

# Policy

## DANGEROUS AND INSANITARY BUILDINGS

<b>TEAM:</b>	Building Services
<b>RESPONSIBILITY:</b>	Building Services Manager
<b>ADOPTED:</b>	7 September 2022
<b>REVIEW:</b>	Every five years or as required
<b>CONSULTATION:</b>	Special Consultative Procedure required when amending or replacing
<b>RELATED DOCUMENTS:</b>	Ashburton District Council Long-Term Plan, Ashburton District Plan, Building Act 2004, Building (Earthquake-prone Buildings) Amendment Act 2016, Health Act 1956, Health and Safety at Work Act 2015, Local Government Act 2002, Local Government Official Information and Meetings Act 1987, Resource Management Act 1991.

### Policy Objective

This policy aims to achieve compliance with the Building Act 2004 and other relevant legislation with respect to dangerous and insanitary buildings.

### Definitions

**Act**, for the purposes of this policy, means the Building Act 2004.

**Affected building** has the same meaning as section 121A of the Act and generally means a building that is adjacent to, adjoining, or nearby a dangerous building as defined in section 121 of the Act.

**Council** means Ashburton District Council.

**Dangerous building** has the same meaning as section 121 of the Act and generally means a building that, for reasons other than earthquakes, is likely to cause injury or death, by collapse or otherwise, or is likely to cause damage to other property.

**Heritage building**, for the purposes of this policy, are those listed in Council's District Plan Schedule, Maraes and buildings listed in the New Zealand Heritage List.

**Insanitary building** has the same meaning as section 123 of the Act and generally means a building:

- that is offensive or injurious to the health of people because of the situation, construction

or disrepair;

- where moisture penetration makes the building damp or causes dampness in an adjoining building; or
- which does not have adequate drinking water or sanitary facilities for its intended use.

## Policy Statement

### 1. Introduction and background

- 1.1 This policy replaces the Dangerous, Earthquake-prone and Insanitary Buildings Policy, first adopted in 2006 and last reviewed in 2012.
- 1.2 The Building (Earthquake-prone Buildings) Amendment Act 2016 was enacted on 1 July 2017. Council's policy on earthquake-prone buildings ceased to apply and Council is required to work to standards under national earthquake-prone building legislation.
- 1.3 As per requirements of the Act, this policy states:
- the approach that Council will take in performing its functions under the Act;
  - Council's priorities in performing those functions; and
  - how the policy will apply to heritage buildings.
- 1.4 All buildings, at the time of construction are required to meet the safety and sanitary requirements of that era. With time, a building can become dangerous and/or insanitary. While an event such as a major fire may change the status of a building, these changes are usually the result of changing safety and sanitation requirements, neglect, unauthorised building alterations or unauthorised change in use.
- 1.5 Throughout Ashburton District there are a number of heritage and historic buildings which are a vital part of the district's cultural identity. These buildings will be categorised and assessed in the same manner as all other buildings in the district and will be subject to the same time-frames.

### 2. Overall approach

#### 2.1 Policy principles

Council has noted that provisions of the Act in regard to dangerous and insanitary buildings reflect the government's broader concern with the health and safety of the public in buildings.

## 2.2 District characteristics

- 2.2.1 The built environment of Ashburton District has developed over the last 150 years. European settlement has largely been based around the successful agricultural economy of the district. Construction of buildings has been according to the standards and styles of the period.
- 2.2.2 Local buildings comprise a range of types and ages with construction techniques ranging from wood and unreinforced masonry buildings to a small number of modern steel and concrete buildings. Most buildings are only one or two-storeys.

## 3. Dangerous and Insanitary Buildings

- 3.1 Council is committed to ensuring that Ashburton District is a safe and healthy place to live.
- 3.2 Council acknowledges that conversions of existing buildings, lack of maintenance, lack of appropriate facilities, overcrowding and un-consented alterations can cause serious health and safety problems. The failure to obtain a building consent or the use of buildings for unauthorised purposes can pose a danger to the occupants as well as users. Dangers may include danger of collapse, inadequate fire protection or means of escape.
- 3.3 Dangerous and insanitary buildings will be dealt with in much the same way as Council already deals with those buildings - by responding to complaints received from the public and advice received from the New Zealand Fire Service.
- 3.4 Council is actively involved in educating the public on Act matters with a view to encourage owners to obtain a building consent where necessary. Council treats building safety as a serious matter; buildings must be safe for their intended use and for occupiers.

### 3.5 Identifying Dangerous or Insanitary Buildings

- 3.5.1 Council will identify potentially dangerous or insanitary buildings based on:
- complaints from members of the public,
  - advice received from Council officers, and
  - complaints or advice from other agencies (e.g. local health providers, NZ Police, NZ Fire Service, tradespersons etc).
- 3.5.2 When a building is identified by these means Council will investigate and assess the condition of the building to determine whether it is dangerous or insanitary in terms of sections 121 and 123 of the Act .

### 3.6 Assessment/prioritisation criteria

- 3.6.1 Council will endeavour to assess potentially dangerous or insanitary buildings in accordance with s121 (1) or s123 of the Act within 5 working days. Where Council is satisfied a building is dangerous or insanitary it will also assess the level of risk to public health or safety that is presented.
- 3.6.2 Council will give priority to buildings that have been determined to present such a high level of risk as to warrant immediate action to remove the risk to the users of

the building and members of the public.

3.6.3 Options for immediate action include:

- Prohibiting any person from occupying or using the building;
- If necessary, erecting barriers and warning signs, plus securing the building to prevent entry until such time as remedial action can be taken;
- Undertaking remedial action under s129 of the Act. Note that in the case of insanitary buildings, Council reserves the right to use powers available under s34 of the Health Act 1956.

3.6.4 Where Council undertakes remedial action under either s129 of the Act or s34 of the Health Act, all costs will be recoverable from the building owner(s) as provided for in the relevant legislation.

3.6.5 Buildings that are determined to present a serious risk which is not immediate will be subject to the minimum timeframes for reduction or removal of the danger (being not less than 10 days) as set out in s125(1)(d) of the Act.

3.6.6 In addition to remedial action, the Act also empowers Council to prosecute building owners and the exercise of this power may also be considered at times by Council.

### 3.7 Investigation and enforcement process

3.7.1 Council will endeavour to:

- Respond to and investigate all building complaints received within 5 working days.
- Identify from these investigations any buildings that are dangerous or insanitary.
- Assess the level of risk presented by the building and, if required, take immediate action.
- Inform the owner and occupier of the building to take action to reduce or remove the danger or insanitary condition, as required by s124 and s125 of the Act.
- Liaise with Fire and Emergency New Zealand when Council deems it appropriate, in accordance with s121 (2) of the Act.

3.7.2 Where the building is a heritage building listed in Council's District Plan, a Marae or building listed in the New Zealand Heritage List, Heritage New Zealand shall also be advised and consulted.

3.7.3 If the building is found to be dangerous or insanitary but does not present an immediate risk, Council may:

- Make every attempt possible to contact the building owner prior to attaching a written notice to the building. Where contact cannot be made with the building

owner, written notice will be attached to the building requiring work to be carried out on the building, within a time stated in the notice being not less than 10 days, to reduce or remove the danger.

- Give copies of that 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 Heritage New Zealand (if the building is a registered heritage building) and record this information on property records generally available to the public.
- 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 the owner will formally be requested to provide an explanation as to how the work occurred and who carried it out and under whose instructions.
- Pursue enforcement action under the Act and Health Act 1956 and recover actual & reasonable costs.

3.7.4 All owners have the right to apply to the Ministry of Business, Innovation and Employment (MBIE) for a determination under s177(1)(b) of the Act.

### 3.8 Interaction between this policy and related sections of the Act

3.8.1 Section 41 (1)(c) of the Act provides for situations where, because of the urgency of work required, it is not practical to apply for a building consent before the work is undertaken. In these cases the application for a Certificate of Acceptance may be required.

3.8.2 In cases where a building is assessed as being immediately dangerous, Council may not require a building consent for urgent work. However, building owners must submit a written proposal to Council for agreement, before any work is undertaken.

### 3.9 Economic impact of policy

3.9.1 The intent of this policy is to protect the health and safety of people who use buildings. However, Council needs to be conscious of the costs of any work required to remove dangerous or insanitary conditions in the broader social and economic context of the community.

## 3. Heritage buildings

### 4.1 Philosophy

4.1.1 Where buildings are identified as dangerous or insanitary, Council will negotiate with the building owner and advise the owner to consult with Heritage New Zealand, pursuant to section 125 (2)(f) of the Act.

4.1.2 Council will inform the building owner of any other obligations known to exist relating to other legislation such as the Resource Management Act 1991 and the possible requirements of a resource consent. Peer review of structural strength assessment reports may be required if a resource consent application is lodged to

demolish a heritage building. Where possible, Council will seek a mutually acceptable solution that meets heritage objectives and Act requirements included in this policy.

- 4.1.3 Council will serve notices requiring upgrading or demolition within specified timeframes, in consultation with building owners. A copy of any notice issued under s124 of the Act will be sent to the Heritage New Zealand in the case of all heritage buildings.
- 4.1.4 Any upgrading work must take into account the principles of the International Council on Monuments and Sites (ICOMOS) NZ Charter, any advice from Council's heritage staff or other heritage professionals or organisations, where applicable and should be designed to involve minimal loss to heritage fabric.
- 4.1.5 Waivers of modifications of the building code will be considered on a case by case basis.
- 4.1.6 Council funding of structural strength assessments and strengthening works will be subject to availability of Council grants, as determined by the Heritage Grants criteria, Long-Term Plan and Revenue and Financing Policy.
- 4.1.7 Council will encourage building owners to retain heritage buildings wherever practicable.

#### **4. Post disaster assessment**

- 5.1 If, following a seismic event a building had previously been assessed as not dangerous or insanitary, then Council will reassess the building under the conditions set out in this policy.