

Policies on Dangerous Buildings & Insanitary Buildings

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PART 1 – Dangerous Buildings

1.1 Background

The Queenstown Lakes District Council is required to adopt a policy on dangerous buildings, as a requirement of section 131 of the Building Act 2004.

Although Council already manages the situation relating to dangerous buildings when they are detected or reported, the requirement to have a formal policy is entirely new.

The definition of a dangerous building is set out in s121 (1) of the Act:

*“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.”*

1.1 Policy Objectives

The objective of this policy is to fulfil Council's responsibilities with respect to dangerous buildings as defined within the Building Act 2004.

Council's responsibility is to ensure that when dangerous building conditions are found, that the danger is appropriately reduced or removed in an acceptable timeframe.

The overall objective is to ensure that people who use buildings can do so safely and without endangering their health.

This policy applies to all buildings, even though a code compliance certificate may have been issued previously, as the current use and/or maintenance of the building can impact on the safety of occupants.

1.2 Identifying dangerous buildings

There is both an active and reactive approach which will be taken with regard to identifying dangerous buildings.

- a) Complaints and queries from members of the public or building occupants would lead to investigation being required; and
- b) Observations through normal duties of Council Officers which indicate a potentially dangerous building.

The Council will:

1. Respond to and investigate all building complaints received;

2. Identify from these investigations any buildings that are dangerous;
3. Inform the owner and occupier of the building to take action to reduce or remove the danger, as required by s124 and s125 of the Building Act 2004;
4. Liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with s121 (2) of the Building Act 2004.

1.3 Assessment Criteria

The Council will assess dangerous buildings in accordance with s121 (1) of the Building Act 2004:

“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.”

1.4 Taking Action on dangerous buildings

In accordance with s124 and s125 of the Building Act 2004 the Council will:

- Advise and liaise with the owner(s) of buildings; and
- May request a written report on the building from the N Z Fire Service.

If it is found that the building is dangerous, Council will:

- Attach a written notice to the building requiring work to be carried out on the building, within the time stated in the notice and not being less than 10 days, to reduce or remove the danger;
- Give copies of the 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 heritage building);
- 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;
- Where the danger is the result of non-consented building work a Notice to Fix will be issued under s124 of the Building Act 2004;

- If the Dangerous Building notice requirements are not met within a reasonable and specified period of time, Council will pursue enforcement action under the Building Act 2004 in accordance with Council's policy on enforcement.

If the building is considered to be immediately dangerous the Council will:

- Take any action necessary to remove the danger (this may include prohibiting persons using or occupying the building through erecting a barrier or hoarding, or even demolition of all or part of the building); and
- Take action to recover costs from the owner(s) if the Council must undertake works to remove the danger.
- The owner(s) will also be informed that the amount recoverable by Council will become a charge on the land on which the building is situated.

Owners have the right of appeal as defined in the Building Act 2004. This can include applying to the Department of Building and Housing for a determination under s177.

1.6 The dangerous buildings policy and the Building Act 2004

Under section 41: Building Consent not Required in Certain Cases

Where a building is assessed as being immediately dangerous the Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any action being taken Council will require a discussion with owners, and a written scope of the work.

1.7 Recording of buildings defined as dangerous

Where a building is identified as dangerous, there will be a notice placed on the building file for the property where the building is situated. This notice will remain on the file, along with any further information showing the danger is remedied.

In addition, this same information will be placed on any LIM produced for the property

1.8 Economic impact of policy

The volume of buildings defined as being dangerous in any one year, (with the exception of a significant event such as flooding or an earthquake) is relatively minor.

It is therefore expected that the economic impact of this policy is negligible.

There is effectively very little change to the manner in which dangerous building occurrences have been treated in the past, and this process is primarily a documentation of the policy.

1.9 Access to dangerous building information

Information concerning dangerous buildings will be contained on the relevant building property file held by Council, and will be provided on any LIM produced for that land.

In granting access to information concerning dangerous buildings, the Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

1.10 Priorities

Council will act on buildings deemed to be immediately dangerous as a matter of urgency. In these circumstances immediate action may be required to remove the danger and could include prohibiting any person occupying or using the building and where needed boarding the building up to prevent entry, or erecting a suitable barrier.

Buildings that are determined to be dangerous, but not immediately dangerous, will be subject to the minimum timeframes for reduction or removal of the danger (i.e. not less than 10 days) as set out in s124(1)(c) of the Building Act 2004.

1.11 Heritage Buildings

Heritage buildings will not be given unilateral dispensation under this policy but in circumstances where an assessed risk is minor, where no accidents are known to have occurred in the past as a result, and where mitigation or full compliance would result in significant negative impacts to the heritage value, innovative non-damaging approaches may be accepted where these reasonably mitigate the risk.

In cases where compliance with any aspect of the Act would so damage the attributes of a historic place to the extent that its very role is compromised then case-by-case consideration of a dispensation or waiver may be negotiated by the Council.

Where a dangerous building notice is issued for a heritage building a copy of the notice will be sent to the New Zealand Historic Places Trust as required by s125 (2) (f) of the Building Act 2004.

Part 2 Insanitary Buildings

2.1 Background

The Queenstown Lakes District Council is required to adopt a policy on Insanitary buildings, as a requirement of section 131 of the Building Act 2004.

Although Council already manages the situation relating to insanitary buildings when they are detected or reported, the requirement to have a formal policy is entirely new.

The definition of an insanitary building is set out in s123 of the Act:

“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.”

The provisions of the Act with respect to insanitary buildings reflect the Government's broader concern with the health and safety of people occupying buildings that may be considered to be insanitary.

2.2 Policy Objectives

The objective of this policy is to fulfill Council's responsibilities with respect to Insanitary buildings as defined within the Building Act 2004

Council's responsibility is to ensure that when insanitary building conditions are found, that appropriate measures are undertaken to remedy the conditions within an acceptable timeframe

The overall objective is to ensure that people who use buildings can do so safely and without endangering their health

This policy applies to all buildings, even though a code compliance certificate may have been issued previously, as the current use and/or maintenance of the building can impact on the safety of occupants.

2.3 Identifying Insanitary buildings

There is both an active and reactive approach which will be taken with regard to identifying insanitary buildings.

- a) Complaints and queries from members of the public or building occupants would lead to investigation being required

- b) Observations through normal duties of Council Officers which indicate a potentially insanitary building

The Council will:

- 1) Respond to and Investigate all building complaints received;
- 2) Identify from these investigations any buildings considered to be insanitary;
- 3) Inform the owner(s) of the action that is necessary to prevent the building from remaining insanitary;
- 4) Liaise with the Council's Environmental Health Officers, and other appropriate support agencies.

2.4 Assessment criteria

The Council will assess insanitary buildings in accordance with s123 of the Building Act 2004,

“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.”

The Council will determine:

- if the building is occupied;
- what the building is currently being used for, and it's legally established use
- whether the insanitary conditions pose a risk to the health of any occupants, or other people.

The items to be considered include:

- adequacy of available sanitary facilities;
- adequacy and availability of potable water;
- potential for moisture penetration, taking into account construction materials and any defects in roof and walls;

In accordance with the Building Code the following clauses are particularly relevant:

- E2 (External Moisture)
- F1 (Hazardous Agents on Site)
- F2 (hazardous Building Materials)
- G1 (Water Supplies)
- G1 (Personal Hygiene)
- H1 (Energy Efficiency).

2.5 Taking action on insanitary buildings

The Council will:

- Advise and work with the owner(s) of the buildings identified as being potentially insanitary.

Where the building is found to be insanitary, Council will:

- Attach written notice to the building requiring work to be carried out on the building, with a time stated on the notice that is not less than 10 working days, to prevent the building from remaining insanitary;
- Give copies of the notice to the building owner(s), occupier, and every person who has an interest in the land, or is claiming an interest in the land, (as well as the N Z Historic Places Trust, if the building is a heritage building);
- Contact the owner(s) at the end of the time period set down in the notice to gain access to the building and determine whether the notice has been complied with;
- Determine if enforcement action should be pursued under the Act if the requirements of the notice have not been met, in accordance with Council's policy on enforcement

Where Council considers that immediate action is required to fix insanitary conditions the Council will:

- Take action necessary to remedy those insanitary conditions (this may include prohibiting persons using or occupying the building, through erecting a barrier or hoarding); and
- Take action to recover costs from the owner(s) if the Council has had to undertake works to address the insanitary conditions;
- The owner(s) will also be informed that the amount recoverable by the Council will become a charge on the land on which the building is situated.

All owners have a right of appeal as defined in the Act. This can include applying to the Department of Building and Housing for a determination under s 177 of the Building Act 2004.

2.6 The Insanitary building policy and the Building Act 2004.

Under section 41: Building Consent not Required in Certain Cases

Where a building is assessed as being insanitary, the Council may not require that a building consent be obtained for any of the immediately necessary building work to remedy the situation. However, prior to any action being taken Council will require a discussion with owners, and a written scope of the work.

2.7 Recording of Insanitary buildings

Where a building is identified as insanitary, there will be a notice placed on the building file for the property where the building is situated. This notice will remain on the file, along with any further information showing the insanitary conditions have been remedied.

In addition, this same information will be placed on any LIM produced for the property.

In granting access to information concerning insanitary buildings, the Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

2.8 Economic impact of policy

The volume of buildings defined as being insanitary in any one year, is relatively minor.

It is therefore expected that the economic impact of this policy is negligible.

There is effectively very little change to the manner in which insanitary buildings have been treated in the past, and this process is primarily a documentation of the policy.

2.9 Heritage Buildings

Heritage buildings will not be given unilateral dispensation under this policy but in circumstances where an assessed risk is minor and where mitigation or full compliance would result in significant negative impacts to the heritage value, innovative non-damaging approaches may be accepted where these reasonably mitigate the risk.

In cases where compliance with any aspect of the Act would so damage the attributes of a historic place to the extent that its very role is compromised then case-by-case consideration of a dispensation or waiver may be negotiated by the Council.

Where an insanitary building notice is issued for a heritage building a copy of the notice will be sent to the NZ Historic Places Trust as required by s125 (2) (f) of the Building Act 2004.