

Director's Guideline

Building Act 2016

Guideline No 2 of 2018

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Dilapidated Buildings

Introduction

Council General Managers were given powers to address issues associated with dilapidated buildings in 2013. These powers are now contained in the *Building Act 2016* (the Act).

This Guideline has been prepared to assist Council General Managers and permit authorities to understand when and how they can exercise their powers in relation to dilapidated buildings to respond to concerns about these buildings in their municipalities.

The decision to take action, however, is wholly in the discretion of the Council General Manager and nothing in this guideline should be read as compelling action to be taken.

What is a dilapidated building?

Meaning of 'dilapidated'

Under section 4 of the Act, a dilapidated building is a building which has an unsightly appearance due to neglect, disrepair, defacement or damage, particularly compared to its surroundings.

It is not possible to have an all encompassing criteria that can apply to all dilapidated buildings in all situations. However, some examples of specific conditions that may cause a building to be considered dilapidated 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.

Whether a building is dilapidated is assessed compared to its surroundings. Therefore, if the building is part of a group of buildings that are in a similar condition, it may not be dilapidated. In light of this, the General Manager’s powers cannot be used to upgrade entire streets or neighbourhoods that are considered untidy.

Councils should develop policies to guide the General Manager in exercising its powers under the dilapidated buildings provisions. This may help to ensure consistency in making decisions about dilapidated buildings, which is important for councils’ accountability to their communities.

Types of buildings these provisions apply to

- A building includes part of a building, a structure and part of a structure. Examples of buildings a General Manager may apply the dilapidated buildings provisions to include 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. Councils have powers under the *Local Government Act 1993* to deal with these nuisances.

Other laws to consider when exercising dilapidated building powers

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 they 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.

Issue	Role of councils	Legislation
Heritage buildings	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.	<i>Historic Cultural Heritage Act 1995</i>
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.	<i>Land Use Planning and Approvals Act 1993</i> <i>Building Act 2016</i>
Waste management and disposal	Councils have an obligation to prevent or control acts or omissions which cause or are capable of causing pollution.	<i>Environmental Management and Pollution Control Act 1994</i>

Photo 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 particularly compared to the neighbouring 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.

What is the process for dilapidated buildings?

1) **General Manager Determines whether a building is dilapidated and prepares a dilapidated building report**

Section 241 of the *Building Act 2016* provides that if a General Manager believes that a building may be dilapidated, they may inspect the building and prepare a report on the matter.

This process may be initiated when the condition of a building is brought to a General Manager's attention, for example via a complaint from a member of the community. The General Manager is not obliged to utilise the dilapidated building provisions in response to a complaint. Rather, **the provisions are a discretionary tool that the General Manager can use.**

Under section 241(2), a dilapidated building report must state whether a building is dilapidated, the building work or other work that the General Manager considers necessary for the building to no longer be dilapidated, and any other relevant matters. Section 241(3) provides that a General Manager can seek information from a licensed building services provider (e.g builder, architect, building surveyor or engineer), or another person (e.g urban planner, valuer or heritage expert), to assist them in preparing the report.

General Managers also have a general power to enter buildings when necessary to exercise their powers under the Act (section 41).

2) **General Manager serves a dilapidated building notice on the owner**

Once a dilapidated building report is prepared, the process for dilapidated buildings is similar to the process for other non-compliant or illegal building work – a building notice is issued followed by an enforceable building order if the owner is unwilling to rectify the dilapidation.

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

The notice is issued using [Form I4](#). It must require the owner to show cause (give reasons) why they should not perform the work specified in the dilapidated building report to fix the building. The notice must be accompanied by a copy of the dilapidated building report. The notice must state that the owner has 14 days to respond and provide details of how a response can be made.

At this point in the process, before an order is issued, the General Manager and the building owner may be able to negotiate an outcome regarding the building that is satisfactory to both parties.

Under section 244 the General Manager may revoke the notice if they are satisfied it is appropriate to do in light of the owner's response or other new information received. An amended notice can be issued if necessary.

3) Permit authority serves a building order relating to the dilapidated building on the owner

Section 249 provides that if a General Manager does not revoke a dilapidated building notice, then the council permit authority must serve a building order on the owner. The order will require the owner to perform the building work or other work which the permit authority specifies is necessary for the building to no longer be dilapidated. The order is issued using [Form I6](#). The order may be contained in another building order made under the Act (for example, if there is more than just dilapidation issues to consider).

The types of work that may be required under the order to rectify a dilapidated building are broad. However, the requirements of the individual building order may be tailored to the particular building and the financial situation of the owner.

Some 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 of graffiti from walls or
- painting.

The order should specify a deadline (after giving a reasonable time) for the owner to complete the work. If they are unable to meet that deadline, the council is then entitled to carry out other actions.

Any necessary works should be done in accordance with the Act, the *Building Regulations 2016* and the National Construction Code. As the works have been ordered by a permit authority, a building permit is not required as an approval for the work. However, the permit authority may require that the owner engage a building surveyor and prepare a plan for how the work is to be done safely. Further, if the required work is permit or notifiable work, the owner will need a licensed builder to carry out the work for them.

The owner should notify the council when the required works are complete. The council should then arrange an inspection to ensure that the building order has been complied with. Under section 254 the order will remain in place until it is revoked by the permit authority, either because it has been complied with or because circumstances have changed.

Under section 278, the owner may appeal against the issuing of a building order to the Resource Management and Planning Appeal Tribunal.

Consequences for owners of 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 of the Act, if a person fails to comply with a building order a permit authority is to take all reasonable steps to enforce the order.

Council performs the work itself

If a person still fails to comply with a building order, the work may be carried out by the council. In carrying out this work, the council may enter the land with appropriate equipment, exclude others from the work site, alter or demolish parts of a building and remove and sell any materials to cover work costs.

Under section 269, any extra costs of performing work not covered by selling materials are a debt due by the owner to the council which can be recovered through court action. A charge can also be put on the land as if the money owed were rates or charges under the *Local Government Act 1993*. This means that if the debt remains outstanding the council can sell the land. If the owner does not allow the council to do the works, the council can bring court proceedings to take possession of the property under section 265.

Council serves demolition order on the owner

The council can also issue an order on the owner to demolish the building under section 267. This order is issued using [Form 32](#). This is a special type of demolition order, only used if the owner has not complied with a prior building order to do something. It is issued in the name of the municipal council, rather than the permit authority. If this order is not complied within 21 days, the council's staff or contractors can enter the land to carry out the demolition work. Owners who are required to demolish buildings under a building order are not compensated for their losses.

Fines and prosecution

Failure to comply with a building order is an offence under the Act (section 246(8)) 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 274 provides that if there is a change in circumstances after an owner is served with a building order, the owner may request the permit authority who served the order to either amend or revoke the order. In response, the permit authority can either decide to amend or revoke the order, or it may refuse to do anything if the circumstances do not warrant it.

Dilapidated building process – *Building Act 2016*



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