

Wanganui District Council

Dangerous & Insanitary Buildings Policy

(Adopted 6 June 2006)

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## 1 INTRODUCTION & BACKGROUND

Section 131 of the Building Act 2004 (“the Act”) requires territorial authorities (“TAs”) to adopt a policy on dangerous and insanitary buildings by 31 May 2006.

One of the key purposes of the Act, as set out in section 3, is to ensure ‘*people who use buildings can do so safely and without endangering their health.*’ Section 4 details the principles to be applied in performing functions under the Act and specifically states that TAs must take these principles into account in the adoption and review of their dangerous and insanitary building policies.

The definition of a dangerous building is set out in Section 121 (1) of the Act:

*“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.”*

The definition of an insanitary building is set out in Section 123 of the Act:

*“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*

*(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.”*

This document sets out the policy proposed to be adopted by Wanganui District Council (“Council”) in accordance with the requirements of the Building Act 2004.

The policy is required to state:

- The approach that the Council will take in performing its functions under the Act
- Council’s priorities in performing those functions
- How the policy will apply to heritage buildings

In developing and adopting its Dangerous and Insanitary Buildings policy, Wanganui District Council has followed the special consultative procedure set out in Section 83 of the Local Government Act 2002.

It is likely that in many, but not all, cases a building’s dangerous or insanitary status will not be readily apparent. For that reason, any attempt to identify these buildings proactively is

unlikely to be successful unless a TA has considerable resources to undertake inspections and evaluations of buildings.

As a consequence, the most likely sources of information concerning dangerous or insanitary buildings will be from building occupants, neighbours, or as the result of an inspection by the police, the fire service or other agencies authorised to inspect buildings. Other sources of information will be known directly by Council, possibly following a significant weather event.

Relying on complaints to provide information concerning potentially dangerous or insanitary buildings may be the only practical way in which TAs can identify these buildings within their districts and undertake their statutory responsibilities.

## **2 POLICY APPROACH**

### **2.1 Policy Principles**

Provisions of the Act in regard to dangerous and insanitary buildings reflect the government's broader concern with the safety of the public in buildings, and with the health and safety of people occupying buildings that may be considered to be insanitary. However, Council recognises that public safety must be balanced against the other broader economic issues and in relation to other Council Policy.

The Council has noted that the development of a dangerous and insanitary building policy is to be undertaken by TAs independently and has responded accordingly. This policy will be developed after due consultation with Wanganui District Council ratepayers and stakeholders in accordance with section 83 of the Local Government Act 2002.

### **2.2 Overall approach**

Sections 124 to 130 of the Act provide the authority necessary for TAs to take action on dangerous and insanitary buildings and set out how this action is to be taken.

The Council is actively involved in educating the public on the need to discuss their development plans with Council and to obtain building consent for work Council deems is necessary prior to any work commencing. This is particularly important in order to avoid creating dangerous and insanitary conditions that could be injurious to the health of occupants, particularly children and the elderly, or where safety risks are likely to arise from a change in use.

Council has indicated that it should take stronger enforcement action under the relevant statutes (Building Act, Health Act, Housing Improvement Regulations etc) for dangerous and insanitary buildings to provide a strong message to the public that Council places paramount importance on the safety of the community. This stance also creates a strong message of deterrence for those property owners who do not seek Council's advice prior to undertaking building works.

## 2.3 Identifying Dangerous and Insanitary Buildings

The Council will:

1. Take a passive approach to identification of buildings.
2. Actively respond to and investigate all buildings complaints received.
3. Identify from these investigations any buildings that are dangerous or insanitary.
4. For dangerous buildings, inform the owner(s) and occupier of the building to take action to reduce or remove the danger, as is required by Section 124 and 125 of the Act; (and liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with Section 121 (2) of the Act).
5. For Insanitary buildings, inform the owner(s) of the building to take action to prevent the building from remaining insanitary; (and liaise with the Wanganui District Health Board's Medical Officer of Health when required to assess whether the occupants may be neglected or infirm).

## 2.4 Assessment criteria

The Council will assess dangerous and insanitary buildings in accordance with the Act and established case-law, as well as the building code:

The Council will:

- Investigate as to whether the building is occupied
- The use to which the building is put
- Whether the dangerous and insanitary conditions pose a reasonable probability of danger to occupants or visitors, or to the health of any occupants

Considerations as to dangerous assessment where a building is either occupied or not may include:

- Structural collapse
- Loose materials/connections
- Overcrowding
- Use which is not fit for purpose
- Seeking advice from NZFS (121(2)(a) )

Considerations as to insanitary assessment where a building is occupied may include:

- Adequate sanitary facilities for the use
- Adequate drinking water
- Separation of use for kitchen and other sanitary facilities
- Likelihood of moisture penetration
- Natural disaster
- Defects in roof and walls/poor maintenance/occupant misuse
- The degree to which the building is offensive to adjacent and nearby properties

## 2.5 Taking Action

In accordance with s124 and s125 of the Act the Council will:

- Advise and liaise with the owner(s) of buildings identified as being dangerous or insanitary
- May request a written report on the building from the New Zealand Fire Service; (dangerous building)
- If found to be dangerous or insanitary
  - Attach written notice 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 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, Council will formally request the owner(s) to provide an explanation as to how the work occurred and who carried it out and under whose instructions; (and apply for a Certificate of Acceptance if applicable).
- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as any other non-compliance matters.

If the building is considered to be immediately dangerous or insanitary the Council will:

- Cause any action to be taken to remove that danger or insanitary condition (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, or insanitary condition
- The owner(s) will also be informed that the amount recoverable by Wanganui District 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 Act, which can include applying to the Department of Building and Housing for a determination under s177(e) of the Act.

## 2.6 Interaction between the Dangerous and Insanitary Buildings policy and related sections of the Act

### 1.3.1 Section 41: Building consent not required in certain cases

In cases where a building is assessed as being immediately dangerous or insanitary the Council may not require building consent to be obtained for any building work required so as to remove the danger or insanitary condition immediately. However, prior to any action being taken it is imperative that building owners discuss any works with the Council, and then subsequently apply for the building consent as required by the Act.

## **2.7 Record Keeping**

Any buildings identified as being dangerous or insanitary will have a requisition placed on the property file for the property on which the building is situated until the danger or insanitary condition is remedied.

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

- Notice issued that the building is dangerous or insanitary
- Copy of letter to owner(s), occupier and any other person that the building is dangerous or insanitary
- 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 or insanitary condition.

## **2.8 Economic impact of policy**

Due to the low number of dangerous and insanitary buildings encountered annually by the Council and the similarity between the obligations of territorial authorities as to what is determined as a dangerous and insanitary building under the Building Act 2004 and the Building Act 1991, the economic impact of this policy is, at this date, considered to be low.

## **2.9 Access to information**

Information concerning dangerous and insanitary buildings will be contained on the relevant LIM, and Council records.

In granting access to information concerning insanitary buildings Wanganui District Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.

## **3 PRIORITIES**

The Council will give priority to buildings where it has been determined that immediate action is necessary to fix dangerous and insanitary conditions. Immediate action will be required in those situations to fix those dangerous and insanitary conditions such as prohibiting occupation of the property, put up a hoarding or fence and taking prosecution action where necessary.

Buildings that are determined to be dangerous and insanitary, but not requiring immediate action to fix those dangerous and insanitary conditions, will be subject to the minimum timeframes to prevent the building from remaining dangerous and insanitary (not less than 10 days) as set in s124(1)(c) of the Act.

#### **4 HERITAGE BUILDINGS**

No special dispensation will be given to heritage buildings under this policy.

The fact that a building has heritage status does not mean that it can be left in a dangerous or insanitary condition. As per s125(2)(f) of the Act a copy of any notice issued under s124 of the Act will be sent to the New Zealand Historic Places Trust where a heritage building has been identified as a dangerous and insanitary building.