

DANGEROUS AND INSANITARY BUILDINGS POLICY

Introduction and Background

Section 131 of the Building Act 2004 requires territorial authorities to adopt a policy on dangerous, earthquake-prone and insanitary buildings. It must be reviewed at least every five years. For convenience, Council has produced two separate policies, this one on dangerous and insanitary buildings, and another one on earthquake prone buildings.

The definition of a dangerous building is set out in Section 121 (1) of the Act:

“A building is dangerous for the purposes of this Act if,-

- (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause-*
 - (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or*
 - (ii) damage to other property; or*
- (b) in the event of fire, injury or death to any person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”*

The definition of an insanitary building is set out in s123 of the Act:

“A building is insanitary for the purposes of this Act if the building-

- (a) is offensive or likely to be injurious to health because-*
 - (i) of how it is situated or constructed; or*
 - (ii) it is in a state of disrepair; or*
- (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or*
- (c) does not have a supply of potable water that is adequate for its intended use; or*
- (d) does not have sanitary facilities that are adequate for its intended use.”*

Policies on dangerous and insanitary buildings are required to state:

- The approach that the Council will take in performing its functions under the Act;
- Council’s priorities in performing those functions;
- How the policy will apply to heritage buildings;

In developing and adopting its policy on dangerous and insanitary buildings, Council has followed the special consultative procedure set out in section 83 of the Local Government Act 2002.

Policy approach

The provisions of the Act relating to dangerous and insanitary buildings reflect the government's broader concern with the lives and health and safety of the public in buildings. This is expressed in the purpose of the Act set out in Section 3, and the principles contained in Section 4. Council is committed to ensuring that people are able to go about their business and leisure any time of the day or night without fear for their safety. This is set as a community outcome in the LTCCP.

Causes of Dangerous or Insanitary Buildings

Buildings may become dangerous or insanitary due to a number of reasons. These include poor maintenance, misuse by the occupant, natural disasters such as floods, landslides or erosion and inappropriate construction methods or materials.

Buildings that are dangerous or insanitary may come to the attention of the Council via complaints from building tenants, during building consent inspections, or in follow-ups after a flood event. Once Council is aware of a problem, it is obliged to act in order to ensure the health and wellbeing of the building's occupants. Council will follow the process laid down in the Building Act 2004 in dealing with dangerous conditions. In respect of insanitary conditions, it will decide whether to use its powers under the Health Act 1956 and/or the Building Act 2004 in each particular case.

Identifying Dangerous or Insanitary Buildings

It is impractical to inspect every building in the District on a regular basis. Instead the Council will:

1. Respond to and investigate all building complaints received;
2. Identify from these investigations any buildings that are dangerous or insanitary;
3. Issue a notice to the owner and occupier of the building to take action to remedy or remove the problem, as required by s124 and s125 of the Act;
4. Liaise with the New Zealand Fire Service in respect of dangerous buildings when Council deems it is appropriate, in accordance with s121 (2) of the Act;
5. Liaise with the Regional Public Health Service (Medical Officer of Health) when required, to assess whether the occupants may be neglected or infirm.

Assessment Criteria

The Council will assess dangerous buildings in accordance with s121 (1) of the Act, in terms of the extent to which:

- the building is likely to cause injury or death to any persons in it or on other property, or to cause damage to other property; or
- injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.

- in the event of fire, injury or death to any person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”

Council may request a written report on the building from the New Zealand Fire Service or other agencies.

Insanitary buildings will be assessed in accordance with s123 of the Building Act. The Council will consider the use to which the building is put and whether the insanitary conditions pose a reasonable probability of danger to the health of any occupants.

Acceptable Solutions E2 (External Moisture), G1 (Water Supplies), G1 (Personal Hygiene) and G13 (Foul Water) of the New Zealand Building Code may be consulted:

Taking Action

Immediate action

Where the danger or hazard is assessed and requires immediate action, the Council will remove that danger or hazard. Council can prohibit persons from using or occupying the building under section 128 and can request demolition of all or part of the building under section 129. The Act allows Council to recover costs from the owner(s) for any such remedial works.

Natural disasters

If the dangerous or insanitary conditions are due to a widespread natural hazard event, it may not be reasonable or practical for formal notice under the Act to be served at the outset. During the recovery process buildings deemed dangerous or insanitary will be identified in accordance with recovery procedure. During this process Council will advise and work with owners with a view to obtaining a mutually acceptable approach to removing the danger or insanitary conditions.

Information relating to the affected properties will be held on Council records.

Serving notices

Council will use the provisions of Sections 124 and 125 of the Building Act. This will be done after advising the owners concerned, and involves:

- Attaching a written notice to the building requiring work to be carried out, within a time stated in the notice (being not less than 10 days), to reduce or remove the danger or the insanitary conditions;

- Giving copies of the notice to the building owner, occupier, and every person who has an interest in the land, or is claiming an interest in the land, as well as the New Zealand Historic Places Trust if the building is a heritage building;
- Contacting the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with;
- Pursuing enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as any other non-compliance matters. Any person who fails to comply with a notice under Section 125 is committing an offence and is liable to infringement fines of up to \$2,000 or a fine not exceeding \$200,000.

Section 112: Alterations to existing buildings

Whenever a building consent application is received for significant upgrading or alteration of a building that is or could be dangerous or insanitary then, irrespective of the general priorities set in this policy, Council will not issue a building consent unless it is satisfied that the building will no longer be dangerous or insanitary after the alteration.

Record keeping

Any buildings identified as being dangerous or insanitary will be recorded on the property file for the land on which the building is situated. The following information will also be included with any LIM issued in respect of the property:

- Advice that the building is dangerous or insanitary.
- A copy of any correspondence about the state of the building, if applicable.
- A copy of any dangerous and/or insanitary notices issued under the Act.
- Any report as to the completed works and how the situation was rectified, if applicable.

Economic impact of policy

Due to the very low number of dangerous or insanitary buildings encountered annually by the Council, the economic impact of this policy is considered to be negligible.

Access to information

Information concerning dangerous or insanitary buildings will be contained in the relevant LIM. In granting access to information concerning such buildings, the Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987, the Privacy Act and the Local Government Act 2002.

Priorities

Priority will be given to buildings that have been determined to be immediately dangerous or insanitary. Urgent action will be required in these situations to remedy the situation, such as prohibiting occupation of the property, and putting up a hoarding or fence.

Buildings that are determined to be dangerous or insanitary, but not requiring immediate action to remedy their condition, will be subject to a reasonable timeframe, but not less than 10 days for reduction or removal of the danger as set out in section 124(1) (c) of the Building Act .

Heritage Buildings

A number of principles relevant to historic heritage are outlined in Section 4 of the Act, including:

- d) *the importance of recognising any special traditional and cultural aspects of the intended use of a building, and*
- l) *the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value.*

Local authorities are required to take these principles into account, including when they are preparing, adopting and reviewing policies on dangerous and insanitary buildings.

No special dispensation will be afforded to heritage buildings in terms of compliance under this policy. It is just as important for these buildings to be made safe and sanitary as it is for any other structure. Where the required remedial works might adversely affect the historic fabric or heritage value of the building, however, it will be important for Council or the landowner to obtain advice from an appropriate heritage professional on how the work may be done with minimum impact.

under section.125 (2) (f) of the Building Act, a copy of any notice issued under section 124 of the Act will be sent to the New Zealand Historic Places Trust where a heritage building has been identified as dangerous or insanitary.