

Dangerous and Insanitary Buildings Policy

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Introduction

The Building Act 2004 (the Act) requires councils to adopt a policy that addresses the identification, assessment, and management of any dangerous and insanitary buildings within its District. The policy must also consider buildings that may be affected by a nearby dangerous or insanitary building, as well as detailing how the policy provisions will be applied to historical buildings.

Definitions

Where a term is used in this Policy that has a meaning defined in the Building Act 2004, that term will have the same meaning as provided in subpart 2 of the Act.

The following additional definitions apply to this Policy:

- **Council** – means the Far North District Council.
- **Policy** – means Council’s adopted Dangerous and Insanitary Buildings Policy.
- **Act** – means the Building Act 2004

Legislative Context

This Policy is adopted under Section 131 of the Act. Section 132 of the Act outlines the process Council must follow when adopting or amending the Policy, and further stipulates the Policy must be reviewed every 5 years.

Sections 121-130 of the Act provide the specific powers and duties of Council relating to dangerous, insanitary, and affected buildings. The Policy provides the required framework to outline how Council will undertake its powers and responsibilities under these sections.

Application

This Policy applies to the District of the Far North District Council.

The Policy does not apply to a dangerous or insanitary building or a building adjacent to, or adjoining, a dangerous building, located in an area that has been designated under subpart 6B of the Building Act 2004 (which relates to management of buildings located in an area that has been affected by an emergency).

Purpose

The purpose of this Policy is to protect public health and safety. It does this by stating:

- the approach Council will take in performing its functions under the Building Act 2004 in relation to dangerous and insanitary buildings
- Council’s priorities in performing those functions
- how the policy will apply to heritage buildings
- how affected buildings are considered within the approach provided in this Policy.

Policies

General approach

Council's overall approach is for flexibility due to the diversity of factors and the dynamics between these, that result in buildings being dangerous or insanitary. This Policy strikes a balance between the risk to communities arising from dangerous and insanitary buildings and other priorities, considering social and economic implications of implementing the Policy.

The Act gives Council powers, responsibilities, and duties to take action to protect people who use buildings from any harm arising from that use. This policy describes a consistent, transparent, and accountable approach to the matters provided for in the Act to protect the health and safety of building users.

Identifying dangerous, insanitary, or affected buildings

Council does not have the resources to carry out a systematic survey of the quality of buildings across the District, nor does it need to. To identify whether a building is dangerous or insanitary, Council will use any of the following sources of information:

- the observations of its staff or contractors
- information or complaints received from members of the public or members of professional bodies such as Engineering New Zealand
- events arising following an emergency
- notification from the Ministry of Business Innovation and Employment
- notification from Fire and Emergency New Zealand (FENZ)
- an application for a building consent under sections 112 to 116A of the Act.

Reliance on the above mechanisms to provide information about possible dangerous or insanitary buildings is the only practical way Council can identify these buildings.

The most likely sources of information will be building occupants, neighbours who believe their amenity is threatened by the state of a building, or as the result of an inspection by Council staff, the Police, FENZ or other agencies authorised to inspect buildings.

Prioritisation criteria

Council will prioritise inspections and investigations of possible dangerous or insanitary buildings in the following circumstances:

1. The building is open to the public and it is possible the:
 - land is unstable; or
 - building is structurally unsound and considered dangerous to occupants or the public; or
 - building has a high fire risk; or
 - building lacks sufficient protection to occupants, public or other property (i.e. unfenced pool or large-scale excavations); or
 - building which has poor sanitation and poses an immediate impact to the health of the occupants or the public; or
 - building is inadequately protected against moisture penetration i.e. not weathertight.
2. The building is privately occupied, the occupants can be easily relocated, and any of the circumstances listed in 1 above are possible.

3. The building is likely to become dangerous or insanitary quickly, as a result of the failure of some feature within the building, for example, the fire alarm system malfunctions, drains become blocked or a tenant stores dangerous goods without the building owner's knowledge.
4. The building is unoccupied and possibly endangers other properties or the environment (e.g.: contamination of water bodies).

If the building in question is a potentially affected building, then the above criteria will be applied with all necessary modifications to that building.

Inspection and investigation

When Council receives a complaint or notification, it will inspect the building and undertake additional investigation actions. Inspections will be done promptly on the receipt of a complaint or notification, in accordance with the prioritisation criteria in this Policy. The inspection record form in Appendix 1 will be used for all inspections.

As part of the inspection process Council will seek the advice of FENZ about whether a building is dangerous with respect to a fire hazard. With respect to drinking water, waste disposal or weathertightness, Council will seek the advice of appropriate sources, such as its Environmental Health Team, technical building specialists, testing laboratories, and/or geotechnical, fire or structural engineers, about whether a building is dangerous or insanitary.

A building is less likely to be classified as dangerous or insanitary if it is unoccupied; however, the risk to the public and other properties must still be considered. Council will need to carefully consider these issues and determine whether they warrant immediate action to prevent injury or death. Each case must be considered on its own merits.

If the risk is significant e.g. the building is occupied or construction / earthworks pose a risk to the public or other property, immediate action may be warranted. In some cases, while the risk is significant, it can be adequately managed but in other cases this may not be possible.

There is always a risk that in the event of a fire, death or injury will occur; however, there must be 'particular features' for this risk to be 'likely to occur'. To make this determination, Council must firstly decide whether the building complies with the Building Code. If the building doesn't comply, then Council must determine what features do not comply with the Building Code. While a building may be non-compliant with the Building Code; this in itself does not make a building dangerous.

Council will use the following risk management process to assess the features of a building that may make it dangerous or insanitary and this, together with the inspection record, the matters described above, and any other investigations undertaken, will support a final decision.

Determining Risk

The risk of a feature of a building making it dangerous or insanitary is determined by considering the consequences and likelihood of that happening. A building is less likely to be dangerous or insanitary if it is unoccupied, however, the risk to the public and other properties must still be considered (Source AS/NZS 4630:1999 Risk Management).

Likelihood

A qualitative description of probability or frequency

Level	Descriptor	Description
A	Almost Certain	Is expected to occur in most circumstances
B	Likely	Will probably occur in most circumstances
C	Possible	Might occur at some time
D	Uncertain	Could occur at some time
E	Rare	May occur in exceptional circumstances

Consequence

The outcome of an event expressed qualitatively or quantitatively, being a loss, injury, disadvantage, or gain. There may be a range of possible outcomes associated with an event.

Level	Descriptor	Description
1	Insignificant	No injuries
2	Minor	May require some medical treatment
3	Significant	Medical treatment required
4	Major	Extensive injuries
5	Extreme	Death

Qualitative Measures of Consequences

Level	Consequences	Description	Examples
1	Insignificant	Would not cause illness or injury to any person Loss of amenity Temporary or very minor nuisance or inconvenience	Lack of insulation Unauthorised minor work e.g.: carport, deck, small garden shed, temporary noise or odour, disconnected downpipe
2	Minor	May cause very minor injury to people Very minimal impact if any on people other than those in immediate proximity Minor damage to local physical environment only Significant loss of amenity, widespread impact from noise or odour	Unauthorised addition to existing building; multiple utility sheds on property; garden shed too close to boundary; mild stormwater runoff; tripping or slipping hazard in public place
3	Moderate	Potential to cause significant injury or illness to people Minor injury or illness to many people	Structural elements fail that could cause a person to fall >1.0m but <2.0m Unconsented habitable space

Level	Consequences	Description	Examples
		May cause some significant damage to property or the environment Can include multiple instances of minor effects long term	Significant storm water runoff Leaky home Persistent noise issues
4	Major	Serious illness, injury, or death to one or more people Significant injury or illness to many people Major degradation to the wider environment (not contained on offending property).	Structural elements fail that could cause a person to fall >2m Non-compliant swimming pool Electrical supply to unauthorised building Sleepout or similar with unconsented sanitary fixtures Expired Warrant of Fitness or failed systems
5	Extreme	Serious illness, injury, or death to one or more people including building occupants, third parties (neighbours) or the general public. Threatens overall integrity of buildings other than the offending buildings Serious and irreversible degradation to the wider environment (not contained on offending property) Serious threat to the overall structural integrity of the building such that collapse is imminent and would cause death or serious injury to third parties	Public Use building considered unsafe due to fire or insanitary risk whether due to unsafe heating, energy systems or lack of means of escape Building condition could cause very serious harm to due to discharge or improper containment, processing of contaminants or hazards, including industrial and solid wastes Large excavation threatening other property

Risk rating

The combination of the determination of consequences and likelihood.

Likelihood	Consequences				
	Insignificant	Minor	Moderate	Major	Extreme
Almost Certain	Moderate	Moderate	High	Very High	Very High
Likely	Moderate	Moderate	High	High	Very High
Possible	Low	Moderate	Moderate	High	High
Uncertain	Low	Low	Moderate	Moderate	High
Rare	Low	Low	Moderate	Moderate	High

Risk Response

- Very high: Extreme risk; immediate action required
- High: High risk; senior management attention required
- Moderate: Management responsibility must be specified
- Low: Manage by routine procedures

If Council is satisfied a building is dangerous, the risk to potentially affected buildings must then be considered using the same risk assessment process.

Taking action - dangerous or insanitary buildings

If the Council is satisfied a building is dangerous or insanitary, it will take action to protect people by using its powers under the Act. The action taken by the Council will depend on the risk response required. For buildings that are low or moderate risk, the Council may discuss the building's state with the owner, or any other agency with responsibilities for the building (e.g.: NZTA for bridges on state highways) before taking any action.

A discussion will be appropriate if the work required on a building is complex, and the nature of any remedial work is best determined in discussion with the building owner. However, any such discussions will not delay Council's use of its powers if necessary. For example, if the building owner is not able to be contacted immediately and risk has been assessed as high, then action will be taken without discussing it with the owner beforehand.

Before acting, Council will consider the costs of any work required to be carried out to reduce or remove the danger, or prevent the building from remaining insanitary, in the broader social and economic context of the community. Council will also consider the availability of alternatives to continued use and occupation of the building, both in the short and long term and will consult with Housing NZ and other social agencies to find appropriate solutions. For example, in some circumstances demolition may be the most appropriate way to remove danger from an occupied building, yet if there is no alternative accommodation for its occupants, it may be necessary for the Council to pay for somewhere the occupants can relocate to.

If a building is very high risk, the Council will take immediate action under section 129 of the Building Act 2004 to remove the danger or fix the insanitary conditions.

If Council decides to act by issuing a notice requiring work to be carried out on the building or restricting entry to a building¹, Council will ensure the first person to receive a copy of the notice is the owner of the building, followed by the occupants (if any). Copies of notices to owners and occupants will be given in person where practicable.

Taking action – affected buildings

When the Council is satisfied a building is dangerous, the Council will contact the owners of any buildings it considers are, or are likely to be, affected buildings before it takes any action in relation to the dangerous building. The Council will discuss with owners of affected buildings the circumstances of the owner or the future plans for the site. Such knowledge could affect, for example, the time in which repairs are to be undertaken.

If the Council decides to issue a notice restricting entry to an affected building¹, the Council will ensure the first person to receive a copy of the notice is the owner of the building, followed by the occupants (if any).

Copies of notices to owners and occupants will be given in person where practicable.

¹ Under section 124(1)(b), (c) or (d) of the Building Act 2004

Where a building is identified as being affected, that information will be put on the relevant property file and disclosed in any land information memorandum or project information memorandum issued for the building, until the danger is removed.

Heritage Buildings

These buildings play an important role in the social and cultural fabric of New Zealand society, but their nature and age mean that even simple rectification requirements may present design and cost challenges for owners. In cases where heritage buildings are dangerous or insanitary, Council will, in addition to discussing with the building's owner, get advice from Heritage New Zealand Pouhere Taonga to identify a mutually acceptable way to rectify the building in light of:

- the nature and importance of the building
- the level of risk it poses to the community
- efforts needed to meet heritage objectives and ensure the building's heritage values and protection are retained.

Council will also consider any applicable guidance issued by Heritage New Zealand Pouhere Taonga in its Sustainable Management of Historic Heritage Guidance series (link: <https://www.heritage.org.nz/resources/sustainable-management-guides>)

However, the fact that a building is a heritage building does not mean it can be left in a dangerous or insanitary condition.

If a notice is issued in relation to a heritage building, Council will send a copy of the notice to the Heritage New Zealand Pouhere Taonga as required by section 125(2)(f) of the Building Act 2004.

Register

Council will keep a register of all dangerous and insanitary buildings for which action has been taken. The register will record:

- a description of the building
- the action taken
- the date by which the requirements of any notice are to be met
- the status or results of any building work required in a notice
- in the case of Heritage Buildings, the date a copy of any notice was sent to Heritage New Zealand Pouhere Taonga.

The following information will be put on the relevant property file and disclosed in any land information memorandum or project information memorandum issued for the building:

- a statement the building is on Council's register of dangerous and insanitary buildings
- the date by which any remedial work or demolition is required.

Monitoring and Implementation

The Council may amend this Policy at any time in accordance with the Act.

The Council will complete a review of the Policy every 5 years as specified in the Act.

Appendix 1

Template check sheet for inspections as per [MBIE guidance info from 2005](#):

Or

Investigation

Once Council becomes aware of a potential problem, an investigation will be conducted that will include, but is not limited to the following elements:

- a review of Council's records prior to site visit to understand:
 - what consents have been approved for this site
 - whether a Compliance Schedule exists
 - the status of the Building Warrant of Fitness
 - any IQP reports; Notices to Fix, and any other matters on file.
- A review of GIS / aerials prior to site visit to determine whether there are any natural or human-caused hazards or other issues to be aware of
- the location of the building
- the actual site conditions
- the previous and current use of the building
- occupancy numbers
- ownership / occupancy details
- whether the public have access to the building e.g., via the building or adjacent land and waterways
- what aspects of the building are considered dangerous (all or part of the building)
- whether any neighbouring properties are affected by the potentially dangerous building
- what aspects of the building are considered insanitary, including but not limited to:
 - lack of potable drinking water
 - sanitary fixtures or waste disposal
 - light and ventilation
 - presence of vermin
- how and to what extent these aspects are non-compliant with the Building Code
- who is or was responsible for creating this hazard (e.g., whether authorised or unauthorised work has been conducted)
- whether the land or building has heritage status
- priorities (the **immediacy**) of the issue.