

DANGEROUS AND INSANITARY BUILDINGS POLICY

1. INTRODUCTION AND BACKGROUND

- 1.1 The Building Act 2004 required territorial authorities to adopt a policy on dangerous and insanitary buildings by 31st May 2006.
- 1.2 This policy is developed with due consideration of the ratepayers and stakeholders in accordance with section 83 of the Local Government Act 2002.
- 1.3 This document sets out Council's policies relating to dangerous and insanitary buildings, specifies the priorities that will be adopted in carrying out those functions and how the policy applies to heritage buildings.
- 1.4 The purpose of this policy is in accordance with the general principles of the Building Act 2004 which is to ensure people who use buildings can do so safely and without endangering their health; and buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them.

2. BUILDING ACT 2004 LEGISLATIVE REQUIREMENTS

- 2.1 Section 131 of the Act states that:

"(1) A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous, earthquake-prone, and insanitary buildings within its district."

"(2) The policy must state -

- (a) the approach that the territorial authority will take in performing its functions under this Part; and*
- (b) the territorial authority's priorities in performing those functions; and*
- (c) how the policy will apply to heritage buildings."*

2.2 Section 132 of the Act states that:

- 1) *A policy under section 131 must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.*
- 2) *A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.*
- 3) *A territorial authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.*
- 4) *A territorial authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.*
- 5) *A policy does not cease to have effect because it is due for review or being reviewed.*

2.3 Section 121 of the Act defines a building to be dangerous as follows:

- "(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 Fire and Emergency New Zealand (FENZ) who have been notified to the territorial authority by the FENZ National Commander as being competent to give advice; and*
 - (b) *if the advice is sought, must have due regard to the advice."*

2.4 Section 123 of the Building Act 2004 defines an insanitary building as:

- "A building is **insanitary** for the purpose 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."*

3. DANGEROUS AND INSANITARY BUILDINGS POLICY

- 3.1 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.
- 3.2 Council must first be satisfied that the building in question is dangerous or insanitary. To determine this Council will carry out the following steps.
- (a) On receiving a complaint or information expressing concern that the building is dangerous or insanitary, the Council will consult the owner of the building, inspect the building and site and may also seek the advice of FENZ.
 - (b) Following the inspection and taking into account the advice or recommendations of FENZ, Council will determine whether the building is dangerous or insanitary. In making this decision Council will take into account the provisions of sections 121 and 123 of the Building Act 2004.
 - (c) If Council is satisfied that the building in question is deemed to be dangerous or insanitary Council will then determine the work or action that must be carried out to prevent it from being dangerous or insanitary.
 - (d) In forming its view as to the work or action that is required to be carried out on the 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.

- (e) Following the inspection of the building, after receiving advice from FENZ if applicable, and taking into account the matters listed above, Council will then decide whether immediate action should be taken to avoid the danger or to fix the insanitary conditions pursuant to the provisions of section 129 of the Building Act 2004.
- (f) If Council decide that immediate action under section 129 of the Building Act 2004 is not required, Council will issue a notice under section 124 of the Building Act 2004 requiring the owner to carry out the necessary work and to obtain a building consent before commencing work. The time required to obtain a building consent and commence work will depend on the particular set of circumstances, but shall not exceed six months from the time notice was served on the owner. Completion of the work for which a building consent has been issued shall depend on the particular set of circumstances of each case but shall not exceed any timeframes set out in the issued notice.

3.3 Where a property owner has failed to carry out the work within the time specified, Council may apply to the District Court for an order authorising it to carry out the work pursuant to section 130 of the Building Act 2004. The full costs of carrying out such works will be recovered from the property owner.

3.4 With regard to heritage buildings that are determined to be dangerous or insanitary, Council will seek to ensure, as far as reasonably practicable, that work carried out will not diminish the heritage values of the building. Property owners must take all reasonable steps to ensure that this objective is achieved. If a notice is issued to the owner of a heritage building, under section 124 of the Building Act 2004, a copy of the notice will also be sent to the New Zealand Historic Places Trust.

4.0 Policy Review dates

4.1 *Council will complete a review of this policy at intervals of not more than 5 years.*

Next review due August 2022