

Dangerous, Affected and Insanitary Building POLICY

Dangerous, Affected and Insanitary Buildings Policy



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Associated documents		

Policy Objectives

The objectives of this Policy are to:

- Improve the control of and encourage better practice in design and construction of buildings.
- Reduce the potential risk posed to residents in the district caused by Dangerous, Affected and Insanitary Buildings.
- Provide a clear framework of how Council will manage unsatisfactory building conditions.
- Establish the priorities that Council has in performing these functions.

Principles

One of the key purposes of the Building Act 2004 is to ensure that people who use buildings can do so safely and without endangering their health.

In setting this policy, Council has endeavored to strike a balance between the threats posed by Dangerous, Affected and Insanitary Buildings and the broader social and economic issues affecting the community that are involved.

Background

This policy has been prepared by Council to comply with Section 131 of The Building Act 2004 (the Act). Section 131 requires that each territorial authority prepares a Policy on Dangerous, and Insanitary Buildings.

Policy Statement

1. Identifying Dangerous and Insanitary Buildings

Council recognizes that most Dangerous, Affected and Insanitary buildings will be identified by complaints received from members of the public, adjoining property owners or through investigations from other authorities.

Council Building Control Officers may become aware of Dangerous, Affected and Insanitary Buildings in the day to day performance of their duties. Such buildings will be addressed as required.

2. Responses to Complaints

All complaints shall be investigated by Council Building Control Officers. Each complaint shall, in the first instance, be assessed as to the severity of the problem and the potential for harm to people and property. The time taken to respond and action complaints will depend on the risk and will vary from within 24 hours for high risk to within five working days for low risk, frequently occurring as public nuisance complaints, , in the absence of the Building Control Manager delegated authority will be made to ensure timeframes are met.

3. Assessing Buildings

Each building complaint will be investigated according to the timeframe stated in this policy. A report will be prepared detailing the investigation and assessment of the building. A Dangerous, Affected and Insanitary Building Checklist (Appendix 1) will be completed for the building. Upon completion of the checklist the complaint shall be categorised according to the level of risk by completing the Building Risk Assessment (Appendix 2). This will provide a level of intervention required along with guidelines and timeframes for remedial work that is required.

A Notice of the required work will be forwarded to the Owner. A copy of the Notice and report will be placed on the property file and this will be made available to the public until the matter has been resolved and this has been confirmed in writing to the Owner, after which it will be moved to the confidential property file.

4. Taking Action

Council will take action on Dangerous, Affected and Insanitary Buildings according to the powers set out in section 124 of the Building Act 2004.

4.1 Approach to Taking Action

- In the event of the risk being immediate or to prohibit the use of a Dangerous, Affected or Insanitary building, Council may instruct the Owner:
 - i) To erect a hoarding or fence to prevent people from approaching the building nearer than is safe.
 - ii) To erect a warning notice.
 - iii) By giving written notice, require work to be carried out within a certain time (not less than 10 days from the date of notice).
or :
 - iv) Council may decide to carry out (i) or (ii) above itself.
 - v) Council may elect to exercise the powers under Section 129 of the Act to remove the immediate risk.
- Owners and Occupants will be advised of the risk and issued with a Dangerous, Affected and Insanitary Building Notice, stating the remedial works required to comply with the Building Code and the required timeframe.
- Where there is slow progress or failure to commence on any remedial work, Council may intervene as permitted under the powers conferred in sections 126 and 129 of the Act.
- In the event of a building having historical significance, either from being an actual listing with Heritage New Zealand Pouhere Toanga or Council's District Plan Built Heritage Inventory , then advice will be sought from the Heritage New Zealand Pouhere Toanga and/or Council's Planning Officers with regards to any intervention directly affecting the building structure.

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- With regard to any building of cultural significance, advice on the action to be taken will be sought from suitably qualified persons.
- Where the Owner does not meet the stated timeframe or is unable to carry out the work, then Council may obtain a Chief Executive's Warrant to carry out such work to remove any immediate danger or fix immediate insanitary conditions.
- Where the Owner does not meet the stated timeframe or is unable to carry out the work then Council shall obtain a District Court Order, authorising Council to carry out such work as required to achieve compliance with the Dangerous, Affected and Insanitary Building Notice. Council shall advise the Owner in writing no less than ten (10) days prior to obtaining a Court Order for the work.
- All costs associated with Council works shall be recovered from the Owner and this recoverable amount becomes a charge against the land on which the building is situated.
- Council will, where deemed appropriate, obtain advice from the Fire Emergency New Zealand and/or a suitably qualified Engineer, and such advice shall be given due regard in determining whether a building is dangerous.

4.2 Issuing Notices

Any notice required under the Act will be as established and issued as per Section 125 of the Act.

A Dangerous, Affected and Insanitary Building Notice will be served on an Owner either in person or to their last known address as per the Rating Database held by Council, or alternatively to their Legal Counsel if known.

As required by Section 125 of the Act a copy of the notice will be provided to:

- a) The owner of the building.
- b) The occupier/s of the building.
- c) Every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952.
- d) Every person claiming an interest in the land that is protected by a caveat lodged and in force under Section 137 of the Land Transfer Act 1952.
- e) Any statutory authority, if the land or building has been classified.
- f) Heritage New Zealand Pouhere Taonga and Council's Planning Officers if the building is a heritage building.

The notice, if fixed on the building, is not invalid should a copy not be given to any or all of the above persons. It will be deemed to have been served on the Owner by way of fixing the notice upon the building.

The notice shall clearly set out the work that is to be carried out and the timeframe in which to do so. The notice shall further state whether it is permitted to use or occupy the building during the time or whether it must remain vacant.

In the event that a building is in such a state as to cause immediate danger to people or property, Council may take action prior to consulting with the Owner and such consultation will be carried out as soon as practicable.

4.3 Consultation with Owners

Council will, in all cases, make contact with the Owner of any potentially Dangerous, Affected and Insanitary building. This shall be prior to, or at the same time as, the issue of a notice complying with Sections 12 and 125 of the Act.

The Owner will be given the opportunity to discuss with Council their circumstances or future plans for the building and these will be taken into consideration.

Whilst the underlying intent of this Policy is the safety of occupants and users of the building and improvement in the health of users, every attempt will be made to consider the impact of the cost of required works against the value of the building. Where it is obvious that remedial work will be such as to place an unreasonable cost burden on the Owner then this will be discussed with the Owner and other alternatives, including demolition or temporary hoardings, will be considered.

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Where there is no alternative accommodation for the occupants, Council will encourage the Owner and Occupants to work together to secure an acceptable solution.

4.4 Fixing Dangerous, Affected and Insanitary Buildings

Once decided that a building is Dangerous, Affected or Insanitary the notice will be either placed upon the building or served on the Owner and shall state the remedial work if any that is required to be undertaken and the timeframes for this to be completed in. The notice will not be lifted until all work has been completed to the satisfaction of Council, meaning that it can no longer be deemed to be Dangerous, Affected or Insanitary.

When the Owner fails to undertake the work or to complete it within the timeframe Council can obtain District Court approval to enter the building to carry out the work as stipulated in Section 126 of the Act. This work may include, as per section 127 of the Act, the demolition of the building.

Section 129 of the Act sets out the powers that Council has to take action to avoid immediate danger.

4.5 Building Work to Reduce or Remove Danger

When building work is required to reduce or remove the risk of danger to the public, Council will discuss with the Owner the most suitable approach. In most cases the use of fencing, hoardings or shuttering to a building will be sufficient until remedial works can be carried out.

In extreme cases, or cases where fencing, hoardings or shuttering will not satisfactorily reduce or remove the risk, the option of demolition may be adopted.

Council will consider the following when making its decision:

- The occupancy and use of the building.
- Any relevant cultural impacts.
- Any historical issues.
- The surrounding environment and properties.
- The location of the building and type of construction.

4.6 Recording Dangerous, Affected and Insanitary Buildings

All Dangerous, Affected and Insanitary buildings shall initially be recorded on Council's electronic file management system relating to the property.

The property file shall have all relevant documents relating to the issued Notice whilst work is progressing or until such time as the building is compliant or removed. Once this position has been reached all information will be removed from the working file but shall remain on the confidential file for that property.

Information regarding any Dangerous, Affected or Insanitary building shall be made available through a Land Information Memorandum (LIM).

4.7 Priorities for Action

Priorities for dealing with Dangerous, Affected and Insanitary Buildings will be assessed as per the Risk Rating Matrix. Situations will receive a high-risk rating where there is an immediate risk of injury or death.

Civil Defence emergencies may result in the instigation of special procedures under the Civil Defence Emergency Management team and Council will work in accordance with its Emergency Management Plan.

All other Dangerous, Affected or Insanitary Buildings will be dealt with in normal situations as per clause 4.1 of this policy and action will be taken as appropriate according to the risk and situation.

4.8 Dealing with Heritage Buildings

All known heritage buildings, as listed by Heritage New Zealand Pouhere Taonga or Council's District Plan Built Heritage Inventory that become classified as Dangerous, Affected or Insanitary Buildings, shall include Heritage New Zealand Pouhere Taonga and/or Council's Planning Officers in the decision-making process as to remedial work required and contact will be made prior to any action being taken, with the exception of making a building safe through the removal of access to any building.

In the event of a listed building being issued a Dangerous, Affected or Insanitary Building Notice, a copy shall be sent to Heritage New Zealand Pouhere Taonga.

Where a building is not listed but may have historical significance, Heritage New Zealand Pouhere Taonga shall be invited to assist with recommendations as to how to remedy any Dangerous, Affected or Insanitary Buildings in keeping with the historical features and to ensure public safety.

Definitions

Dangerous Building (Section 121 of the Building Act 2004)

- 1) 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.
 - ii) Damage to other property.
 - b) In the event of fire, 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.
- 2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority—
 - a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
 - b) if the advice is sought, must have due regard to the advice.

Affected building (Section 121A of the Building Act 2004)

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.

Insanitary Building (Section 123 of the Building Act 2004)

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

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- 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.*

Relevant Delegations

Group Manager Regulatory

References and Relevant Legislation

Building Act 2004

Building (Earthquake-prone Buildings) Amendment Act 2016

Heritage New Zealand Pouhere Taonga Act 2014

Annotations

Res No	Date	Subject/Description
307/06	22/06/06	Policy adopted
21/41	04/03/21	Amendments to Policy reviewed and Policy adopted

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Appendix 1

DANGEROUS, AFFECTED AND/OR INSANITARY BUILDING INSPECTION RECORD			
Address of building			
Building name			
Name of person allowing access			
Relationship to building			
Time and date of inspection			
Contact details of at least two tenants (continue on reverse if necessary):			
Name			
Relationship			
Address			
Phone (home)			
Phone (work)			
Mobile			
Building warrant of fitness - current? Yes / No		Displayed? Yes / No	
Is current use and described use the same? Yes / No		Number:	
List fire protection/detection system(s) present			Operational?
			Yes / No
			Yes / No
			Yes / No
*Note on rear of page if system has obvious defects in relation to relevant New Zealand Standards			
Building features			
1. Number of floors		8. Adequate potable water supply? Yes / No	
2. How many flats?		9. Adequate sanitary facilities for intended use? Yes / No	
3. How many beds (total)?		10. Has the cladding failed? Yes / No	
4. How many means of escape?		11. Is the nature of the building likely to be offensive or injurious to health? Yes / No	
5. Can you identify safe paths? Yes / No		12. Do safe paths lead to exterior ground? Yes / No	
6. Have you walked the escape routes? Yes / No		13. Are any escape doors fitted with locks? Yes / No	
7. Any uncontrolled sources of ignition? Yes / No		14. Is any other building likely to be affected by these building defects? Yes / No	
Describe the buildings construction:			
Describe means of escape:			

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Describe purpose groups within the building:			
Describe water and sanitary facilities:			
Describe why building is "offensive" and/or "likely to be injurious to health":			
High hazard backflow prevention:			
Required? Yes / No		Installed? Yes / No	
Dangerous/hazardous goods:			
Stored/used in building? Yes / No			
What	Where	Class	Quantity
ACTION			COMPLETE
On attached blank pages, sketch floor plans and record locations of items 5-14 in building features above			
Obtain copy of the current certificate of title			
Obtain copies of lease agreements			
Obtain tenants' contacts details			
Obtain name of person tenants deal with			
Obtain expert reports			
Research building warrant of fitness			
Research authorised use/s			
What is your opinion of the building overall?			

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Do you believe that the building is dangerous, affected or insanitary? Yes / No		Has this been confirmed by another party? Yes / No
Name	Agency	Address
Reasons for YOUR decision:		
Obtain copies in writing from any attending experts - eg Fire Emergency NZ, NZ Police, Engineers		
Signed:		
Date:		

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Appendix 2 - Building Risk Assessment Dangerous, Affected and Insanitary Buildings

Address:.....

Valuation:..... Building Consent No:.....

<u>Risk Factor</u>	<u>Rating (H/L)</u>	<u>Score</u>
<i>Users</i>		
1. What is the maximum number of users at any one any one time	100 + people (H) = 10 Less than 100 people (L) = 7	
2. What is the predominant age group of the building users?	Children or Infants (H) = 10 Adults (L) = 3	
3. What is the general capability of the building users?	Mentally handicapped/immobile (H) Physically handicapped but mobile Normal (L) = 3	
<i>Usage of the building</i>		
4. What is the sleeping activity rating for the building in terms of the building code?	SD, SA, SC, (H) = 10 SR (L) = 3	
5. Is the building used for any of the following activities?		
a. Education	Children (H) = 10 Adults (L) = 5	
b. Old people's home	Geriatric (H) = 10 Mobile (L) = 5	
c. Hospital (private or public)	Bedridden (H) = 10 Mobile (L) = 8	
d. Residential institution	Bedridden (H) = 10 Mobile (L) = 5	
e. Place of Assembly	>100 people (H) = 10 <100 (L) = 3	
f. Hotels and motels	>20 people (H) = 7 <5 (L) = 3	
g. Backpackers and Home stays	>20 people (H) = 9 <5 (L) = 5	
h. Attached multi-unit buildings	>5 apartments (H) = 7 3-5 (L) = 5	
6. What is the crowd, working, business or storage activity for the building in terms of the building code?	WD, WM, CL, CM (H) = 10 WL, CS (L) = 3	
<i>Building Characteristics</i>		
7. Does the building have common walls with others?	>1 (H) = 5 <1 (L) = 3	

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8. How many storeys does the building have? 1 2 3 4 5 6 7 8 9 includes basements	2 = 5 add 5 for every subsequent	
9. Any historic clarification or significance?	Yes = 2	
10. Is the building in the inner city, in a known geothermal area or previous seismic activity?	Yes (H) = 10	
11. What is the age and condition of the building? e.g. Pre 1940 = 10 Pre 1965=8	Assign score 1-10 accordingly	
12. Are there any other factors to be considered? e.g. Parapets, verandas, attachments or adornments	Assign score 1-10 accordingly	
Total Score (out of approx 100) Note: < 40 Low Risk 40-60 = Moderate Risk) >60 = High Risk)		