

**POLICY:** **DANGEROUS AND INSANITARY BUILDINGS**

**GROUP RESPONSIBLE:** Regulatory Services

**DATE APPROVED:** 22/4/99

**DATE AMENDED:** 31/5/06

**FILE NO:** 30/1/1/1, 300/40/4/2

**POLICY DETAIL:**

**1. INTRODUCTION**

**1.1 Background**

Section 131 of the New Zealand Building Act 2004 requires territorial authorities to adopt a policy on dangerous and insanitary buildings by 31 May 2006. The policy is required to state:

- The approach that the Southland District Council will take in performing its functions under Section 131 of the New Zealand Building Act 2004.
- Southland District Council's priorities in performing those functions.
- How the policy will apply to heritage buildings.

The definition for dangerous and insanitary buildings are set out under Section 121 and Section 123 respectively of the New Zealand Building Act 2004. These are:

**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
    - (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.

- (2) For the purposes of determining whether a building is dangerous in terms of subsection (1) (b), 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 advice is sought, must have due regard to that advice.

#### 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 its intended use; or
  - (d) Does not have sanitary facilities that are adequate for its intended use.

This document sets out the policy proposed by the Southland District Council in accordance with the requirements of the New Zealand Building Act 2004. In developing and adopting this dangerous-insanitary building policy, the Southland District Council has followed the consultative procedures set out in Section 83 of the Local Government Act 2002.

Section 132 of the New Zealand Building Act 2004 requires the policy to be reviewed within five years of being adopted and then at five yearly intervals with any replacement or amendment being subject to the consultative procedures of the Local Government Act.

### **1.2 Policy Principles**

The Southland District Council acknowledges there are situations that arise from time to time across the District where buildings have become dangerous/insanitary for various reasons including neglect, inadequate maintenance, fire damage or through non-compliance with the Building Code.

In such situations, Council's first approach will to endeavour to negotiate a resolution with the building owner, however where this fails or an immediate hazard exists Council will take appropriate action under the provisions of Sections 124, 125, 126, 127, 128, 129 and 130 of the New Zealand Building Act to mitigate the dangerous/insanitary conditions.

### **1.3 Social, Environmental, Economic and Cultural Impact of Policy**

In adopting a proactive approach to policy in respect to dangerous/insanitary buildings, the Southland District Council will have a positive influence in reducing the incidence

of neglected, inadequate maintained, fire damaged or non-compliant buildings impacting on the community.

In doing so the principles of the Local Government Act are addressed in that:

- Cultural issues are considered in consultation with the Historic Places Trust for situations relating to heritage buildings.
- Negative environmental effects resulting from dangerous/insanitary conditions are addressed.
- Amenity issues concerning neighbouring property owners are minimised.
- Social issues are influenced by the removal of potential sites of illegal occupation and infestation of vermin.

## **2. POLICY PROCESS**

### **2.1 Overall Approach**

The Southland District Council will:

- Be proactive in responding to situations where dangerous/insanitary buildings are identified.
- Where a potentially dangerous/insanitary building is identified an inspection will be undertaken by Council's Building Control staff.
- On reporting back, consultation with the Manager Building Control and direction from the Group Manager shall reach a decision as to whether the building is deemed to be dangerous/insanitary in line with the procedural flow chart/process document.

Where deemed necessary expert opinion is to be sought on whether the situation is dangerous/insanitary from in-house or external expertise. This could include Environmental Health, Dangerous Goods/HAZNO, CP Register Engineer, New Zealand Fire Service, Occupational Safety and Health, Ministry of Health or other sources of expert advice.

- Where a building is deemed to be dangerous/insanitary the first approach will to endeavour to negotiate a solution with the building owner, however where this fails or an immediate hazard exists Council will take appropriate action under the provisions of Sections 124, 125, 126, 127, 128, 129 and 130 of the New Zealand Building Act to mitigate the dangerous/insanitary conditions.
- Where it is determined immediate action is necessary to mitigate a dangerous/insanitary situation, Council reserves the right to appoint any contractor it deems competent to undertake the work.
- Where Council is forced to take action to mitigate a dangerous/insanitary situation, all costs incurred including any work necessary are to be recovered from the building owner.

#### **Note:**

Initially the Building Control Business Unit will charge travel, time, administration and other incidental costs, plus legal costs and the work itself back to Council through the existing "Internal Charging" provisions. Costs for

which there is provisions to recover under the Building Act will then be recovered from the building owner by Council.

- Heritage buildings will be assessed in the same way as other potentially dangerous/insanitary buildings and negotiation held with the owners and the Historic Places Trust to identify a mutually acceptable way forward. Although special effort will be made to meet heritage objectives the life safety and wellbeing of the buildings users/general public will take priority over heritage provisions where deemed necessary.

## **2.2 Interaction between Dangerous/Insanitary Prone Building Policy and the New Zealand Building Act**

The following sections of the New Zealand Building Act could initiate action under Council policy relating to dangerous/insanitary buildings:

- Section 96 Certificate of Acceptance.
- Section 108 Annual Building Warrant of Fitness.
- Section 112 Alteration to an Existing Building.
- Section 115 Change of Use.
- Section 122 Meaning of an Earthquake Quake-prone Building.
- Sections 124-130 Powers of Territorial Authorities in Respect to Dangerous, Earthquake-prone, or Insanitary Buildings.
- Section 164 Notice to Fix.
- Section 216 (e) Complaints received by a Territorial Authority.

## **3. HERITAGE BUILDINGS**

### **3.1 Special Considerations and Constraints**

The Southland District Council is concerned that measures are put in place to ensure identified heritage buildings within the District (72 approx) are maintained in a safe and sanitary conditioned.

Where deficiencies are identified relating to heritage buildings they will be assessed in the same way as other potentially dangerous/insanitary buildings and negotiation held with the owners and the Historic Places Trust to identify a mutually acceptable way forward. Although special effort will be made to meet heritage objectives the buildings performance in terms of ensuring its users/general publics safety and wellbeing will take priority over heritage considerations where necessary.

Where remedial/upgrade work can not be negotiated with the owner of a heritage building within what Council deems to be a satisfactory timeframe in terms of risk to the users/general publics safety/wellbeing, notice will be served under Section 124 of the New Zealand Building Act to remedy the situation.

In cases likely to be of particular public concern consultation will be included with the relevant Community Boards of the District.

### 3.2 SDC District Plan Heritage Building, Places and Sites Provisions

With respect to those heritage classification buildings:

- Redecoration and restoration of any original features or details are permitted provided it is carried out in the same manner, design and with similar materials to those originally used and does not detract from the character of the item that is being protected.

Reason:

Works that are in keeping with or are carried out to enhance the character of any heritage buildings should be encouraged and accordingly resource consent is not seen as necessary.

- Any alterations or additions proposed will firstly be considered as a non-notified controlled activity provided the proposal replicates with the original design, materials, colour and will not adversely affect the special character of the registered item. Council shall consult with the New Zealand Historic Places Trust and if satisfied these conditions are met, the application shall be approved. If not satisfied, the application will be notified as a discretionary resource consent.

Reason:

This method allows a certain degree of flexibility with the development of registered items whilst still ensuring any development is in keeping with the character of the item protected.

- Works which may modify, destroy or detract from the character of the registered item shall require discretionary resource consent which Council shall both publicly notify and serve notice upon the New Zealand Historic Places Trust and such other interested groups it sees fit.

Reason:

There may well be a valid reason why a heritage building needs to be altered or demolished (for example, public safety) and consequently the discretionary resource consent procedure enables Council to relax the standards when unique circumstances can be shown.

The Ward Member, Community Board or Community Development Area Committee be informed of any complaints received in respect of dangerous or insanitary buildings and that the cost of any response be met from the Community Board and/or Community Development Area Committee and/or Ward Account, as is appropriate, providing that the local cost be capped at a maximum of \$1,000 (exclusive of GST) per property, with any subsequent action being funded by the District.