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# Dangerous, Affected and Insanitary Buildings Policy 2022

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# Dangerous, Affected and Insanitary Buildings Policy

## 1 Introduction and Background

- 1.1.1 Section 131 of the Building Act 2004 requires territorial authorities to adopt a policy on dangerous and insanitary buildings. It must be reviewed at least every five years.
- 1.1.2 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.
- 1.1.3 Section 132A<sup>1</sup> requires the policy to take into account affected buildings.
- 1.1.4 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.

## 2 Definitions

- 2.1.1 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."*

- 2.1.2 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."*

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<sup>1</sup> Inserted on 28 November 2013 by section 36 of the Building Amendment Act 2013 (2013 No 100).

2.1.3 The definition of an affected building is set out in s121A:

*“A building is an affected building for the purposes of this Act if it is adjacent to, adjoining, or nearby—*

- a) *a dangerous building as defined in section 121; or*
- b) *a dangerous dam within the meaning of section 153.*

### **3 Policy Approach**

3.1.1 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 the Manawatu’s built environment is safe and resilient. This policy aligns with Council Priorities as set out in the 2021-31 Long term Plan: A place to belong and grow, by ensuring a safe environment to live, work and play and Infrastructure fit for purpose, by making sure buildings and new developments are safe and accessible.

#### **3.2 Causes of Dangerous, Affected or Insanitary Buildings**

3.2.1 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.

3.2.2 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 natural hazard 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.

3.2.3 Where the risk associated with a dangerous building or a dangerous dam extends to other buildings located adjacent to, adjoining or nearby, these buildings may be considered “affected buildings” in accordance with s121A. In such instances Council will use its powers under section 124(2) of the Building Act to ensure public safety.

3.2.4 Buildings in areas designated under subpart 6B will be assessed under section 123B (2).

#### **3.3 Identifying Dangerous, Affected or Insanitary Buildings**

3.3.1 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 Council considers may be dangerous or insanitary and any buildings adjacent to, adjoining or nearby that may be affected buildings;

- 3) Liaise with the Fire and Emergency New Zealand in respect of dangerous buildings when Council deems it is appropriate, in accordance with s121 (2) of the Act:
- 4) Liaise with the Regional Public Health Service (Medical Officer of Health) when required, to assess whether the occupants may be neglected or infirm.
- 5) Respond to any notification from Horizons Regional Council of a dangerous dam located within the Manawatu District that may trigger affected buildings under the Building Act 2004.

### 3.4 Assessment Criteria

3.4.1 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
- in the event of fire, injury or death to any person in the building or to persons on other property is likely.”

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

3.4.3 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 offensive or likely to be injurious to the health of any occupants.

3.4.4 Relevant clauses of the New Zealand building Code will be consulted as part of the assessment.

## 4 Taking Action

### 4.1 Immediate action

4.1.1 Where a building is assessed by Council, and verified by a suitably qualified person as posing an immediate danger to the safety of people, or where immediate action is necessary to fix insanitary conditions, Council may, by warrant under s129(2), take any action necessary to remove that danger or to fix those insanitary conditions. The Act allows Council to recover the costs of those actions from the owner(s). Council can prohibit or restrict persons from using or occupying the building under section 128.

### 4.2 Serving notices

4.2.1 Owners of buildings that are determined to be dangerous, affected or insanitary, but not requiring immediate action to remedy their condition, will be issued a notice requiring actions to be taken to reduce or remove the danger or insanitary conditions. Council will use the provisions of Sections 124 and 125 of the Building Act, as follows:

- 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, any

statutory authority if the land or building has been classified, as well Heritage New Zealand Pouhere Taonga 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 issued under Section 124(2)(c) is committing an offence and is liable to a fine not exceeding \$300,000 in the case of an individual and not exceeding \$1,500,000 in the case of a body corporate.
- Any person who fails to comply with section 128(2) by using or occupying the building, or permitting another person to use or occupy the building commits an offence. In accordance with section 128A(2) they are liable on conviction to a fine not exceeding \$200,000 and in the case of a continuing offence, to a further fine not exceeding \$20,000 for every part or part of a day during which the offence has continued.

#### 4.3 Affected Buildings

4.3.1 Where a building is assessed by Council as being an affected building, Council will do any or all of the following to ensure the safety of the public (in accordance with clauses (a), (b) and (d) of section 124(2) of the Building Act):

- put up a hoarding or fence to prevent people from approaching the building nearer than is safe
- attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building:
- issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

4.3.2 These restrictions will remain in place until Council, or the owner of the building or dam, undertakes all actions necessary to remove the danger or hazard so that the building is no longer affected.

#### 4.4 Natural disasters

- Buildings deemed dangerous, affected or insanitary due to a widespread natural hazard event under a designation area will be managed under Subpart 6B.
- Where no designation is in place buildings deemed dangerous, affected or insanitary will be identified in accordance with the response and recovery process. During this process Council will advise and work with the owners to remove the danger or insanitary conditions.
- Information relating to the affected properties will be held on Council records.

- 4.5 Section 112: Alterations to existing buildings
- 4.5.1 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.
- 4.6 Heritage Buildings
- 4.6.1 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.*
- 4.6.2 Local authorities are required to take these principles into account, including when they are preparing, adopting and reviewing policies on dangerous and insanitary buildings.
- 4.6.3 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. The landowner is responsible for any costs associated with the engagement of a heritage professional.
- 4.6.4 Under section 125 (2) (f) of the Building Act, a copy of any notice issued under section 124(2)(c) or section 124(2)(d) of the Act will be sent to Heritage New Zealand Pouhere Taonga where a heritage building has been identified as dangerous or insanitary.
- 4.7 Priorities
- 4.7.1 Priority will be given to buildings that have been determined by a suitably qualified structural engineer to be immediately dangerous or insanitary and buildings that are downstream of dams that pose an immediate risk. 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. In such instances, actions will also be taken by Council to prevent people from approaching or entering affected buildings.
- 4.7.2 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 125 of the Building Act.
- 4.7.3 The Council may apply to the District Court for an order to carry out work under a notice if it is not completed or proceeding at a reasonable speed within the time stated in the notice or further time that the council has agreed.

4.7.4 In this event, the Council will provide 10 days' written notice to the owner of its intention to do so. The costs associated with this work are recoverable from the owner under section 126.

## **5 Record keeping and access to information**

5.1.1 Any buildings identified as being dangerous, affected 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.

5.1.2 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.

## **6 Economic impact of policy**

6.1.1 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.