Dangerous, Affected and Insanitary Buildings Policy

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1. Introduction

1.1 Hutt City Council is committed to ensuring that Te Awa Kairangi ki Tai Lower Hutt is a city where everyone thrives. The Building Act 2004 (the Act) requires Territorial Authorities (TAs) to ensure that dangerous, affected or insanitary buildings are managed in an effective and timely manner to remove the danger and address the issues and building condition.

1.2 Section 131 of the Act requires TAs to adopt a policy on dangerous and insanitary buildings and section 132A requires the policy take into account affected buildings. Section 132(4) of the Act requires the policy to be reviewed every five years. This version of the Dangerous, Affected and Insanitary Buildings Policy (the Policy) has been developed following a review of the Policy Council agreed in 2021.

1.3 The definitions of dangerous, affected, or insanitary buildings are set out in sections 121, s121A and 123 of the Act. To assist with understanding the provisions outlined below, see the definitions in section 11 of this Policy.

2. Purpose

2.1 This Policy sets out the approach of Hutt City Council to dangerous, affected, or insanitary buildings. In-line with one of the key purposes of the Act, this Policy helps to ensure that people in and around buildings in Te Awa Kairangi ki Tai Lower Hutt are safe. In accordance with the requirements in section 131 of the Act, this Policy sets out:

- the approach that Hutt City Council takes in performing its functions under the Act;
- its priorities in performing those functions; and
- how the Policy applies to heritage buildings.

3. Priorities

3.1 Hutt City Council will respond to complaints received from the public e.g. building occupiers, or neighbours, and from agencies such as Fire and Emergency New Zealand (FENZ), New Zealand Police, and others, and inspect buildings to assess their condition and status.

3.2 Council primarily adopts a reactive (complaint-led or FENZ notified) approach to identifying dangerous, affected, or insanitary buildings.

Council may also take a proactive approach where potential risks are identified through inspections, Building Warrant of Fitness audits, other regulatory functions, or known high-risk situations.

3.3 In performing its functions under the Act, Council will:

- prioritise life, safety and risk reduction;
- apply a proportionate and risk-based approach as outlined below;
- use the most appropriate regulatory tools available;
- act in a timely and consistent manner; and
- consider social, economic, and heritage impacts on property owners.

3.4 The Council will give priority to buildings that have been determined to be immediately dangerous as identified in section 129 of the Act.[1] Immediate action will be required in these situations to remove the danger, such as prohibiting any person from occupying or using the building. If necessary, the building will be secured to prevent entry.

3.5 Buildings that are determined to be dangerous, but not immediately dangerous, will be subject to timeframes set by Council in a dangerous building notice for reduction or removal of the danger (being not less than 10 days) as set out in section 124(2)(c) of the Act.[2]

4. Risk-based Assessment

4.1 In assessing dangerous, affected or insanitary buildings, Council will undertake a risk-based approach to:

- identify risks posed by a building to people and property;
- assess the urgency and severity of the situation;
- pay due regard to advice provided by FENZ; and
- consider local factors and priorities.

[1] Building Act 2004, s129 https://www.legislation.govt.nz/act/public/2004/0072/latest/DLM307305.html
[2] Building Act 2004, s124 https://www.legislation.govt.nz/act/public/2004/0072/latest/DLM307300.html

5. Taking Action on Dangerous, Affected or Insanitary Buildings

5.1 Council will investigate complaints received about buildings that are reported to be dangerous, affected or insanitary and inspect the building in question. Council will assess the buildings in accordance with sections 121, s121A and 123 of the Act.[3][4][5]

5.2 Council will maintain records of all notifications, inspections, and decisions relating to dangerous, affected or insanitary buildings, including a register of buildings subject to investigation or action under this policy.

5.3 In accordance with section 124[6] and section 125[7] of the Act, Council:

- will advise and liaise with the owner/s of the building; and
- may, under section 121 of the Act, request a written report on the building from FENZ if appropriate.

5.4 If the building is determined by Council to be dangerous, Council will:

- attach a written notice to the building requiring work to be carried out within the time stated in the notice, a period of not less than 10 days, to reduce or remove the danger;
- give 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 Heritage New Zealand Pouhere Taonga if the building is a heritage building;
- contact the owner at the expiry of the time period given in the notice in order to gain access to the building to ascertain whether the notice has been complied with; and

[3] Building Act 2004, s121 https://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306896.html
[4] Building Act 2004, s121A https://www.legislation.govt.nz/act/public/2004/72/en/latest/#DLM5767794
[5] Building Act 2004, s123 https://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306898.html
[6] Building Act 2004, s124 https://www.legislation.govt.nz/act/public/2004/72/en/latest/#DLM307300
[7] Building Act 2004, s125 https://www.legislation.govt.nz/act/public/2004/72/en/latest/#DLM307301

where the danger is the result of non-consented building work, also issue a Notice to Fix under section 164 of the Act.

5.5 Council will monitor compliance with any notice issued under section 124 of the Act and undertake follow-up inspections as required. Where compliance is not achieved, Council may escalate enforcement action. Council may use available enforcement tools under the Act, including:

a. infringement notices under section 372 of the Act; or
b. prosecution under section 375 of the Act; or
c. court orders under section 381 of the Act; or
d. carrying out work and recovering costs under section 126 of the Act.

5.6 If the Dangerous Building notice requirements are not met within a reasonable period of time, Council will pursue enforcement action under the Act.

5.7 If the building is considered an immediate danger, as defined in section 129 of the Act, Council will:

- take any action necessary to remove the danger (this may include prohibiting persons using or occupying the building and demolition of all or part of the building);
- take action to recover costs from the owner/s if the Council must undertake work to remove the danger (see above); and
- inform the owner/s the amount recoverable by Hutt City Council that will become a charge on the land on which the building is situated.

5.8 Under section 41(1)(c) of the Act, building consent is not required for work on buildings assessed as being immediately dangerous and where a building consent cannot practically be obtained in advance because the building work has to be carried out urgently. If consent is required, then the owner must subsequently apply to Council for a Certificate of Acceptance (section 42(1)). However, it is prudent for building owners to discuss potential work with Council before taking action.

5.9 Building owners have the right to apply to the Ministry of Business, Innovation, and Employment (MBIE) for a determination under section 177 of the Act if they wish to challenge the Council's assessment of a building as being dangerous, affected or insanitary.

6. Additional Considerations

6.1 Council will also consider the interaction between dangerous, affected or insanitary buildings and other provisions of the Act, including sections 112–116A relating to alterations to existing buildings and 116B where the use of a building is not safe.

6.2 In addition, Council will consider the implications for other policies such as the Heritage Policy[8] as it relates to legislative priorities outlined in the Heritage New Zealand Pouhere Taonga Act 2014 (the Heritage Act) and community outcomes for Lower Hutt's cultural heritage.

6.3 When assessing dangerous, affected and insanitary buildings, Council will also consider the implications for other legislation such as the Resource Management Act, the Health Act 1956, the Housing Improvement Regulations 1947 and the Health and Safety at Work Act 2015.

6.4 Council also participates in the inter-agency Hutt Valley Hoarding Working Group to support occupants living in hoarding situations.

7. Heritage Buildings

7.1 Heritage buildings are scheduled in Hutt City Council's District Plan and/or identified in the New Zealand Heritage List/Rārangi Kōrero. Council's Heritage Policy 2021 recognises the importance of heritage to the story and identity of Te Awa Kairangi ki Tai Lower Hutt. The Heritage Policy includes incentives for the conservation of heritage buildings and sites and areas of cultural significance and is available on Council's website.

7.2 The Act requires that if a building is listed under the Heritage Act that Council sends a copy of any notice issued under section 124 of the Heritage Act to Heritage New Zealand. Council will consult with Heritage New Zealand for any buildings that are listed in the New Zealand Heritage List/Rārangi Kōrero and for those included in the heritage schedule of the District Plan.

7.3 Except in emergencies, where demolition constitutes emergency works under sections 330 and 330A of the Resource Management Act 1991, heritage buildings (included in Council's District Plan) cannot be demolished without resource consent. Emergency works can be done

8 Council's Heritage Policy seeks to promote, protect, celebrate and conserve the Lower Hutt's heritage.

where any sudden event means that a building is likely to cause loss of life, injury, or serious property damage, for example if a building wholly or partially collapses.

7.4 If the demolition of a building constructed before 1900 is proposed, the archaeological provisions of Heritage New Zealand apply. Council will seek advice from Heritage New Zealand on any other permission required under the Heritage Act. Additional consents may be required for work affecting buildings subject to Heritage Orders and those subject to heritage covenants or encumbrances.

7.5 Council will ensure that alternative methods to avoid unnecessary demolition of heritage buildings are actively considered, including:

- providing extended timeframes for heritage buildings in relation to any dangerous building notice requiring work; and
- ensuring that any dangerous building notice requiring work provides options to repair the building as appropriate.

8. Economic Impact

8.1 Historically, Hutt City Council has not received many complaints about buildings that are deemed dangerous, affected or insanitary. The overall economic impact of the Policy is minor. However, Council recognises that actions taken under this Policy may have economic and social impacts on building owners, occupants and the wider community. These impacts will be considered when determining an appropriate and proportionate response.

8.2 For example, where a building is deemed unusable due to a natural calamity and a Dangerous Building Notice is issued, property owners may be eligible for rates relief under Council's Rates Remission Policy (the Rates Remission Policy is administered separately from this Policy but can be found on Council's website).

9. Information and Record Keeping

9.1 Any buildings identified as being dangerous, affected or insanitary will be noted as such on Council's property database until the issues are resolved. Council maintains a register of dangerous, affected, and insanitary buildings. Information relating to these buildings may be

recorded on Land Information Memoranda (LIMs) and, where relevant, to proposed building work and Project Information Memoranda (PIMs).

9.2 The following information will be recorded on LIMs for a property:

- where dangerous and insanitary conditions, or affected building status, are confirmed and not resolved; and
- any outstanding written notice under section 124(2) of the Act, along with explanatory information of the Act requirements.

9.3 Information is not included on a LIM when dangerous or insanitary conditions, and affected building status, have been resolved. Information about those matters may still be made available in response to a request for information in accordance with the Local Government Official Information and Meetings Act 1987.

10. Policy Review

10.1 Section 132(4) of the Act requires Council to review this Policy every five years. This Policy will be next reviewed by October 2031.

10.2 Any amendment to this Policy will be undertaken in accordance with the special consultative procedure under section 83 of the Local Government Act 2002.

10.3 A copy of the amended Policy will be provided to MBIE in accordance with section 132(3) of the Building Act 2004.

11. Definitions

Term	Definitions
Dangerous building	Under section 121 of the Act, a building is dangerous if: a. in the course of events (excluding the occurrence of an earthquake), if 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 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.
Insanitary building	Under section 123 of the Act, a building is insanitary if it is: a. 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 does not have sanitary facilities that are adequate for its intended use.
Affected building	Under section 121A of the Act, a building is an affected building 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.
Heritage building	Heritage buildings are buildings or structures that are: a. identified in New Zealand Heritage List / Rārangi Kōrero; or b. scheduled heritage buildings or heritage structures in Hutt City Council's District Plan
Building owner	Owner is defined in section 7 of the Act. Owner in relation to land and any buildings on the land means:

	a. a person who: i. is entitled to the rack rent from the land; or ii. Would be so entitled if the land were let to a tenant at a rack rent; and b. Includes: i. the owner of the fee simple of the land; and ii. for the purpose of sections 32, 44, 92, 96, 97, and 176 (c), any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force.
Immediate danger	In accordance with section 129 of the Act, if the state of the building means: a. immediate danger to the safety of people is likely in terms of section 121 or 123; or b. immediate action is necessary to fix insanitary conditions