

Grey District Council Dangerous, Affected and Insanitary Buildings Policy

This policy was adopted by the Grey District Council on 14 February 2011 and amended on 13 May 2013 and again on 11 February 2019 following consideration of submissions received as part of the Special Consultative procedure

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1. Introduction and Background

Section 131 of the Building Act, 2004 required territorial authorities to adopt a policy on earthquake-prone, dangerous and insanitary buildings by 31 May 2006.

This policy has been amended to exclude earthquake-prone buildings as required by the Building (Earthquake-prone Buildings) Amendment Act 2016 and include affected buildings as required by the Building Amendment Act 2013.

This document sets out the policy adopted by Grey District Council in accordance with the requirements of the Building Act 2004.

The policy is required to state:

1. The approach that the Grey District Council will take in performing its functions under the Building Act 2004;
2. Grey District Council's priorities in performing those functions; and
3. How the policy will apply to heritage buildings.

Section 132(4) requires "A territorial authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years."

In preparing this policy, Grey District Council has made use of the Department of Building and Housing's guidance document and has also consulted policies prepared by a number of other councils.

This policy shall come into force on 14 February 2011 and any subsequent amendment or review, on the date of its confirmation by Council.

2. Building Act Principles

Section 4 of the Building Act lays down the principles to be applied in performing functions or duties or exercising powers under the Act. The sub clauses appropriate to this policy are as follows.

- (2) *"In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:*
- a) *when dealing with any matter relating to 1 or more household units*
 - (i) *the role that household units play in the lives of the people who use them, and the importance of —*
 - A) *the building code as it relates to household units; and*
 - B) *the need to ensure that household units comply with the building code:*
 - (ii) *the need to ensure that maintenance requirements of household units are reasonable:*
 - (iii) *the desirability of ensuring that owners of household units are aware of the maintenance requirements of their household units:*
 - b) *the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimised:*
 - (c) *the importance of ensuring that each building is durable for its intended use:*
 - (d) *the importance of recognising any special traditional and cultural aspects of the intended use of a building:*
 - (e) *the costs of a building (including maintenance) over the whole of its life:*
 - (f) *the importance of standards of building design and construction in achieving compliance with the building code:*
 - (g) *the importance of allowing for continuing innovation in methods of building design and construction:*

- (h) *the reasonable expectations of a person who is authorised by law to enter a building to undertake rescue operations or firefighting to be protected from injury or illness when doing so:*
- (i) *the need to provide protection to limit the extent and effects of the spread of fire, particularly with regard to —*
 - (i) *household units (whether on the same land or on other property); and*
 - (ii) *other property:*
- (j) *the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building:*
- (l) *the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value.”*

3. Definitions of Buildings Covered by this Policy

The definitions of dangerous, affected and insanitary buildings are set out in Sections 121, 121A and 123 of the Building Act 2004 as follows.

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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”*

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.”*

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.”*

4. Overall Approach

4.1 Policy Principles

Grey District Council has noted that provisions of the Building Act 2004 in regard to dangerous, affected and insanitary buildings reflect the government’s broader concern with the health and life safety of the public in buildings.

Grey District Council is committed to ensuring that Grey District is a safe and healthy place to live and work while also ensuring that the District continues to develop and thrive. This policy supports the following outcomes from the Grey District Long Term Community Outcomes Plan:

- **Outcome Two** – A thriving, resilient and innovative economy creating opportunities for growth and employment.
- **Outcome Five** – A District that is a safe place to live.

Grey District Council has also noted that the development of a dangerous, affected and insanitary building policy is up to each territorial authority to determine and has responded accordingly.

This policy has been developed after due consultation with Grey District Council ratepayers and stakeholders in accordance with section 83 of the Local Government Act 2002.

4.2 District Characteristics

Grey District and the West Coast in general have developed on a boom/bust cycle over the past 150 years. In boom times, the population has expanded substantially over a short space of time, with new buildings constructed according to the standards and styles of the period. In the alternating bust periods, the population has declined as significantly and quickly and settlements have, on occasion, been abandoned. During periods of economic downturn the tendency has been to limit building maintenance to essentials at best, leading to a gradual degradation in the state of some building stock.

Local buildings comprise a range of types and ages with construction techniques ranging from wood and unreinforced masonry buildings to a few modern multi-storey steel and concrete buildings. The great majority of buildings are one or two-storey only. Much of the district's housing stock was constructed in the first half of the twentieth century, as were the majority of the commercial buildings.

Following strong economic times with a period of steady growth driven by new investment in mining, dairying, tourism and other ventures, global economic factors have undermined our economy. Average incomes for the West Coast are significantly lower than the rest of New Zealand. In late 2005, Housing New Zealand began the West Coast Sub-Standard Housing Project in recognition that the West Coast region contains some of the poorest housing stock in the country.

In developing this policy, the Grey District Council must balance the need to protect public health and safety against the economic implications of requiring significant remedial building work and the community's desire to protect historic structures and the West Coast heritage.

4.3 Enforcement

Nothing in this policy shall override any ability to take enforcement action under the Building Act 2004, where such action is considered necessary. Such action may include, but is not limited to, issuing Notices and taking any other action under Sections 124 – 130 and issuing Infringement Notices or instigating prosecution.

Enforcement action is likely to occur if the strategies in this Policy have failed to produce results in that the risk has not been removed or reduced, or if the risk is such that immediate action is required.

5. Dangerous, Affected and Insanitary Buildings Policy

5.1 Policy Approach

Conversions of existing buildings, lack of maintenance, lack of appropriate facilities, overcrowding and un-consented alterations can cause serious health and safety problems.

The failure to obtain a building consent or the use of buildings for unauthorised purposes can pose a danger to the occupants as well as users. Dangers may include danger of collapse, or inadequate fire protection or means of escape.

The development of the New Zealand Building Code and associated standards creates, over time, an effective raising of the bar on the standards which buildings must meet. Existing buildings must be maintained appropriately in order to continue to meet standards.

The Council is actively involved in educating the public on Building Act matters with a view to encourage owners to obtain building consent where necessary. Council currently follows the NZ Society of Local Government Managers Legal Guidance Documents in initiating enforcement action under the Building Act when dealing with dangerous, affected or insanitary buildings. This is expected to provide a strong message to the public that Council is taking building safety matters seriously. Such corrective action is likely to have a deterrent effect on those building owners who fail to maintain their buildings in a safe or sanitary condition.

Notices issued by the Territorial Authority pursuant to Section 124 shall be signed by the Chief Executive Officer or his/her Deputy.

5.2 Identifying Dangerous, Affected or Insanitary Buildings

The Council will identify potentially dangerous, affected or insanitary buildings on the basis of:

1. Complaints from members of the public.
2. Advice received from Council staff on the condition of buildings inspected from time to time.
3. Complaints or advice from other agencies (eg local health providers, NZ Fire Service, Police etc).
4. Observation of Council staff in the vicinity of the building for purposes other than inspection of that building.

5.3 Assessment/Prioritisation Criteria

The Council will assess dangerous, affected or insanitary buildings in accordance with s121(1), s121A or s123 of the Act as appropriate and in terms of the level of risk to public health or safety that is presented.

The Council will give priority to buildings that have been determined to present such a high level of risk as to warrant immediate action to remove the risk.

Options for such immediate action include:

- Prohibiting any person from occupying or using the building;
- If necessary, securing the building to prevent entry until such time as remedial action can be taken;
- Undertaking remedial action under s129 of the Building Act should the owner.

Note that in the case of insanitary buildings, the Council reserves the right to use its powers available under s34 of the Health Act 1956.

Where the Council undertakes remedial action under either s129 of the Building Act or s34 of the Health Act, costs will be recoverable from the building owner(s) as provided for in the relevant legislation.

Buildings that are determined to present a risk which is not immediate will be subject to the minimum timeframes for reduction or removal of the danger (being not less than 10 days) as set out in s124(1) (c) of the Act.

5.4 Investigation and Enforcement Process

The Council will:

1. Respond to and investigate all building complaints received.
2. Identify from these investigations any buildings that are dangerous, affected or insanitary.

3. Assess the level of risk presented by the building and, if required, take immediate action.
4. Inform the owner and occupier of the building to take action to reduce or remove the danger or insanitary condition, as required by s124 and s125 of the Act.
5. Liaise with the New Zealand Fire Service when Council deems it appropriate, in accordance with s121(2) of the Act.

“For the purpose of determining whether a building is dangerous or affected in terms of s121 subsection (1) (b) or s121A, a territorial authority-

(a) May seek advice from members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and

(b) If the advice is sought, must have due regard to the advice.”

6. Where the building is a heritage building listed in Council’s District Plan, a Marae or building listed in the New Zealand Historic Places Register, the New Zealand Historic Places Trust shall also be advised and consulted.

If the building is found to be dangerous, affected or insanitary but does not present an immediate risk the Council will:

7. Attach written notice to the building requiring work to be carried out on the building, within a time stated in the notice being not less than 10 days, to reduce or remove the danger or insanitary condition.
8. Give copies of that notice to the building owner, occupier 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 registered heritage building.
9. Contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with.
10. Where the danger or insanitary state is the result of non-consented building work, the owner will formally be requested to provide an explanation as to how the work occurred and who carried it out and under whose instructions.
11. Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as any other non-compliance matters.

All owners have a right of objection as defined in the Act, which can include applying to the Department of Building and Housing for a determination under s 177(e) of the Act.

5.5 Interaction between this Policy and Related Sections of the Act

Section 41 of the Act provides for situations where, because of the urgency of the work to be done, it is not practical to apply for a building consent before the work is undertaken.

In cases where a building is assessed as being immediately dangerous the Council may not require a building consent to be obtained for any building work considered to be immediately necessary to remove the danger. However, prior to any action being taken it is essential that building owners provide a written proposal of any proposed works to the Council.

5.6 Record Keeping

Any buildings identified as being dangerous, affected or insanitary will have a requisition placed on the Council’s records for the property on which the building is situated until the danger or insanitary condition is remedied.

In addition, the following information will be placed on any Land Information Memorandum (LIM):

- Copies of any notices issued where a building is dangerous, affected or insanitary and requires evacuation of the building.
- Copies of any letters sent to the owner, occupier and any other person where a building is dangerous, affected or insanitary.
- Copies of any notices given under section 124(1) which identifies the work to be carried out on a building and the timeframe given to reduce or remove the danger or insanitary condition.

6. Heritage Buildings

Heritage buildings are those listed in Council's District Plan Schedule, Marae and buildings listed in the New Zealand Historic Places Trust Register and the Building Act recognises that special provision may be made for such buildings.

Heritage buildings will be assessed in the same manner as other dangerous, affected or insanitary buildings and as per ss121-123 of the Act and discussions will be entered into with the owner and the New Zealand Historic Places Trust (pursuant to s125(2)(f) where the building is contained in their Register) to identify a mutually acceptable way forward which meets heritage objectives and Building Act requirements as near as is reasonably practicable in the circumstances.

Council will serve notices requiring upgrading or demolition within specified timeframes, in consultation with building owners. A copy of any notice issued under s124 of the Act will be sent to the Historic Places Trust in the case of all heritage buildings.

Any upgrading work must take into account the principles of the International Council on Monuments and Sites (ICOMOS) NZ Charter, any advice from Council's heritage staff or other heritage professionals or organisations, where applicable, and should be designed to involve minimal loss to heritage fabric.

Waivers of modifications of the building code will be considered on a case by case basis. Methods that respect heritage values will be supported.

Demolition is an option of last resort for heritage buildings.

7. Objections

In the first instance, building owners or other directly affected parties who wish to object to a building being declared dangerous, affected or insanitary should record their objections in writing to the CEO of the Council. The CEO will undertake, within the timescales specified in the Council's policy on written communications, an investigation of the circumstances of the building and the reasons behind the declaration. The outcome of this investigation will be provided to the objector(s).

Priority will be given to objections where the building has been declared to be of such a risk as to require immediate remedial action so that no undue delays are caused.

7.1 Determinations

Building owners and a variety of other interested parties can formally object to the Council's decision through the right to apply to the Chief Executive of the Department of Building and Housing for a determination. Determinations can be applied for concerning the Council's decisions to issue or not issue a consent or code compliance certificate, or to exercise its powers concerning dangerous, affected or insanitary buildings.

Sections 176 – 190 of the Act lay out the requirements for determinations.

8. Economic Impact of Policy

The economic impact of this policy is assessed as being minor, since there are relatively few such issues each year.

9. Lifetime of Policy

This policy shall be reviewed within five years.