

OPOTIKI DISTRICT COUNCIL

POLICY ON DANGEROUS AND INSANITARY BUILDINGS

1 Introduction

1.1 Introduction of the Policy

This policy has been prepared by Council to comply with **Section 131** of The Building Act 2004. Section 131 requires that each Territorial Authority prepares a Policy on Dangerous, and Insanitary Buildings and to have this in place by 31 May 2006.

In preparing this policy Opotiki District Council has chosen to adopt a moderate approach. This is the midway between a totally passive approach and a proactive approach of inspecting the entire stock of buildings.

Opotiki District Council has adopted the moderate approach to coincide with our inspection regime of Building Warrants of Fitness Audits (BWOFA).

2 Aim of Policy

2.1 The aim of this Policy is to;

- a) Improve the control of, and encourage better practice in design and construction.
- b) Reduce the danger to the population caused by Dangerous and Insanitary Buildings.
- c) Establish the approach Council will take in performing its functions under the Act.
- d) The priorities that Council has in performing these functions

2.2 In setting this policy the Council has endeavoured to strike a balance between the threats posed by Dangerous and Insanitary buildings and the broader social and economic issues affecting the community that are involved.

2.3 This policy must be reviewed every 5 years.

3 Definitions

3.1 The relevant definitions arising from The Building Act 2004 are as follows;

Section 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*

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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.

Section 123 Meaning of insanitary building

- (1) *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 it's intended use; or*
 - (d) does not have sanitary facilities that are adequate for it's intended use.*

4 Identifying Dangerous and Insanitary Buildings

Opotiki District Council recognizes that most Dangerous and Insanitary buildings will be identified by complaints received from members of the public and adjoining property owners or through investigations by Police or the Fire Service.

ODC Building Control Officers may become aware of Dangerous and Insanitary Buildings in the day to day performance of their duties. Such buildings will be addressed as required.

4.1 Responses to Complaints

All complaints shall be investigated by ODC Building Control Officers. Each complaint shall in the first instance be graded as to the severity of the problem and the potential for harm to people and property. The time taken to respond to complaints will depend on the risk and will vary from within 24 hours for high risk to within 5 working days for low risk, frequently occurring as public nuisance complaints.

5 Assessing Buildings

Each building complaint will be investigated within 24 hours for high risk to within 5 days for low risk. A report will be prepared for each building and will include a Risk Assessment Rating Matrix (Appendix 1). Upon completion of the checklist the

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complaint shall be categorized according to the level of risk by completing the Risk Rating Matrix. This will provide a level of intervention required along with guidelines and timeframes for remedial work that is required.

The completed report will then be forwarded to the Owner with a Notice of the required work. A copy of the report will be placed on the property file and this will be made available to the public until the matter has been resolved and this has been given in writing to the Owner after which it will be moved to the confidential property file.

6 Taking Action

Opotiki District Council will take action on Dangerous and Insanitary Buildings according to the powers set out in section 124 of the Building Act 2004.

6.1 Approach to Taking Action

- Have its Building Control Officers carry out all initial inspections of Dangerous and Insanitary buildings and complete a risk assessment checklist (appendix 1). This will identify the specific complaint and any risk of injury to people or damage to property. Prepare the report and provide a copy to the Owner.
- In the event of the risk being immediate or to prohibit the use of a Dangerous or Insanitary building Council may either instruct the Owner to erect a hoarding or carry out the required remedial work. Alternatively Council may elect to exercise the powers under section 129 to remove the immediate risk.
- Advise Owners and Occupants of the risk and issue a Dangerous and Insanitary Building Notice stating the requirements to carry out remedial works comply with the Building Code and to the required timeframe.
- Where there is slow progress or failure to commence on any remedial work Council may intervene as permitted under the powers conferred in sections 126 and 129 of the Act.
- In the event of a building having Historical significance either an actual listing or so deemed by Council then advice will be sought from the Historic Places Trust with regards to any intervention directly affecting the building structure.
- With regard to any building of Cultural Significance advice on the action to be taken will be sought from suitably qualified persons.

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- Where the Owner does not meet the stated timeframe or is unable to carry out the work then Council shall obtain a Chief Executives Warrant to carry out such work to remove any immediate danger or fix immediate insanitary conditions.
- Where the Owner does not meet the stated timeframe or is unable to carry out the work then Council shall obtain a District Court Order authorizing Council to carry out such work as required to achieve compliance with the Dangerous and Insanitary Building Notice. Council shall advise the Owner in writing ten (10) days prior to obtaining a Court Order for the work.
- All costs associated with Council undertaking such works shall be recovered from the Owner and this recoverable amount becomes a charge against the land on which the building is situated.
- Opotiki District Council will where deemed appropriate, obtain advice from the New Zealand Fire Service, and such advice shall be given due regard in determining whether a building is dangerous in terms of subsection 1)(b) of the Act.

6.2 Issuing Notices

Any notice required under the Act will be as established and issued as per Section 125.

A Dangerous and Insanitary Building Notice will be served on an Owner either in person or to their last known address as per the Rating database held by Council, or alternatively to their Legal Counsel if known.

As required by section 125 a copy of the notice will be provided to –

- a) The owner of the building;
- b) the occupier/s of the building;
- c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952;
- d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952;
- e) any statutory authority, if the land or building has been classified; and
- f) the New Zealand Historic Places Trust if the building is a heritage building.

The notice if fixed on the building is not invalid should a copy not be given to any or all of the above persons. It will be deemed to have been served on the Owner by way of fixing the Notice upon the building.

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The notice shall clearly set out the work that is to be carried out and the timeframe in which to do so. It will also state as to whether a building consent is required to carry out the work.

The notice shall further state whether it is permitted to use or occupy the building during the time or whether it must remain vacant.

In the event that a building is in such a state as to cause immediate danger to people or property Council may take action prior to consulting with the Owner and such consultation will be carried out as soon as is practicable.

6.3 Consultation with Owners

Opotiki District Council will endeavor in all cases to make contact with the Owner of any affected building. This shall be prior to or at the same time as the issue of a notice complying with sections 124 & 125.

The Owner will be given the opportunity to discuss with Council their circumstances or their future plans for the building and these will be taken into consideration.

Whilst the underlying intent of this policy is the safety of occupants and users of the building and improvement in the health of users, every attempt will be made to consider the impact of the cost of required works against the value of the building. Where it is obvious that remedial work will be such as to place an unreasonable cost burden on the Owner then this will be discussed with the Owner and other alternatives like demolition or temporary hoarding up will be considered.

Where there is no alternative accommodation for the occupants, Council will encourage the Owner and Occupants to work together to secure an acceptable solution.

6.4 Fixing Dangerous and Insanitary Buildings

Upon deciding that a building is Dangerous or Insanitary the notice either placed upon the building or served on the Owner shall state the work that is required to be undertaken and the timeframe for completion. In all cases a building consent will be required and this will allow Council to carry out normal inspections in accordance with the conditions stated in the consent.

The notice will not be lifted until all work has been completed to the satisfaction of Council meaning that it meets the building code and is no longer dangerous or insanitary.

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When the Owner fails to undertake the work or to complete the work within the given timeframe Council can obtain District Court approval to enter the building to carry out the work as stipulated in section 126. This work may include as per section 127 the demolition of the building.

Section 129 of The Building Act 2004 sets out the powers that the Council has in taking action to avoid immediate danger.

6.5 Building Work to Reduce or Remove Danger

When building work is required to reduce or remove the risk of danger to the public Council will discuss with the Owner the most suitable approach. In most cases the use of hoardings or shuttering to a building will be sufficient until the remedial works can be carried out.

In extreme cases or cases where hoardings will not satisfactorily reduce or remove the risk the option of demolition will be adopted.

Council will consider the following when making its decision;

- The occupancy and use of the building.
- Any relevant cultural impacts.
- Any historical issues.
- The surrounding environment and properties.
- The location of the building and type of construction.

6.6 Policy on Dangerous and Insanitary Buildings and Interaction with other provisions of The Building Act 2004

When an Owner applies for a building consent to alter an existing building the Council shall have the ability to deem a building to be either Dangerous or Insanitary if the alterations affect the means of escape from fire, affects the ability for the building to be used by disabled persons or the alterations affect the ability of the building to continue to meet the Building Code. The Council may also use this opportunity to ensure the Owner meets any outstanding Dangerous and Insanitary building notice requirements before the consent is issued or during the consented works.

When applying for a building consent to remedy the work as listed on a Dangerous and Insanitary Building Notice the Council will use the opportunity to obtain compliance with the building code in relation to facilities and access for people with disabilities.

6.7 Recording Dangerous and Insanitary Buildings

All Dangerous and Insanitary buildings shall be recorded the Dangerous and Insanitary Building working file and this file shall be treated as confidential.

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The Dangerous and Insanitary Building file shall have all relevant documents relating to the issued notice whilst work is progressing or until such time as the building is compliant or removed. Once this position has been reached all information will be removed from the working file but shall remain on the confidential file.

Information regarding the Dangerous or Insanitary building shall be made available through a Land Information Memorandum (LIM). For Project Information Memoranda such information will only be provided while the listed works required to remove any danger have yet to be completed.

6.8 Priorities for Action

Priorities for dealing with Dangerous and Insanitary Buildings will be assessed as per the Risk Rating Matrix. Situations that will receive a high risk will be where there is an immediate risk of injury or death.

Civil Defence emergencies will result in the cooperative approach with the CD management team and Council will work in accordance with its Emergency Management Plan.

All other Dangerous or Insanitary Buildings will be dealt with in normal situations as per 6.1 of this policy and action will be taken as is appropriate according to the risk and the situation.

6.9 Dealing with Heritage Buildings

Any known heritage buildings as listed by the Historic Places Trust that become classified as Dangerous or Insanitary Buildings shall require Council to include HPT in the decision making process as to remedial work required. The Historic Places Trust will be contacted prior to any action being taken with the exception of making a building safe through the removal of access to the Building.

In the event of a listed building being issued a Dangerous or Insanitary Building Notice a copy shall be sent to the HPT.

Where a building is not listed but may have historical significance the Historic Places Trust shall be invited to assist with recommendations as to how to remedy any dangerous or Insanitary buildings in keeping with the historical features and to ensure public safety.

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Building Risk Assessment Dangerous and Insanitary Buildings

Address.....

Lot No:..... DPS No:..... Building Consent No:.....

<u>Risk Factor</u>	<u>Rating (H/L)</u>	<u>Score</u>
<i>Users</i>		
1. What is the maximum number of users at any one any one time	100 + people (H) = 10 Less than 100 people (L) = 7	<input type="text"/>
2. What is the predominant age group of the building users?	Children or Infants (H) = 10 Adults (L) = 3	<input type="text"/>
3. What is the general capability of the building users?	Mentally handicapped/immobile (H) = 10 Physically handicapped but mobile (H) = 6 Normal (L) = 3	<input type="text"/>
<i>Usage of the building</i>		
4. What is the sleeping activity rating for the building in terms of the building code?	Hospitals Care Institutions, Motels, Hotels, Hostels, Boarding houses, Boarding schools, Halls (H) = 10 Multi-unit dwellings, flats, apartments + Residential accommodation above shops (L) = 3	<input type="text"/>
5. Is the building used for any of the following activities?		<input type="text"/>
a. Education	Children (H) = 10 Adults (L) = 5	
b. Old people's home	Geriatric (H) = 10 Mobile (L) = 5	
c. Hospital (private or public)	Bedridden (H) = 10 Mobile (L) = 8	
d. Residential institution	Bedridden (H) = 10 Mobile (L) = 5	
e. Place of Assembly	>100 people (H) = 10 <100 (L) = 3	
f. Hotels and motels	>20 people (H) = 7 <5 (L) = 3	
g. Backpackers and Home stays	>20 people (H) = 9 <5 (L) = 5	
h. Attached multi-unit buildings	>5 apartments (H) = 7 3-5 (L) = 5	
6. What is the crowd, working, business or storage activity for the building in terms of the building code?	Manufacturing of combustible materials, cinemas, schools, colleges, libraries, restaurants (when occupant loads exceed 100)(H) = 10 Manufacturing non-combustible materials, pack houses, banks, hairdressers, dentists, doctors, police stations, professional services, Cinemas, churches, court rooms, halls, day care centres, gyms, museums, eating places (when occupant loads up to 100) (L) = 3	<input type="text"/>
<i>Building Characteristics</i>		
7. Does the building have common walls with others?	>1 (H) = 5 <1 (L) = 3	<input type="text"/>
8. How many storeys does the building have? 1 2 3 4 5 6 7 8 9 includes basements	2 = 5 add 5 for every subsequent storey	<input type="text"/>

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9. Any historic clarification or significance?	Yes = 2	<input type="checkbox"/>
10. Is the building in the inner city, in a known geothermal area or previous seismic activity?	Yes (H) = 10	<input type="checkbox"/>
11. What is the age and condition of the building? e.g. Pre 1940 = 10 Pre 1965=8	Assign score 1-10 accordingly	<input type="checkbox"/>
12. Are there any other factors to be considered? e.g. Parapets, verandahs, attachments or adornments	Assign score 1-10 accordingly	<input type="checkbox"/>
Total Score (out of approx 100)		<input type="checkbox"/>
Note: < 40 Low Risk 40-60 = Moderate Risk) >60 = High Risk)		