



Dangerous, Affected and Insanitary Buildings Policy 2021 - 2026



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1 Introduction

1.1 Policy Purpose

The purpose of this policy is to identify and manage dangerous, affected and insanitary buildings in the Auckland region, in order to reduce the risk of injury, death, ill health or damage that may occur as a result of dangerous and/or insanitary buildings.

Under section 131 of the Building Act 2004 (the Act), all territorial authorities are required to adopt a policy on dangerous and insanitary buildings. Auckland Council adopted such a policy in 2011. In 2013, the Act was amended to require councils to also consider ‘affected buildings’ in their policies.

The Act also specifically recognises that heritage buildings may require a variation to such an approach if their particular heritage values are to be maintained and not compromised. For instance, council can consider dispensations and waivers for issues of safety and sanitary conditions for heritage buildings and consider lateral or innovative approaches to achieving the desired level of compliance.

This policy sets out:

- the approach that Auckland Council will take in performing its functions under the Building Act 2004 in relation to dangerous, affected and insanitary buildings; and
- its priorities in performing those functions; and
- how the policy will apply to heritage buildings.

The policy document is divided into two parts:

- Dangerous and affected buildings, and
- Insanitary buildings

It also makes reference to Heritage Buildings throughout the document.

1.2 Definitions

Affected building is defined as any building that is adjacent to, adjoining, or nearby-

- a) a dangerous building as defined in section 121 of the Act; or
- b) a dangerous dam within the meaning of section 153 of the Act.

Dangerous building is defined under Section 121 of the Act as:

“(1) A building is dangerous for the purposes of the 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 a 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 Fire and Emergency National Commander as being competent to give advice; and
- b) if the advice is sought, must have due regard to the advice.”

Insanitary building is defined under Section 123 of the Act 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 causedampness 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.”

Heritage building is defined in the interpretation section of the Act and has been summarised for the Auckland context as the following:

- identified as heritage in the Auckland Unitary Plan or Hauraki Gulf Islands District Plan, including within a scheduled historic heritage place or area;
- part of a Special Character Area, as identified within the Auckland Unitary Plan;
- listed in the New Zealand Heritage List/Rārangī Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014;
- subject to a Heritage Order, or a heritage-related covenant on the title;
- constructed prior to 1900.

2 **Dangerous and affected buildings**

2.1 Policy principles

This policy has been developed with the intent of a pragmatic approach to implementation. The approach addresses the following considerations:

- intent and provisions of the Building Act 2004,
- Government's broader concern with the life safety of the public in buildings.

The council is committed to ensuring that the Auckland Council region is a safe place to live and work in. The dangerous building policy is consistent with the Auckland Council's strategic direction indicators as outlined in the Auckland Plan to deliver on the current and future social, economic, environmental, or cultural well-being of the Auckland region.

Auckland Council is expecting strong growth over the next 40 years with an expected increase in population from 1.6 million people to 2.2 million, which is placing considerable pressure on existing building stock. Conversions of existing aged buildings, lack of maintenance, overcrowding and illegal building alterations can cause serious building problems for occupants. The failure to obtain a building consent or the negligent use of a building for a purpose for which it is not suitable can result in a building that no longer complies with the building code and poses a danger to the occupants. Dangers could include inadequate fire protection or means of escape, or danger of collapse.

The council is actively involved in educating the public on the need to discuss development plans with it and to obtain building consent where necessary. Where necessary, the council will initiate enforcement action under the Act.

2.2 Identifying dangerous and affected buildings

The council will:

- respond to and investigate all building complaints received;
- identify from these investigations any buildings that are dangerous;
- inform the owner(s) and occupier(s) of the building to take action to reduce or remove the danger, as is required by sections 124 and 125 of the Building Act 2004;
- liaise with FENZ when the council deems it appropriate, in accordance with s121(2) of the Building Act 2004¹

2.3 Assessment criteria

The council will assess dangerous buildings in accordance with s121(1) of the Building Act 2004.

2.4 Taking action on dangerous or affected buildings

In accordance with s124 and 125 of the Building Act 2004, the council:

- will advise and liaise with the owner(s) of buildings, and
- may request a written report on the building from the FENZ;

If it is found that the building is dangerous or affected, the council will:

- attach a written notice to the building requiring work to be carried out on the building, within the time stated in the notice, not being less than 10 days, to reduce or remove the danger;
- give copies of the notice to the building owner, occupier, and every person who has an interest in the land, or is claiming an interest in the land, as well as council's Heritage

¹ s121 of the Building Act 2004 says "For the purpose of determining whether a building is dangerous in terms of s121 subsection (1)(b), a territorial authority-

- (a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
- (b) if the advice is sought, must have due regard to the advice."

Manager (if the building is a heritage building) and Heritage New Zealand Pouhere Taonga (if the building is listed or pre-1900);

- contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with;
- where the danger is the result of non-consented building work, a Notice to Fix will be issued under s124 of the Building Act 2004;
- if the Dangerous Building notice requirements are not met, the council may pursue enforcement action under the Building Act 2004.

If the building is considered immediately dangerous, the council will:

- take any action necessary to remove the danger (this may include prohibiting persons using or occupying the building, or demolition of all or part of the building); and
- take action to recover costs from the owner(s) if the council must undertake works to remove the danger; and
- inform the owner(s) the amount recoverable by Auckland Council will become a charge on the land on which the building is situated.

Building owners may appeal the council's decision by lodging an application for a determination with the Chief Executive Officer of the Ministry of Business, Innovation and Employment in accordance with Section 177(3)(f) of the Building Act 2004.

2.5 Urgent works

Where a building is assessed as being immediately dangerous, under Section 41 of the Act the council may decide that a building consent is not required for any of the immediately necessary building work. However, prior to any action being taken, council will require from owners and discuss with them, a written scope of the work.

2.6 Access to dangerous building information

Where a building is identified as dangerous, Auckland Council will place a requisition on the relevant property file. This requisition will remain until the danger is remedied.

In addition, the following information will be placed on the LIM:

- The notice issued informing the owner that the building is dangerous and where necessary notice of the requirement to evacuate
- a copy of the letter to owner, occupier and any other affected parties that the building is dangerous;
- a copy of the notice given under section 124(1) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger.

In granting access to information concerning dangerous buildings, the council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

2.7 Economic impact of policy

The council receives a number of complaints of building non-compliance every year. At the time of the writing of this operational policy, of the buildings that had been deemed to be dangerous, the council had issued an average of 31 Dangerous Building Notices per annum.

Consequently, the council has concluded that the economic impact of the policy is negligible.

2.8 Priorities

The council will respond to buildings deemed to be immediately dangerous as a matter of urgency. In these circumstances, immediate action will be required to remove the danger and

could include prohibiting any person occupying or using the building and where needed, boarding up the building up to prevent entry.

Buildings that are determined to be dangerous, but not immediately dangerous, will be subject to the minimum timeframes for reduction or removal of the danger (i.e. not less than 10 days) as set out in s124(1)(c) of the Building Act 2004.

2.9 Heritage buildings

Heritage buildings will not be given automatic dispensation under this policy. However, innovative non-damaging approaches are encouraged and will be accepted at heritage buildings in situations where the building meets the definition of a dangerous building but the risk is minor, no accidents are known to have occurred in the past, and where mitigation or full compliance would result in significantly negative impacts to the heritage value. The alternative approaches would still need to demonstrate mitigation of the identified risks.

In cases where compliance with any aspect of the Act would so damage the attributes of a place to the extent that its very role as a valued heritage building is compromised then case-by-case consideration of a dispensation or waiver may be negotiated by the appropriate council officer acting under delegated authority.

This procedure is in accordance with established practices and has been used on a number of occasions. There are examples where preventing access or propping the structure has been used to remove any immediate danger while still protecting the heritage values of the building. Other examples include the non-complying height of the Auckland Town Hall balcony rail (where an increase to code height would obstruct sightlines for much of the balcony, and where no accidents are known to have occurred), or non-complying stair tread/riser/handrail dimensions in the Civic Theatre and Old Central Post Office, where compliance would involve complete reconstruction and therefore destruction of the significant original element.

3 **Insanitary buildings**

3.1 Policy Development approach

The provisions of the Act with respect to insanitary buildings reflect the Government's broader concern with the health and safety of people occupying buildings that may be considered insanitary. This is particularly so in the older building stock in Auckland and (potentially) buildings that have been identified as having severe weathertightness issues.

Growth in Auckland is resulting in a reduction in the availability of affordable housing. As a result, there is increased overcrowding, occupation of garages, basements and sleep-outs and an increase in numbers of apartments. Often, the associated conversions are undertaken without a building consent and do not comply with the Building Code. Insanitary conditions can occur in these circumstances.

The council is actively involved in encouraging people to discuss their development plans with the council and, where necessary, to obtain building consent prior to the work beginning. This is particularly important to avoid creating insanitary conditions. The council has and will initiate enforcement action under the Building Act 2004 when appropriate.

3.2 Identifying insanitary buildings

The council will:

- investigate complaints received;
- identify from these investigations any buildings considered to be insanitary;
- inform the owner(s) of the action necessary to prevent the building from remaining insanitary;
- liaise with the Auckland Regional Public Health Service (Medical Officer of Health) where occupants may be neglected or infirm²
- Work with other agencies where required to assist occupants (i.e. for relocation)

3.3 Assessment criteria

The council will assess insanitary buildings in accordance with s123 of the Building Act 2004, established case law, the Building Code and advice from the Medical Officer of Health.

The council will determine:

- if the building is occupied;
- what the building is being used for; and
- whether the insanitary conditions pose a reasonable probability of being potentially dangerous to the health of any occupants.

Where a building is occupied, considerations may include:

- adequacy of available sanitary facilities;
- adequacy and availability of drinking water;
- ventilation;
- the separation of kitchen and other sanitary facilities;
- potential for moisture penetration taking into account construction materials and any defects in roof and walls; and
- potential for moisture penetration taking into account construction materials and any defects in roof and walls; and
- the extent to which the building is offensive to adjacent and nearby properties.

In accordance with the Building Code, the following clauses are relevant:

- E1 (Surface Water)
- E2 (External Moisture)

² This terminology comes from section 126 of the Health Act – Neglected and Infirm Persons – that addresses the issue of: “...any aged, infirm, incurable, or destitute person is found to be living in insanitary conditions ...”

- E3 (Internal Moisture)
- G1 (Personal Hygiene).
- G3 (Food Preparation)
- G4 (Ventilation)
- G12 (Water Supplies)
- G13 (Foul Water)

3.4 Taking action on insanitary buildings

The council will:

- advise and work with the owner(s) of the buildings identified as being potentially insanitary.

Where the building is found to be insanitary, the council will:

- attach a written notice to the building requiring work to be carried out on the building to prevent the building from remaining insanitary, with a time stated on the notice that

- is not less than 10 working days;
- give copies of the notice to the building owner(s), occupier(s), and every person who has an interest in the land or is claiming an interest in the land, as well as the council's Heritage Manager (if the building is a heritage building) and Heritage New Zealand Pouhere Taonga (if the building is listed or pre-1900);
- where the insanitary conditions are the result of non-consented work, issue a Notice to Fix;
- contact the owner(s) at the end of the period set down in the notice to gain access to the building and determine whether the notice has been complied with;
- determine if enforcement action should be pursued under the Act if the requirements of the notice have not been met.

Where the council considers immediate action is required to fix insanitary conditions the council will:

- take action necessary to fix those insanitary conditions; and
- take action to recover costs from the owner(s) if the council has had to undertake work to address the insanitary conditions;
- inform the owner(s) the amount recoverable by the council will become a charge on the land on which the building is situated.

Building owners may appeal the council's decision by lodging an application for a determination with the Chief Executive Officer of Ministry of Business Innovation and Employment (MBIE) in accordance with Section 177 (3)(f) of the Building Act 2004.

3.5 Urgent works

Where a building is assessed as requiring immediate work to address the insanitary conditions, under Section 41 of the Act the council may decide that a building consent is not required for any of the immediately necessary building work. However, prior to any action being taken, council will require from owners and discuss with them, a written scope of the work.

Note: The council may decide to use powers under the Health Act 1956, instead of or in addition to, the Building Act. Provisions exist in the Health Act to deal with nuisance conditions associated with housing, including overcrowding and insanitary conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation.

3.6 Recording of insanitary buildings

Where a building is identified as insanitary, Auckland Council place a requisition on the relevant property file. This requisition will remain until the danger is remedied.

In addition, the following information will be placed on the LIM:

- The notice issued informing the owner(s) the building is insanitary and, if issued, notice of the requirement to evacuate;
- A copy of the letter to owner(s), occupier(s) and any other relevant person(s) advising the building is insanitary;
- A copy of the notice given under section 124(1) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the insanitary conditions;
- Any report that describes work that has been undertaken to remedy the insanitary conditions.

3.7 Heritage buildings

Heritage buildings will not be given automatic dispensation under this policy. However, where the non-compliance is minor, and where to correct the situation would involve destruction or visual compromise of high-value items, the appropriate council officer acting under delegated authority may negotiate a dispensation or waiver. Lower-impact methods such as repairing leaks or clearing rubbish will be encouraged to help remedy insanitary conditions without compromising heritage values. This procedure is in accordance with established practice and has been used on a number of occasions.

Find out more: **phone 09 3010101**
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