

Statement of Proposal

Dangerous, Affected and Insanitary Buildings Policy

1 Introduction

Manawatu District Council has a responsibility under the Building Act 2004 to manage dangerous, affected and insanitary buildings. Management of these buildings includes identification and enforcement action. The purpose for this is to ensure the safety of the public.

Section 131(1) states that *“A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous, earthquake-prone, and insanitary buildings within its district.”*

Clause (2) of section 131 says that the policy must state:

- (a) The approach that the territorial authority will take in performing its functions under this Part; and*
- (b) The territorial authority's priorities in performing those functions; and*
- (c) How the policy will apply to heritage buildings.*

New section 132A (inserted on 28 November 2013, by section 36 of the Building Amendment Act 2013 (2013 No 100)) requires the amendment of the existing policy to take into account “affected buildings.”

Manawatu District Council adopted two policies in 2006: the dangerous and insanitary buildings policy and the earthquake prone buildings policy. The earthquake prone buildings policy will shortly be revoked as new legislation came into effect on 1 July 2017. The Building (Earthquake-prone Buildings) Amendment Act 2016 and overwrites Council's existing earthquake-prone buildings policy.

This proposal is to review Council's “Dangerous and Insanitary Buildings Policy 2006.” Section 124(2) of the Building Act requires that the policy be reviewed at intervals of no more than 5 years. The current Manawatu District Council dangerous and insanitary buildings policy was adopted in June 2011. This policy was therefore due for review by June 2016. However, section 132(5) states that “A policy does not cease to have effect because it is due for review of being reviewed.” The current policy will therefore continue to be in effect until the new policy is adopted by Council.

Section 132(2) states that *“a policy may be amended or replaced only in accordance with the special consultative procedure...”* (section 83 of the Local Government Act 2002). This statement of proposal has been prepared to fulfil the requirements of section 83 of the Local Government Act 2002, and section 131 of the Building Act 2004.

2 Background

The dangerous and insanitary building policy is proposed to be updated to take into account changes in legislation, to correct referencing errors and to reflect the name change of the New Zealand Historic Places Trust to Heritage New Zealand Pouhere Taonga.

This policy review will allow Council to meet their legislative requirements more effectively and will provide clear information to the public and Council staff.

The proposed Dangerous, Affected and Insanitary Buildings Policy can be accessed on Council's consultation website: www.haveyoursay.kiwi.nz.

3 Proposal

The following tables outlines the proposed changes to the Dangerous and Insanitary Buildings Policy and the reasons for the proposed changes. A copy of the proposed Policy is available on Council's consultation website (www.haveyoursay.kiwi.nz). A tracked changes version of the policy is available upon request (email Lisa.Thomas@mdc.govt.nz).

Table 1: Proposed Changes to the Policy

Section	Proposed Change	Reason for Change
Introduction and Background	Relocation of paragraphs relating to the statutory requirements for the policy and the legislative review of the policy to site above the definitions.	The relocation of these paragraphs is to improve the flow of the policy to make it easier for readers to understand.
Definitions	Insertion of a "Definitions" Heading and the grouping of the definitions together.	A new heading is proposed for ease of reading. The definition of "affected building" was imbedded within the policy requirements. The relocation of these policy paragraphs to the introduction now means that all of the definitions are grouped together in the policy, improving the layout of the policy.
	Amendment to clause (b) in the definition of "dangerous building" as follows: (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 a "dangerous building" was amended by s51 of the Building Amendment Act 2012. This change is to ensure consistency with the current definition as set out in Section 121(1) of the Building Act 2004.
	Insertion of reference to section 132A of the Building Act 2004 that requires the policy to take into account affected buildings.	Section 132A was added to the Building Act 2004 by section 36 of the Building Amendment Act 2013. Council is required by this section to amend the policy to take into account affected buildings.

Section	Proposed Change	Reason for Change
	Insertion of the definition of an “affected building” as set out in s121A of the Building Act 2004.	The insertion of the definition of an “affected building” from the Building Act 2004 is necessary to ensure consistent understanding of what an affected building is.
Policy Approach	<p>Replacement of <i>“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.”</i></p> <p>with:</p> <p><i>“the Manawatu’s built environment is safe, reliable and attractive. This is one of the community outcomes in the Long Term Plan 2015-25.”</i></p>	Council priorities change over time. The community outcomes were reviewed in 2012 as part of the Long Term Plan and carried forward into the 2015 Long Term Plan. The proposed changes are to replace an outdated community outcome with a relevant outcome from the most recent Long Term Plan.
Causes of Dangerous, Affected or Insanitary Buildings	The heading of this section is proposed to be amended to also reference affected buildings. In addition, a new paragraph is proposed that advises policy users of what makes a building an affected building and what powers are available to Council to respond.	As the Policy is now required to also consider affected buildings, it is appropriate that the policy include information on what causes a building to become affected. Information on the legislative powers available to Council in respect to affected buildings is proposed with consistency with the information provided for dangerous and insanitary buildings.
Identifying Dangerous, Affected or Insanitary Buildings	<p>Amendments are proposed to the heading to include reference to affected buildings.</p> <p>Amendments are proposed to bullet point 2 to clarify that Council is responsible for investigating building complaints to identify buildings that may be dangerous, insanitary or affected.</p> <p>Existing bullet point 3 is to be deleted.</p> <p>A new bullet point 5 is proposed to be inserted that outlines how Council will act in instances where buildings are at risk due to a dangerous dam.</p>	<p>These changes are to ensure that the policy also considers affected buildings as required by section 132A.</p> <p>Existing bullet point 3 is to be deleted as this relates to the actions that will be taken by Council, rather than how Council identifies dangerous, affected or insanitary buildings.</p> <p>The policy does not currently include any information on how Council will determine if a building is affected by a dangerous dam. Proposed bullet point 5 is to address this deficiency. As the responsibility for managing dangerous dams within our District lies with the Manawatu-Wanganui Regional Council, we are reliant on them for alerting MDC to the location of dangerous dams.</p>

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Assessment Criteria	Deletion of the second bullet point from the assessment criteria for dangerous buildings, in accordance with s121(1) of the Act.	This bullet point is proposed to be deleted as it is essentially an unnecessary repeat of the third bullet point.
	Deletion of <i>“because of fire hazard or occupancy of the building”</i> from the third bullet point under the assessment criteria for dangerous buildings.	The deletion is to ensure consistency with Section 121(1)(b) as amended by s51 of the Building Amendment Act 2012.
Immediate Action	<p>Amendments as follows:</p> <p><u>Where a building is assessed by Council, and verified by a suitably qualified structural engineer 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 s192(2), take any action necessary to remove that danger or to fix those insanitary conditions.</u> the danger or hazard is assessed and requires immediate action, the Council will remove that danger or hazard.</p>	This section is proposed to be amended to clarify that it is the building that is assessed as requiring immediate intervention by Council, rather than an assessment of danger or hazard.
	<p>Minor wording changes are proposed to the sentence about the recovery of costs from building owners as follows: The Act allows Council to recover <u>the costs of those actions</u> costs from the owner(s) for any such remedial works.</p> <p>This sentence is proposed to be relocated to follow the sentence about immediate actions undertaken by warrant under section 129.</p>	<p>The proposed changes are to ensure alignment with section 129 of the Building Act. Clause (2) of section 129 gives the chief executive the power to issue a warrant that allows the territorial authority to take any action necessary in his or judgement to remove that danger or fix those insanitary conditions.</p> <p>Clause (3) of section 129 places the liability for the costs of the action on the owner and allows the territorial authority to recover those costs from the owner. The amount recoverable by the territorial authority becomes a charge on the land on which the building is situated. The actions taken by the territorial authority may include an assessment by a structural engineer.</p> <p>The sentence about cost recovery is to be relocated to provide greater certainty that these costs relate to those actions undertaken by the territorial authority to</p>

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	<p>Deletion of reference to requesting the demolition of all or part of the building under section 129.</p>	<p>remove the danger or fix insanitary conditions.</p> <p>The proposed insertion of the words “any action necessary” to the immediate danger part of the policy will encompass demolition of a building. As section 129 does not specifically mention the demolition of buildings, specifying this as one potential course of action is unnecessary.</p> <p>Section 127 of the Building Act is specific to demolition of a building. This section does not apply to buildings that pose an immediate danger (s129), but to those that are subject to a notice to fix under section 124(2)(c). Section 126 only gives Council the power to undertake works on behalf of the building owner, which may include demolition, if they fail to complete the works required by a notice issued under s124(2)(c), or if the works are not proceeding with reasonable speed.</p> <p>Specific reference to demolition in the <i>Immediate Actions</i> section of the policy may create confusion if policy users interpret this as referencing section 127 of the Building Act.</p>
Serving Notices	<p>Insertion of an introductory sentence as follows:</p> <p><i>“Owners of buildings that are determined to be dangerous 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.”</i></p> <p>Amendments to the second bullet point to include <i>“any statutory authority if the land or building has been classified...”</i></p>	<p>This sentence is proposed to be added for clarity. It makes it clear in what instances a notice to fix will be issued and who is responsible for undertaken actions to reduce or remove the dangerous or insanitary conditions.</p> <p>This section of the policy lists those parties that a notice issued under section 124(2)(c) or 124(2)(d) must be served on. The second bullet point gives effect to section 125(2) except that it is currently missing statutory authorities (clause (e) of section 125(2)). The proposed changes are therefore to correct this omission and ensure that the policy is aligned with section 125(2) of the Building Act 2004.</p>

Section	Proposed Change	Reason for Change
	Deletion of “the New Zealand Historic Places Trust” and replacement with “Heritage New Zealand Pouhere Taonga” in the second bullet point under “serving notices.”	This change is to reflect the name change of the New Zealand Historic Places Trust to “Heritage New Zealand Pouhere Taonga.” Section 125(2)(f) was amended on 20 May 2014 by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).
	Amendments to bullet point four to reference a notice issued under section 124(2)(c) instead of section 125 and to delete reference to “ <i>infringement fines of up to \$2,000.</i> ”	<p>The changes are to correct a referencing error. Section 125 of the building act sets out the requirements for notices requiring building work or restricting entry to dangerous, affected, earthquake-prone or insanitary buildings. However, the notices themselves are issued under section 124(2)(c) or section 124(2)(d) of the Building Act. The enforcement action for offences under the Act differs depending on which clause ((c) or (d)) of s124(2) the notice is issued under.</p> <p>Proposed amendments to bullet point 4 make it specific to notices issued under s124(2)(c) as set out in clause (1) of section 128A.</p> <p>The deletion of the reference to “infringement fines of up to \$2,000” is to ensure consistency with s128A(1) that was inserted to the Building Act on 28 November 2013, by section 35 of the Building Amendment Act 2013.</p> <p>A new bullet point is proposed for inclusion that sets out the enforcement action that will be taken for persons failing to comply with notices issued under s124(2)(d).</p>
	Insertion of new bullet point five that sets out the enforcement action that relates to offences against section 128(2).	<p>This bullet point is proposed to be added for completeness as it relates to offences under clause (2) of s128A. The policy does not currently include information on the enforcement action for offences against notices issued under section 124(2)(d) that restrict entry to dangerous, affected, earthquake-prone and insanitary buildings to particular persons or groups of persons.</p> <p>Clause (2) of Section 128A sets out the offences that apply when a person fails to comply with section 128(2). Section 128(2) prohibits use or occupation of the building, or permitting any other person to use or</p>

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		<p>occupy the building, unless permitted in the notice issued under section 124(2)(d).</p> <p>The proposed wording is consistent with the wording in section 128A(2).</p>
Affected Buildings	A new section is proposed that outlines how Council will respond in instances where a building is assessed as being an affected building.	<p>The proposed actions included in the section are consistent with bullet point 3 in the section titled “Identifying Dangerous, Affected or Insanitary Buildings” and the powers given to Council under section 124(2) of the Building Act.</p> <p>The proposed addition of this section is to achieve compliance with section 132A of the Building Act 2004.</p>
Natural Disasters	The section on “Natural Disasters” is to be relocated to sit under the “affected” section of the Policy.	This paragraph is to be relocated as it also relates to Council processes around the serving of notices to building owners in the event of buildings being identified as dangerous or insanitary.
Heritage Buildings	Relocation of this section to sit beneath “Alterations to Existing Buildings.”	It is proposed that this section be relocated to sit within the “Taking Action” section of the policy as it relates to actions that will be taken with respect to heritage buildings that are identified as being dangerous or insanitary.
	Expansion of the reference to section 124 to include notices issued under section 124(2)(c) or section 124(2)(d) of the Act.	<p>Section 125(2)(f) requires a copy of a notice requiring building work or restricting entry to be given to Heritage New Zealand Pouhere Taonga, if the building is a heritage building and is assessed as being dangerous or insanitary. This requirement relates to both notices issued under s124(2)(c) and s124(2)(d).</p> <p>Section 125(1) was repealed and replaced on 28 November 2013, by section 31 of the Building Amendment Act 2013 (2013 No 100). Section 125(1) sets out the requirements for notices issued under s124(1)(c). New section 125(1A) was added at the same time and sets out the requirements for notices issued under s124(2)(d).</p> <p>Prior to being repealed, section 125 only referred to notices issued under section 124(1)(c) as clause 124(1)(d) did not exist.</p>

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		The current reference in the policy is just to “section 124” which may create confusion for plan users. The proposed changes are to add certainty for plan users that a copy of the notice must be served on Heritage New Zealand Pouhere Taonga irrespective of which clause of section 124 the notice is issued under.
	Deletion of “the New Zealand Historic Places Trust” and replacement with “Heritage New Zealand Pouhere Taonga” from the final paragraph in the Heritage Buildings section of the policy.	This change is to reflect the name change of the New Zealand Historic Places Trust to “Heritage New Zealand Pouhere Taonga.” Section 125(2)(f) was amended on 20 May 2014 by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).
	Insertion of a clause that states that <i>“Funding may be available for owners of Heritage Buildings through a Council Heritage Funding Policy.”</i>	The establishment of a Heritage Funding Policy is one of the recommendations coming out of the Earthquake Prone Buildings Working Party that Council is currently considering. Including this clause now will reduce the need for future updates to the policy, should a funding policy be developed in the future.
Priorities	Relocation of the “Priorities” section of the policy to follow “Heritage Buildings.”	The priorities relate to actions being taken by Council in relation to all buildings identified as being dangerous, affected or insanitary. It is therefore logical for this section to be located at the end of those clauses that outline the actions that Council and building owners will take with respect to dangerous, affected and insanitary buildings.
	Addition of reference to a “suitably qualified structural engineer” in relation to assessments of buildings that are immediately dangerous or insanitary.	The determination that building poses an immediate threat is to be verified by a structural engineer to ensure that the assessment is defensible in court, should this be required. The costs of such assessments are recoverable under section 129(3) of the Building Act 2004.
	Inclusion of “affected buildings that are downstream of dams that pose an immediate risk” to the matters requiring urgent action.	The definition of an affected building in section 121A of the Building Act includes buildings that are adjacent to, adjoining or nearby to a dangerous dam. Section 132A of the Building Act (inserted on 28 November 2013 by section 36 of the

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	Addition of a sentence that refers to the powers that Council has to prevent people approaching or entering affected buildings.	Building Amendment Act 2013 (2013 No 100) requires that the Policy take into account affected buildings. Both of these proposed changes are to ensure that the Policy adequately considers affected buildings, as required by Section 132A of the Building Act.
	Change the reference in the second paragraph from s124(1)(c) to s124(2)(c).	Section 124 was repealed and a new section 124 substituted on 28 November 2013 by section 30 of the Building Amendment Act 2013 (2013 No 100). The policy needs to be updated so that it references the correct clause within new section 124.
Record Keeping and access to information	Merging of the “Record Keeping” and “Access to Information” Sections of the policy together.	This change is to simplify the policy and reduce repetition.
	Addition of “affected” in the list of buildings that need to be considered when providing information in LIM reports.	The proposed addition of this section is to achieve compliance with section 132A of the Building Act 2004.

3.1 Making a Submission

Anyone can make a submission about the proposal described in this document. We encourage anyone with an interest in the issues raised in this proposal to make a submission.

This Statement of Proposal and the Summary of Information will be available from:

- Manawatu District Council Administration Office 135 Manchester Street, Feilding
- Feilding Public Library, corner Stafford & Bowen Streets
- Council’s “Have Your Say” website www.haveyoursay.kiwi.nz

The submission period runs from Thursday 24 August to **Monday 25 September 2017 at 4.00pm.**

Copies of the documents may be obtained by contacting the Council on (06) 323 0000.

A submission form is available from Council, however any written form of submission will be received and considered. Submissions can be via letter, email or via the “Have Your Say” website. Written submissions should be posted to the following address:

Manawatu District Council
Private Bag 10 001
Feilding 4743

or hand delivered to the Council's Front of House reception at 135 Manchester Street, Feilding. Submissions can also be emailed to submissions@mdc.govt.nz subject heading '**Dangerous, Affected and Insanitary Buildings Policy**'.

Submitters should note that their submission will be copied and made available to the public after the submission period closes.

5 Hearing of Submissions

A hearing will be scheduled after the submission period to hear any submissions made. Please state in your submission whether or not you wish to be heard.

The Council will contact all submitters in writing to advise the confirmed time, date and venue of the meeting to hear submissions. Hearings on the Dangerous, Affected and Insanitary Buildings Policy will be open to the public.

An analysis of all submissions and a final report will be presented to the Council for consideration and adoption.