

DANGEROUS INSANITARY and AFFECTED BUILDINGS POLICY

DECEMBER 2014

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1. INTRODUCTION

This policy was developed in response to requirements set out in the Building Act 2004 (BA04).

This policy has a tenure of five years from the adoption date before it must be reviewed.

This policy was developed using the special consultative procedure under the Local Government Act 2002 which included discussion with principal Council stakeholders, principal external stakeholders, adjacent territorial authorities, the Greater Wellington Regional Council, and the public.

Amendments to this policy must also be made in accordance with the special consultative procedure.

2. POLICY OBJECTIVES

The policy's objective is to discharge BA04 responsibilities for dangerous, insanitary and affected buildings. The policy indicates the Council's general approach and its priorities in performing its functions in relation to dangerous, insanitary and affected buildings. The policy also expressly deals with the performance of those functions in relation to buildings that are also heritage buildings.

It is the building owner's responsibility to ensure that buildings comply with the BA04 requirements. The Council can give no assurance or guarantee that any building is safe or sanitary at any time. The Council's responsibility is to ensure that when dangerous or insanitary conditions are found, the danger is reduced or removed and the owner takes action to prevent the building from remaining dangerous or insanitary. Where an owner fails to take steps to address the dangerous or insanitary state of a building, the Council may exercise its powers to take those steps on the owner's behalf and to seek to recover any resulting costs from the owner.

This policy applies to all buildings, even if a building consent, code compliance certificate or other form of certificate (such as a certificate of acceptance or a certificate for public use) has been issued previously. This is because, the current use and/or maintenance of the building, events affecting building performance (such as fire or natural hazard events), or the state of nearby buildings can all impact on the health and safety of building occupants.

3. POLICY PRINCIPLES

This policy has been developed considering the purpose and principles of the BA04 which, amongst other things, seek to ensure that:

- people who use buildings can do so safely without endangering their health
- people who use a building can escape from the building if it is on fire.

4. PRIORITIES

The Council will respond promptly to a complaint about a building and will inspect the building to assess its dangerous or insanitary status. The assessment will determine whether immediate or urgent action is necessary, and confirm if the building is or is not dangerous or insanitary. If an immediate response is needed, Section 129 of the BA04 gives the Council options to take action.

In general, 10 days is a minimum period for any danger to be removed or the insanitary conditions to be fixed – unless the situation requires immediate rectification.

5. HERITAGE BUILDINGS

The Council's Heritage Policy 2010, its District Plan and section 6 (f) of the Resource Management Act 1991 (RMA) reflect that historic heritage is a matter of national importance. Those documents collectively anticipate that work on a heritage building will be done in a manner that protects its heritage values.

Except in emergencies where demolition constitutes emergency works under sections 330 and 330A of the RMA, heritage buildings in Wellington City cannot be demolished without Resource Consent. These emergency works can be done 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).

The owner(s) of a heritage building that is identified as dangerous or insanitary should consult with Council's heritage advisors when developing a scheme of works to address the building's dangerous or insanitary aspects.

The BA04 requires that if a building is registered under the Historic Places Act 1993 (HPA) we send a copy of any notice issued under section 124 of the BA04 to Heritage New Zealand (HNZ).

If demolition is proposed to a building that was constructed before 1900, the archaeological provisions of the HPA apply. Seek advice from the HNZ on any other permission required under the HPA.

6. GENERAL APPLICATION

The Council's general approach is outlined below:

1. Detect

When a complaint is received or a Council officer observes a potentially dangerous or insanitary condition:

- the event is recorded on the Council's databases
- the building records are searched if time allows
- an inspection is arranged.

2. Assess

The building is assessed to determine:

- if there has been any illegal building work and/or an unauthorised change of use
- the standard of maintenance of specified systems for fire safety, water supply and other systems
- the state of repair of the building structure, services and passive fire protection
- the safety level offered by the building compared to any relevant "acceptable solution"¹.

A decision as to whether the building is dangerous or insanitary, and if dangerous or insanitary whether any other buildings should consequently be regarded as affected buildings, is made by an

¹ An acceptable solution is a document issued by the Ministry of Business, Innovation and Employment as one way of compliance with the Building Code.

authorised Council officer who may obtain expert advice where appropriate and options to reduce or remove the danger or to fix the insanitary conditions are explored.

3. Act

When a building is determined to be dangerous and/or insanitary, the Council will contact the building owner or their agent to discuss remedial options. In some cases the urgency of the situation may not allow the Council to contact the building owner.

The building owner can agree to complete the work within a specified time, otherwise the Council can issue a notice to require the work be done to reduce or remove the danger or to fix the insanitary conditions.

If there is immediate danger to building users, the Council can arrange the work to remove the danger or fix the insanitary conditions and recover costs from the owner.

When a building (Building A) is determined to be dangerous, the Council will contact the owner/s of any adjacent, adjoining or nearby building (Building B) i.e. an 'affected building' as defined in section 121A of the BA04. The Council will provide the Building B owner with a copy of any notice issued for Building A under section 124(2)(c) or (d) of the BA04. The Council will also provide the Building B owner with information relating to the Council's monitoring and enforcement actions in relation to Building A. The Council may, at its discretion, exercise any of its powers under section 124(2)(a), (b) or (d) in relation to Building B.

4. Monitor

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

5. Enforce

If dangerous or insanitary conditions continue, the Council will issue further notices requiring the owner to carry out the remedial work.

Continued failure to comply with a notice can lead to prosecution or an infringement notice being served.

Another option is the Council arranges the work and recovers the costs from the building owner, in accordance with the process set out in section 126 of the BA04.

Where immediate danger to the safety of people is likely, or immediate action is necessary to fix insanitary conditions, the Council's Chief Executive may exercise his or her discretion to issue a warrant under section 129 of the BA04.

7. RECORD KEEPING ON THE LIM

The following information will be recorded on the Land Information Memorandum (LIM) for a property:

- where dangerous and insanitary conditions, or affected building status, are confirmed but not resolved
- any outstanding written notice under section 124(2) of the BA04, along with explanatory information of the BA04's requirements.

Information is not included on a LIM when dangerous or insanitary conditions, and affected building status, have been resolved. Note 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.