

STATEMENT OF PROPOSAL

Dangerous and Insanitary Buildings Policy

21 SEPTEMBER 2023



Statement of Proposal—Dangerous and Insanitary Buildings Policy 2023

We want your feedback on the proposal to adopt an amended Dangerous and Insanitary Policy.

This document contains our proposed amended Dangerous and Insanitary Policy. Please read this amended policy alongside our *Summary of Information—Dangerous and Insanitary Buildings Review* which outlines the key changes in the policy, the options we considered in developing the policy and how to make a submission on the policy.

This policy applies to all buildings within Upper Hutt City.

We are seeking your feedback by 20 October 2023.

Proposed Dangerous and Insanitary Buildings Policy 2023

(Te kaupapa here mō ngā whare mōrearea, ngā poke me ngā whakāwenga)

1. Introduction and background

The Dangerous and Insanitary Buildings Policy has been prepared to comply with s131 of the Building Act 2004, requiring Council to have a policy on Dangerous and Insanitary Buildings.

It is important that the Council protects public health by ensuring buildings are structurally sound, do not pose health risks and perform their function without putting the health of building users, residents, and visitors at risk.

Upper Hutt City Council first adopted an 'Earthquake-prone, Dangerous and Insanitary Buildings Policy' (Policy) in 2006. The policy was subsequently revised by Council in August 2017, following changes required by the Building (Earthquake-prone Buildings) Amendment Act 2016 - which removed 'earthquake-prone buildings' from this Policy.

The Act also requires the Policy to state the Council's policy approaches regarding affected buildings, which are buildings adjacent to, adjoining or nearby to a dangerous building or dam.

This version of the Dangerous and Insanitary Building Policy has been updated to improve its useability and include relevant requirements of the Health Act 1956 and the Heritage New Zealand Pouhere Taonga Act 2014 where these relate to buildings deemed dangerous, affected, or insanitary.

This version of the policy was adopted by Council on [DATE] and comes into effect immediately.

2. Principles

A key principle of the Building Act 2004 (the Act) is to provide a regulatory framework to ensure *people who use buildings can do so safely and without endangering their health and people who use a building can escape from the building if it is on fire*.

Council is committed to ensuring that Upper Hutt is a safe place to live, visit, and work.

This policy states the approach that Council will take to respond to dangerous and insanitary buildings, how we will prioritise potential actions, and how we will apply the policy to heritage buildings, to minimise the risk to people within the district from dangerous and insanitary buildings.

This policy has strong links with our vision to create and promote a safe district for all people.

3. Scope

The Policy applies to all buildings within Upper Hutt City.

The Policy sets out:

- the approach that the Council will take in performing its functions under Part 2 of the Act;
- the Council's priorities in performing those functions;
- the Council's approach to dangerous, affected, and insanitary heritage buildings.

4. Definitions

For the purposes of this Policy the following definitions apply.

Act The Building Act 2004

Authorised officer (s222 Building Act 2004) means 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
- (b) he or she is authorised to enter land—
 - (i) by this Act; or
 - (ii) by an order of the District Court made under section 227

Building (s8 (a) Building Act 2004) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and

- (b) includes—
 - (i) a mechanical, electrical, or other system; and
 - (ii) any means of restricting or preventing access to a residential pool; and
 - (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; and
 - (iv) a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); and
- (c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; and
- (d) includes the non-moving parts of a cable car attached to or servicing a building; and
- (e) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.

Dangerous building (s121 of the Building Act 2004), a dangerous building is defined as a building that:

- (a) in the course of events (excluding the occurrence of an earthquake), if 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 because of fire hazard or the occupancy of the building.

Affected building (s121A of the Building Act 2004), a building is an affected building if it is adjacent to, adjoining, or nearby—

- (a) a dangerous building as defined in s121; or
- (b) a dangerous dam within the meaning of s153.

Insanitary building (s123 Building Act 2004), a building is insanitary if it is:

- (a) 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.

Council means Upper Hutt City Council.

Heritage building, for the purposes of this policy, a heritage building is either:

1. A Marae - including the area of land on which the *marae ātea* (an open space), *wharenui* (meeting house), *wharekai* (dining room), *wharepaku* (ablution blocks), and any other associated buildings are situated; or
2. Considered to be of significant historical, traditional and/or cultural importance, under Council's Arts, Culture, and Heritage Strategy; or
3. Is a building, place, or part of a place, which is defined in s7 Building Act 2004 as:
 - (a)
 - (i) a building that is included on the New Zealand Heritage List/Rārangi Kōrero maintained under s65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (ii) a building that is included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under s81 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (iii) a place, or part of a place, that is subject to a heritage covenant under s39 of the Heritage New Zealand Pouhere Taonga Act 2014 and is registered under s41 of that Act; or
 - (iv) a place, or part of a place, that is subject to a heritage order within the meaning of s187 of the Resource Management Act 1991; or
 - (v) a place, or part of a place, that is included in a schedule of a district plan because of its heritage value;

Immediate danger (s129 Building Act 2004) Measures to avoid immediate danger or to fix insanitary conditions.

This section applies if, because of the state of a building,

- (a) immediate danger to the safety of people is likely in terms of section 121 or 123; or
- (b) immediate action is necessary to fix insanitary conditions.

5. Overall approach

All buildings, at the time of their construction, are required to meet the safety and sanitary requirements of that era, however, over time, a building may become dangerous and/or insanitary. This may be due to a major event such as a natural disaster, fire, or as a result of neglect, unauthorised building alterations, or an unauthorised change of use.

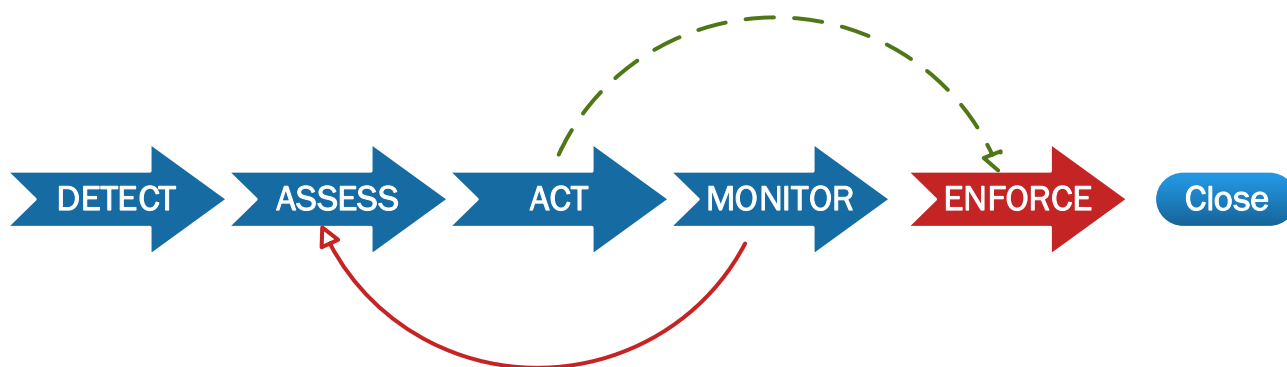
This policy enables Council to act on complaints, or other information made available, that a building may be dangerous or insanitary. Council must then assess each complaint or notification to determine if a building is dangerous and/or insanitary, on the basis of:

- Building details on the property held in Council records;
 - A building and site inspection by an authorised officer.
- and, if required;
- The advice of Fire and Emergency New Zealand (FENZ), registered engineer, medical officer of health or health protection office or other relevantly qualified professional.

When a building has been assessed, an inspection record will be produced, and options for intervention will be prioritised. If the assessment relates to a heritage building, Council will work with Pouhere Taonga and Iwi as appropriate to support the Council's assessment process.

Once an intervention pathway has been agreed Council will monitor progress until it is agreed to close the case.

The overall process is noted below:



5.2 Detection

Council does not actively, or regularly, inspect all buildings within the city, however, it will respond to complaints or other information being made available to the Council that a building may be dangerous or insanitary. Additionally, under s42 of the Health Act 1956 (Health Act) a medical officer of health can certify that any house within the district is likely to cause injury to the health of any person or is unfit for human habitation and require Council action.

5.3 Assessment

Once Council has received information regarding a potentially dangerous, affected or insanitary building it will:

- (a) Check the details of the property against Council records.
- (b) Have an Authorised Officer or independently qualified person undertake an inspection of the building in question. In doing this, Council may seek advice from FENZ or any other professional or organisation deemed appropriate by Council and;
- (c) All inspections of potentially dangerous, affected or insanitary buildings will involve assessment of the building's condition against the definitions in ss121-123 of the Act, and current building code requirements.
- (d) Prepare an inspection record.

Council is not required to inform or obtain approval for inspections to determine whether or not a building is Dangerous or Insanitary, unless the building is a private dwelling. In these circumstances Council must either obtain consent of the occupier of the dwelling or an order from a District Court.

To inform the potential actions required to prevent a building from remaining insanitary or dangerous, Council will consider a range of factors in its assessment, including but not limited to:

- (a) The size and complexity of the building.
- (b) The location of the building in relation to other buildings, public places, and natural hazards.
- (c) The expected life of the building.
- (d) The use of the building, and how many people spend time in or in the vicinity of the building.
- (e) The reasonable practicality of any work concerned.
- (f) Any special historical or cultural value of the building; and
- (g) Any other matters that Council considers may be relevant.

Council will consider each case on an individual basis and determine the appropriate course of action. Council may seek professional advice as part of any investigation.

5.4 Act

When exercising its powers under this policy, Council must be satisfied that the thresholds for being dangerous, insanitary, or affected have been met. If Council determines that a building is dangerous, insanitary, or affected, it will then decide on the action(s) required to ensure the safety of the public.

Where immediate action is required, Council may use its powers under s124(c) and s124(d) of the Act to issue a notice requiring owners to undertake work to remove the danger. Council may also, where necessary, under s124(a), take measures to secure the building; this may include, but is not limited to, fences, hoardings, or warning notices.

Additionally, under s129 of the Act if there is an immediate danger to the safety of people or property due to dangerous or insanitary conditions the Council's chief executive may issue a warrant to take immediate actions to remove that danger or fix insanitary conditions and Council may undertake those works.

If these actions have not been completed by the due date, Council may escalate the matter with subsequent notices, and may undertake the work itself in accordance with s126 of the Act, where this is deemed necessary.

Where immediate actions are not required, Council will contact the owner to discuss an action plan, and/or issue a notice under s124(2) of the Act.

If a heritage building is identified as dangerous or insanitary, Council will consult with Pouhere Taonga or encourage building owners to do so.

Council will advise owners of any funding assistance available, either through Council or other funding sources, such as the National Heritage Preservation Incentive Fund and New Zealand Lotteries Commission, where owners can apply for funding to help with costs associated with heritage buildings.

Owners of properties determined to be unsafe or insanitary are required, under s126 of the Act, to pay all costs related to restoring the building to a condition that complies with the requirements of the Act and the current Building Code. Costs shall include costs incurred by Council to assess and enforce compliance.

Where actions are not urgent, Council may recommend improvements to the building with the Owner.

If no actions are required, or have been completed by the Owner, Council will close the investigation and take no further action.

In certain circumstances, regardless of the Council's assessment and proposed actions, the Health Act allows the Director-General of Health to require the Council to take actions relating to insanitary conditions. This may include requiring Council to issue a repair notice under s42(2) of the Health Act and if the repair notice is not complied with, making an order prohibiting occupation until repairs have been made, known as a closing order, under s42(3) of the Health Act. The Director-General may also direct the Council to issue a closing order without issuing a repair notice where circumstances require this.

5.5 Monitor

Council will work with the building owner, who is ultimately responsible for ensuring the safety of their building, to highlight any necessary improvements and agree a timeframe for any necessary works to be completed.

The building will also be re-inspected to confirm the required actions have been completed or a written notice has been complied with.

5.6 Escalate

If remedial works are not completed on-time, or do not appear to be progressing, Council will liaise with the building owner to try and ascertain when they are due be completed, and if there are any extenuating circumstances around the delay.

If works are still not completed, or are unlikely to be completed, Council may issue a notice to fix, requiring work to be carried out on the building to reduce or remove the danger, or prevent the building from remaining insanitary. Council may use any and all mechanisms under the Act to ensure such works are undertaken. These mechanisms include, but are not limited to, powers under ss124 - 127 of the Act.

Where a property owner has failed to carry out the work within the time specified, Council may apply to the District Court for an order authorising it to carry out the work under s130 of the Act.

The full costs of carrying out such works will be recovered from the property owner.

Additionally, if Council does not issue a repair notice or closing order when required or directed to under s42 of the Health Act 1956 the medical officer of health, on direction by the Director-General of Health, can themselves issue the same notices under s44(1) of the Health Act 1956. In this case all costs incurred by or against the medical officer of health will be recoverable from the Council by the Crown.

5.7 Heritage buildings

The Council's Arts Culture and Heritage Strategy, District Plan, Resource Management Act 1991, and Heritage New Zealand Pouhere Taonga Act 2014 reflect that heritage buildings and sites are locally and nationally important.

There are several heritage buildings throughout Upper Hutt, and these are a vital and valued part of our identity. If a heritage building is deemed to be dangerous or insanitary, Council will seek to ensure, as far as is reasonably practicable, that any necessary work carried out will not diminish the heritage value of the building, considering:

- (a) any special traditional and cultural aspects of the building regardless of its current use.
- (b) the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value.

Section 39 of the Act requires that, if a building listed under the Heritage New Zealand Pouhere Taonga Act 2014 is subject to a notice issued under s124 of the Act, Council must send a copy of that notice to Pouhere Taonga.

Additional consents may be required for work affecting buildings subject to Heritage Orders, and those subject to heritage covenants and encumbrances. The owner(s) of a heritage building identified as dangerous or insanitary should also consult with Council's heritage advisors when developing options to address the building's dangerous or insanitary aspects.

Except in emergencies and where demolition constitutes emergency works under s330 of the Resource Management Act, heritage buildings in Upper Hutt 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.

If demolition of a building constructed prior to 1900, subject to a notice under s124 of the Act, is proposed the archaeological provisions of the Heritage New Zealand Pouhere Taonga Act 2014 apply. In such a case Council must also consult with Pouhere Taonga on any potential site-specific requirements.

5.8 Record keeping

All information relating to dangerous, affected, or insanitary buildings will be filed on the relevant Council property file. This will include a copy of the original inspection record and any further action taken. This information will also be included on any Land Information Memorandum prepared for the property.

Council will keep a record of all complaints, action plans, notices relating to investigations/cases. These records will include any dates when action plans or notices were issued, due or completed, as well as recording when any escalation and/or subsequent activities were undertaken.

5.9 Disputes

Where a building owner disputes a Council decision or proposed activity, relating to the exercise of the Councils powers under s124 -129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Business, Innovation, and Employment as provide by s177(3)(f) of the Act. Such a determination is binding on both the building owner and the Council.

6. Breaches and enforcement

Under s128A of the Act, a person who fails to comply with a notice issued under s124 commits an offence and is liable on conviction to a fine.

Enforcement of breaches under the Building Act may be undertaken by the Ministry of Business, Innovation and Employment.

7. Legislation

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

Building Act 2004

Health Act 1956

Local Government Act 2002

Resource Management Act 1991

Civil Defence Emergency Management Act 2002

Heritage New Zealand Pouhere Taonga Act 2014