

DANGEROUS AND INSANITARY BUILDINGS POLICY

Source:	Council		
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Reviewed:	2014	Next review:	2019
See also:	Building Act 2004, Local Government Act 2002, Department of Building and Housing's guidance documents		

1. INTRODUCTION AND BACKGROUND

Section 131 of the Building Act 2004 (BA 2004) requires territorial authorities to adopt a policy on dangerous and insanitary buildings. In developing this policy the Buller District Council has balanced the need to protect public health and safety against the economic implications of requiring significant remedial building work and the community's desire to protect heritage structures.

This document sets out the policy adopted by Buller District Council and includes:

1. The approach that the Buller District Council will take in performing its functions under the BA 2004;

2. Buller District Council's priorities in performing those functions; and
3. How the policy will apply to heritage buildings.

The Building (Earthquake-prone Buildings) Amendment Act 2016 has established a new nationally consistent system for identifying and remediating earthquake-prone buildings.

2. BUILDING ACT PRINCIPLES

The principles to be applied in performing functions or duties or exercising powers under the Act are as detailed under Section 4 (2)(a-p) of the BA 2004.

3. DEFINITIONS OF BUILDINGS COVERED BY THIS POLICY

The definitions of dangerous and insanitary buildings are set out in sections 121 and 123 of the BA 2004 and are as follows:

121 Meaning of dangerous building

- (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 because of fire hazard or the occupancy of the building.*
- (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.*

123 Meaning of insanitary building

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.*

4. OVERALL APPROACH

4.1 Policy Principles

Buller District Council has noted that provisions of the BA 2004 in regard to dangerous and insanitary buildings reflect the government's broader concern with the health and safety of the public in buildings and, more particularly, the need to address human safety in the event of an earthquake.

Council is committed to ensuring that the Buller District is a safe and healthy place to live and work while also ensuring that the District continues to develop and thrive. This policy supports the following outcomes from the Buller District Long Term Community Plan:

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| Outcome 1 Health: | <i>Healthy communities with access to quality facilities and services.</i> |
| Outcome 3 Safety: | <i>A region that is a safe place to live.</i> |
| Outcome 4 Environment: | <i>The distinctive character of the environment is appreciated and retained.</i> |

This policy was developed and finalized after due consultation with Buller District Council ratepayers and stakeholders in accordance with Section 83 of the Local Government Act 2002.

4.2 District Characteristics

Local buildings comprise a range of types and ages with construction techniques ranging from wood and unreinforced masonry buildings to a few modern multi-storey steel and concrete buildings. The great majority of buildings are one or two-storey only.

5.1 Policy Approach

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.

The development of the New Zealand Building Code and associated standards creates, over time, an effective “raising of the bar” for the standards which buildings and Building Owners must meet. Existing buildings must be maintained appropriately in order to continue to meet such standards.

The Council is actively involved in educating the public on BA 2004 matters with a view to encourage owners to obtain building consent where necessary. The Council treats building safety as a serious matter; buildings must be safe for their intended use and for Occupiers.

5.2 Identifying Dangerous or Insanitary Buildings

The Council will identify potentially dangerous or insanitary building on the basis of:

1. Complaints from members of the public.
2. Advice received from Council staff.
3. Complaints or advice from other agencies (e.g. local health providers, NZ Police, trades people).

5.3 Assessment/Prioritisation Criteria

The Council will assess potentially dangerous or insanitary buildings in accordance with sections 121 or 123 of the Act as appropriate and in terms of the level of risk to public health or safety that is presented.

The 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.

Options for such 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 BA 2004. Note that, in the case of insanitary buildings, the Council reserves the right to use its powers available under s34 of the Health Act, 1956.

Where the Council undertakes remedial action under either s129 of the BA 2004 or s34 of the Health Act, all costs will be recoverable from the building owner(s) as provided for in the relevant legislation.

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 s124(1) (c) of the Act.

In addition to remedial action, the BA 2004 also empowers the Council to prosecute Building Owners and this power may be considered at times by the Council.

5.4 Investigation and Enforcement Process - Dangerous or Insanitary Buildings

The Council will:

1. Respond to and investigate all building complaints received.
2. Identify from these investigations any buildings that are dangerous or insanitary.
3. Assess the level of risk presented by the building and, if required, take immediate action.
4. 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.
5. Liaise with the New Zealand Fire Service when Council deems it appropriate, in accordance with s121 (2) of the Act which provides that:

“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.”

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

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

7. 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.
8. 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 the Heritage New Zealand, if the building is a registered heritage building.

9. 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.
10. 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.
11. Pursue enforcement action under the BA 2004 and Health Act 1956 and recover actual and reasonable costs.

All owners have a right of objection as defined in the Act, which can include applying to the Department of Building and Housing for a determination under s 177(e) of the Act. Council will reserve the right to recover costs of this process from Objectors and / or Building Owners.

5.5 Interaction between this Policy and Related Sections of the Act

Section 41 of the BA 2004 provides for situations where, because of the urgency of the work to be done to remove the danger, it is not practical to apply for a building consent before the work is undertaken. In these cases an application for a certificate of acceptance may be required. However, prior to any action being taken it is essential that building owners provide a written proposal of any proposed works to the Council for agreement on the matter.

5.6 Record Keeping

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

In addition, the information will be placed on any Land Information Memorandum (LIMs) and will be available for public release in accordance with the provisions of Local Government Official Information and Meetings Act 1987.

5. PLANNING

Buller District Council will:

- (i) enter into mutual aid agreements with other Territorial Authorities / Building Control Authorities to share resources;
- (ii) develop a current list of contacts with other organisations that may co-operate during an emergency;
- (iii) use the national rapid assessment forms and stickers when assessing building structural damage;
- (iv) identify priorities for building evaluation; and
- (v) prepare a database for receiving and recording information.

6. OBJECTIONS

In the first instance, building owners or other directly affected parties who wish to object to a building being (or not being) declared dangerous or insanitary should record their objections in writing to the Council's Chief Executive Officer who will undertake an investigation of the circumstances of the building and the reasons behind the Councils' decision on the matter and arrange for the executive management of Council to review the decision and if necessary to hear evidence from parties involved. The executive management decision will be provided by way of response to an objection.

Further legal remedies and application to the Department of Building and Housing for a Determination are also available to Building Owners.

The Council reserves the right to recover actual and reasonable costs incurred in conducting review and objection processes, in accordance with fees set from time to time.

Priority will be given to objections where the building has been declared to be of such as risk as to require immediate remedial action so that no undue delays are caused.

9.1 Determinations

Building owners and a variety of other interested parties can formally object to the Council's decision through the right to apply to the Chief Executive of the Department of Building and Housing for a determination. Determinations can be applied for concerning the Council's decisions to issue or not issue a consent or code compliance certificate, or to exercise its powers concerning dangerous or insanitary buildings. Sections 176 – 190 of the BA 2004 lay out the requirements for determinations.

7. ECONOMIC IMPACT OF POLICY

The economic impact of the dangerous and insanitary buildings is assessed as being minor, since there are relatively few such issues each year.

8. REVIEW

Pursuant to section 132 of the BA 2004 this policy is required to be reviewed by the Council every 5 years. Any amendment or replacement of the policy must be in accordance with the Local Government Act 2002 Special Consultative Procedure.