

STATEMENT OF PROPOSAL

Proposed Dangerous and Insanitary Buildings Policy

WHAT'S BEING PROPOSED

Hamilton City Council (the Council) is looking to adopt a new policy for Dangerous and Insanitary Buildings.

The Council want's your feedback on this policy which sets out how the Council will identify and deal with dangerous and insanitary buildings.

BACKGROUND

Previously the Building Act 2004 required the Council to have a policy on dangerous, earthquake-prone and insanitary buildings. The Act was recently changed and now requires that the Council have a policy just on dangerous and insanitary buildings by 1 January 2019.

QUICK FACTS

What is the policy for?

The policy is focused on making sure people can live and work in buildings without compromising their health or safety.

How does the policy work?

The policy outlines the process that the Council will follow in relation to any dangerous or insanitary building that comes to the Council's attention.

What buildings does the policy apply to?

The policy applies to any building where the current conditions mean the building could be dangerous or insanitary.

Are heritage buildings included in the policy?

Yes, heritage buildings will be assessed in the same way as other buildings.

Does the policy require the building's status to be documented?

Yes, the Council keep a record of all dangerous and insanitary buildings on the property file which will be included in the LIM and which building owners will be able to access.

OPTIONS

Option A: Adopt the draft Policy

Under this option, the Council will approve the proposed Dangerous and Insanitary Buildings Policy below. The draft policy sets out dangerous and insanitary buildings in relation:

- how the Council will identify these buildings
- actions it will take for these buildings
- how it will work building owners
- what information will be kept on file and what access is given to this information
- the treatment of heritage buildings

This option will mean that the Council will have a comprehensive and concise policy in place that meets legal requirements. Although this option will mean a comprehensive policy is adopted, there is opportunity to provide further direction around the processes the Council will take as outlined in option B.

Option B: Adopt a revision of the draft policy which has more direction on affected buildings and the action the Council will take regarding dangerous or insanitary buildings

Under this option, the Council will include more direction in the policy around:

- affected buildings; and/or
- the action the Council will take where a building is found to be dangerous or insanitary.

This option includes revising the draft policy to include the following:

- The Council will receive information regarding affected buildings – buildings which are next to or nearby a dangerous building - and consider what action to take, how it will work with the building owners and what information will be kept on file.
- The Council will attach a written notice to the building requiring work. The written notice will explain the work to be carried out on the building to avoid the building from:

- remaining insanitary; and/or
- to reduce or remove the danger

- The Council will give copies of the written notice to the building owner(s), occupier(s), 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 scheduled/registered heritage building

This option gives more direction around the processes the Council must take regarding dangerous, affected or insanitary buildings but will make the policy wordier and will create less flexibility for the Council in the approach that it may wish to take.

TELL US YOUR THOUGHTS ON THE POLICY

Before making any final decisions, we'd like to have your input.

You can give us feedback from **5 February 2018 to 5 March 2018**.

How to give feedback

There are a number of ways you can give your feedback:

- Fill out a feedback form online at hamilton.govt.nz/haveyoursay
- Fill out the feedback form included in this Statement of Proposal and send to Hamilton City Council, Strategy Unit, Private Bag 3010, Hamilton 3240.
- Fill out the feedback form and deliver it to the Municipal Building Reception Lounge or one of Council's libraries.

Feedback forms and the proposed policy are on our website and available from Council libraries and the ground floor reception of Council's Municipal Building in Garden Place.

For any queries please ring 07 838 6699.

First adopted:	May 2018
Revision dates/version:	Version 1
Next review date:	May 2023
Engagement required:	The Special Consultative Procedure is required
Document Number	
Associated documents:	
Sponsor/Group:	General Manager – City Growth

Draft Dangerous and Insanitary Buildings Policy

Purpose and scope

1. To outline the approach the Council will take and clarify the Council's priorities in performing its functions under the Building Act 2004.

Principles

2. The Council will seek immediate or early resolution of any defect to minimize potential risk to public health or safety.
3. The Policy recognises the importance of Hamilton's heritage buildings and will protect the heritage value of these buildings wherever possible, without compromising public health and safety.
4. The Council will work pro-actively with building owners to ensure the best outcome for all parties.

Definitions

Term	Means
Affected Building	Defined in s121A of the Act; A building is an affected building for the purposes of this Act if it is adjacent to, adjoining, or nearby: (a) a dangerous building as defined in Section 121; or (b) a dangerous dam within the meaning of Section 153.
Building Owner	Defined in s7 of the Act; Owner in relation to any land or buildings on the land, (a) means the person who – (i) is entitled to the rack rent from the land; or (ii) would be so entitled if the land were let to a tenant at a rack rent; and (b) includes – (i) the owner of the fee simple of the land; and (ii) for the purposes of sections 32, 44, 92, 97, and 176(c), any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force.
Dangerous Building	Defined in s121 of the Act; (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

	<p>(ii) damage to other property; or</p> <p>(b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.</p> <p>(2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority:</p> <p>(a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and</p> <p>(b) if the advice is sought, must have due regard to the advice.</p>
Heritage Building	<p>Defined in s7 of the Act;</p> <p>Means a building that is included on :</p> <p>(a) the New Zealand Heritage List/Rarangi Korero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or</p> <p>(b) the National Historic Landmarks/Ngaā Manawhenua o Aotearoa me onaa Korero Tuturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.</p>
Immediate danger	<p>Defined in s129 of the Act;</p> <p>(1) This section applies if, because of the state of the building;</p> <p>(a) immediate danger to the safety of people is likely in terms of section 121 or 123; or</p> <p>(b) immediate action is necessary to fix insanitary conditions.</p>
Insanitary Building	<p>Defined in s123 of the Act;</p> <p>A building is insanitary for the purposes of this Act if the building:</p> <p>(a) is offensive or likely to be injurious to health because:</p> <p>(i) of how it is situated or constructed; or</p> <p>(ii) it is in a state of disrepair; or</p> <p>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</p> <p>(c) does not have a supply of potable water that is adequate for its intended use; or</p> <p>(d) does not have sanitary facilities that are adequate for its intended use.</p>
Property file and register	A record of legal information the Council is required to maintain in terms of 216 of the Act
Structural condition	The structural condition of the building at the time the Council carries out an inspection of the building to ascertain its state.
Territorial Authority	<p>Defined in s7 of the Act;</p> <p>(a) means a City Council or District Council named as Part 2 of Schedule 2 of the local Government Act 2002; and</p> <p>(i) in relation to land within the district of the territorial authority, or a building on or proposed to be built on such land, means that territorial authority; and</p> <p>(II) in relation to any part of a coastal marine area (within the meaning of the resource management Act 1991) that is not within the district of the territorial authority, or a building on or proposed to be built on any such part, means the territorial authority whose district is adjacent to that part; and</p> <p>(b) includes the Minister of Conservation or the Minister of Local Government, as the case may be, in any case in which the Minister of Conservation or the Minister of Local Government is the territorial authority under section 22 of the Local Government Act 2002.</p>
The Act	The Building Act 2004
The Council	The Hamilton City Council

Policy

Identifying dangerous and insanitary buildings

5. The Council will respond to building complaints received from the public, the Fire Service, or any person or organisation that has a health and safety interest in a particular building and investigate the complaint and assess the condition of the building.
6. The assessment of dangerous buildings will be in accordance with Section 121 of the Act.
7. The assessment of insanitary buildings will be in accordance with Section 123 of the Act.

Actions for dangerous and insanitary buildings

8. Priority for action will be decided after investigation of complaints.
9. The Council will liaise with the Fire Service to discuss the proposed action when notification has been received from the Fire Service of a dangerous building.
10. The Council may also engage a subject matter expert to assist with determining the course of action.
11. The Council may use the powers given in Section 124 of the Act to take action regarding dangerous or insanitary buildings to serve formal notice in accordance with the Act and consider if it should erect a hoarding, fence or warning sign.
12. On being advised of conditions that are alleged to be insanitary within the provisions of Section 123 of the Act, the buildings will be inspected and a determination made whether action in terms of Sections 124 or 129 of the Act will be taken.
13. Where it is considered measures are necessary to avoid immediate danger or to fix insanitary conditions. The Council may use the powers given in Section 129 of the Act.

Working with building owners

14. Where there is an agreement between the Council and the building owner to rectify any deficiency, the Council may elect to forego the issue of a formal notice, but will retain details of the building in the property file and register.
15. Where an acceptable agreement between the building owner and the Council cannot be obtained, the Council will exercise its powers and issue a notice under Section 124 of the Act. The Section 124 notice will outline the danger to be removed and a timeframe to achieve the necessary result.
16. In urgent cases the Council may at the outset serve formal notice under Section 124 of the Act.

Recording a building's dangerous or insanitary status

17. The Council will keep a record of all dangerous and insanitary buildings noting the status of requirements for improvement or the results of improvements as applicable.
18. In addition, the Council will keep and record the following information that may be placed on the Land Information Memoranda (LIM) for each dangerous or insanitary building:
 - a. A statement that the building is considered to be dangerous or insanitary.
 - b. The date by which rectification of any deficiency, or demolition is required (only if known).
 - c. If a notice under Section 124 is issued in respect of any dangerous or insanitary building then a record may also be included.
 - d. A statement that further details may be available from Council's property file.

Access to information

19. Information concerning the dangerous or insanitary status of a building (if known) will be contained in the property file.
20. If a notice under Section 124 is issued in respect of any dangerous or insanitary building then a record of that will also be available on the relevant property file.
21. Access to information may be available through a LIM application or request for information in terms of the Official Information and Meetings Act 2002.
22. Building owners will be able to access information from the Council relating to their building during normal office hours.

Heritage buildings

23. Heritage buildings will be assessed in the same way as other dangerous and insanitary buildings.
24. The Council will work with the building owner to ensure the development of appropriate management and planning for these buildings for their protection wherever possible. This will be achieved by:
 - a. Recognising the heritage buildings that exist in the city, including the Heritage New Zealand Register, the Heritage Items Schedule of the Hamilton City District Plan, listed heritage places, and buildings of significance to iwi, and other buildings of significance to the community, for example:
 - b. Any listed in a strategy or management plan prepared under the Conservation Act 1987 or Reserves Act 1977
 - c. Any within a reserve identified by the Te Turi Whenua Maori Land Act 1993 for historic and cultural purposes;
 - d. Any listed in an iwi management plan;
 - e. Buildings or structures associated with historic cemeteries or memorials;
 - f. Any building managed for heritage purposes by agencies, such as Heritage New Zealand, Department of Conservation or by Council; and
 - g. Buildings or structures subject to heritage order, heritage covenant or other protective covenant.
 - h. Informing relevant statutory organisations, including Heritage New Zealand, with regards to any listed building identified as dangerous or insanitary.
 - i. Ensuring the consideration of any advice from Heritage New Zealand or professional conservation organisation, heritage professional, including the Council's own heritage advisers (if relevant).
 - j. Considering any relevant conservation report, conservation plan, condition report, management plan, heritage assessment or other document.
 - k. Any statutory protection, including any listing in the Heritage Items.
 - l. For any notice issued in relation to a heritage building under Section 124 of the Act, the Council will provide a copy of the notice to Heritage New Zealand.

Monitoring and implementation

25. The implementation of this policy will be monitored by the General Manager City Growth.
26. The policy will be reviewed in response to any issues that may arise, every five years as required under section 132 of the Act, at the request of Council or in response to changed legislative and statutory requirements (whichever occurs first).

FEEDBACK FORM

PROPOSED Dangerous and Insanitary Buildings Policy

Hamilton City Council is proposing to adopt a Dangerous and Insanitary Buildings Policy. Tell us what you think.

- 1. Is the approach in the policy to identify and deal with dangerous and insanitary buildings clear? (Please explain why/why not below)**

Yes

No

(Please print clearly) _____

- 2. Should the Council adopt a revised version of the draft policy which provides more detail on both affected buildings and the action the Council will take regarding dangerous or insanitary buildings? (Please explain why/why not below).**

Yes

No

(Please print clearly) _____

3. Are you responding as/or representing? (tick all that apply)

- A building owner
 A building tenant
 A business
 Other stakeholder interest: _____

4. Do you live in:

- Hamilton City
 Waikato or Waipa District
 Greater Waikato District
 New Zealand
 Overseas

5. Can you tell us your age group?

- 16-24
 25-35
 36-50
 51-64
 65+

6. Please provide your contact details (* required fields)

* Name: _____
Organisation (where applicable): _____
Postal Address: _____
_____ Post code: _____
Phone: *(day) _____ (evening) _____
* Email: _____

7. Do you wish to be heard in support of your submission or feedback in April 2018?

- Yes
 No

Please give us your contact details (above) if you wish to be heard

Note: Please be aware when providing personal information that all responses are part of the consultation process. As such it may be reproduced and included in Council's public documents such as Council agendas and minutes. These documents are available on Council's website at hamilton.govt.nz

Please get your feedback to us by the 5 March 2018.

You can:

- Complete it online at hamilton.govt.nz/haveyoursay
- Post the form to Freepost 172189, Strategy Unit, Hamilton City Council, Private Bag 3010, Hamilton 3240
- Drop it off to the Hamilton City Council Office in Garden Place, any Hamilton City Library.