
REPORT 4

DANGEROUS AND INSANITARY BUILDINGS POLICY UPDATE

1. Purpose of report

This report recommends to Council that it amends the Dangerous and Insanitary Buildings Policy, which is required to be reviewed under the provisions of the Building Act 2004.

2. Recommendations

Officers recommend that the Transport and Urban Development Committee

- 1. Receive the information.*
- 2. Agree that the proposed changes set out in the Statement of Proposal undergo public consultation in accordance with section 132 of the Building Act 2004.*
- 3. Agree to adopt the Statement of Proposal, and initiate the special consultative procedure under Section 83 of the Local Government Act 2002.*

3. Background and Discussion

The current Dangerous and Insanitary Buildings Policy is due for review. It must be reviewed at intervals of not more than five years under section 132(4) of the Building Act 2004.

The Policy's purpose is to set out the approach the Council will take in the performance of its functions under the Building Act 2004 in relation to any dangerous, insanitary or affected building it identifies.

Officers have reviewed this Policy and no changes are needed, other than amendments to incorporate recent legislation changes and editorial changes. Since the Policy was established, the Act has been modified to include the impact on those buildings affected by a dangerous or insanitary building and this now needs to be addressed by the Policy.

Officers recommend that the Committee agrees to the recommendations above and that Council seeks community feedback using the special consultative procedure, in accordance with section 132(2) of the Building Act 2004.

The Statement of Proposal is attached as Appendix 1.

3.1 Consultation and Engagement

No consultation has been undertaken on the amended Policy at this point, as the proposed amendments are consistent with the existing policy and respond to legislative changes.

The policy can only be amended by using the special consultative procedure and consultation with interested parties will occur as part of the next steps in that process.

3.2 Financial and LTP considerations

There are no financial or Long Term Plan implications.

Contact Officers: Richard Toner, Manager Building Policy and Planning;
Geoff Lawson, Principal Advisor Policy.

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

These policy changes continue to support the resilience of Wellington City.

2) LTP/Annual Plan reference and long term financial impact

There are no LTP impacts.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations

4) Decision-making

This is not a significant decision.

5) Consultation

a) General consultation

Under section 132(2) of the Building Act 2004, the Policy may be amended only in accordance with the special consultative procedure provided in the Local Government Act 2002.

b) Consultation with Māori

NA

6) Legal implications

Legal advice has been taken on the changes to these policies.

7) Consistency with existing policy

There are no significant changes to our existing policies.

STATEMENT OF PROPOSAL TO AMEND THE DANGEROUS AND INSANITARY BUILDINGS POLICY

1. Introduction and reasons for proposal

This statement of proposal for changes to the Dangerous and Insanitary Buildings Policy is being published so we can find out what Wellingtonians think about these changes and update the policy. These changes reflect changes that have been made to the Building Act 2004 (the Act) since the policy was first approved in 2006.

The amendments are proposed in accordance with the consultation requirements of section 132 of the Act.

This document contains:

- background information; and
- an outline of the review process required under the Act and the Local Government Act 2002 (LGA); and
- the amended policy, showing the original text and the proposed changes.

2. Summary of Information

Wellington City Council (the Council) is required to have a Dangerous and Insanitary Buildings Policy under the Act. This states how the Council will manage situations where it considers buildings to be either dangerous or insanitary.

Section 131 of the Act says that the policy must state:

- the approach that the territorial authority will take in performing its functions under Part 2, Subpart 6 of the Act; and
- the territorial authority's priorities in performing those functions; and
- how the policy will apply to heritage buildings.

The policy is required to be reviewed every five years. Amendment may only be made in accordance with the special consultative procedure set out in the LGA.

Since the policy was adopted in 2006, changes have been made to the Act to include affected buildings (defined in Section 121A of the Act). An 'affected building' is one that is adjacent to, adjoining, or nearby a dangerous building. The policy is now required to take affected buildings into account. This has now been included in the draft policy, along with a number of other minor amendments.

3. Have your say

We need you feedback by 5pm on 17 October.

The Council is keen to know what people think about the proposed amendments.

Please make a submission online at Wellington.govt.nz, email your submission to policy.submission@wellington.govt.nz or complete the attached submission form and send it to Dangerous and Insanitary Buildings Policy Changes, Freepost, Wellington City Council, PO Box 2199, Wellington.

You can get more copies online at Wellington.govt.nz, the City Service Centre, libraries, by emailing policy.submission@wellington.govt.nz or phoning 499 4444.

If you wish to make an oral submission to City Councillors, please indicate this on the submission form and ensure that you have included your contact details. We will contact you to arrange a time for you to speak. Submissions will be heard by the Transport and Urban Development Committee in November 2014.

Written submissions open on 22 September 2014 and close at 5pm on 17 October 2014.

4. Background

The requirement to adopt a policy and the requirement to use the special consultative procedure in the LGA to amend the policy is set out in the following legislation.

Section 131 of the Building Act 2004 - Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings

- 1) A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous ... 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.

Section 132 - Adoption and review of policy

- 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

Section 132A - Policy must take into account affected buildings

- 1) A policy under section 131 must take into account affected buildings.
- 2) A territorial authority must amend an existing policy to take into account affected buildings at the latest within a reasonable period following the next review of its policy under section 132(4).
- 3) In subsection (2), existing policy means a policy existing at the date of this section coming into force.

Section 132A came into force on 28 November 2013.

The powers that the Council has in relation to dangerous, insanitary and affected buildings are set out in Sections 124 – 130 of the Act.

The existing policy needs to include more recent changes to the Building Act, i.e. to include affected buildings within the provisions for dangerous and insanitary buildings under the Act. There are a number of other minor amendments of an editorial nature, which do not change the substance of the policy.

The editorial amendments include proposed changes to Part 5 of the policy, which deals with the Council's approach to heritage buildings that are also classified as dangerous, insanitary or affected buildings. One change to Part 5 that arguably goes beyond a merely editorial amendment is the omission of the policy's current signal that demolition is not regarded as an appropriate measure to address dangerous or insanitary conditions, unless the emergency work provisions of the Resource Management Act 1991 are triggered. Instead, the proposed changes to the policy provide that the owner(s) of a heritage building that is identified as dangerous or insanitary should consult with the Council's heritage advisors when developing a scheme of works to address the building's dangerous or insanitary aspects.

5. Developing the proposed amendment

5.1 Building Act 2004 requirements

The policy was created under the provisions of the Act. The amendments reflect recent changes in the Act that now include affected buildings as well as dangerous and insanitary buildings.

The proposed changes to the policy provide for the Council to take the following steps when it determines that a building is 'dangerous':

- contact the owner of any adjacent, adjoining or nearby building that is an 'affected building' as defined in section 121A of the Act;

- provide the 'affected building' owner with a copy of any notice issued for the dangerous building under section 124(2)(c) or (d) of the Act;
- provide the 'affected building' owner with information relating to the monitoring and enforcement steps taken by Council in relation to the dangerous building.

These steps are additional to the formal notice requirements arising under sections 125(1A) and 125(2) of the Act, which only apply to an affected building where the Council issues a section 124(2)(d) notice for that building. Unless such a notice is issued in relation to an affected building, the proposed changes to the policy do not require the Council to notify people in the categories set out in section 125(2) (other than the building's owner(s)) that the building is an affected building.

The Council may also, at its discretion, exercise any of its powers under section 124(2)(a), (b) or (d) that relate to the 'affected building'. Those powers are to:

- put up a hoarding or fence to keep people at a safe distance from the affected building;
- attach in a prominent place on, or next to, the affected building a notice that warns people not to approach the building;
- issue a notice to the building owner that complies with section 125(1A) of the Act, restricting entry to the building only for a particular purpose or to particular people or groups of people.

The Council cannot issue a notice requiring work to be carried out on an affected building (unless it is regarded as a dangerous building in its own right). Its powers are limited to restricting access to the affected building in the ways listed above.

6. Reasonably practicable options

Sections 77 and 87(3)(b) of the LGA require the Council to seek to identify and to analyse all the reasonably practicable options for making the changes to the policy that are required by section 132A of the Act.

Under section 79 of the LGA, the Council must, in its discretion, make a judgement about how to achieve compliance with those provisions in a manner that is largely in proportion to the significance of the matters affected by the decision.

In that regard, it is relevant that the amendments required by section 132A of the Act are relatively narrow in scope, as are the Council's statutory powers in relation to affected buildings. In accordance with section 79 of the LGA, the Council's assessment of options under sections 77 and 87(3)(b) reflects the confined nature of section 132A.

As currently framed, the proposed substantive changes to the policy:

- require the provision of information to affected building owners in all cases; and

- identify the Council's various statutory powers in relation to affected buildings and provide for them to be exercised on a discretionary basis, as envisaged by the Act.

The Council's determination that a building is an 'affected building', and the subsequent provision of information to its owner(s), will be official information that may be sought in accordance with the Local Government Official Information and Meetings Act 1987. Some of the information may also appear on a land information memorandum issued for the property containing the affected building. It is possible that affected building owners may be concerned that the availability of the information will be prejudicial to their commercial or other interests in the property that contains the affected building.

In those circumstances, the Council has considered whether the provision of information to affected building owners should be omitted from the proposed changes to the policy. On balance, the Council's view is that the requirement to provide information is appropriate. The reasons for the Council's view are:

- it is appropriate that a building owner is made aware that their building falls within the Act's 'affected building' definition, which means that the powers set out in sections 124(2)(a), (b) and (d) may be exercised in relation to it;
- because a building is deemed to be 'affected' due to its proximity to a separate 'dangerous' building, it is fair that affected building owners are made aware of the steps that Council is taking in relation to that dangerous building;
- members of the general public have an interest, reflected in the statutory purpose described in section 3(a) of the Act, in knowing that a building is an affected building, so that they can make decisions about how to best to provide for their health, safety and well-being.

The Council has also considered whether the policy should be amended to require the Council to exercise one or more of its powers under sections 124(2)(a), (b) and (d) of the Act in prescribed circumstances. The Council has formed the view that such a requirement would not be appropriate. The reasons for the Council's view are:

- a requirement of the kind described could potentially be viewed as an unlawful fetter on the Council's freedom to choose how and when to exercise inherently discretionary statutory powers;
- the practical realities of dealing with dangerous buildings, and by association affected buildings, mean that it is desirable for the Council to retain the flexibility to determine whether/how to use its statutory powers on a case by case basis.

7. Process and proposed timeline

This consultation is being undertaken as a special consultative procedure.

Here is the timeline for the proposed changes to the policy:

Dates	Activity
22 September 2014 until 17 October 2014.	Consultation period
November 2014	Oral submissions heard
December 2014	Transport and Urban Development Committee considers the report on all written and oral submissions received
December 2014	The Council decides whether to adopt the proposed changes
December 2014	Following the Council adopting the proposed changes the amended policy will come into force

**DANGEROUS AND INSANITARY and AFFECTED
BUILDINGS POLICY**

May ~~2006~~

2014

- 1. INTRODUCTION**
- 2. POLICY OBJECTIVES**
- 3. POLICY PRINCIPLES**
- 4. PRIORITIES**
- 5. HERITAGE BUILDINGS**
- 6. GENERAL APPLICATION**
- 7. RECORD KEEPING**

1. INTRODUCTION

This policy ~~has been~~ was developed in response to requirements set out in the Building Act 2004 (BA04). ~~Although Council already manages dangerous and insanitary buildings when they are detected or reported, the requirement to have a formal policy is entirely new.~~

This policy has a tenure of five years from the ~~time it is adopted~~ adoption date before it to when it must be reviewed.

This policy ~~has~~ was been developed using the special consultative procedure under the Local Government Act 2002 ~~including 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 ~~of this policy~~ is to discharge BA04 responsibilities ~~for with~~ respect to the dangerous, and insanitary and affected buildings. The policy ~~also includes~~ 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 ~~and its application to~~ heritage buildings.

It is the building owner's responsibility ~~of building owners~~ to ensure that buildings comply with the BA04 requirements. ~~of the BA04.~~ 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, that the danger is reduced or removed and the owner takes action to prevent that the building is prevented 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 though~~ a building consent, code compliance certificate or other form of certificate (such as a certificate of acceptance or a certificate for public use) ~~may have~~ has been issued previously. This is because, as the current use and/or maintenance of the building, events affecting building performance (such as fire or the occurrence of 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:

- ~~p~~People who use buildings can do so safely ~~and~~ without endangering their health

- ~~p~~People who use a building can escape from the building if it is on fire.

4. PRIORITIES

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

~~In general, 10 days is considered is a minimum notice period for the 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.~~

~~Council's Built Heritage Policy 2005 and section 6(f) of the Resource Management Act 1991 (RMA) note that building work on a heritage building must be done in a way appropriate to its heritage values. No further special measures will apply. Except in emergencies, a heritage building cannot be demolished without resource consent and demolition is not an option to remove a danger or fix insanitary conditions. The BA04 requires that any notice regarding a building listed under the Historic Places Act 1993 be copied to the Historic Places Trust.~~

~~Sections 330 and 330A of the RMA do allow for the demolition of a heritage building. This is in the case that any sudden event (for example the collapse of a building) is likely to cause loss of life, injury or serious damage to property.~~

6. GENERAL APPLICATION

The Council's general approach is outlined in the process 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
- ~~records related to the building records~~ are searched if time the urgency of the situation allows
- an inspection is arranged.

2. Assess

~~An assessment of the building is undertaken using the checklist and the work instruction, which is an agreed process common to Hutt City Council, Upper Hutt City Council, Porirua City Council, Kapiti Coast District Council, and Wellington City Council.~~

~~Among other things, the~~ The building is inspected-assessed to determine:

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

~~Credible scenarios are then considered and, expert advice may be taken where appropriate. A decision as to whether the building is dangerous or and/or insanitary, and if dangerous or insanitary whether any other buildings should consequently be regarded as or affected buildings, is made by an 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 is contacted to discuss remedial options. In some cases the urgency of the situation may not allow the Council to contact the building owner, allows.

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

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

If there is immediate danger to building users, the Council can undertake 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 ~~that~~ the required actions have been completed or a written notice has been complied with.

5. Enforce

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

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

Another option is ~~for~~ the Council arranges to undertake the work and to seek to recover 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 is will be recorded on the ~~included on~~ Land Information Memoranda Memorandum (LIM) for a property:

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

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.