

P11-007 Dangerous and Insanitary Buildings Policy

Approved by the Council on 20 December 2011

POLICY PURPOSE

1. To clarify how the Council will manage dangerous and insanitary buildings in New Plymouth District.

POLICY OBJECTIVE

2. The objective of this policy is to reduce the danger to the public posed by dangerous and insanitary buildings.

LEGISLATIVE REQUIREMENTS

3. Section 131 and 132 of the Building Act 2004 requires Councils to adopt and then review a policy on dangerous and insanitary buildings.
4. The policy is required to cover:
 - The approach that the Council will take in performing its functions under the Building Act 2004.
 - The Councils priorities in performing those functions.
 - How the policy will apply to heritage buildings.

DANGEROUS AND INSANITARY BUILDINGS

5. The Council deals with isolated instances of dangerous and insanitary buildings in the district. For example, there are instances where buildings have been illegally converted from a commercial use into a residential use and the change of use provisions of the Building Act 2004 have not been applied which may create a danger for occupants.
6. Unauthorised building work does occur in the district, particularly in older houses where small alterations are made on an occasional basis over a long period of time. However, this unauthorised building work does not always contribute to a building being dangerous or insanitary.

POLICY PRINCIPLES

7. Through this policy the Council seeks to ensure that:
 - People who use buildings can do so safely without being subjected to dangerous or insanitary conditions.
 - Heritage values of dangerous and insanitary buildings are preserved were possible.
 - People can access information on dangerous and insanitary buildings.

ASSESSMENT CRITERIA FOR DANGEROUS AND INSANITARY BUILDINGS

8. Section 121 and 123 of the Building Act 2004 define the meaning of dangerous and insanitary buildings:

The definition of a **dangerous building** is set out in section 121(1) of the Building Act 2004:

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.*

Under section 121 (2) of the Building Act 2004, for the purposes of determining whether a building is dangerous, advice may be sought from members of the New Zealand Fire Service who have been notified to the Council by the Fire Services National Commander as being competent to give advice.

The definition of an **insanitary building** is set out in section 123 of the Act:

“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 on 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.”*

The Council will assess dangerous and insanitary buildings in accordance with these definitions.

PRIORITIES FOR IDENTIFYING AND ASSESSING DANGEROUS AND INSANITARY BUILDINGS

9. Dangerous and insanitary buildings are brought to the Council’s attention via complaints or concerns raised by building or other professionals or via general inspections. These are dealt with under the provisions of the Building Act 2004 and the Health Act 1956, sometimes in co-operation with other agencies. This approach has been effective in addressing the Council’s statutory obligations.
10. The Council deals with dangerous and insanitary buildings on a case by case basis and allocates priority for action to those buildings that are deemed to pose severe dangerous or insanitary risks. Immediate action will be required in these situations to reduce or remove the danger or rectify the insanitary condition of the building. Buildings that are deemed to be dangerous or insanitary, but not immediately dangerous or insanitary, will be subject to the timeframes stated in section 124(1)(c) of the Building Act 2004 to reduce or remove the danger or prevent the building to remain insanitary. Investigations into earthquake-prone buildings could result in a building being declared dangerous due to its severe risk and sections 128 and 129 of the Act may then apply.

ASSESSMENT APPROACH

11. The Council’s dangerous and insanitary buildings policy under the Building Act 2004 is an ongoing incident based approach where the Council will respond promptly to dangerous and insanitary building issues as required.
12. Through this policy the Council:
 - Will investigate all complaints received from the public regarding potentially dangerous or insanitary buildings and investigate all instances where Council officers are aware that a building may be dangerous or insanitary.
 - Will upon completing investigations, identify if the buildings are deemed to be dangerous or insanitary.

- Will advise owners of these buildings of the results of the Council's investigations and invite them to discuss any requirements to address the danger of the building.
 - Will seek an agreement with building owners to address the danger of a dangerous or insanitary building.
 - Will direct the owner or occupier of a dangerous or insanitary building to take action to reduce or remove the danger or the element contributing to the insanitary condition of the building.
 - Can exercise its powers under section 124 of the Building Act 2004 to address the danger of a dangerous or insanitary building.
 - Can exercise its powers under sections 126 and 129 of the Building Act 2004 where there is non-compliance with a notice issued under section 124.
 - Will liaise with relevant bodies such as the New Zealand Fire Service, Housing New Zealand and the Taranaki District Health Board when appropriate.
13. Under section 177 of the Building Act 2004 owners have a right of appeal against the classification of their building as dangerous and/or insanitary. Should an owner dispute the classification they may apply for a determination to the Chief Executive of the Department of Building and Housing.
14. The above process may be streamlined to achieve urgency where there is an immediate need to eliminate danger posed by a building. All statutory steps will be followed in such an event. If the Council assesses a building and determines that immediate action is required then the Council may exercise its powers under section 124 of the Building Act 2004 and undertake immediate steps to address the danger.

HERITAGE BUILDINGS

15. It is important that the heritage values of buildings are retained for future generations. While heritage buildings will be assessed in the same way as other potentially dangerous and insanitary buildings, specific consideration will be given to the importance of retaining the recognised heritage features where upgrading is to take place. To achieve this, the Council will promote the use of sympathetic, less invasive upgrading methods by encouraging building owners to work with the New Zealand Historic Places Trust and other recognised heritage experts.
16. Where viable upgrading options compromise heritage values, the Council may, where appropriate in terms of the risk to building users and the public, agree to a reduced level of upgrading by way of a formal waiver under the provisions of the Act. Alternatively a determination may be applied for through the Department of Building & Housing.
17. Applications may be made to the Council's Heritage Protection Fund to assist with the upgrading of recognised heritage buildings in the New Plymouth district. The adequacy of this fund to meet demand will be monitored. If there is a need for increased funding, this will be identified for consideration when budgets are reviewed.

INTERACTION BETWEEN THE POLICY AND OTHER RELATED SECTIONS OF THE BUILDING ACT 2004

18. **Section 41: Building consent not required in certain cases-** in cases where the Council agrees there is extreme urgency to address a dangerous or insanitary building the Council may waive the need for building consent to be obtained for the work required to remove the danger or fix the insanitary conditions immediately. A Certificate of Acceptance will need to be sought following the completion of the work.

19. **Section 112 Alterations to existing buildings-** whenever a building consent application is received for upgrading or alteration of a building that is dangerous and/or insanitary, then the Council will as part of that building consent require that the scope of the building work so authorised include further building work to such an extent that the building will not continue to be dangerous and/or insanitary after the alteration.
20. **Section 115 Change of use-** whenever a building consent application is received for a change of use of a building that is dangerous and/or insanitary, then it will be a requirement of the building consent that the scope of the building work so authorised include further building work to such an extent that the building will not continue to be dangerous and/or insanitary after the change of use.

AVAILABILITY OF INFORMATION ON DANGEROUS AND INSANITARY BUILDINGS

21. The Council will hold all information regarding dangerous and insanitary buildings in the appropriate property files. If a building is deemed to be dangerous or insanitary at the time a LIM or PIM is applied for this will be documented on the LIM or PIM. Upgrading works completed other than those defined as maintenance will be subject to building consent and noted on a LIM. Information held by the Council regarding previous works will also be provided.

In granting access to information concerning dangerous and insanitary buildings the Council will conform to the requirements of relevant legislation.

Section 124 of the Act provides for the Council to prevent access to, and place notice upon, a dangerous building which will act to notify the public of the danger.

POLICY CONTACT

22. The policy holder is the Customer and Regulatory Services Team within the Community Services Group.

POLICY REVIEW

23. Section 132 of the Building Act 2004 requires that a Council must complete a review of the policy within 5 years after the policy is adopted and then at intervals of not more than 5 years. Next review is to be completed by 2016.