



Dangerous Buildings and Insanitary Buildings Policy 2006

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Dangerous Buildings and Insanitary Buildings

Introduction and Background

Section 131 of the Building Act 2004 (the Act) requires territorial authorities (TAs) to adopt policy on dangerous buildings, insanitary buildings and earthquake-prone buildings.

This document sets out a proposed draft policy for dangerous buildings and insanitary buildings for adoption by the Gisborne District Council (the Council) in accordance with the requirements of the Building Act 2004.

A policy on earthquake-prone buildings has been developed independent of this policy.

The policy is required to state:

- ▶ The approach that the Council will take in performing its functions under this Part of the Building Act 2004.
- ▶ The Council's priorities in performing those functions.
- ▶ How the policy will apply to heritage buildings.

1.0 Policy Approach

1.1 Policy Principles

The Council recognises that provisions of the Act in regard to dangerous buildings and insanitary buildings reflect that the government seeks to reduce the danger posed to the population by buildings within our communities. The Council is committed to ensuring that the Gisborne District is a safe place to live and work within and this policy assists the Council to achieve the Community Outcome of Safe and Health Haven by ensuring that people using buildings can do so safely and without endangering their health.

In accordance with the Act the Council is developing policy in consultation with community and stakeholders that recognises the varying social, economic and cultural factors that impact on the implementation of the dangerous and insanitary provisions of the Act. For this purpose the special consultative procedure set out in section 83 of the Local Government Act 2002 is being followed.

1.2 Overall Approach

The Gisborne District is experiencing some growth predominantly in proximity to Gisborne City and static activity or decline in many smaller communities. The Council recognises that the economic status of some sectors of community is challenged and that resources from Gisborne District ratepayers to implement policy are restricted. However within the diversity of our communities there is the potential for dangerous or insanitary building conditions to occur that the Council must address.

The Council wishes to administer its statutory obligations under the Act in a fair and reasonable manner ensuring buildings that become dangerous or insanitary are improved to acceptable standards in a timely manner.

Within this environment the Council will respond to complaints and act on matters of dangerous buildings or insanitary buildings that come to its attention including acting on advice received from the New Zealand Fire Service.

This approach is believed to be the minimum that would comply with the Act.

1.3 Identifying Dangerous Buildings or Insanitary Buildings

The Council will:

- ▶ Respond to and investigate all building related complaints received and building related issues identified by Council staff in a timely manner. Identify from these investigations any buildings that are considered dangerous or insanitary.
- ▶ Require the owner(s) and occupier(s) of the building to take action to prevent the building from remaining dangerous or insanitary.
- ▶ Seek advice from the New Zealand Fire Service when the Council deems it is appropriate, in accordance with section 121(2) of the Act.
- ▶ Liaise with Tairāwhiti District Health (Medical Officer of Health) when appropriate to assess whether the occupants may be neglected or infirm.

1.4 Assessment Criteria

Dangerous Buildings

The Council will assess dangerous buildings in accordance with 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 persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building".*

- ▶ The Council may seek advice from the New Zealand Fire Service in accordance with section 121(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.*

- ▶ The Council may seek the advice of an Independently Qualified Person (IQP).

Insanitary Buildings

The Council will assess insanitary buildings in accordance with section 123 of the Act and the relevant building code:

“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”.*

- ▶ The Council will investigate occupation and use to which the building is put.
- ▶ The Council may seek the advice of an Independently Qualified Person.
- ▶ The Building Code will be used for assessment criteria as appropriate:
 - E2 External Moisture
 - G1 Water Supplies
 - G2 Personal Hygiene
 - G13 Foul Water - Sanitary Plumbing
- ▶ The Council will make assessment including the degree to which a building is offensive to adjacent and nearby property occupiers.

1.5 Taking Action on Dangerous Buildings and Insanitary Buildings

The Council on being satisfied a building is dangerous or insanitary will:

- ▶ Advise and liaise with the owner(s) of buildings.
- ▶ Advise and inform the property occupier(s).
- ▶ In good faith consult and negotiate with the property owner(s) before determining appropriate time periods for work that must be completed.
- ▶ Time periods will be determined by the danger or risk to health and safety posed by the condition(s) making the building dangerous or insanitary. Time periods for both interim work and full compliance work to reduce or remove the danger, or prevent the building from remaining insanitary may be negotiated.
- ▶ In accordance with section 124 of the Act consider, based on the danger posed, whether to erect a hoarding, fence or warning sign. This decision will be documented.

- ▶ In accordance with section 124 and section 125 of the Act attach written notice to the building and give written notice in accordance with the Act requiring work to be carried out on the building, within a time stated in the notice (that is not less than 10 days) to reduce or remove the danger, or prevent the building from remaining insanitary.
- ▶ Contact the owner in writing at least five working days prior to the expiry of time period set down in the notice requiring an inspection appointment to assess compliance with the notice.
- ▶ Consider an additional time period for an owner to comply with requirements of a notice provided an application is received from the property owner(s) prior to the expiry date of the originating notice. Vacating the building may be necessary for agreement to a prolonged compliance period.
- ▶ Pursue enforcement action under the Act if the requirements of the notice are not met within the stated time period or any additional time period determined appropriate by the Council.

In accordance with section 129 of the Act, if the state of a building is considered to present immediate danger to safety of people or immediate action is necessary to fix insanitary conditions the Council will:

- ▶ Cause any action to be taken that is necessary to remove that danger; or fix those insanitary conditions (this may include prohibiting persons using or occupying the building and demolition of all or part of the building); and
- ▶ Take action to recover the costs from the owner(s) if the Council must undertake the works to remove the danger; and
- ▶ Inform the owners that the amount recoverable by the Council will become a charge on the land on which the building is situated. Property owners have the right of appeal defined in the Act, which can include applying to the Department of Building and Housing for a determination under section 177 (e) of the Act.

1.6 Interaction between Dangerous Buildings and Insanitary Buildings Policy and Other Provisions of the Building Act 2004

Section 41: Building consent not required in certain cases.

In cases where a building is assessed as being immediately dangerous the Council may not require building consent to be obtained for any building work required so as to remove the danger immediately. In every case the owners must discuss with Council and obtain a decision as to whether this provision applies prior to commencing any work.

1.7 Recording of Dangerous Buildings and Insanitary Buildings

Any buildings identified as being dangerous or insanitary will have a copy of the notice served and a schedule of work required, placed on the corresponding property file held by the Council until the condition is remedied.

In addition, during the period that the building is deemed dangerous or insanitary, the following information will be placed on any Land Information Memorandum (LIM) or a Project Information Memorandum (PIM), where the status affects proposed building work:

- ▶ Statement that the building is dangerous or insanitary.
- ▶ Copy of the notice given under 124(1) identifying the work to be carried out on the building and the time period given to achieve compliance with the notice.

1.8 Economic Impact of the Policy

It is considered that the economic impact for the administration of this proposed policy to the Gisborne District ratepayers will be similar to administration of provisions under the previous Building Act 1991. However it is possible that the higher potential level of enforcement could have some increased staff resource and financial impact.

Due process will be followed to recover costs incurred by the Council in meeting its statutory obligations from implicated property owners.

The costs to reduce or remove danger from buildings will be the responsibility of the implicated property owners. In some circumstances economic impact of this policy may cause individual hardship. The Council will convey its duty under the Act through implementation of this policy in a fair and reasonable manner with the intent of improving health and safety of people who use or are affected by buildings.

1.9 Access to Dangerous Buildings and Insanitary Buildings Information

Information concerning dangerous and insanitary buildings will be contained on the relevant LIM or PIM. In granting access to information concerning dangerous and insanitary buildings the Council will conform to the requirements of the Local Government Official Information Act 1987 and the Local Government Act 2002.

2.0 Priorities for Performing Functions under Part 2 of the Act

The Council will allocate priority to buildings where it has been determined that immediate action is necessary to remove immediate danger or to fix immediate insanitary conditions. Immediate action will be required in those situations such as prohibiting occupation or use of a building, erecting a hoarding or fence or demolition of part or all of a building likely of collapse.

Buildings that are determined to be dangerous or insanitary, but not requiring immediate action will be subject to timeframes, being not less than 10 days, to remove the danger or prevent the building from remaining insanitary.

3.0 Heritage Buildings

The provisions of the Act apply to heritage buildings (that is those buildings identified in the District Plan Schedule of Heritage Orders) and dangerous and insanitary assessment will be completed in the same manner as other buildings under this policy.

Where a heritage building is deemed dangerous or insanitary the Council will consult with the building owner(s) and consider seeking advice from the Historic Places trust.

In accordance with section 125 (2) (f) of the Act a copy of any notice issued under section 124 of the Act will be sent to the New Zealand Historic Places Trust where a heritage building has been identified as a dangerous or insanitary building.

4.0 Adoption and Review of Policy

The Council has, as required under the Act, followed the special consultative procedure set out in section 83 of the Local Government Act 2002 for developing and adopting this policy.

The policy may be amended or replaced only in accordance the special consultative procedure.

The Council will complete a review of this policy at least once every five years.

5.0 Links to Other Legislation

5.1 Health Act 1956

Applicable to buildings and the use of buildings, the Health Act 1956 empowers and directs the Council with a duty to regularly inspect the Gisborne District ascertaining if any nuisances, or any conditions likely to be injurious to health or are offensive exist. It also requires adequate water supply and sanitation.

Identification of unsatisfactory conditions causes the Council to take action to abate the nuisance or correct the condition. When conditions exist that cause a building likely to be injurious to health or to be insanitary the Council can require of the property owner abatement of the condition, cleansing, repairs or subsequent closure of the building to occupation.

5.2 Resource Management Act 1991 (RMA)

The Council administers provisions of the RMA in the Gisborne District. One purpose of the Act is avoiding, remedying or mitigating any adverse effects from activities on the environment. While provisions of the RMA are not directly related to dangerous or insanitary buildings, amenity issues arising from the offensive nature of a building can be considered under RMA provisions and related regulatory policies contained within Regional and District Plans.