



**WHANGANUI
DISTRICT COUNCIL**
Te Kaunihera a Rohe o Whanganui

Dangerous and Insanitary Buildings Policy 2017

**He Kaupapa Here mō ngā Hanganga Pāngia e te
Mōrearea e te Paruparu**



Dangerous and Insanitary Building Policy

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Approved by:

Statutory and Management Committee

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Foreword

This policy has been developed for Whanganui District Council to address dangerous, insanitary and affected buildings within the confines of the requirements of the Building Act 2004.

Council acknowledges that in dealing with some instances of dangerous, insanitary and affected buildings, it may choose to use statutory tools other than that contained within the Building Act 2004 and this policy.

The policy also outlines what is expected to ensure Whanganui is a safe and healthy place for the public to live, and people to visit. It contributes to Council's vision for Whanganui to be a flourishing and leading edge district that truly works for everyone.

This policy has a tenure of five years from the adoption date before it must be reviewed. Amendments to this policy must also be made in accordance with the special consultative procedure under the Local Government Act 2002.



Introduction

Why we need a policy

This policy has been developed in response to the requirements set out in the Building Act 2004 (“the Act”). The Act requires territorial authorities to have a policy on dangerous and insanitary buildings. Additionally, Council is now required to take into account affected buildings.

Who is it prepared for

This policy is prepared for Whanganui District Council (“Council”) and the general public.

Scope of policy

Within this policy the Council aims to identify the approach it will take in performing its functions under the act in relation to dangerous, insanitary and affected buildings, establish what the Council’s priorities are in performing those functions and how this policy is going to apply to heritage buildings.

The definition of a ‘dangerous building’ is set out in section 121 of the Act.

The definition of an ‘insanitary building’ is set out in Section 123 of the Act.

The definition of an ‘affected building’ is set out in section 121A of the Act.

Instances of ‘dangerous, insanitary or affected buildings’ within the context of this policy, will most likely be caused by buildings having one or more of the following issues:

- poor upkeep
- poor workmanship
- effects from a weather or seismic event
- accumulation of flammable material
- overcrowding
- insufficient or defective provisions against moisture
- inadequate potable water supply, or inadequate sanitary fixtures
- insufficient means of escape.

Key aspects when assessing whether a building is ‘**dangerous**’ will be determining whether in the ordinary course of events the building is likely to cause injury or death to any persons in it or to persons on other property, or damage to other property.

Key aspects when assessing whether a building is ‘**insanitary**’ will be determining whether a building is ‘offensive’ or ‘likely to be injurious to health’. Although these assessments are subjective by nature, Council intends to rely on procedures outlined in this policy and utilising case law as guidance.

Key aspects when assessing whether a building is ‘**affected**’ will be determining whether an adjoining, adjacent or nearby building has been deemed a dangerous building by the Council.



Policy context

Council is committed to ensuring that the Whanganui district is a safe and healthy place to live and visit. The Act provides the means to ensure that dangerous, insanitary or affected buildings are improved to meet Building Code standards, and the Council will administer the Building Act in a fair and reasonable way. Dangerous, insanitary and affected buildings will be dealt with in much the same way as the Council already deals with those buildings— by responding to complaints received from the public and advice received from appropriate agencies such as the New Zealand Fire Service (NZFS), and working with building owners to address the problem.

Background and issues

Historically Council has waited for dangerous and insanitary buildings to be brought to its attention. This has occurred through complaint (neighbours or tenants concerned about dangerous and insanitary conditions) or through a severe weather event (flooding, wind or earthquake causing damage to foundations and structural integrity of buildings – dangerous).

Often by the time Council is notified the problem is well advanced and has been an issue for some time, especially in the case of insanitary buildings.

Provisions of the Act in regard to dangerous, insanitary and affected buildings reflect the Government's broader concern for life, health and safety of the public in buildings, and with people occupying buildings that may be considered to be dangerous, insanitary or affected. However, Council also recognises that this policy needs to balance the public safety and overall community good, against the costs and broader economic restraints that impact building owners and the community as a whole.

This policy also reflects and gives effect to—

- Council's vision for Whanganui to be a flourishing and leading edge district that truly works for everyone
- ensuring our built environment reflects 21st century needs while protecting our distinctive heritage
- Council's commitment to our 'Safer Whanganui' programme
- pursuing initiatives that secure our health, our safety and instil a sense of belonging and wellbeing for all
- Council's commitment towards World Health Organisation accreditation as a safe city

Vision and purpose

Vision statement

To ensure that people who use buildings in our district can do so safely without endangering their health or life.

Purpose

The purpose of this policy is to ensure buildings are safe, sanitary and inoffensive.



Objectives

1. Council will respond to identify potential dangerous and insanitary and affected buildings in the district

Council officers will respond to identify dangerous, insanitary or affected buildings as a part of normal fieldwork duties.

Council will also investigate potentially, dangerous, insanitary and affected buildings on the basis of complaints or advice from other agencies.

2. Council will actively respond to, fully investigate and assess all potential dangerous, insanitary or affected buildings it becomes aware of either through identification, complaint or notification


Once a building is identified as potentially dangerous, insanitary or affected the necessary professional resource will be identified and allocated to undertake the required investigation, inspection, assessment and reports.

The assessment to whether a building is dangerous, insanitary or affected under the Act is often subjective by nature, as is the threshold to take necessary immediate action or enforcement action. Council will endeavour to actively enforce those dangerous, insanitary or affected buildings which are at the higher end of culpability until the courts and case law determine where that threshold sits.

The Council will assess dangerous, insanitary and affected buildings in accordance with the principles set out in the Act and established case-law, as well as the building code.

The Council will investigate:


- Whether the building is occupied
- The use to which the building is put
- Whether the dangerous, insanitary or affected conditions pose a reasonable probability of danger to occupants or visitors, or to the life and health of any occupants. Considerations as to dangerous assessment where a building is either occupied or not may include:
 - Structural collapse
 - Loose materials/connections
 - Overcrowding
 - Use which is not fit for purpose
 - Seeking advice from NZFS Section 121(2a) the Act
 - Adequate sanitary facilities for the use
 - Adequate drinking water
 - Separation of use for kitchen and other sanitary facilities
 - Likelihood of moisture penetration
 - Natural disaster e.g. flood, earthquake, tsunami.
 - Defects in roof and walls/poor maintenance/occupant misuse
 - The degree to which the building is offensive to adjacent, nearby properties and the surrounding neighbourhood.



3. For buildings identified as ‘dangerous’, ‘insanitary’ or ‘affected’ in terms of the Act, Council will respond using the powers available to it under Section 124-130 of the Act

Sections 124-130 of the Act provide the authority necessary for Council to take action on dangerous, insanitary and affected buildings and set out how this action is to take place. Nothing in this policy shall override any ability to take action under the Act, where such action is considered necessary. Such action may include, but is not limited to, issuing notices and taking any other action under Sections 124-130. Steps Council will take:

- a. Advise and liaise with the owner(s) and occupiers of buildings identified as being dangerous, insanitary or affected and all those parties identified on the title.
- b. May request a written report on the building from the New Zealand Fire Service (must be a person deemed competent by the national commander) or other suitable professional.
- c. If the building is found to be dangerous, insanitary or affected:
 - For dangerous buildings, inform the owner(s) and occupier of the building to take action to reduce or remove the danger, as is required by Section 124 and 125 of the Act; (and liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with Section 121 (2) of the Act).
 - For insanitary buildings, inform the owner(s) of the building to take action to prevent the building from remaining insanitary; (and liaise with the Whanganui District Health Board’s Medical Officer of Health when required to assess whether the occupants may be neglected or infirm).
 - For affected buildings, inform the owner(s) of the building only when restricting entry to particular persons or groups of persons to the building and any interested parties in the property.
 - Where the danger is the result of non-consented building work, Council will formally request the owner(s) to provide an explanation as to how the work occurred and who carried it out and under whose instructions; (and apply for a Certificate of Acceptance if applicable).
- d. Attach a written notice on 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.
- e. 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 the New Zealand Historic Places Trust, if the building is a heritage building.

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- f. 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.
 - g. Pursue prosecution 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.
 - h. If the building is considered to be immediately dangerous or insanitary the Council will:
 - Cause any action to be taken to remove that danger or insanitary condition (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 works to remove the danger, or insanitary condition; and
 - Inform the owner(s) that the amount recoverable by the Council will become a charge on the land on which the building is situated.
 - i. The Council will give priority to buildings where it has been determined that immediate action is necessary to fix dangerous and insanitary conditions. Immediate action may include prohibiting occupation of the property, installation of a hoarding or fence and taking prosecution action where necessary.

Buildings that are determined to be dangerous and insanitary, but not requiring immediate, will be subject to the minimum timeframes to prevent the building from remaining dangerous and insanitary (not less than 10 days) as set in s124(1)(c) of the Act.


Buildings will also need to be re-inspected to confirm the required actions have been completed or a written notice has been complied with.

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 of the Act.

4. Council actively keeps timely and accurate records of all dangerous, insanitary and affected buildings

Any buildings identified as being dangerous, insanitary or affected will have a requisition placed on the property file for the property on which the building is situated and updated when the danger or insanitary condition is remedied. In addition, the following information will be placed on the Land Information Memorandum (LIM):

- Notice issued that the building is dangerous, insanitary or affected.
- Copy of letter to owner(s), occupier and any other person that the building is dangerous, insanitary or affected.

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- Copy of the notice given under Section 124(1) of the Act that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger or insanitary condition.

5. Council will consider measures to preserve heritage buildings implicated by this policy

For the purpose of this part of the policy 'heritage buildings' are:

- structures as scheduled in the Whanganui District Plan; or
 - buildings or structures forming part of the old town overlay area or Special Character Zone as identified within the Whanganui District Plan; or
 - buildings or structures as registered under the Historic Places Act 1993; structures as scheduled in the Whanganui District Plan; or
 - buildings or structures constructed prior to 1900.

No special dispensation will be given to heritage buildings under this policy. The fact that a building has heritage status does not mean that it can be left in a dangerous, insanitary or affected condition. As per s125(2)(f) of the Act a copy of any notice issued under s124 of the Act will be sent to Heritage New Zealand where a heritage building has been identified as a dangerous, insanitary and or affected building.

In cases where heritage buildings are dangerous, insanitary or affected, the Council, in addition to consulting with a building's owner(s), will consider seeking advice from Heritage New Zealand.

Monitoring and evaluation

- Council will monitor this policy by gauging public and other agencies satisfaction with the approach Council takes towards dealing with dangerous, insanitary and affected buildings. Council will request feedback from the public and other agencies.
- Respond to, investigate and report on building complaints and notifications.
- Encourage the public to discuss their development plans with the Council.

Appendices and References

- *Building Act 2004*
- *Local Government Act 2002*
- *Historic Places Act 1993*
- *Heritage New Zealand Pouhere Taonga Act 2014*

Dealing with Dangerous, Insanitary and Affect Buildings

