

# DANGEROUS AND INSANITARY BUILDINGS POLICY 2016

Division	Strategy and Planning
Date created	15 December 2016
Publication date	December 2016
Review period	December 2021
Owner	Principal Policy Advisor
Approved by	Divisional Manager, Strategy and Policy

Version	Author	Date	Description
V 1.0	Graham Sewell	15/12/2016	Approved by Council

# CONTENTS

- 1. Policy Approach ..... 3**
  - 1.1 Policy Principles ..... 3
  - 1.2 Overall Approach ..... 3
  - 1.3 Assessment Criteria ..... 4
  - 1.4 Identifying Dangerous or Insanitary Buildings ..... 5
  - 1.5 Liaison with Building Owners and Taking Action on Dangerous or Insanitary Buildings ..... 5
  - 1.6 Interaction between Dangerous Building Policy and Related Sections of the Act ..... 6
  - 1.7 Record Keeping ..... 7
  - 1.8 Economic Impact of Policy ..... 7
  - 1.9 Access to Information on Dangerous or Insanitary Buildings ..... 7
- 2. Priorities ..... 7**
- 3. Heritage Buildings ..... 8**
- 4. Policy Review ..... 8**

## **Background**

Section 131 of the Building Act 2004 (the Act) required territorial authorities (TAs) to adopt a policy on dangerous and insanitary buildings by 31 May 2006. The definitions of dangerous or insanitary buildings are set out in section 121(1) and 123 of the Act (and referred to in 1.4 of this policy). Section 132(4) of the Act requires TAs to review this policy every 5 years.

This document sets out the policy to be adopted by Hutt City Council (Council) in accordance with the requirements of the Building Act 2004.

## **Progress to date**

In May 2006 Council adopted a combined policy on both earthquake-prone, dangerous and insanitary buildings. Since then experience has shown there are two separate issues Council needs to address. One is concerned with earthquake-prone buildings, the other with dangerous and insanitary buildings. To reflect this officers have prepared two separate policies.

Council has a common sense approach to the implementation of this policy. Whether a building is considered 'dangerous' or 'insanitary' under the Act will depend on the individual circumstances of each case. Council will consider each case and determine the appropriate course of action based on the particular set of circumstances that exist. There have been a very low number of dangerous or insanitary buildings encountered annually by Council.

# **1. POLICY APPROACH**

## **1.1 POLICY PRINCIPLES**

The Council has noted that provisions of the Act in regard to dangerous and/or insanitary buildings reflect the government's broader concern with public safety.

Early detection and rectification of dangerous or insanitary buildings has a strong relationship with Council's aim to have a safe city. This policy is being developed after consultation in accordance with section 83 of the Local Government Act 2002.

## **1.2 OVERALL APPROACH**

There is an ongoing requirement on Council to ensure that all buildings are safe. This is in line with Council's desire to develop a healthy and safe city, as outlined in its Long Term Plan. Conversions of existing buildings, lack of maintenance, overcrowding and un-consented alterations can cause serious safety problems.

The failure to obtain a building consent, where one is required, or the use of buildings for unauthorised purposes can pose a danger to the occupants as well as users. Dangers may include inadequate fire protection, means of escape or danger of collapse.

The Council is actively involved in educating the public on Building Act matters with a view to encouraging owners to obtain building consent. The Council will follow the NZ Society of Local Government Managers Legal Guidance Documents in initiating enforcement action under the Building Act, when dealing with dangerous or insanitary buildings. This is expected to provide a strong message to the public that Council is taking building safety matters seriously. Such corrective action is likely to have a deterrent effect on those building owners who fail to maintain their buildings in a safe or sanitary condition.

### 1.3 ASSESSMENT CRITERIA

The Council will assess dangerous or insanitary buildings in accordance with section 121 and section 123 of the Act:

*“(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; or*
  - (ii) damage to other property; or*
- (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 members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and*
- (b) if the advice is sought, must have due regard to the advice.”*

*“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.”*

## 1.4 IDENTIFYING DANGEROUS OR INSANITARY BUILDINGS

The Council will:

- 1 Respond when complaints or concern are received about the state of a building and the Council considers there are grounds for further investigation and assessment;
- 2 Identify from these investigations whether a building is dangerous or insanitary;

In forming its view as to the work or action that is required to be carried out on a building to prevent it from remaining insanitary or dangerous, Council will take the following matters into account:

- i. The size of the building;
- ii. The complexity of the building;
- iii. The location of the building in relation to other buildings, public places, and natural hazards;
- iv. The life of the building;
- v. How often people visit the building;
- vi. How many people spend time in or in the vicinity of the building;
- vii. The current or likely future use of the building, including any special traditional and cultural aspects of the current or likely future use;
- viii. The expected useful life of the building and any prolongation of that life;
- ix. The reasonable practicality of any work concerned;
- x. Any special historical or cultural value of the building; and
- xi. Any other matters that Council considers may be relevant, taking into account the particular set of circumstances.

## 1.5 LIAISON WITH BUILDING OWNERS AND TAKING ACTION ON DANGEROUS OR INSANITARY BUILDINGS

In accordance with section 123, section 124 and section 125 of the Act the Council:

1. Once a building has been identified as per clause 1.3 above, will advise and liaise with the owner(s) of buildings. When the building is a heritage building listed in Council's District Plan or a building listed in the New Zealand Heritage List/Rarangi Korero, Heritage New Zealand shall also be advised and consulted;
2. May request a written report on the building from the New Zealand Fire Service;

If found to be dangerous or insanitary the Council may:

1. Attach a written notice to the building requiring work to be carried out on the building, within a time stated in the notice being not less than 10 days, to reduce or remove the danger;

2. Give copies of that 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, if the building is a registered heritage building;
3. Contact 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;
4. Where the danger is the result of non-consented building work the owner will be formally requested to provide an explanation as to how the work occurred, who carried it out and under whose instructions;
5. Pursue 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 noncompliance matters.

If the building is considered to be immediately dangerous (as defined in section 129 of the Act), the Council:

1. May undertake any action to remove that danger (this may include prohibiting persons from using or occupying the building or demolition of all or part of the building); and
2. May undertake action to recover costs from the owner(s) when the Council carries out works to remove the danger;
3. May inform the owner(s) that the amount recoverable by the Council will become a charge on the land on which the building is situated.

All owners have a right of appeal as defined in the Act, which can include applying to the Department of Building and Housing for a determination under section 177(e) of the Act.

## 1.6 INTERACTION BETWEEN DANGEROUS BUILDING POLICY AND RELATED SECTIONS OF THE ACT

### ***Section 41: Building Consent not required in certain cases***

*In cases where a building is assessed as being immediately dangerous the Council may not require a building consent to be obtained for any building work considered to be immediately necessary to remove the danger. If a consent is required then the owner can apply for a Certificate of Acceptance. However, prior to any action being taken it is essential that building owners provide a written proposal of any proposed works to the Council.*

## 1.7 RECORD KEEPING

Any buildings identified as being dangerous or insanitary will have this noted on the Council's property database for the property on which the building is situated until the danger or insanitary condition is remedied.

In addition, the following information may be placed on any Land Information Memorandum (LIM):

1. Copies of any notices issued where a building is dangerous or insanitary and requires evacuation of the building;
2. Copies of any letters sent to the owner, occupier and any other person where a building is deemed dangerous or insanitary;
3. Copies of any notices given under s124(1) which identifies the work to be carried out on a building and the timeframe given to reduce or remove the danger or insanitary condition.

## 1.8 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 minor.

## 1.9 ACCESS TO INFORMATION ON DANGEROUS OR INSANITARY BUILDINGS

Information concerning dangerous or insanitary buildings will be contained on the relevant Land Information Memorandum (LIM).

In granting access to information concerning dangerous or insanitary buildings, the Council will act in accordance with the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

## 2. PRIORITIES

The Council will give priority to buildings that have been determined to be immediately dangerous. 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.

Buildings that are determined to be dangerous, but not immediately dangerous, will be subject to the minimum timeframes for reduction or removal of the danger (being not less than 10 days) as set out in s124(2)(c) of the Building Act 2004.

### 3. HERITAGE BUILDINGS

Deferred maintenance can result in heritage buildings becoming dangerous or insanitary and may lead to the loss of the city's historic heritage. Council encourages owners of heritage buildings to conserve the heritage values of these places by maintaining, repairing and upgrading these buildings. Council adopted a new Heritage Policy in May 2008. This policy provides a range of incentives, available to all owners, for the conservation of heritage buildings. The Heritage Policy is available from the Council website [www.huttcity.govt.nz](http://www.huttcity.govt.nz)

The Council, in the implementation of procedures under the Building Act 2004 with regard to dangerous or insanitary buildings, will take into account any special traditional and cultural aspects of the intended use of a building and the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value. This will be achieved by:

- Recognising the range of heritage buildings that exist in the city, including the New Zealand Heritage List/Rarangi Korero and statutory protection through listing in the District Plan or protection by covenant.
- Consultation with owners and the Heritage New Zealand in relation to any proposed written notice requiring work.
- Informing and involving relevant statutory organisations, including Heritage New Zealand, with regard to any heritage building identified as at risk.
- Considering heritage values when developing and managing upgrading proposals.
- Consideration of alternative methods to avoid unnecessary demolition for heritage buildings including:
  - Restricting public access and erecting public warning notices.
  - Providing extended timeframes for heritage buildings in relation to any written notice requiring work.
  - Ensuring that any written notice requiring work provides options to repair the building as appropriate.

After undertaking the actions outlined above, the Council will serve notices requiring upgrading or removal within specified timeframes, in consultation with building owners.

### 4. POLICY REVIEW

Section 132(4) of the Act requires the Council to review this policy every five years. This policy will be reviewed by December 2021.





