

DANGEROUS, INSANITARY AND AFFECTED BUILDINGS POLICY



Approved by:	Council		
Sponsor:	General Manager Corporate and Regulatory		
Department responsible:	Building Services		
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BACKGROUND

The Building Act 2004 requires territorial authorities to have a policy on dangerous, insanitary and affected buildings. The Dunedin City Council (“the Council”) recognises that provisions of the Building Act in regard to dangerous, insanitary and affected buildings reflect the Government’s broader concern with the health and safety of the public in buildings. The Council understands that the development of these policies is the responsibility of each territorial authority and has responded accordingly.

The policy has been developed in accordance with the purpose and principles of the Building Act 2004 which seeks to ensure that:

- people who use buildings can do so safely and without endangering their health;
- buildings have attributes that contribute appropriately to the health, physical independence and well-being of people who use them; and
- buildings are designed, constructed, and able to be used in ways that promote sustainable development.

The Council is committed to ensuring that Dunedin is a safe and healthy place to live. The Building Act provides the means to ensure buildings that become dangerous, insanitary or affected are managed in a timely manner to remove the danger and fix the insanitary conditions. The Council will administer the Building Act in a fair and reasonable way.

DEFINITIONS

Dangerous Buildings

Under section 121 of the Building Act 2004, a building is dangerous if:

- a) in the ordinary course of events (excluding the occurrence of an earthquake), if 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.

Affected Buildings

Under section 121A 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.

Insanitary Buildings

Under section 123 of the Building Act 2004, a building is insanitary if it is:

- a) 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.

Heritage Buildings

Heritage buildings are considered to be buildings or structures that are—

- a) identified on the New Zealand Heritage Pouhere Taonga List;
- b) 'scheduled heritage buildings' or 'scheduled heritage structures' in the Dunedin City District Plan; or
- c) are 'character contributing buildings' located within a Heritage Precincts in the Dunedin City District Plan.

POLICY

Dangerous, insanitary and affected buildings will be dealt with by responding to complaints received from the public, advice received from Fire and Emergency New Zealand, New Zealand Police, social service agencies, a building tenant or other agency/department, and working with building owners to address the problem without delay.

When a building has been assessed as being either dangerous, insanitary or affected in terms of sections 121, 121A and 123 of the Building Act appropriate action will be taken.

1. Taking action on dangerous, insanitary and affected buildings

- 1.1. On being satisfied that a building is dangerous, insanitary or affected, the Council will advise and liaise with the owner, where possible, to discuss action to be taken. If notification was received from Fire and Emergency New Zealand that the building was dangerous, it will liaise with Fire and Emergency New Zealand and the owner, where possible, to discuss the proposed action. If the building is a heritage building the Council will take into account its heritage values in determining a course of action, as set out in section 2 of this policy.
- 1.2. If the Council is satisfied that a building is dangerous, insanitary or affected and the building owner does not meet the requirements imposed on them as the owner, the Council may exercise any or all of its powers under sections 124-130 of the Building Act which include:
 - a) Installing hoardings or fences to prevent people from approaching the building nearer than is safe
 - b) Attaching notices warning people not to approach the building
 - c) Giving written notice requiring work to be carried out so that the building will not be dangerous, insanitary or affected within a stated time period
 - d) Initiating prosecution if buildings are used after notices or hoardings are in place
 - e) Initiating prosecution where there is failure to comply with the notice
 - f) Applying to a District Court to carry out the work to remove the danger or so that the building is no longer insanitary, or demolish, where the work is not completed or is not proceeding with reasonable speed
 - g) If immediate action is necessary to strengthen or fix dangerous, insanitary or affected conditions the Council may take that immediate action and in some cases may need to apply to a District Court to confirm the action
 - h) Recovering all costs involved from owner
 - i) Placing a charge on the land until the Council recovers the costs
- 1.3. Before exercising these powers, the Council will seek to meet with owners to discuss proposals to address the issue. The Council will also seek to meet with owners to discuss proposals to comply with a notice following issue of a formal notice. Notwithstanding this, the Council, as a responsible authority, will issue notices or take other actions which are reasonably required to protect the building occupants or members of the public from injury or death, or to protect damage to other property.
- 1.4. Building consent or certificate of acceptance may be required for certain alterations or demolition of a building.

2. When a dangerous, insanitary or affected building is also a heritage building

- 2.1. When considering what action to take on heritage buildings that have become dangerous, insanitary or affected, the Council will take into account the heritage values of the building in determining possible courses of action.
- 2.2. For heritage buildings, Council's position is to avoid demolition, or removal of significant architectural features, wherever possible.
- 2.3. However, it may be that the dangerous or insanitary part of the building can be removed without affecting the overall heritage value of the place. Council's heritage advisors can provide advice about the heritage values of the place. An owner may engage suitably qualified professionals with heritage expertise to advise and recommend actions.
- 2.4. In addition to building consent or certificate of acceptance, a resource consent may also be required for alterations, partial demolition, or demolition of heritage buildings. Any proposed work affecting buildings or areas subject to heritage orders or encumbrances (for example a heritage covenant), may require additional approvals.
- 2.5. On any matters concerning demolition, sufficient information to support this course of action will need to be supplied to the Council. Council may choose to engage a suitably qualified professional to undertake a peer review of information provided to Council.
- 2.6. If the building is included on the New Zealand Heritage Pouhere Taonga List, the Council will notify New Zealand Heritage Pouhere Taonga of any notice requiring building work or restricting entry to that building.
- 2.7. Demolition of buildings constructed prior to 1900 is likely to trigger the archaeological provisions of the Heritage New Zealand Pouhere Taonga Act 2014. Early consultation with Heritage New Zealand is advised.

3. Financial assistance for heritage buildings

- 3.1. Dunedin City Council administers the Dunedin Heritage Fund to support building owners with the conservation and retention of heritage buildings across the city. Work on a dangerous or insanitary heritage building may be eligible for an emergency application if the work is urgent. Owners are advised to consult with the Council's heritage advisor about the Dunedin Heritage Fund.

4. Health Act 1956

- 4.1. Provisions also exist in the Health Act 1956 to deal with nuisance conditions related to certain matters associated with housing [under section 29(f)], overcrowding likely to be injurious to health, and under section 42, insanitary conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation.

5. Disputes

- 5.1. If a building owner disputes the Council's decision, or proposed decision, or any other matter relating to the exercise of the Council's powers under sections 124 to 130 of the Building Act relating to dangerous, insanitary or affected buildings, they may apply for a determination

from the Chief Executive of the Ministry of Business, Innovation and Employment, as set out in the Building Act. Such a determination is binding on both parties.

6. Review

- 6.1. Any review, amendment or replacement of this policy must be in accordance with the provisions of the Local Government Act 2002, including the special consultative procedure outlined in section 83. This policy will not cease to have effect if it is due for review or is undergoing a review.

Relevant Legislation:	Building Act 2004 Local Government Act 2002 Heritage New Zealand Pouhere Taonga Act 2014 Resource Management Act 1991 Health Act 1956
Associated Documents:	The New Zealand Building Code Dunedin City District Plan