

	COUNCIL POLICY	POLICY NUMBER
	DILAPIDATED BUILDINGS POLICY	C 031
RESPONSIBLE OFFICER	APPROVAL DATE	REVIEW DUE
General Manager	24 th June 2015	January 2019

1.0 PURPOSE OF POLICY

The purpose of this policy is to set a framework for the objective consideration by Council of whether enforcement action should be undertaken by Council in respect of a ‘dilapidated’ building or buildings.

Part 4 of the *Building Act 2016* (“the Act”) defines a dilapidated building as *“a building that because of neglect, disrepair, defacement or damage, is of an appearance that is prejudicial to the visual amenity of its surroundings”*.

A building that is to be considered 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.

In addition, the policy defines the considerations that must be made by before a Building Notice is served on a building owner requiring specified building works to be carried out to a building to improve the condition of the building.

2.0 SCOPE

This policy applies to all buildings in the Tasman Municipality. There is no obligation for Council to act at the directive of community complaints in relation to dilapidated buildings. The Act defines the considerations that must be made by the General Manager before he is 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.

A Building Notice under the dilapidated building 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 Act.

This policy does not apply junk, car wrecks or other unsightly articles. These matters are dealt with separately by Council in accordance with the Local Government Act 1993.

This policy will not apply to Heritage Buildings 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.

3.0 PROCESS

3.1 Resolution to commence a dilapidated building action

The Act defines the considerations that must be made by the General Manager before he is 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.

Prior to issuing a Building Notice for a dilapidated building the General Manager is to provide Council with a report that:

- Reasonably establishes that the building or buildings in question satisfy the definition of 'dilapidated'; and
- 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 buildings under the Act until Council has resolved that both the action, and any likely cost to Council for carrying out the works is acceptable in the circumstances.

3.2 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 factors:

- 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.

Section 241 (1) of the Act states 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 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 a building practitioner, or other person, to assist them in preparing the report. Examples of people that 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 of the Act states that an Authorised Officer under the Act, the General Manager or his delegate(s) may access and enter any building for the purpose of exercising any power or performing any function under the Act.

3.3 Issuing a dilapidated Building Notice

Section 242 of the Act specifies 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.

3.4 Serving a Building Order relating to a dilapidated building

Section 249 of the Act states that if the General Manager does not revoke the Building Notice, a Building Order is to be issued for the dilapidated building. The Building Order requires the owner to carry out building work or other remedial work to improve the dilapidated building.

A Building Order relating to a dilapidated building may be combined with another Building Order issued in accordance with the Act (ie for illegal building work). Some specific examples of building works that may be included in a Building Order relating to a dilapidated building include:

- *repairing broken windows, roof or walls*
- *boarding up access points (windows / doors) 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*

3.5 Appeal Rights

A building owner may appeal to the Resource Management and Planning Appeal Tribunal (RMPAT) against a Building Order issued in respect of a dilapidated building.

3.6 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. The General Manager is to take all reasonable steps to enforce a Building Order in the event that a person has failed to comply. If a person fails to comply with a Building Order, the work may be carried out by the Council.

If the work is undertaken by Council, 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 or recovering expenses as a charge on the land and recoverable as if it were rates or charges under the *Local Government Act 1993*.

Failure to comply with a Building Order is an offence under section 170 of the Act and prosecution can result in significant fines. Council also has powers to issue infringement notices for such an offence.

3.6 Amending or revoking a Building Order relating to a dilapidated building

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.

4.0 REFERENCES

- *Building Act 2016*
- Building Regulation Advisory Note No. 01/2014

This policy was reviewed and approved at the ordinary Council meeting held on 23 January 2019, resolution number 12/01.2019/C.

Policy Developed and approved: June 2015

Policy reviewed: February 2017

Policy reviewed: January 2019



Kim Hossack

Acting General Manager

Disclaimer

That this policy be read in conjunction with any or all other Council and/or Management Policies.