



Brighton Council

POLICY NAME: Dilapidated Building

POLICY No: AP19

PURPOSE OF POLICY:

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.

In section 4(1) of the *Building Act 2016* (the Act) 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.*'

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.

SCOPE:

This policy applies to all buildings in the Brighton Municipality.

POLICY:

Before the General Manager may issue a building notice he must consider whether a building or buildings falls within the definition of 'dilapidated'.

It 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.

It sets out the matters about which the General Manager must be satisfied before issuing a building notice.

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.

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.

1.1 Resolution to commence a dilapidated building action

Before using 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 provisions section 242 of 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.

1.2 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.

Subsection 241 (1) of the Act provides that if a General Manager believes that a building may be a dilapidated building, then the General Manager may inspect the building and is to prepare a dilapidated building 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 request 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, that the General Manager considers is required in order for the building to cease to be a dilapidated and any other matter that the General Manager considers relevant.

Subsection 241 (3) provides that the General Manager may obtain information as to any matter relating to a dilapidated building report from any building services provided, or other person, the General Manager thinks appropriate. 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(1) and section 41(2) provides that as an authorised person under the Act, the General Manager or Permit Authority may access and enter any building for the purpose of exercising any power or performing any function under the Act.

1.3 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.

1.4 Serving a building order relating to a dilapidated building

Section 249 provides that if the General Manager does not revoke the building notice, then he is to serve a building order relating 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, 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

1.5 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).

1.6 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.

If a person fails to comply with a building order, the work may be carried out by the 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 (as per section 265 and 271), or recovering expenses as a charge on the land and recoverable as if it were rates or charges under the *Local Government Act 1993* (as per section 269).

Failure to comply with a building order is an offence under section 246 of the Act and prosecution can result in significant fines. Council also has powers to issue infringement notices for such an offence.

1.7 Amending or revoking a building order relating to a dilapidated building

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.

ROLES & RESPONSIBILITIES:

Responsible Manager

General Manager

REFERENCES:

Building Act 2016

ADMINISTRATIVE DETAILS:

Policy compiled: May 2015

Adopted by Council: 19th May 2015

Reviewed: May 2017, September 2019; September 2021

To be reviewed: September 2023

Responsibility: Governance Manager



GENERAL MANAGER