



DILAPIDATED BUILDING POLICY

POLICY TYPE	POLICY ADOPTED (DATE)	MINUTE NUMBER	POLICY DOCUMENT NUMBER (TRIM)
Council	22 July 2019	153/19	D595082
DOCUMENT CONTROLLER	RESPONSIBLE MANAGER	STRATEGIC PLAN 2009-2030 (STRATEGY REFERENCE)	DATE OF NEXT REVIEW
Development Services Manager	General Manager	2.1.2 – Provide consistent and responsive development assessment and compliance processes	July 2021
PURPOSE	<p>To set a framework for the objective consideration by Council of whether a building notice should be issued by the General Manager specifying any building works that are required to be carried out in respect of a “dilapidated” building or buildings.</p> <p>Under the <i>Building Act 2016</i> (the <i>Act</i>) a dilapidated building is defined as a building “that because of neglect, disrepair, defacement or damage, is of an appearance that is unsightly, particularly in comparison with its surroundings”.</p> <p>A building that is considered to be against the criteria for “dilapidated” may come to the attention of the General Manager by any means, including external notification, observations of Council officers or by a structured building audit program.</p>		
SCOPE	<p>This policy applies to all buildings in the Devonport Municipal area.</p> <p>Before the General Manager may issue a building notice, they must consider whether a building or building falls within the definition of “dilapidated”.</p> <p>It defines the considerations that must be made by the General Manager before they are satisfied that a building notice should be served on a building owner requiring that specified building works are to be carried out to a building.</p> <p>It sets out the matters about which the General Manager must be satisfied before they issue a building notice.</p> <p>This Policy will not apply to buildings listed on the State Heritage Building Register or buildings referenced as a local heritage building under Council's Planning Scheme unless the General Manager first obtains the written approval of the Heritage Council of Tasmania to require specified building works to be carried out to such a building.</p> <p>A building notice under the dilapidated buildings provisions will not be served in instances where the General Manager is of the opinion that a threat to life may arise out of the condition or use of a building or temporary structure. In such cases an emergency order will be issued under the provisions of Section 245 of the <i>Act</i>.</p>		
POLICY	<p>1. Resolution to Commence a Dilapidated Building Action</p> <p>Before issuing a building notice for a dilapidated building, the General Manager is to provide Council with a report that:</p>		

- 1.1. reasonably establishes that the building or buildings in question satisfy the definition of “dilapidated”; and
- 1.2. provides an estimate of the cost to Council to carry out the building works stipulated in the notice in the event that the property owner fails to do so.

The General Manager is not to issue a building notice for the remediation of a dilapidated building or building under the provisions of section 242 of the Act, until Council has resolved that both the action and any likely cost to Council for carrying out the works are acceptable in the circumstances.

2. Determining whether a Building is a Dilapidated Building

In determining whether a building is of an appearance that is prejudicial to the visual amenity of its surroundings the General Manager may consider, but is not limited to, the following indicators:

- broken windows, or major damage to window screens/external window frames;
- significant damage to roofs, roof coverings or guttering;
- significant damage to exterior building surfaces (for example peeling paint);
- broken exterior doors or major damage to exterior door frames;
- partially completed or partially demolished buildings; or
- excessive graffiti.

Subsection 241 (1) of the Act provides that if the General Manager is of the opinion that a building may be a dilapidated building, then the General Manager may inspect the building and is to prepare a report on the matter. This process may be initiated when the condition of a building is brought to the General Manager’s attention, for example, via a complaint from a member of the community.

There is no obligation for the General Manager to act at the behest of community complaints in relation to dilapidated buildings. Subsection 241 (2) provides that the dilapidated building report is to state whether or not the building is a dilapidated building, the building work or other work the General Manager considers necessary to ameliorate the condition of the building and any other relevant matter.

Subsection 241 (3) provides that the General Manager may seek information from any building services provider, or other person, to assist them in preparing the report. Examples of other people that may have relevant skills and therefore be of assistance in preparing a report are:

- an urban planner who can give advice concerning visual amenity issues;
- a valuer who can give advice on relative property values;
- a heritage expert; and/or
- an architect, engineer, building surveyor or an accredited builder who can give advice on the building or structure.

Section 26 provides that as an authorised person under the *Act*, the General Manager or their delegate(s) may at all reasonable times, access and enter any building for the purpose of exercising any power or performing any function under the *Act*.

3. Issuing a Dilapidated Building Notice

Section 242 provides that if the dilapidated building report states that a building is a dilapidated building, the General Manager may issue a dilapidated building notice to the building owner.

A dilapidated building notice is to be in the form of a 'show cause' notice which provides the owner with the opportunity to express, in writing and within a time nominated in the notice (usually 20 days), why they should not be required to carry out the proposed building work or other work to ameliorate the dilapidated building.

The dilapidated building notice is to be accompanied by a copy of the dilapidated building report.

The General Manager and the building owner may be able to negotiate an outcome regarding the building that is satisfactory to both parties, before an order is made.

4. Serving a Building Order relating to a Dilapidated Building

Section 249 (1) provides that if the General Manager does not revoke the building notice, then they are to serve a building order to the dilapidated building.

The building order is to require the owner to carry out building work or other work to ameliorate the dilapidated building.

A building order relating to a dilapidated building may be combined with another building order under the *Act*.

Some specific examples of building works that may be included in a building order relating to a dilapidated building include:

- repairing broken windows, roofs or walls;
- boarding up access points (windows) to prevent vandalism entry points; or
- partial or complete demolition if required and appropriate;

A building order can also include other relevant types of work, for example:

- fencing of a site;
- removing graffiti from walls; or
- painting.

5. Appeal Rights

A building owner may appeal to the Resource Management and Planning Appeal Tribunal against a building order issued in respect of a dilapidated building (Section 278).

6. Failure to Comply with a Building Order

A building order is a legal order issued under the *Act* and compliance with the order is mandatory.

Under Section 265, the General Manager is to take all reasonable steps to enforce a building order in the event that a person has failed to comply.

	<p>If a person fails to comply with a building order, the work may be carried out by the Council.</p> <p>The Council can then recover the costs of carrying out any building works by selling the building for removal or after demolition, any materials on the site (as per Sections 269 and 270) or recovering expenses as a charge on the land and recoverable as if it were rates or charges under the <i>Local Government Act 1993</i>.</p> <p>7. Amending or Revoking a Building Order relating to a Dilapidated Building</p> <p>Section 274 provides that if an owner is served with a building order after being issued with a dilapidated building notice and there is a change of circumstances after the original notice was issued, the owner may request the General Manager to amend or revoke the building order. The General Manager may, if he considers it appropriate, then amend or revoke the building order, or revoke or issue an amended dilapidated building notice.</p>		
LEGISLATION AND RELATED DOCUMENTS	<p><i>Building Act 2016</i> <i>Local Government Act 1993</i> Building Regulation Advisory Note 01/2014</p>		
ATTACHMENTS (IF APPLICABLE)	<p>Show Cause Notice – Dilapidated Building Notice (<i>Building Act 2016</i> Section 242)</p>		
TRAINING REQUIREMENTS (IF APPLICABLE)	Is training required as result of this Policy	YES	NO
	Training required by:	Councillors	Staff
			Department

**Building Act 2016
Section 242
SHOW CAUSE NOTICE – DILAPIDATED BUILDING**



TAKE NOTICE THAT:

You (1)
Of (2) as owner
Of a (3)
On (4)
Situated at (5)
are invited to show cause why you should not be required to carry out the following building works (6)

The Council considers these works should be carried out as it reasonably believes, based on the report attached, that the works are necessary to ameliorate the condition of the building so that it is not of an appearance that is prejudicial to the visual amenity of its surroundings.

You may send written representations about this Show Cause Notice to the Council at the following address:

The General Manager
Devonport City Council
PO Box 604
DEVONPORT TAS 7310

Your written representations should be marked with the following reference number to assist Council in a prompt consideration of your response: *Insert TRIM File No.*

Your written representations must be received by Council no later than *Insert date.*

You may appeal to the Resource Management and Planning Appeal Tribunal against this building order. An appeal must usually be lodged within 14 days of the date of this notice.

In the event that you fail to show cause within the time stipulated in this notice, or to lodge an appeal with RMPAT, Council may carry out, or cause to be carried out, the work stipulated in the notice. Council is entitled to recover the costs involved by either sale of materials on site or by levying a charge against the property recoverable as if it were a rate or charge as set out in section 197 of the *Local Government Act 1993.*

Failure to comply with a building order is an offence pursuant to Section 246 of the *Building Act 2016* and prosecution may result in significant fines. Council is also empowered to issue an infringement notice for such an offence.

DATED THISDAY OF20

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General Manager

Instructions to complete

- (1) Insert the name of the owner of the land
- (2) Insert the last known address of the owner from a title search, rates record etc
- (3) Insert a description of the building or structure eg "building being a class 1a single detached dwelling
- (4) Insert the real property description of the land on which the building or structure is erected
- (5) Insert the street address of the land on which the building or structure is standing
- (6) Insert brief general description of building works required to be carried out (based on the building report) eg
 - Repair all broken windows to the dwelling
 - Repair all broken roof sheeting to prevent water entry
 - Secure the building by replacing lockable doors to all entries
 - Refix loose, and replace missing weatherboards to prevent water and vermin entry
 - Repaint the exterior of the building to an acceptable standard
 - Obtain a report from a qualified person about any asbestos in the building, and then engage a suitably licensed contractor to demolish the building and remove all resultant building rubble