

Draft Dangerous, Affected and Insanitary Buildings policy

Statement of Proposal

Introduction

This statement of proposal is seeking public feedback on the draft Dangerous, Affected and Insanitary Buildings policy (the draft policy).

This policy allows Council to identify and manage dangerous, affected and insanitary buildings in the District so that people who use buildings can do so safely and without endangering their health.

This consultation is in accordance with the special consultative procedures under section 83 and 87 of the Local Government Act 2002. The special consultative procedure gives the public an opportunity to make submissions and provide feedback on the proposal.

Once the submission period closes, Southland District Council (Council) will conduct hearings for anyone who wishes to speak in support of their submissions.

The statement of proposal includes making publicly available:

- the draft policy and rationale behind it
- any other reasonably practical options
- a description of the consultation and submission process, including the period within which views on the draft policy may be provided.

Proposed changes

The draft policy seeks to modernise the current Dangerous, Affected and Insanitary Buildings policy, make it fit for purpose for the next five years and easily understood by Council officers and the community.

The variations proposed under the draft policy are considered minor technical changes from the current policy and include no significant changes. These amendments include:

- a new Information Disclosures section
- a new Disputes section
- a new Definitions section

The draft policy continues to outline Council's approach to identifying dangerous, affected or insanitary buildings, what powers it can exercise when such buildings are identified and how it will work with building owners to prevent buildings from remaining dangerous or insanitary.

The draft policy also addresses the matter of costs associated with Council remediating dangerous and insanitary buildings where the owner fails to take action.

The reason for the proposal

To make our communities safer, legislation requires councils across New Zealand to have a Dangerous and Insanitary Buildings policy. Council last reviewed its current Dangerous, Affected and Insanitary policy in 2018 so it is required to be reviewed and adopted.

How you can have your say

Anyone can make a submission online at www.makeitstick.nz. Submissions will be accepted from 8am on Thursday 13 July 2023 and must be received **by 5pm on Monday 14th August 2023**.

All submissions should state:

- the submitter's name
- the submitter's contact details
- whether or not the submitter would like to speak to Council about this matter.

If you need help submitting please contact Council at 0800 732 732, or call in to one of Council's offices. All written submissions made to Council will be acknowledged and made available to the public.

Council intends to hold a hearing in mid-September 2023. This is when anyone who has made a written submission and who has said they would like to speak to Council, can do so at a yet to be scheduled Council meeting. This meeting will be open to the public. If you indicate you would like to be heard, Council staff will get in touch with you to arrange a time for you to speak at the hearing. If at the hearing you have any requirements, please let us know.

Timetable for consultation

The dates below outline the timetable for the consultation process. Any changes to these dates will be publicly advised on Council's Facebook page and website.

ACTION	DATE
Council resolves to undertake public consultation regarding the draft policy	Wednesday 21 June 2023
Advertisement in Southland Express, Southland Times and Stewart Island News	Between Thursday 13 July 2023 and Wednesday 19 July 2023
Submissions open	Thursday 13 July 2023, 8.00am
Submissions close	Monday 14 August 2023, 5.00pm
Hearing	Date to be confirmed after submissions period ends
Deliberation	Date to be confirmed after Hearing
Public notice of final decision	Date to be confirmed after Hearing

Information about the proposal

Background

The Building Act 2004 requires every Territorial Authority to have a Dangerous and Insanitary Buildings policy. This is to ensure that Council has a mechanism to identify dangerous and insanitary buildings and clearly states what action will be taken to ensure they do not pose a public safety or health risk. Legislation also requires Council to include 'affected' buildings within the policy ('affected' defined as an adjacent to, adjoining or nearby building that could be impacted by a dangerous building).

Section 132 of the Building Act 2004 requires Councils to review their Dangerous and Insanitary Buildings policy every 5 years and in accordance with special consultative procedures outlined in section 83 and 87 of the LGA.

Options for the draft Dangerous, Affected and Insanitary Buildings policy

The following options have been considered regarding how Council could proceed, after it has undertaken the consultation process:

Option 1 – adopt the draft policy

Option 2 – adopt the draft policy with amendments

Analysis of Options

Option 1 – adopt the draft policy

Advantages	Disadvantages
<ul style="list-style-type: none"> the draft policy will allow staff to follow the provisions in the Act and be legally compliant. the draft policy will allow Council to collaborate and take into account the circumstances of relevant owners the draft policy will balance preserving heritage buildings with public safety and the administrative burden to Council 	<ul style="list-style-type: none"> no known disadvantages

Option 2 – adopt the draft policy with amendments

Council has discretion in its approach (and isn't bound by the Act) on the policy approaches outlined below. These are areas where Council could potentially make changes.

Proposed policy approach - When a building is deemed dangerous (but not immediately dangerous) or insanitary, before taking action under the Act, Council will liaise and consult with the relevant owners to try and get the owners to produce a mutually acceptable formal proposal on how the problem will be rectified.		Alternative policy approach – When a building is deemed dangerous (but not immediately dangerous) or insanitary, Council could begin to take action under the Act.	
Advantages	Disadvantages	Advantages	Disadvantages

<ul style="list-style-type: none"> • it is a gentler and more collaborative way to work with relevant owners. • it would allow Council to take into account the circumstances of relevant owners. 	<ul style="list-style-type: none"> • it may mean dangerous/insanitary buildings are not rectified as quickly. • some extra administrative burden is placed on Council. 	<ul style="list-style-type: none"> • it may mean dangerous/insanitary buildings are rectified quicker. • it may place less administrative burden on staff. 	<ul style="list-style-type: none"> • Council would be taking a more formal approach. • it would mean Council could not take into account the circumstances of the relevant owners.
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Proposed policy approach – Heritage buildings		Alternative policy approaches – Heritage buildings	
<ul style="list-style-type: none"> - Applying the policy to heritage buildings - Consulting with Heritage New Zealand when assessing the building when it will not material increase the physical danger to the public. - Considering particular factors associated with heritage buildings. - Seeking to avoid demolition where possible. - Using suitably qualified professionals with heritage expertise, where possible, to advise and offer recommendations for action. 		<ul style="list-style-type: none"> - The policy approach could have further measures to ensure heritage buildings are preserved/protected. - The policy approach could be less sympathetic to preserving heritage buildings, which may increase public safety, and reduce the administrative burden for Council staff. 	
Advantages	Disadvantages	Advantages	Disadvantages
<ul style="list-style-type: none"> • appropriately balances preserving heritage buildings while ensuring public safety and not placing too much burden on Council staff. 	<ul style="list-style-type: none"> • some people may believe the approach doesn't go far enough to protect heritage buildings. 	<p><i>Further protecting/preserving heritage buildings</i></p> <ul style="list-style-type: none"> • there may be benefits in regards to better preserving/protecting heritage buildings. <p><i>Less emphasis on preserving heritage buildings</i></p> <ul style="list-style-type: none"> • there may be benefits in regard to public safety and the administrative burden placed on staff. 	<p><i>Further protecting/preserving heritage buildings</i></p> <ul style="list-style-type: none"> • there may be disadvantages in relation to public safety and the administrative burden in staff. <p><i>Less emphasis on preserving heritage buildings</i></p> <ul style="list-style-type: none"> • it may fail to appropriate preserve/protect heritage buildings.

Next steps

Following this consultation Council will determine whether or not to adopt the draft Dangerous, Affected and Insanitary Buildings policy. If the policy is adopted, Council will review the policy again in 2028.

Attachment A: Draft Dangerous, Affected and Insanitary Buildings Policy

DRAFT Dangerous, Affected, and Insanitary Buildings Policy 2023

Group Responsible: Building Solutions

Date Approved:

Effective from:

File Number: R/23/6/25418

Purpose

The purpose of this policy is to identify and manage dangerous and affected, and insanitary buildings in the Southland District.

This policy meets the requirements of sections 131, 132 and 132A of the Building Act 2004 (the Act). This is a review of existing policy under Section 132 of the Act.

The policy sets out:

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

Objective

The overall objective of this policy to ensure that people who use buildings can do so safely and without endangering their health.

This policy fulfils Council's responsibilities under the Act, with respect to dangerous, affected, and insanitary buildings. Council's responsibility is to ensure that when:

- dangerous and affected buildings are found, that the danger is appropriately reduced or removed in an acceptable timeframe.
- insanitary conditions are found, that appropriate measures are undertaken to remedy the conditions within an acceptable timeframe.

Scope

This policy applies to all buildings in the Southland District, even though a code compliance certificate may have been issued previously, as the current use and/or maintenance of the building can impact on the safety of occupants.

Earthquake-prone buildings are addressed under the Act, and are therefore excluded from this policy.

Definitions

The following definitions are used in this policy.

- affected building - has the meaning outlined in section 121A of the Act
- Council – means Southland District Council
- dangerous building - has the meaning outlined in section 121 of the Act
- heritage building – has the meaning outlined in section 7 of the Act and means a building which is on the New Zealand Heritage List/Rārangī Kōrero in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 and identified in Schedule 5.2 of the Southland District Plan 2018
- insanitary building - has the meaning outlined in section 123 of the Act
- owner – has the meaning outlined in section 7 of the Act.

Part 1- Dangerous and Affected Buildings

Identifying and assessing Dangerous and Affected Buildings

On receiving information or a complaint regarding a possible dangerous or affected building, Council will quickly and efficiently respond to information received to ascertain the extent of any issues.

Council will:

- investigate all information received about dangerous and affected buildings (this includes when Council receives reports from members of the public or building occupants, or if a Council officer observes a potentially dangerous or affected building through their usual duties);
- assess and identify any dangerous or affected buildings in accordance with sections 121 and 121A of the Act;
- liaise with Fire and Emergency New Zealand when Council deems it is appropriate, in accordance with section 121(2) of the Act.

When an assessment is undertaken and a building is not deemed to be a dangerous or affected building, Council may not take action under this policy or the Act.

Taking action on Dangerous and Affected Buildings

When a building is deemed to be a dangerous building, but it is not immediately dangerous, Council will, before taking action under the Act, liaise and consult with the relevant owners and encourage the owners to produce a mutually acceptable formal proposal on how the problem will be rectified.

If, after a reasonable time-period, a mutually acceptable formal proposal has not been achieved, Council will take further steps to address the problem by following the procedures set out in the Act.

When a dangerous or affected building is deemed to be immediately dangerous, Council will act immediately, by following the procedures set out in the Act.

When Council undertakes work to address problems relating to a dangerous building, pursuant to either a Court Order or Chief Executive Warrant, the Council reserves the right to appoint an independent contractor to carry out the required work.

Priorities

Council will act on buildings deemed to be immediately dangerous, as a matter of urgency. In these circumstances immediate action may be required to remove the danger and could include prohibiting any person occupying or using the building and, where needed, boarding the building up to prevent entry, or erecting a suitable barrier.

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 the Act.

Part 1 of this Policy and the Act

Under section 41 of the Act, building consents are not required in certain cases. Where a building is assessed as being immediately dangerous the Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any action being taken, Council will require a discussion with owners, and a written scope of the work.

Part 2 - Insanitary Buildings

Identifying and assessing Insanitary Buildings

On receiving information or a complaint regarding a possible insanitary building, Council will quickly and efficiently respond to information received to ascertain the extent of any issues.

Council will:

- investigate all information received about insanitary buildings (this includes when Council receives reports from members of the public or building occupants, or if a Council officer observes an insanitary building through their usual duties); and
- assess and identify insanitary buildings in accordance with the Act or the Health Act 1956 (the Health Act). As part of this process, Council will investigate:

- if the building is occupied; and
- what the building is currently being used for, and its legally established use; and
- whether the insanitary conditions pose a risk to the health of any occupants, or other people.

In determining what an insanitary building is, Council may consult with other agencies and Council staff.

When an assessment is undertaken and a building is not deemed to be an insanitary building, Council may take no further action under this policy, the Act or the Health Act.

Taking action on Insanitary Buildings

When a building is deemed to be an insanitary building, Council will, before taking action under the Act or Health Act, liaise and consult with the relevant owners and encourage the owners to produce a mutually acceptable formal proposal on how the problem will be rectified. If, after a reasonable time-period, a mutually acceptable formal proposal has not been achieved, Council will take further steps to address the problem by following the procedures set out in the Act or the Health Act.

Where, pursuant to the Act, Council undertakes work to address problems relating to an insanitary building, pursuant to either a Court Order or Chief Executive Warrant, Council reserves the right to appoint an independent contractor to carry out the work required.

Part 2 of this Policy and the Act

Under section 41 of the Act, building consents are not required in certain cases. Where a building is assessed as being insanitary, the Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any action being taken, Council will require a discussion with owners, and a written scope of the work.

Part 3 - Heritage Buildings

Part 1 and Part 2 of this policy will apply regardless of whether or not the dangerous, affected or insanitary building is a heritage building.

However, in assessing a heritage building, Council will consult Heritage New Zealand provided that the time required for consultation will not materially increase the risk to occupants or the public.

When considering heritage buildings under this policy, account will be taken of:

- the importance of recognising any special traditional and cultural aspects of the intended use of the building.
- the need to facilitate the preservation of buildings of significant cultural, historical or heritage value.
- the circumstances of each building.

When considering what action to take on heritage buildings that have become dangerous, affected or insanitary, Council will take into account the heritage values of the building in determining possible courses of action. The skills of suitably qualified professionals with heritage expertise will be engaged where possible to advise and offer recommendations for action.

Recording of information

Where a building is identified as dangerous, affected or insanitary, there will be a notice placed on the building file for the property where the building is situated. This notice will remain on the file, along with any further information showing the dangerous or insanitary conditions have been remedied. In addition, this same information will be placed on any LIM produced for the property.

Information disclosure

Information concerning dangerous or insanitary buildings will be contained on the relevant building property file held by Council, and will be provided on any LIM produced for that land.

In granting access to information concerning dangerous or insanitary buildings, Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

Economic impact of policy

The volume of buildings defined as being dangerous, affected or insanitary in any one year, (with the exception of a significant event such as flooding or an earthquake) is likely to be relatively minor. It is therefore expected that the economic impact of this policy is negligible. There is effectively very little change to the manner in which dangerous, affected or insanitary buildings have been treated in the past, and this process is primarily a documentation of the policy.

Costs

Council will hold the owner of any dangerous building liable for the cost of any work required to reduce or eliminate the danger posed by that building to its occupants or to the public. The work may include the demolition of the building and clearance of the site at the owner's cost.

Council will hold the owner of any insanitary building liable for the cost of any work required to eliminate the risk posed by the building to its occupants or to the public because it is insanitary.

Disputes

If a building owner disputes a Council decision, or proposed action, relating to the exercise of Council's power under sections 124 or 129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Building, Innovation and Employment, as set out in the Act. Such a determination is binding on Council.

Policy review

This policy must be reviewed at least every five years.

Council may decide to review the policy at any time within the five year review requirement.

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