

Dangerous, Affected, and Insanitary Buildings Policy 2024

1. Introduction

The Building Act 2004 (the Act) permits territorial authorities to take a local approach in identifying and remedying buildings within its boundaries that fit the definition of dangerous, affected, and insanitary.

Palmerston North City Council (the Council) must adopt a policy to give effect to its legislative function to identify and remedy dangerous, affected, or insanitary buildings under the Act. This is in line with the aims of the Act to regulate building work and standards to ensure that buildings do not endanger the health, safety and wellbeing of the people who use them.

2. Strategic Context

Our vision for our city is [He iti rā, he iti pounamu - Small city benefits, big city ambition](#). Council seeks to fulfil this vision through four goals:

Whāinga 1: He tāone auaha, he tāone tiputipu

Goal 1: An innovative and growing city

Whāinga 2: He tāone whakaihiihi, tapatapahi ana

Goal 2: A creative and exciting city

Whāinga 3: He hāpori tūhonohono, he hāpori haumarū

Goal 3: A connected and safe community

Whāinga 4: He tāone toitū, he tāone manawaroa

Goal 4: A sustainable and resilient city

The Policy contributes to *Whāinga 1: He tāone auaha, he tāone tiputipu - Goal 1: An innovative and growing city*, and specifically to the following outcome, where we want our communities to have:

- A city that fosters pride, and supports the aspirations of people and communities

The Policy contributes to *Whāinga 2: He tāone whakaihiihi, tapatapahi ana - Goal 2: A creative and exciting city*, and specifically to the following outcome, where we want our communities to have:

- Our unique heritage preserved and promoted

The Policy contributes to *Whāinga 3: He hāpori tūhonohono, he hāpori haumarū - Goal 3: A connected and safe community*, and specifically to the following outcomes, where we want our communities to have:

- the support they want to live healthy lives
- access to healthy and affordable housing
- access to safe and accessible community places

The Policy acknowledges the Tiriti partnership the Palmerston North City Council has with Rangitāne o Manawatū. Council staff meet regularly with iwi leaders and aim to ensure that Rangitāne values and perspectives have significant weight in decision-making.

3. Policy Purpose

The purpose of this policy is to:

- Reduce the potential risk posed to residents in the district by dangerous, affected, and insanitary buildings; and
- Provide a clear framework for how Council will manage dangerous, affected, and insanitary buildings, that fits the local context.

4. Policy Objectives

In implementing this policy, Council aims to achieve the following objectives:

- The public are aware that complaints about potential dangerous, affected, and insanitary buildings in the city can be made to the Council.
- Complaints about potential dangerous, affected, and insanitary buildings are responded to promptly by the Council.
- The risk to people from dangerous, affected, and insanitary buildings is mitigated.

5. Principles

This policy has been developed considering the purpose and principles of the Act which seek to ensure that:

- People who use buildings can do so safely without endangering their health
- People who use a building can escape from the building if it is on fire.

6. Guidelines

Definitions

The definitions for the following words are taken from the Building Act 2004 and any subsequent amendments.

Affected:

121A Meaning of affected building

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](#).

Dangerous:

121 Meaning of dangerous building

- (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
 - (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.
- (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 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
 - (b) if the advice is sought, must have due regard to the advice.

Insanitary:

123 Meaning of insanitary building

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.

Identifying dangerous, affected, or insanitary buildings

- (a) On receiving a complaint or information about a building that is potentially dangerous, affected and/ or insanitary, the Council will respond promptly by:
 - informing the owner(s) of the building
 - inspecting the building and site and
 - seeking the advice of Fire and Emergency New Zealand (FENZ) where deemed relevant.

Assessment criteria

- (b) Assessment will be made in accordance with sections 121, 121A or 123 of the Act and the New Zealand Building Code. Assessment may include consideration of:
 - Whether the building is occupied
 - The building use
 - Whether the building is likely to cause injury or death to people
 - Whether conditions present a danger to the health of occupants
 - Potential for damage to other property
 - Whether a fire hazard exists
 - Whether the building is affected by a dangerous building or dangerous dam

Where a building is occupied an assessment of insanitary conditions may include a review of:

- The adequacy of sanitary facilities
 - The adequacy of potable water
 - Evidence or likelihood of moisture penetration
 - If the building is offensive or likely to be injurious to health because of how it is situated or constructed or whether or not it is in a state of disrepair.
- (c) Following the inspection and assessment, and consider, any advice or recommendations received from FENZ, Council will:
- determine whether section 121 (dangerous building), 121A (affected building) and/or 123 (insanitary building) of the Act are satisfied.
 - determine whether section 123A (in relation to only parts of a building being deemed dangerous or insanitary) of the Act applies.
 - determine whether section 123B (in relation to buildings affected by emergency) of the Act applies.

Taking action under the Building Act 2004

- (d) In forming its view as to the extent of the action that is required to be carried out on the building to prevent it from remaining dangerous, affected and/or insanitary, Council may take the following matters into account:
- (i) The size of the building.
 - (ii) The complexity of the building.
 - (iii) The location of the building in relation to other buildings, public places, and natural hazards.
 - (iv) How many people spend time in or in the vicinity of the building.
 - (v) The current or likely future use of the building, including any special traditional and cultural aspects of the current or likely future use.
 - (vi) The expected useful life of the building and any extension of that life.
 - (vii) The reasonable practicality of any work concerned.
 - (viii) Any other matters that Council considers may be relevant, taking into account the particular set of circumstances.
- (e) Council will determine the necessary action in line with the Act which may include requiring building work and/or restricting access to the building, or in extreme cases demolition of the building. Council will also:
- (i) Notify the building owner(s) of the assessment findings;
 - (ii) Where relevant attach the necessary notices to the buildings according to the Act;
 - (iii) Provide copies of notices to the building owner(s) and every person who has an interest in the land, including Hertiage New Zealand if the building has Heritage status;
 - (iv) Contact the owner once a reasonable time has lapsed since the notice was issued so that access to the building can be gained to assess compliance with the notice;
 - (v) Determine if enforcement action should be pursued under the Act if the requirements of the notice are not met; and
 - (vi) Notify Te Whatu Ora – Health New Zealand through the Palmerston North Health Protection Team or other relevant staff when Council has determined a building to be insanitary.

- (f) Where immediate action is required, according to section 129 of the Act, Council will:
 - (i) Take action to recover all cost from the building owner(s).
 - (ii) Inform the building owner(s) that the amount recoverable by the Council will become a charge on the land on which the building is situated.
- (g) All building owners have a right of appeal as defined in the Building Act, which can include applying for a determination from the Ministry of Business Innovation and Employment. That decision can be subject to appeal to the District Court.

Buildings of cultural heritage value

- (h) Buildings that are defined as having cultural heritage value are identified in section 17 of the Palmerston North City Council District Plan, and the definition provided in the Act.
- (i) Council will seek to ensure that any work carried out on a building of cultural heritage value that is determined to be dangerous, affected, or insanitary will not diminish the cultural heritage value of the building, as far as is reasonably practicable.
- (j) Property owners must take all reasonable steps to ensure that the above provision in (i) is achieved.

Recording the status of dangerous, affected, or insanitary buildings

- (k) Any building identified as dangerous, affected or insanitary will have a note placed on Council's property file until the conditions have been remedied.
- (l) In addition, the following information may be placed on any Land Information Memorandum (LIM) and Property Information Memorandum (PIM):
 - (i) A copy of any notices issued;
 - (ii) Copies of any letters sent to the owner, occupier and/or any other person where a building is deemed dangerous or insanitary, and
 - (iii) Any report on how the matter is to be rectified.

7. Monitoring and review

The policy will be monitored through an implementation plan that will be developed following the adoption of the policy and will be approved by the senior leadership team as set out in Council's policy framework. Review will take place every five years, or earlier if requested by Council