

Dangerous and Insanitary Buildings Policy

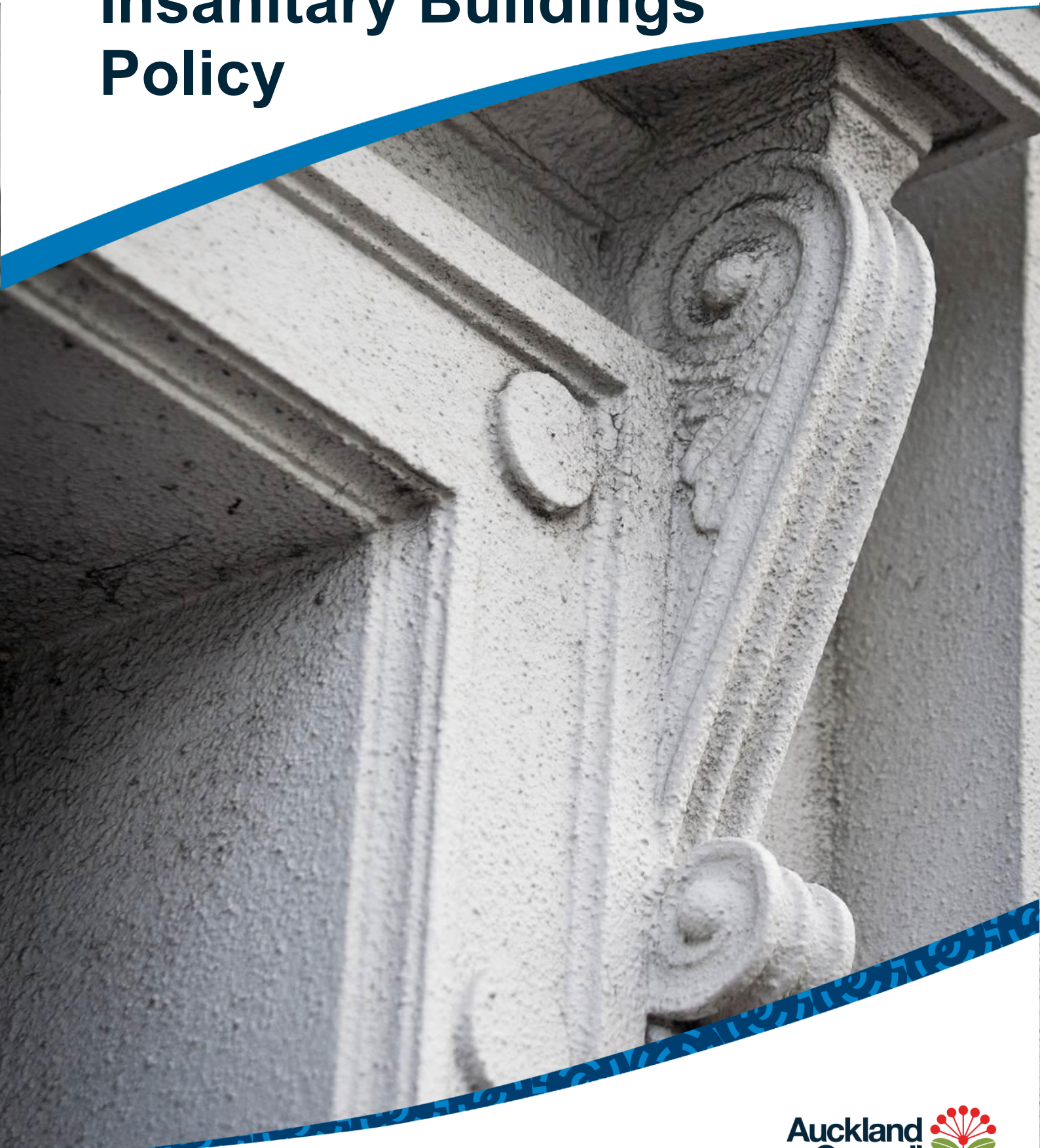


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1 Policy purpose

Auckland Council is required under s131 of the Building Act 2004 to adopt a policy on dangerous and insanitary buildings. The Act also specifically recognises that heritage buildings may require a variation to such an approach if their particular heritage values are not to be 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 is required to state:

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

The policy document is divided into two Parts:

- Dangerous buildings, and
- Insanitary buildings

2 Dangerous buildings

2.1 Background

By 1 December 2011, Auckland Council was required to have adopted a policy on dangerous buildings.

The definition of a dangerous building is set out in s121 (1) of the Building Act 2004. It says:

“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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”

2.2 Policy principles

This policy has been developed and will be implemented using a pragmatic approach.

The approach addresses the following considerations:

- intent and provisions of the Building Act,
- 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 Draft Auckland plan to deliver on the current and future social, economic, environmental or cultural well-being of the local board area or Auckland region and any statutory responsibility.

Auckland Council is expecting strong growth over the next forty years with an expected increase in population from 1.4 million people to 2.2 million, which will place 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 no longer complying with the building code and pose a danger to the occupants. Dangers could include inadequate fire protection, 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, Council will initiate enforcement action under the Building Act 2004.

2.3 Identifying dangerous 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 s124 and s125 of the Building Act 2004;
- liaise with the New Zealand Fire Service when Council deems it appropriate, in accordance with s121(2) of the Building Act 2004¹.

2.4 Assessment criteria

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

2.5 Taking action on dangerous buildings

In accordance with s124 and s125 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 New Zealand Fire Service;

If it is found that the building is dangerous, 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 and 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 the New Zealand Historic Places Trust, if the building is a heritage building;
- 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;

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 members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and

(b) If the advice is sought, must have due regard to the advice."

- if the Dangerous Building notice requirements are not met within a reasonable period of time as well as any other non-compliance matters Council will 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 and 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.
- Inform the owner(s) the amount recoverable by Auckland Council will become a charge on the land on which the building is situated.

Owners have the right of appeal as defined in the Building Act 2004. This can include applying to the Department of Building and Housing for a determination under s177.

2.6 The dangerous buildings policy and the Building Act 2004

s41: Building consent not required in certain cases

Where a building is assessed as being immediately dangerous the Council may not require that a building consent be obtained 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.

2.7 Access to dangerous building information

Where a building is identified as dangerous, Auckland Council will have a requisition placed on the property file where the building is situated. This requisition will remain until the danger is remedied.

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.

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 person that the 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.

2.8 Economic impact of policy

In any one year, the council could expect to receive 400 complaints relating to potentially dangerous buildings and as a result issue 20 Dangerous Building Notices. Consequently, the council has concluded that the economic impact of this is negligible.

2.9 Priorities

The council will act on 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 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.

2.10 Heritage buildings

For the purposes of this part of the policy 'heritage buildings' are:

- structures as scheduled in a district plan;
- buildings or structures forming part of a Conservation Area or Special Character Zone as identified within a district plan;
- buildings or structures as registered under the Historic Places Act 1993;
- buildings or structures constructed prior to 1900.

Heritage buildings will not be given systematic dispensation under this policy. However, where a risk is minor and no accidents are known to have occurred in the past as a result and where mitigation or full compliance would result in significantly negative impacts to the heritage value, then, innovative non-damaging approaches will be accepted. 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 item 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. Examples are the non-complying height of the Auckland Town Hall balcony rail (where an increase to code height would obliterate 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 precious original element.

3 Insanitary buildings

3.1 Background

By 1 December 2011 Auckland Council was required to adopt a policy on insanitary buildings.

The definition of an insanitary building is set out in s123 of the Act. It says:

“A building is insanitary for the purposes 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.”

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 where it may be considered insanitary. This is particularly so in the older building stock in Auckland City and (potentially) buildings that has been identified as having severe weathertightness issues.

Auckland also has a substantial number of buildings that are subject to weathertightness issues. In these severe cases insanitary conditions can occur.

3.2 Policy Development approach

Growth in Auckland is resulting in a reduction in the availability of affordable housing. As a result there is an increased incidence of 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 prevail 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.

3.3 Identifying insanitary buildings

The council will:

- investigate all building 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 infirm.

3.4 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;
- 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
- the extent to which the building is offensive to adjacent and nearby properties.

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

- E2 (External Moisture)
- G1 (Water Supplies)
- G1 (Personal Hygiene).

3.5 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 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 and the New Zealand Historic Places Trust if the building is a scheduled and/or registered heritage building;
- 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 works 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.

All owners have a right of appeal as defined in the Building Act 2004. This can include applying to the Department of Building and Housing for a determination under s 177 of the Act.

3.6 The insanitary building policy and the Building Act 2014

S.41: Building consent not required in certain cases

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

3.7 Recording of insanitary buildings

Where a building is identified as insanitary, Auckland Council will have a requisition placed on the property file where the building is situated. 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 danger;
- Any report that describes work that has been undertaken to remedy the insanitary conditions.

3.8 Heritage buildings

For the purposes of this part of the policy 'heritage buildings' are:

- structures as scheduled in a district plan;
- buildings or structures forming part of a Conservation Area or Special Character Zone as identified within a district plan;
- buildings or structures as registered under the Historic Places Act 1993;
- buildings or structures constructed prior to 1900.

Heritage buildings will not be given systematic dispensation under this policy. However, as with earthquake risk and other dangerous aspects, 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 consideration of a dispensation or waiver. This procedure is in accordance with established practice and has been used on a number of occasions.

Find out more: **phone 09**
or visit **aucklandcouncil.govt.nz/**