Guidance for General Managers on new Dilapidated Building legislation

Legislative basis

The Building Act 2000 (the Act) was amended on 19 November 2013 to provide the general manager of a council with the power to address issues associated with dilapidated buildings. Under section 3 of the Act, a dilapidated building is defined 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 flowchart on page 6 outlines the dilapidated building process.

GUIDANCE – GENERAL

When should the dilapidated building powers be exercised?

The definition of a dilapidated building focuses on the impact of the building on the visual amenity of its surroundings. Therefore, in order to determine whether a building is a dilapidated building, a general manager would need to consider the effect of the building on its surroundings.

These provisions cannot be used for wholesale upgrading of streets or neighbourhoods. This is because if a building is part of a group of buildings of similar condition, it is unlikely that it would be considered to be ‘prejudicial to the visual amenity of its surroundings’.

It is not possible to prescribe a set of criteria that apply to all dilapidated buildings in all situations. That said, some examples of specific conditions that may cause a building to be prejudicial to the visual amenity of its surroundings and therefore be considered a dilapidated building include:

- 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.

Councils may wish to develop a ‘dilapidated buildings policy’ to guide the general manager in the application of this legislation. This is important because councils are accountable to their communities for the decisions they make and this extends to decisions relating to dilapidated buildings.

What types of buildings do the provisions apply to?

The dilapidated building provisions apply to any permanent structure.
Under section 3 of the Act, a building includes a part of a building, a structure and part of a structure.

Examples of buildings that a general manager may apply this legislation to include dwelling houses, sheds, greenhouses, factories, tank stands, windmills, sawmills, front fences and unfinished buildings.

The dilapidated building provisions do not apply to junk, car wrecks or other unsightly articles. This is because councils have powers under the *Local Government Act 1993* to deal with such nuisances.

**What other legislation should be considered?**

It is important that general managers consider other relevant legislative requirements when utilising the dilapidated building provisions.

The table below outlines some key legislation that councils should consider.

This is not an exhaustive list and it is up to councils to ensure compliance with relevant legislation when taking action on dilapidated buildings.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Role of councils</th>
<th>Legislation</th>
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<tbody>
<tr>
<td>Heritage buildings</td>
<td>Councils have an important role in preserving places of historic cultural heritage. The possible effects of a building order on cultural heritage issues and relevant legislative requirements should be taken into account by the general manager.</td>
<td><em>Historic Cultural Heritage Act 1995</em></td>
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| Planning / building permits    | Councils are the authorities in regards to issuing planning and building permits. A general manager can include permit requirements in building orders. | *Land use Planning and Approvals Act 1993*  
Building Act 2000 |
| Waste management and disposal | Councils have an obligation to prevent or control acts or omissions which cause or are capable of causing pollution. | *Environmental Management and Pollution Control Act 1994* |

**Photographs of examples of potentially dilapidated buildings**

*Figure 1: Building shows signs of dilapidation by way of broken windows and damaged exterior surfaces*
Figure 2: Building shows signs of dilapidation and may impact on the visual amenity of the adjacent house.

Figure 3: Building shows signs of dilapidation by way of damaged exterior building surfaces and graffiti. Building may also have structural defects that, if unfit for use or occupation, or a danger to users of the building, can also be addressed through the building notice/order process under the Building Act.

Figure 4: Building shows signs of dilapidation by way of damaged exterior building surfaces and damaged roof coverings. Building may also have structural defects that can also be addressed through the building notice/order process under the Building Act.
GUIDANCE – DILAPIDATED BUILDING PROCESS

Determining whether a building is a dilapidated building and preparing a dilapidated building report

Subsection 167A(1) of the Act provides that if a 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 a general managers’ attention, for example via a complaint from a member of the community.

There is no obligation for a general manager to act at the behest of community complaints in relation to dilapidated buildings. Rather, the dilapidated building provisions are a discretionary tool that a general manager can use.

Subsection 167A(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 167A(3) provides that a general manager may seek information from a building practitioner, or other person, to assist them in preparing the report.

Examples of people that may have relevant skills and therefore be of assistance to a general manager may include:

- 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 258 provides that as an authorised person under the Act, a general manager or his/her delegate(s) may access and enter any building for the purpose of exercising any power or performing any function under the Act.

Issuing a dilapidated building notice

Section 167B 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 essentially a ‘show cause’ notice which provides the owner with the opportunity to express 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.

At this point in the process, 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.

Serving a building order relating to a dilapidated building

Section 173A provides that if a general manager does not revoke the building notice, then he/she 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.

The remedial conditions that can be included in an order are broad and can be tailored to the particular building and the financial situation of the owner.

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 works, for example:

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

**Building owner appeal rights against a building order**

A building owner has appeal rights to the Resource Management and Planning Appeal Tribunal against a building order issued in respect of a dilapidated building (section 211).

**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 192, a 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 from carrying out any building works by selling the building for removal or after demolition, any materials on the site (as per sections 192 and 194), 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 197).

Failure to comply with a building order is an offence under section 170 of the Act and prosecution can result in significant fines. Councils also have powers to issue infringement notices for such an offence.

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

Section 200 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 then amend or revoke the building order, or revoke or issue an amended dilapidated building notice.

**Please see the next page for a flowchart on the Dilapidated Building Process under the Act**

The Director of Building Control acknowledges the assistance of the Department of Premier and Cabinet (Local Government Division) and the Local Government Association of Tasmania in the preparation of this Guidance Material.
Dilapidated building process – *Building Act 2000*

General Manager (GM) identifies that a building may constitute a dilapidated building.

GM determines whether building is a dilapidated building. May include building inspection and/or statement from building practitioner. Is to include consideration of relevant environmental, heritage, planning and structural issues.

GM prepares a report on the matter. Report to state whether the building is a dilapidated building and the building work/other work necessary to ameliorate the dilapidated building.

If the report states that the building is a dilapidated building, GM may issue the owner with a dilapidated building notice.

Building owner can make representations to GM as to why he/she should not be required to carry out the building work specified in the dilapidated building report.

GM may revoke the dilapidated building notice after considering the owner representations.

If GM does not revoke the dilapidated building notice, GM is to serve a building order relating to the dilapidated building.

The building order is to require the owner to undertake building work/other work to ameliorate the dilapidated building.

A building order for a dilapidated building may be a separate building order or combined with another building order made under the Building Act.

The building owner may appeal to the Resource Management and Planning Appeal Tribunal (RMPAT) against the building order.

Failure to comply with a building order is an offence and prosecution can result in significant fines. Councils also have powers to issue infringement notices for such an offence.

A council may carry out the building work to ameliorate the dilapidated building if the building order has not been complied with.

The council can recover costs from carrying out any building works by selling building supplies, or recovering expenses as a charge on the land and recoverable as if it were rates/charges under the *Local Government Act 1993*. 