

POLICY

Dangerous, Affected, and Insanitary Buildings

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1 Introduction

1.1 Policy purpose

The purpose of this policy is to identify how dangerous, affected and insanitary buildings in the Upper Hutt district will be managed and regulated, 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 sections 131 and 132A of the Building Act 2004 (the Act), all territorial authorities are required to adopt a policy on dangerous, affected and insanitary buildings. Upper Hutt City Council adopted such a policy in 2006 and subsequently amended the policy in 2017. The 2017 amendment removed Earthquake Prone Buildings following changes required by the Building (Earthquake-prone Buildings) Amendment Act 2016. In 2013, the Building Act was amended to require Councils to also consider 'affected buildings' in their policies.

The Building 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.

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 Scope of policy

This policy applies to all buildings within Upper Hutt City, excluding dams and buildings affected by an emergency event.

This policy sets out:

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

1.3 Relationship to legislation and other Council policies

This Policy should be read in conjunction with relevant sections of the following legislation:

- Building Act 2004
- Civil Defence Emergency Management Act 2002
- Health Act 1956

- Heritage New Zealand Pouhere Taonga Act 2014
- Housing Improvement Regulations 1947
- Local Government Act 2002
- Resource Management Act 1991

This Policy should also be considered alongside other relevant Upper Hutt City Council policies which may also deal with buildings and the health and safety of residents.

1.4 Review

This policy replaces the Upper Hutt City Council – Dangerous and Insanitary Building Policy 2017 and must be reviewed at least every five years. Any amendments or replacement of the policy must be undertaken in accordance with the Special Consultative procedure in s83 of the Local Government Act 2002 as required by s132(2) of the Act.

The policy does not cease to have effect because it is due for review or is being reviewed.

1.5 Definitions

For the purposes of this policy the following definitions apply:

- **The Act** means the Building Act 2004.
- **Affected building** has the same meaning as section 121A of the Act and is as follows:
“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.”
- **Authorised officer** has the same meaning as in section 222 of the Act and is as follows:
“an officer of a territorial authority to whom either or both of the following applies:
 (a) he or she is authorised to carry out inspections; or
 (a) he or she is authorised to enter the land –
 (i) by this Act; or
 (ii) by an order of the District Court made under section 227.”
- **Council** means the Upper Hutt City Council.
- **Dangerous building** has the same meaning as Section 121 of the Building Act and is as follows:
 (1) “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 persons in the building or to persons on other property is likely.
- (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 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.”
- **Heritage building** has the same meaning as section 7 of the Building Act and is as follows:

“means a building that is included on –

 - (a) the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014, or
 - (c) the District Plan - Historic Heritage Schedule.”
- **Insanitary building** has the same meaning as Section 123 of the Act and is as follows:

“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.”

1.6 Policy development approach

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 Act,
- the life safety of the public in buildings.

The Council is committed to ensuring that the Upper Hutt City Council district is a safe place to live, visit and work in. The Dangerous, Affected and Insanitary Buildings Policy is consistent with the social and cultural, and economic outcomes in the Upper Hutt City Council Long Term Plan.

Upper Hutt City Council is expecting strong growth over the next 30 years with an expected increase in population from 47,500 people to 65,000, placing additional pressure on existing building stock, and resulting in a reduction in the availability of affordable housing. Conversions of existing aged buildings, lack of maintenance, overcrowding and illegal building alterations can cause serious problems for occupants and insanitary conditions can occur in these circumstances. This is particularly so in the older building stock in Upper Hutt

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 dangerous or insanitary conditions. 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 has and will initiate enforcement action under the Building Act 2004 when appropriate.

In accordance with Section 123A of the Act, if a territorial authority is satisfied that part of a building is dangerous it may only take enforcement action in respect of that part of a building rather than the whole building.

1.7 Economic impact of policy

The Council receives several complaints of building non-compliance every year, however these generally do not result in the buildings meeting the threshold to be deemed dangerous or insanitary.

Consequently, Council has concluded that the economic impact of the policy is negligible since, at the time of writing the operational policy, very few instances of dangerous buildings have been encountered.

1.8 Approach taken by Council

Council will identify and manage Dangerous, Affected and Insanitary Buildings in accordance with the flow chart shown at Appendix 1 of this policy. Further details on how Council will perform the functions identified in the flow chart are identified in sections 2 and 3 below.

1.9 Priorities

The Council will respond to buildings deemed to be dangerous, affected or insanitary which pose immediate risk to occupants and surrounding environments.

In such circumstances as immediate action is required to remove the danger and could include prohibiting any person occupying or using the building and where needed, boarding up the building 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 s125(1)(c) of the Act.

2.0 Dangerous and affected buildings

2.1 Step One - Identifying dangerous and affected buildings and responding to complaints

The Council will:

- respond to and investigate all building complaints received.
- undertake inspections by an authorised officer.
- identify from these investigations any buildings considered to be dangerous.
- liaise with FENZ when the Council deems it appropriate, in accordance with s121(2) of the Act¹

2.2 Step Two – Assessing and recording dangerous and affected buildings

Assessment criteria

The Council will assess dangerous buildings in accordance with s121(1) and s121A of the Act.

Recording inspection findings and buildings deemed to be dangerous, affected or insanitary

Where a building is identified as dangerous, Upper Hutt City Council will:

- Record the building, its location, issues raised, and relevant advice received and the outcome of the inspection in a Dangerous, Affected and Insanitary Buildings register.
- place the following information on Council records related to the property:
 - any 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) of the Act that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger.

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."

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.

Involving the owners of dangerous, or affected buildings

If council determined that a building is dangerous or affected or insanitary, it will advise and liaise with the owner(s) of buildings.

2.3 Step Three - Taking action on dangerous or affected buildings

In accordance with s124 and 125 of the Act, the Council:

- will advise and liaise with the owner(s) of buildings, and
- may request a written report on the building from 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, 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 Act.
 - if the Dangerous Building notice requirements are not met, the Council may pursue enforcement action under the Act.

If the building is considered immediately dangerous, the Council will in accordance with section 129 and 130 of the Act:

- 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 Upper Hutt City 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 Act.

At the end of the time period stated in a notice issued under s124(2)(c)(i)&(ii) of the Act (or any extension) Upper Hutt will confirm if the work required by the notice has been completed, or is proceeding with reasonable speed, and record compliance on the Dangerous, Affected and Insanitary Building register and Council records related to the property.

If a person fails to comply with a notice issued under section 124(2)(c) of the Act, requiring work to remove or reduce danger or remove insanitary conditions, then they will commit an offence, and are liable to be fined on conviction. Council may also apply to the District Court seeking a court order to allow them to carry out building work in accordance with section 126 of the Act.

2.4 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.

2.5 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. Any proposed 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.

3.0 Insanitary buildings

3.1 Step One – Identifying insanitary buildings and responding to complaints

The Council will:

- respond to and investigate all building complaints received.
- undertake inspections by an authorised officer.
- identify from these investigations any buildings considered to be insanitary.
- liaise with the Wellington 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).

3.2 Step Two – Assessing and recording insanitary buildings

Assessment

The Council will assess insanitary buildings in accordance with s123 of the Act, established case law, the Building Code and if deemed necessary 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 are offensive or likely to be injurious to the health of any occupants or surrounding environments.

Where a building is occupied, considerations may include, but are not limited to:

- adequacy of available sanitary facilities.
- adequacy and availability of drinking water.
- ventilation.
- the separation of kitchen and other sanitary facilities.

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...”

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

Recording inspection findings and buildings deemed to be insanitary

Where a building is identified as insanitary, Upper Hutt City Council will:

- Record the building, its location, issues raised, and relevant advice received and the outcome of the inspection in a Dangerous, Affected and Insanitary Buildings register.
- place the following information on the Council records related to the property:
 - 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) of the Act 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.

Involving the owners of insanitary buildings

If council determined that a building is dangerous or affected or insanitary, it will advise and liaise with the owner(s) of buildings.

3.3 Step Three – 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, 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 (in accordance with section 129 and 130 of the Act):

- 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.

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 Act.

At the end of the time period stated in a notice issued under s124(2)(c)(i)&(ii) of the Act (or any extension) Upper Hutt will confirm if the work required by the notice has been completed, or is proceeding with reasonable speed, and record compliance on the Dangerous, Affected and Insanitary Building register and the Council records related to the property.

If a person fails to comply with a notice issued under section 124(2)(c) of the Act, requiring work to remove or reduce danger or remove insanitary conditions, then they will commit an offence, and are liable to be fined on conviction. Council may also apply to the District Court seeking a court order to allow them to carry out building work in accordance with section 126 of the Act.

3.4 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.

3.5 Heritage buildings

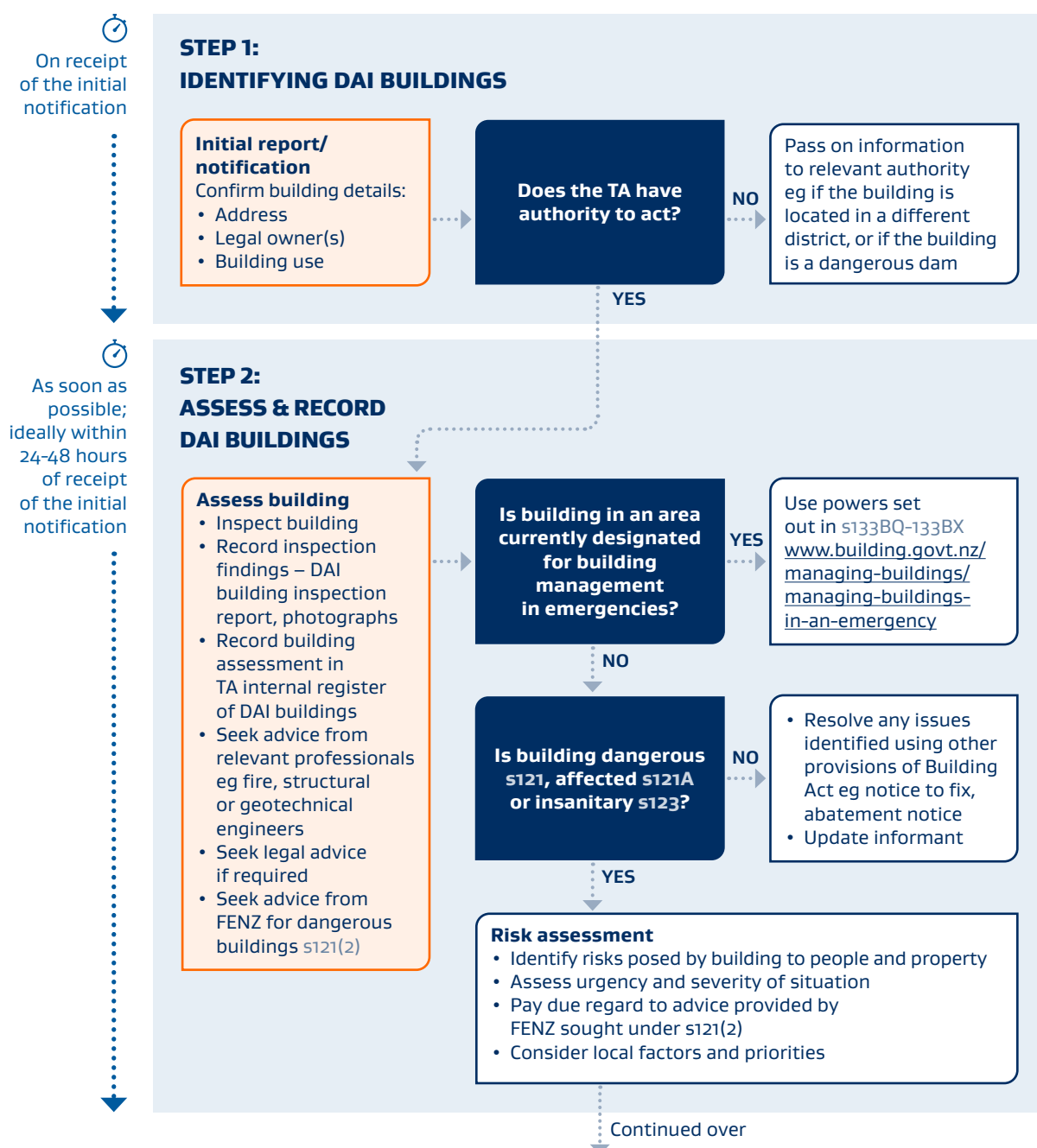
Heritage buildings will not be given automatic dispensation under this policy. However, where the non-compliance is minor, and where to correct the situation would involve destruction or visual compromise of high-value items, the appropriate Council officer acting under delegated authority may negotiate 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.

Appendix One – Steps for identifying and managing dangerous, affected, and insanitary buildings

The following pages are guidance from Central Government on how to identify and manage dangerous, affected, and insanitary buildings.

Steps for identifying and managing dangerous, affected and insanitary buildings

This flowchart outlines the steps that councils will take when performing functions for managing a dangerous, affected or insanitary building from initial identification through to resolution.



Appropriate timeframe decided based on risk posed by building and action required

STEP 3: TAKE ACTION

From previous page

Is immediate danger likely/immediate action required?

YES

NO

Immediate danger

- CE of TA issues warrant under s129 causing action to:
 - avoid immediate danger s121
 - fix insanitary conditions s123
- Inform building owner(s) and occupants of assessment
- Notify Heritage NZ Pouhere Taonga for heritage buildings
- On completion of the warranted action TA applies to District Court for confirmation of warrant s130
- Determine what follow up action is required

Notify

At this point the TA may:

- Inform building owner(s) and occupants of assessment
- Discuss building status with the owner where appropriate

Take action

The TA can take several actions depending on whether the building is dangerous, affected or insanitary

Dangerous (s121)

- Put up a hoarding or a fence to prevent people approaching the building nearer than is safe s124(2)(a)
- Attach in a prominent place, either on or adjacent to the building, a notice that warns people not to approach the building s124(2)(b)
- Issue a written notice restricting entry to the building, either for particular purposes or to a specific person or groups of people s124(2)(d)

Give written notice requiring work to be carried out on the building to reduce or remove the danger s124(2)(c)(i)

Give written notice requiring work to be carried out on the building to prevent the building from remaining insanitary s124(2)(c)(ii)

Insanitary (s123)

Affected (s121A)

Using dangerous, affected or insanitary buildings

Once a TA has done any of the following:

- Put up a hoarding or fence in relation to a building s124(2)(a)
- Attached a notice warning people not to approach a building s124(2)(b)
- Issued a notice restricting entry to a building s124(2)(d)

it is prohibited for anyone to use or occupy a building, or permit another person to use or occupy it s128

Form of s124(2)(c)(i) & (ii) notices specified by s125(1)

- The notice must be in writing and fixed to the building in question
- Copies of notices must be sent to both the owner of the building and those who occupy it, and also to a range of other people as listed in s125(2)
- The notice must state if the owner of the building must obtain a building consent for the work required by the notice
- The notice must state the time that the building work must be carried out in
- This timeframe must not be less than ten days from the date the notice is given, or a reasonable time for a building consent to be obtained, whichever is longer

Form of s124(2)(d) notices specified by s125(1A)

- The notice must be in writing and fixed to the building in question
- Copies of notices must be sent to both the owner of the building and those who occupy it, and also to a range of other people as listed in s125(2)
- The notice must be issued for a maximum period of thirty days, and may be re-issued once for a further maximum period of thirty days

Continued over



Appropriate timeframe decided based on risk posed by building and action required

STEP 3: TAKE ACTION (continued)

Re-assess (dangerous/insanitary)

At the end of the time period stated in a notice issued under s124(2)(c)(i)&(ii) (or any extension allowed by the TA) the TA may:

- reassess the building to confirm if the work required by the notice has been completed, or is proceeding with reasonable speed

If work required under s124(2)(c) is not completed or proceeding with reasonable speed the TA can under s126:

- give the owner 10 days' notice it intends to seek court approval to enter the building and undertake the work itself
- apply to the District Court for approval
- carry out the work itself
- recover costs for this from the owner
- this can include full or partial demolition of the building s127

From previous page

Re-assess (affected)

At the end of the time period stated in a notice issued under s124(2)(d) (either the initial period of max 30 days or additional period of max 30 days) the TA may reassess the building to confirm what further action is required

Resolution

- ✓ Uplift s124 notice when any required remedial building work has been completed to the satisfaction of the TA, or when the dangerous, affected or insanitary conditions have been removed
- ✓ Update TA records to confirm issue has been resolved and the building is no longer dangerous, affected or insanitary

Glossary of abbreviations

Term	Explanation
DAI	Dangerous, affected and insanitary
TA	Territorial Authority
FENZ	Fire & Emergency New Zealand
CE	Chief Executive