

# Dangerous, affected and insanitary buildings

**GUIDANCE FOR DEVELOPING POLICIES ON DANGEROUS, AFFECTED AND  
INSANITARY BUILDINGS**



**Ministry of Business, Innovation and Employment (MBIE)**  
**Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

The dangerous, affected and insanitary buildings guidance is produced by the Building System Delivery and Assurance, and Building System Performance branches.

This document is issued as guidance under section 175 of the Building Act 2004.

While MBIE has taken care in preparing the document it should not be relied upon as establishing compliance with all relevant clauses of the Building Act or Building Code in all cases that may arise.

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Information, examples, and answers to your questions about the topics covered here can be found on our website: [www.mbie.govt.nz](http://www.mbie.govt.nz) or by calling us free on 0800 24 22 43.

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# Purpose

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The purpose of this guidance document is to provide a resource that will assist territorial authorities to develop, maintain and adopt policies for the regulation of dangerous, affected and insanitary buildings in their districts.

This guidance seeks to ensure that territorial authorities:

- understand the requirements of the Building Act 2004 (the Building Act) that relate to dangerous, affected and insanitary buildings
- are aware of the wider considerations that should be taken into account when they are developing and reviewing policies on how these buildings should be managed.

## Who is this guidance for?

This guidance is for territorial authorities who are developing, maintaining and adopting a policy on dangerous, affected and insanitary buildings. It may also be useful for other building sector professionals, such as builders and engineers, and for building owners.

Throughout this guidance, territorial authorities are referred to by the common term “council”. This includes territorial authorities (city and district councils) and unitary authorities but excludes regional councils.

## About this document

This guidance document covers the requirements of the Building Act relating to dangerous, affected and insanitary buildings. It is structured and sequenced to help councils:

- build an understanding of what constitutes a dangerous, affected or insanitary building, and the risks that they pose to people and communities
- understand their roles and responsibilities, and those of building owners
- understand the powers available to them to manage these buildings
- identify the approach that they will take when they are carrying out the functions relating to dangerous, affected and insanitary buildings
- confirm what their priorities are in performing these functions
- develop, review and adopt policies on dangerous, affected and insanitary buildings that state the approach and priorities, and also confirm how the policy applies to heritage buildings.

The guidance aims to assist councils to comply with sections 131, 132 and 132A of the Building Act. It does this by explaining the requirements, and by outlining some key considerations for councils to think about when developing their own policies.

The policy and operational approach adopted by a council on how it manages dangerous, affected and insanitary buildings can vary to take into account local circumstances, provided they align to the requirements of the Building Act.

A template for councils to use when assessing a building to confirm if it is dangerous, affected or insanitary has also been developed and is available alongside this guidance.

[Visit the Building Performance website for an inspection report template – www.building.govt.nz](http://www.building.govt.nz)

### **Version control**

This guidance is a 'living document'. The Ministry of Business, Innovation and Employment (MBIE) periodically updates this guidance to reflect legislative changes.

This is the second edition of this guidance, and it incorporates the changes made to the Building Act 2004 by the Building Amendment Act 2013, the Building (Earthquake-prone Buildings) Amendment Act 2016, the Building Amendment Act 2019 and other related legislation.

The first edition was published in October 2005.

### **Features of this document**

Hyperlinks are provided to cross-reference within the document and to external websites.

These hyperlinks appear with an [underline](#).



**Limitations of this guidance**

This document is a general guide to support the interpretation and application of sections 131, 132 and 132A of the Building Act. It aims to assist councils who are developing, reviewing and adopting policies on dangerous, affected and insanitary buildings.

While MBIE has taken great care in preparing this guidance, it is not definitive. Importantly, it should not be read as replacing the relevant legislation. The Building Act and Building Regulations (including the Building Code) should form the primary source documents for councils when they are developing and adopting their policies. They should be aware that for specific situations it may be necessary to also seek legal advice.

Figure 1 below illustrates where this guidance sits in the building regulatory system.

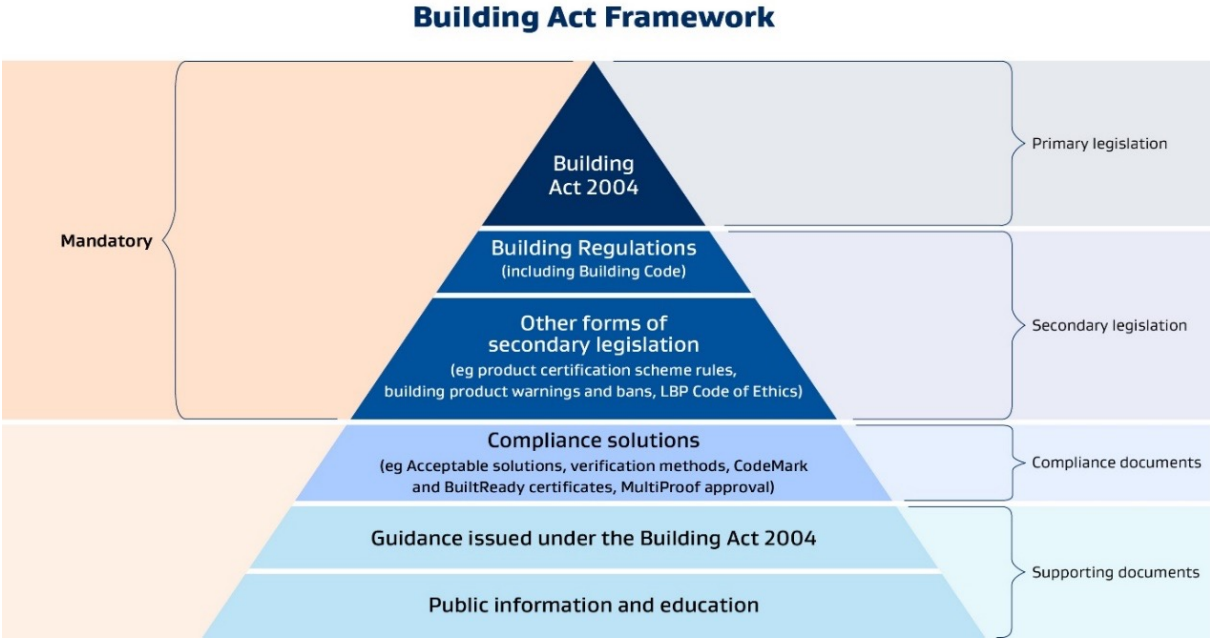


Figure 1 – Building Act Framework

# Background

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This section provides an overview of what a dangerous, affected and insanitary building is, and why councils need to manage them.

A high-performing building regulatory system is critical to ensure people are safe and healthy, and living in durable homes and buildings.

People and communities who use buildings need to be able to do so safely and without endangering themselves and their health.

The most important consideration is the protection of human life and safety.

In some situations, buildings may be being used for something they were not designed for, have suffered structural damage or they may not have functioning sanitary facilities. Such buildings may pose risks to people or to other property.

## What are dangerous, affected and insanitary buildings?

Dangerous, affected and insanitary buildings have the potential to cause serious harm to people, or damage other property.

Under the Building Act, a building is dangerous if any of the following conditions are met:

- Under normal circumstances, except for in an earthquake, it is likely that the building will cause injury or death to people inside or nearby, or cause damage to other property.
- If it is likely to cause injury or death to people inside it or in other buildings nearby in the event of a fire.

In some situations, the risks posed by a dangerous building can affect other properties. Under the Building Act, affected buildings are buildings that are next to, joined to, or close to a dangerous building or a dangerous dam.

Insanitary buildings present health or hygiene risks that could adversely affect occupants or the surrounding environment.

## What the law says:

Section 121 of the Building Act defines a building as being **dangerous** if:

- in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause injury or death (whether by collapse or otherwise) to anyone in it or to people on other property, or damage to other property; or
- in the event of fire, injury or death to any persons in the building or to persons on other property is likely.

Section 121A of the Building Act defines a building as being an **affected building** if it is adjacent to, adjoining or nearby:

- a dangerous building as defined in section 121; or
- a dangerous dam within the meaning of section 153.

Section 123 of the Building Act defines a building as an **insanitary building** if the building:

- is offensive or likely to be injurious to health because of how it is situated or constructed, or it is in a state of disrepair
- has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building
- does not have a supply of potable water that is adequate for its intended use; or
- does not have sanitary facilities that are adequate for its intended use.

Section 123A of the Building Act specifies that:

- if a council is satisfied only part of a building is dangerous or insanitary within the meanings in the Act, it may choose to exercise its powers/functions in subpart 6 in respect of only that particular part of the building, and
- if a council is satisfied only part of a building is affected it can choose to use its powers/functions in subpart 6 for either all or part of the building.

Section 153 of the Building Act defines a dam as being **dangerous** when it:

- is a high potential impact dam or a medium potential impact dam; and
- is likely to fail—
  - in the ordinary course of events; or
  - in a moderate earthquake or in a moderate flood. Section 19 of the Dam Safety Regulations provides definitions of these events.



# Managing dangerous, affected and insanitary buildings

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Councils developing a policy for dangerous, affected and insanitary buildings must determine the approach they should take to perform their functions under the Building Act.

This section of the guidance document outlines the approach that a council should take for performing its functions for managing a dangerous, affected or insanitary building from when it is initially identified through to resolution.

A flowchart illustrating the process for identifying and managing dangerous, affected and insanitary buildings has been developed. This will support councils in identifying what steps are required and it is available alongside this guidance.

[Visit the Building Performance website for a process flowchart](http://www.building.govt.nz) – www.building.govt.nz

## Step one – Identifying dangerous, affected and insanitary buildings

There are several approaches that councils are able to use when gathering information concerning dangerous, affected and insanitary buildings within its district.

### **Different approaches to identifying dangerous, affected and insanitary buildings**

There are a range of approaches that councils may adopt to identify these buildings, from proactive to passive. When developing their policy they should take into account the Building Act, its policy intent and the requirements of their local community.

A building's dangerous, affected or insanitary status will not always be obvious. Therefore, identifying these buildings proactively may be difficult unless, for example, councils have considerable resources to undertake inspections and evaluations of buildings.

Relying on notifications or complaints to provide information concerning potentially dangerous, affected or insanitary buildings may be a way councils can identify these buildings. Potential sources of information concerning these buildings may include either:

- building occupants or neighbours who believe a building could have a negative impact on them or their property
- inspections by agencies who are authorised to enter or inspect buildings such as the New Zealand Police or Fire and Emergency New Zealand (FENZ).

Councils will need to make their own assessment of what is appropriate in their particular circumstances.

## Responding to complaints

Councils can receive reports or complaints about buildings from the building users, members of the public or a government agency. These complaints sometimes lead to a building being classified as dangerous, affected or insanitary.

The appropriate response to a complaint is to inspect the building and determine whether it is a dangerous, affected or insanitary building.

A council's policy must confirm the approach adopted to performing its functions relating to dangerous, affected and insanitary buildings under Part 2 of the Building Act. This may include the approach to identifying them. It could also state how they will investigate complaints they receive about these buildings.



## Step two – Assessments and recording the status of buildings

When a council has reason to believe that a building may be dangerous, affected or insanitary, it should investigate the matter promptly to confirm what, if any, action is required.

As noted in step one, the most effective way for councils to confirm if a building is dangerous, affected or insanitary is usually by inspecting the building to determine if this is the case. Where appropriate, councils are also able to seek advice from FENZ about whether a building is dangerous for the purposes of the Building Act. Where this advice is sought, councils must then give the advice, together with all other relevant facts, fair consideration and attention when making their decision.

### What the law says:

[Section 121\(2\)](#) of the Building Act specifies that when a council is determining whether a building is dangerous, it:

- may seek advice from employees, volunteers, and contractors of FENZ who have been confirmed by FENZ as being competent to give this advice; and
- if it seeks this advice must have due regard to it.



## **Initial assessment**

Councils should respond promptly when they become aware that a building is potentially dangerous, affected or insanitary. Council policies could include information about the timeframe for responding to a notification or complaint about a potentially dangerous, affected or insanitary building.

In some cases, a building may become dangerous, affected or insanitary quickly and as a result of a wide range of reasons, such as the failure of a feature within the building, or a change of use.

There are many different situations that could result in a building becoming dangerous, affected or insanitary, such as:

- fire alarm system malfunctions
- blocked drains
- hazardous goods being stored in a building that was not designed for that purpose.

Councils with limited resources may need to establish a system for prioritising particular types of dangerous or insanitary conditions.

When a council is assessing whether a building is an affected building for the purposes of the Building Act, it should first look at the cause of the problem. Once a council determines that a building or dam is dangerous for the purposes of the Building Act, it can then consider if the risks it poses also affect any other buildings. In situations where this is the case, a council should then determine if the risks posed by the dangerous building or dam to other buildings and their occupants are severe enough for that building to also be considered dangerous, even though it may not itself be in a dangerous condition.

Information collected at the initial assessment will inform what actions are required to manage the risks posed by the building.

This information should be as comprehensive as possible. A template for councils to use when assessing a building to confirm if it is dangerous, affected or insanitary has been developed alongside this guidance.

[Visit the Building Performance website for an inspection report template](http://www.building.govt.nz) – [www.building.govt.nz](http://www.building.govt.nz)

## **Recording the status of a dangerous, affected or insanitary building**

Councils should keep a record of buildings in their district deemed dangerous, affected and insanitary. They will need to consider the period for which information concerning these buildings should be kept on the relevant property file to comply with the requirements of the [Public Records Act 2005](#). They should also consider the requirements of the [Local Government Official Information and Meetings Act 1987](#) when deciding what information will be disclosed in any land information memorandum.

Where the status of the building could affect any proposed building work, councils should consider whether the information should be disclosed in a project information memorandum.

Councils could also maintain a register of all potentially dangerous, affected or insanitary buildings that they investigate. This is to ensure that there is a centralised location where all records relating to investigations of these buildings are easily retrievable.

The register could include information about the building and:

- details about the specific issues and dangers
- the outcome of the assessment
- details of any dangerous, affected or insanitary building notices issued
- any follow-up action required.

## **Involving the owners of dangerous, affected or insanitary buildings**

Once a council has determined that a building is dangerous, affected or insanitary, it should discuss the building's status with the owners of the building before issuing the necessary notices or erecting hoardings or signs.

When remedial building work is required, it may also be appropriate for a council to determine the nature of this work in consultation with building owners.

Contacting the building owner will enable a council to understand their circumstances or their future plans for the site. This will help influence the time in which repairs are to be undertaken.

Whether this is appropriate or required would depend on the specific circumstances of each situation.

Once a council is satisfied that a building is dangerous, affected or insanitary, it should take appropriate steps to manage the risks posed.

In cases where owners of dangerous or insanitary buildings may not be cooperative, councils can still require actions to be taken.

They may issue a notice stating the required actions needed to reduce or remove the danger or fix insanitary conditions. Where the building owner fails to complete this work, the council may seek court approval to enter a building and carry out any necessary work to protect the community itself.

Council policies may include details of how they prioritise, assess and record buildings to confirm if they are dangerous, affected or insanitary. They may also confirm when and how the building owner is informed.

### **What the law says:**

Section 124(2)(c) of the Building Act specifies that once a council determines that a building in its district is dangerous or insanitary, it may give written notice requiring work to be carried out to reduce or remove the danger, or prevent the building from remaining insanitary.

Section 126 of the Building Act specifies that councils may apply to the District Court seeking a court order to allow them to carry out building work if the work required in a notice issued under section 124(2)(c) is not completed, or not proceeding with reasonable speed, within—

- the time stated in the notice; or
- any further time that the council allows.

## Step three – Taking action on dangerous, affected and insanitary buildings

A council can take certain actions when it is satisfied that a building is dangerous, affected or insanitary. These actions may be used to help reduce the risks to people and other property posed by the building.

### **Restrict access and entry, and require remedial work to the building**

A council may take action to prevent people approaching the building by erecting fences or hoardings and attaching notices on or near the building to warn people not to approach it. Councils may also issue written notices to restrict entry to the building, either for a particular purpose or specific people.

For dangerous and insanitary buildings, a council may issue a written notice that requires building work to reduce or remove danger or prevent the building from remaining insanitary.

It is important to note that where a council confirms that a building is an affected building, it is not able to issue a notice requiring work to be carried out under section 124(2)(c). Only the powers to restrict access and restrict entry may be used.

#### **What the law says:**

##### **Actions a council may take**

Section 124(2)(a),(b) and (d) of the Building Act specifies that once a council determines that a building in its district is dangerous, affected or insanitary, it may do any or all of these things:

- Put up a hoarding or a fence to prevent people approaching the building nearer than is safe.
- Attach in a prominent place, either on or adjacent to the building, a notice that warns people not to approach the building.
- Issue a written notice restricting entry to the building, either for particular purposes or to a specific person or groups of people. Notices issued for this purpose under section 124(2)(d) have limitations on the period of time that they are issued for.

Section 124(2)(c) of the Building Act specifies that for dangerous and insanitary buildings only, councils can give written notice requiring work to be carried out to reduce or remove the danger, or prevent the building from remaining insanitary.

### **Remove immediate danger**

In extreme cases, the state of a building may mean that immediate danger to the safety of people is likely, or immediate action is necessary to fix insanitary conditions.

Under these circumstances, the Chief Executive of a council can issue a warrant for necessary action to be taken to remove that danger or fix those insanitary conditions. If these powers are used, there are further requirements that should be considered, such as applying to the District Court for confirmation of the warrant once the action is completed.

The District Court may either confirm the warrant as it is, modify it or set the warrant aside.

Where the owner of the building concerned notifies the council that they do not dispute the entry into their land and do not require confirmation of the warrant, the council does not need to apply to the District Court for confirmation of the warrant. In this situation, the owner is required to pay the costs of the action taken by the council.

Once the council has taken action to remove the immediate danger or insanitary conditions it can determine what further action or remediation work is required.

### **What the law says:**

Section 129 applies where:

- the building is likely to cause immediate danger to people because it is dangerous; or
- immediate action is necessary to fix insanitary conditions.

It allows the Chief Executive of a council to issue a warrant for any action necessary to remove the immediate danger or fix those insanitary conditions.

It further specifies that:

- building owners are liable for the costs of the action
- councils may recover these costs from the owner
- the amount recoverable becomes a charge on the land on which the building is situated.

Section 130 specifies that where the Chief Executive of a council has issued a warrant under section 129(2) for action necessary to remove immediate danger or fix insanitary conditions, that they must subsequently apply to the District Court for confirmation of the warrant.

On hearing the application the District Court may:

- confirm the warrant without modification; or
- confirm the warrant subject to modification; or
- set the warrant aside.

This does not apply where the owner of the building concerned notifies the council that:

- they do not dispute the entry into their land; and
- they do not require confirmation of the warrant by the District Court.

In this situation, the owner is required to pay the costs of the action taken by the council.

### **Notices**

If a council is satisfied that a building is dangerous, affected or insanitary, and determines that it is appropriate to take action, it may serve notice on the owner. There are specific requirements for the form of these notices and how they must be issued.

Where a notice confirms that remedial work is required, the council may inspect the property or take some other step to confirm the work has been carried out within the timeframes stated on the notice.

It is an offence to fail to comply with a notice, issued by a council, requiring work to be carried out on a building to reduce or remove danger, or prevent the building from remaining insanitary.

## What the law says:

### Serving notice

Section 124(2)(b) and (d) of the Building Act specifies that once a council determines that a building in its district is dangerous, affected or insanitary, it may:

- attach in a prominent place, either on or adjacent to the building, a notice that warns people not to approach the building
- issue a written notice restricting entry to the building, either for particular purposes or to a specific person or groups of people. Notices issued for this purpose under section 124(2)(d) have limitations on the period of time that they are issued for.

Section 124(2)(c) of the Building Act specifies that for dangerous and insanitary buildings only, councils can give written notice requiring work to be carried out to reduce or remove the danger, or prevent the building from remaining insanitary.

### Form of notices

Section 125 specifies the form of notices requiring building work or restricting entry. It describes the form of the notices and how they must be issued.

The requirements for the notices requiring building work issued under section 124(2)(c) are set out in section 125(1):

- The notice must be in writing and fixed to the building in question.
- Copies of notices must be sent to both the owner of the building and those who occupy it.
- Copies of notices must be sent to a range of other people when appropriate. These people are listed in section 125(2).
- The notice must confirm if the owner of the building must obtain a building consent for the work required by the notice.
- The notice must state the time that the building work must be carried out in. This timeframe must not be less than 10 days from the date the notice is given, or a reasonable time for a building consent to be obtained, whichever is longer.

The requirements for the notices requiring building work issued under section 124(2)(d) are set out in section 125(1A):

- The notice must be in writing and fixed to the building in question.
- Copies of notices must be sent to both the owner of the building and those who occupy it.
- Copies of notices must be sent to a range of other people when appropriate. These people are listed in section 125(2).
- The notice must be issued for a maximum period of 30 days, and may be re-issued once for a further maximum period of 30 days.

### Offences

Section 128A specifies that if a person fails to comply with a notice issued under section 124(2)(c), requiring work to remove or reduce danger or remove insanitary conditions, they commit an offence, and are liable to be fined on conviction.



## Council action to remediate buildings

If building work, as required by a notice issued by a council, is not completed within the permitted timeframe, or is not proceeding with reasonable speed, a council may seek court approval to enter a building and undertake the necessary work itself. The timeframe referred to in this section is the time stated in the notice, or any extension allowed by the council.

Before applying to the court, the council needs to give the building owner no less than 10 days' written notice of its intention to do so.

Where a council carries out building work under the authority of a District Court order, the owner is liable for the costs of the work and the council may recover these costs from them. The amount recoverable by the council becomes a charge on the land on which the work was carried out.

The work necessary to remove or reduce danger can include demolition of the building.

### What the law says:

[Section 126](#) of the Building Act specifies that councils may apply to the District Court seeking a court order to allow them to carry out building work if the work required in a notice issued under [section 124\(2\)\(c\)](#) is not completed, or not proceeding with reasonable speed, within—

- the time stated in the notice; or
- any further time that the council allows.

[Section 127](#) of the Building Act specifies that the work required or authorised under [section 124\(2\)\(c\)](#) or [section 126](#) may include demolition of all or part of the building.

## Prohibit the use or occupation of buildings

Once a council has taken certain actions to restrict access, or reduce or remove danger or insanitary conditions it is prohibited to use or occupy the building. It is an offence to continue to use or occupy a building, or permit another person to do so, if a council has:

- put up a hoarding or fence in relation to a building
- attached a notice warning people not to approach a building
- issued a notice restricting entry to a building.

The exceptions to this are:

- accessing a building to carry out the work required by a notice issued under [section 124\(2\)\(c\)](#) to reduce or remove danger or insanitary conditions
- access to a building that is specifically permitted by a notice issued under [section 124\(2\)\(d\)](#). In this situation, the notice itself may specify that entry to the building is permitted either by specific people or groups of people, or for a particular purpose. Notices issued under this subsection do allow the use or occupation of the building but only in accordance with the specific terms of the notice.

There is an additional offence specified in [section 116B](#) of the Building Act that prohibits the use of a building that is dangerous or insanitary.

This section specifies that it is an offence for people to use or knowingly permit another person to use a building:

- for a use for which the building is not safe or not sanitary; or
- that has inadequate means of escape from fire.

Councils are able to deal with an offence under this section either as an infringement offence, set out in the Building (Infringement Offences, Fees, and Forms) Regulations 2007, or as a general offence under the Building Act.

A council is able to issue an infringement notice or bring a proceeding for an offence under section 116B without having taken any of the actions under section 124.

### **What the law says:**

[Section 128](#) prohibits someone from using or occupying a building, or permitting another person to use or occupy it if a council has taken measures under section 124(2)(a), (b) or (d) to restrict entry by:

- putting up a hoarding or a fence to prevent people approaching the building nearer than is safe
- attaching in a prominent place, either on or adjacent to the building a notice that warns people not to approach the building
- issuing a written notice restricting entry to the building, either for particular purposes or to a specific person or groups of people. Notices issued for this purpose under section 124(2)(d) have limitations on the period of time that they are issued for.

[Section 128A\(2\)](#) specifies that if a person fails to comply with these requirements of section 128 and they then use or occupy the building, or permit someone else to use or occupy it, they commit an offence and are liable to be fined on conviction.

[Section 116B](#) specifies that it is an offence to use, or knowingly permit someone else to use, a building for a use for which it is not safe or not sanitary. It is also an offence to use, or knowingly permit someone else to use, a building if it has inadequate means of escape from fire.

### **Finding the right balance**

Decisions on what is the appropriate action to be taken about dangerous, affected or insanitary buildings will be based on the specific issues and dangers arising from the building in question, and the requirements of the Building Act.

For example, in the case of a derelict building, erecting a hoarding to prevent people from approaching or entering the building may be adequate. However, if the building has a history of use by squatters who thereby place themselves at risk, this action may be insufficient. Serving notice on the owner to remove or reduce the danger, possibly through demolition, could be a more appropriate course of action.

Similarly, a notice requiring a reduction in danger may be the best solution where removing the danger completely would have other negative impacts. In such circumstances, councils should exercise their judgement as to the most appropriate action under the Building Act.

A council should indicate in its policy any guiding principles or processes it will follow to ensure that it takes the appropriate action.

### **Confirming the approach**

The Building Act empowers councils to take timely and appropriate action when a building is assessed as dangerous, affected or insanitary.

The processes used for identifying, assessing and remediating the buildings and the approach taken by the council in performing these functions should be transparent. They should also be in accordance with a council's overall policy on dangerous, affected and insanitary buildings and the requirements of the Building Act.

# Developing policies for dangerous, affected and insanitary buildings

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This section outlines principles that are key to developing and implementing policies on dangerous, affected and insanitary buildings, and things that a council may consider to create an effective policy.

The Building Act requires a council to adopt policies that set out:

- the approach and priorities it will take in performing its functions for managing dangerous, affected and insanitary buildings
- how the policy will apply to heritage buildings.

The policy and operational approach adopted by a council for how it manages dangerous, affected and insanitary buildings can vary to take into account local circumstances, provided they comply with the Building Act.

A council may wish to ensure that its other policies, for example on housing, complement its policy on dangerous, affected and insanitary buildings.

The policy must cover:

- the approach that the council will take for performing its functions that relate to dangerous, affected and insanitary buildings (these functions are outlined in Steps 1 to 3)
- what the council's priorities will be in performing these functions
- how the policy will apply to heritage buildings.

The policy may also set out:

- how it takes into account the needs of the community
- how the council will consult with the community on their needs
- the social and economic impacts of the policy on the community
- how the policy will be reviewed
- how the policy will be notified
- what buildings are not included in the policy.

In developing their policies, councils may wish to use their current practices as a starting point and consider whether they are appropriate.

When a council decides to use its current practices as the basis for its dangerous, affected and insanitary buildings policy, those practices must meet the requirements of the Building Act.

Once a council has established the approach, it can consider its priorities for performing those functions. The approach and priorities must adhere to the Building Act and be balanced with the needs and aspirations of their community. The priorities and approach for performing the functions should be clearly set out in the policy.

### **What the law says:**

The provisions relating to developing a policy on dangerous, affected and insanitary buildings are found in [Part 2](#) of the Building Act.

[Section 131](#) specifies that the policy on dangerous and insanitary buildings must:

- be adopted by the council
- state the council's approach and priorities in performing its functions under Subpart 6 of Part 2 of the Building Act
- state how the policy will apply to heritage buildings.

[Section 132](#) specifies the adoption and review of a policy, and outlines the following:

- A policy under [section 131](#) must be adopted in accordance with the special consultative procedure in [section 83 of the Local Government Act 2002](#).
- A policy may be amended or replaced only in accordance with the special consultative procedure and section 132 applies to that amendment or replacement.
- A council must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to MBIE's Chief Executive.
- A council must complete a review of a policy within five years after the policy is adopted and then at intervals of not more than five years.
- A policy does not cease to have effect because it is due for review or being reviewed.

[Section 132A](#) of the Building Act specifies that a policy must take affected buildings into account.

## **Priorities for action**

A council's policy must state the priorities for performing its functions.

Councils must consider their priorities in dealing with dangerous, affected and insanitary buildings. Councils should consider whether any specific forms of danger within its district are likely to require more urgent action than others.

There may be areas or communities within the district where there are recognised problems that could subject those buildings to particular dangers or insanitary conditions.

Councils should consider whether to prioritise ensuring those buildings do not represent a danger to the buildings' occupants, adjacent buildings or members of the public.

## **Applying the principles of the Building Act**

The purposes and principles of the Building Act provide a reference point for reading and interpreting the parts of the Act that relate to dangerous, affected and insanitary buildings. Councils must apply the relevant principles of the Building Act when they are adopting and reviewing their dangerous, affected and insanitary buildings policies. They should also consider the purposes specified in section 3 of the Building Act.

An example of this is including guidelines in the policy that set out how the council will act when a dangerous, affected or insanitary building contains one or more household units.

The policy could consider the importance of the role that household units play in the lives of people who use them, identify what approach best recognises and accommodates this while managing the risks posed by the building when it is dangerous, affected or insanitary.

Councils should consider all of the principles set out in section 4 of the Building Act that are relevant to how they manage a building identified as dangerous, affected or insanitary.

## Consultation with the community

Councils must develop their policies in line with the special consultative procedures outlined in section 83 of the [Local Government Act 2002](#). Public engagement during policy development is important to raise awareness of what is proposed, and to help ensure that the policy meets the specific needs of the community and protects their interests.

The consultation process helps ensure policies are open, transparent and understood by those who will be affected by them. It will assist councils with developing policies that balance the threats dangerous, affected and insanitary buildings may present, and other factors within the district such as the broader economic issues of implementing the policy.

A council's policy should outline the consultation procedures.

### What the law says:

[Section 132](#) of the Building Act specifies that policies for dangerous, affected and insanitary buildings must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.

### Local factors

Local factors will affect how a policy is developed.

In some communities, local conditions may limit the options available to a council to deal with dangerous, affected and insanitary buildings.

For example, in some cases the costs of short-term disruption arising from the evacuation of a building may be greater than the risks caused by the dangerous, affected or insanitary building.

This is a matter for a council to apply judgement and requires consideration of the relative risks arising from continuing occupation versus emptying the building.

A possible action could be for the council to require immediate building work to **reduce** the danger or insanitary conditions while requiring further building work to **remove** the issues over a longer period; however, this would depend on the circumstances.

A council's policy should refer to how these local factors may be taken into consideration.

### Economic impact of the policy

Councils should consider in their policy the economic impacts of any action required to reduce or remove dangerous, affected or insanitary conditions in buildings in the broader social and economic context of the community.

For example, in some circumstances demolition may be the most appropriate way to remove danger from an occupied building. However, if there is no alternative accommodation for its occupants, it may be necessary for councils to have in place other arrangements that can support the policy or to consider other forms of action consistent with the Building Act.

## Heritage buildings

Councils must state in their policies how they will manage heritage buildings that are dangerous, affected and insanitary buildings.

Councils will need to ensure respect is given to the national significance of these buildings.

The most important consideration is the protection of human life and safety. Councils will have to exercise their judgement concerning the nature and importance of the building, and the level of risk it poses to people, neighbours, and the community.

The policy should cover consultation procedures for heritage buildings, which may include consulting with the building's owner, and seeking advice from Heritage New Zealand Pouhere Taonga.

The council must make Heritage New Zealand Pouhere Taonga aware that a heritage building is subject to a notice issued under section 124(2)(c) or (d) and a copy of the notice must be sent to them.

### What the law says:

Section 131(2)(c) specifies that policies for dangerous, affected and insanitary buildings must state how the policy will apply to heritage buildings.

Section 125 specifies that when a notice is issued under section 124(2)(c) or (d) a copy is given to Heritage New Zealand Pouhere Taonga, if the building is a heritage building.

## Review of policy

Councils must complete a review of their dangerous, affected and insanitary buildings policy within five years after the policy is adopted and then at intervals of not more than five years.

When an existing policy is reviewed, councils may choose to either adopt, amend or replace their existing policies. Where councils opt to amend or replace their policy, they must use the special consultative procedure in the same way as when the original policy was adopted. The requirement to consult applies for each subsequent amendment or replacement.

A policy that is due for review or currently being reviewed does not cease to have effect.

## Notifications

A council may wish to publish information informing their community as soon as practicable after it adopts or reviews its policy on dangerous, affected and insanitary buildings.

Councils should provide information on their website about the policy and how to get in touch with the council to raise a concern about a dangerous, affected, and insanitary building.

As soon as practicable after a council adopts or amends its policy, it must provide a copy to the Chief Executive of MBIE. Policies can be emailed to MBIE at [ta\\_assessments@mbie.govt.nz](mailto:ta_assessments@mbie.govt.nz).

### **What the law says:**

Section 132 of the Building Act specifies that policies for dangerous, affected and insanitary buildings must:

- be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002
- be amended or replaced in accordance with the special consultative procedure. This requirement to consult then applies to that amendment or replacement policy in turn
- provide a copy of the policy to the Chief Executive of MBIE as soon as practicable after adopting or amending a policy
- complete a review of a policy within five years after the policy is adopted and then at intervals of not more than five years.

Section 132(5) specifies that a policy does not cease to have effect because it is due for review or being reviewed.



# Buildings that are excluded from the dangerous, affected and insanitary building policy

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## Application of the requirements to dams

Council policies for dangerous, affected and insanitary buildings do not need to consider dangerous dams. The Building Act contains separate requirements for the management of dam safety, including when dam structures become dangerous.

Regional authorities need to develop separate procedures and registers for managing dams.

[Find information about the requirements for dam safety](http://www.building.govt.nz) – [www.building.govt.nz](http://www.building.govt.nz)

### What the law says:

[Section 133](#) of the Building Act confirms that subpart 6 of the Building Act does not apply to:

- a building that is a dam; or
- a part of a building that is a dam.

[Subpart 7](#) of the Building Act contains the provisions for managing the safety of dams.

[The Building \(Dam Safety\) Regulations 2022](#) contain the requirements for classifiable dams.

## Buildings in an area designated for building emergency management

The powers in section 124 of the Building Act to manage dangerous, affected and insanitary buildings are not designed to manage buildings damaged in an emergency event. The Building Act provides a system and powers for managing buildings that are in an area that has been affected by an emergency. These powers are set out in Subpart 6B of the Building Act and allow for the designation of an area for building emergency management.

Many buildings damaged in an emergency will not meet the threshold to be a 'dangerous building' under the Building Act, so the powers available in relation to dangerous, affected and insanitary buildings will not be available. These buildings do need to be managed for life safety purposes, and the powers under sections 133BQ to 133BX of the Building Act allow for this.

While a designation is in force, the 'business-as-usual' requirements contained in subpart 6 of the Building Act do not apply to a dangerous, affected or insanitary building within the designated area. Councils are not able to use the dangerous buildings powers of the Building Act when an area is under a designation. Note that if, for example, using business as usual powers for a particular building in a designed area is more appropriate, a council can review the designated area to exclude that particular building from it.

Special requirements also apply to demolition of heritage buildings in designated areas.

The exception to this is where a council has determined that a building is dangerous, affected or insanitary prior to the area being designated, and it has already issued the necessary notices or erected hoardings or signs.

[Find information and guidance about designated areas for building management in emergencies](#) – [www.building.govt.nz](http://www.building.govt.nz).



### What the law says:

Section 123B specifies that the provisions of subpart 6 do not apply where a designation for the emergency management of buildings is in place, except for the purposes of:

- an action taken in relation to the building under section 124(2)(a) or (b) before the designation
- a notice issued in relation to the building under section 124(2)(c), or work carried out in accordance with the notice or under section 126, before the designation
- a notice issued in relation to the building under section 124(2)(d) before the designation
- an action in relation to the building for which a warrant has been issued under section 129(2) before the designation.

Sections 133BQ–133BX of the Building Act allow councils to manage buildings in designated areas.



# Glossary of terms

Term	Explanation
<b>Affected building</b>	A building is an affected building for the purposes of the Building 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 Act section 121A)
<b>Assessment</b>	The process through which a council considers and evaluates whether a building is a dangerous, affected or insanitary building as defined by sections 121, 121A and 123 of the Building Act
<b>Building</b>	Has the meaning given to it by sections 8 and 9 of the Building Act
<b>Council</b>	This guidance uses the common term “council” to refer to local authorities. This includes territorial authorities (city and district councils) and unitary authorities, but excludes regional councils
<b>Dangerous building</b>	A building is dangerous for the purposes of the Building 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 (Building Act section 121)
<b>Heritage buildings</b>	A heritage building is a building that is: (i) included on the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or (ii) a building that is included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.
<b>Insanitary building</b>	A building is insanitary for the purposes of the Building 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.



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