



Dangerous, Affected and Insanitary Buildings Policy

1 September 2024





Dangerous, Affected and Insanitary Buildings Policy

Introduction

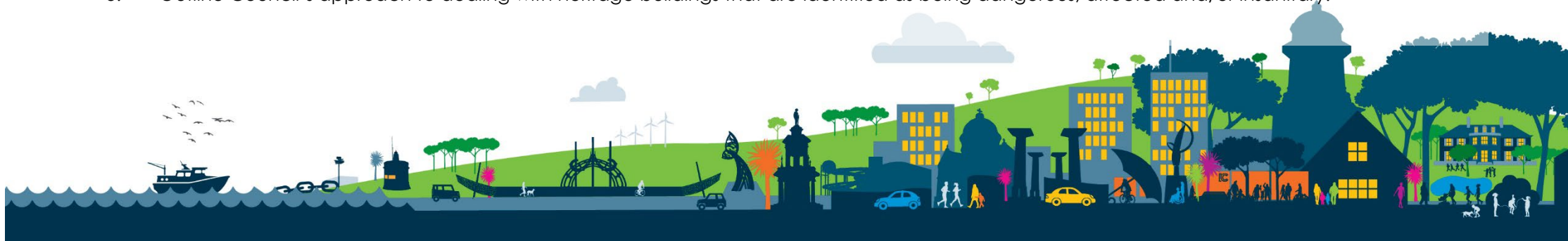
This policy is developed under section 131 of the Building Act 2004 (the Act) which requires Council to have a policy on dangerous, affected and insanitary buildings. This policy aims to reduce the risk of injury, death, ill health or damage within Invercargill City District by identifying and managing dangerous, affected and insanitary buildings. It outlines Council's approach to administration of its responsibility under the Act when responding to complaints received on dangerous, affected and/ or insanitary buildings, in a fair and reasonable manner.

This policy is reviewed every 5 years using the special consultative procedures under section 83 of the Local Government Act 2002. A copy of this policy is sent to the Ministry of Business, Innovation and Employment.

Purpose

The purpose of this policy is to:

1. Discharge the Council's responsibilities under the Act that relate to dangerous, affected and insanitary buildings.
2. Outline the Council's approach to identifying dangerous, affected or insanitary buildings, the powers it can exercise when such buildings are found, and how it will work with owners to prevent buildings from remaining dangerous or insanitary, particularly where a dangerous building is impacting or potentially impacting another affected building, and
3. Outline Council's approach to dealing with heritage buildings that are identified as being dangerous, affected and/or insanitary.



Scope

This policy applies to all buildings within Invercargill City District.

The Policy sets out:

1. the approach that the Council will take in performing its functions under Part 2 of the Act,
2. Council's priorities in performing those functions, and
3. Council's approach to dangerous, affected and insanitary heritage buildings.

This policy does not apply to earthquake prone buildings.

Definitions

The Act: means the Building Act 2004.

Affected building: means a building that is adjacent to, adjoining or nearby a dangerous and/ or insanitary building.

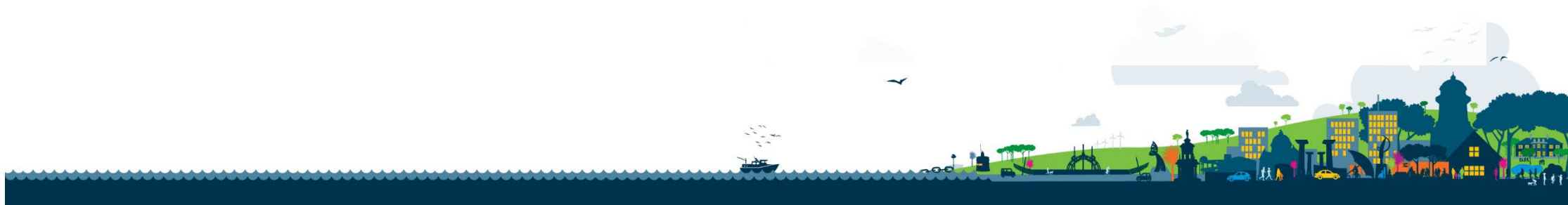
Council: means Invercargill City Council.

Dangerous building: means building in the ordinary course of events (excluding the occurrence of an earthquake), which is likely to cause:

- a) Injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or
- b) Damage to other property; or
- c) In the event of fire, injury or death to any persons in the building or to persons on other property is likely.

Heritage building: means Heritage buildings as defined under the Buildings Act 2004 and buildings that are identified in APP3 – Appendix 3 Heritage Record of Council's operative District Plan.

Invercargill City District: means all the area covered by the Invercargill City Council, a Territorial Authority as per the Local Government Act 2002.



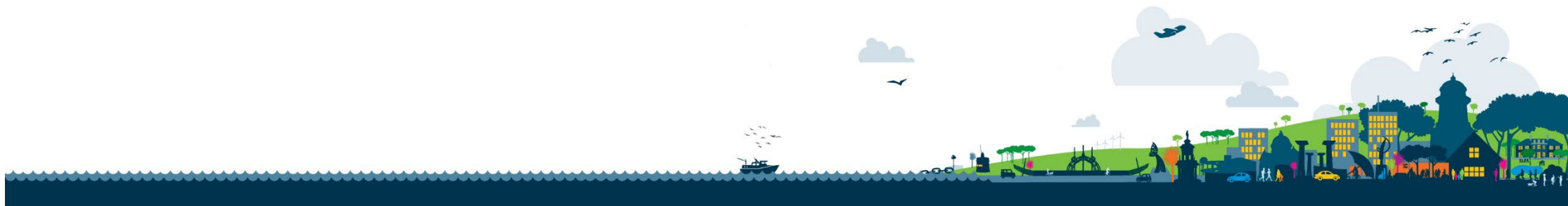
Insanitary building: means a building which:

- a) Is offensive or likely to be injurious to health because:
 - Of how it is situated or constructed; or
 - 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.

Investigation: means the taking of all reasonable steps to identify dangerous, affected and/ or insanitary buildings within Invercargill City District and to carry out Council's duties in relation to those buildings that are dangerous, insanitary buildings and/ or affected. This includes authorised entry of Council's authorised officers into the dangerous, insanitary buildings and/ or affected buildings.

Owner: means, in relation to land and any buildings on the land:

- a) Means the person who:
 - i. Is entitled to the rack rent from the land; or
 - ii. Would be so entitled if the land were let to a tenant at a rack rent; and
- b) Includes:
 - i. The owner of the fee simple of the land; and
 - ii. For the purposes of sections 32, 44, 92, 96, 97, and 176 (c), any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force.



Council's responsibility over dangerous, affected or insanitary building(s)

When Council becomes aware that a building is potentially dangerous, affected and/ or insanitary through complaints received from the public, an unrelated on-site investigation or a notification from Fire and Emergency New Zealand, it will undertake an investigation to determine whether that building is dangerous, affected and/ or insanitary. If a building is determined as being dangerous, affected or insanitary, Council will liaise with the owner(s), and if necessary, use its powers under Sections 124 to 130 of the Act, to ensure appropriate actions are taken to repair or remove the dangerous, affected and/ or insanitary conditions of that building.

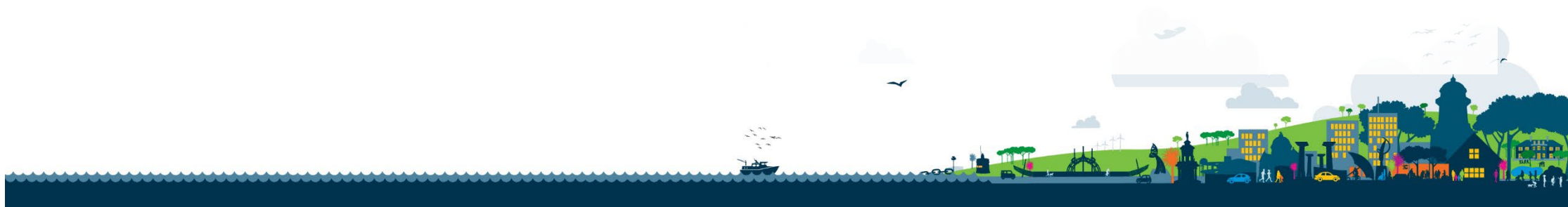
Council will work with Heritage New Zealand Pouhere Taonga, Fire and Emergency New Zealand, the New Zealand Police and other relevant agencies where appropriate to achieve the purpose of this policy and the Act.

Identifying Dangerous, Affected, and/or Insanitary Buildings

Council will respond to complaints which identify dangerous, affected and/ or insanitary buildings.

When responding to complaints, advice received from Fire and Emergency New Zealand (FENZ), or when dangerous, affected, or insanitary buildings come to Council's attention by any other means, Council will:

1. Investigate complaints and identified issues related to the buildings,
2. Assess dangerous and/ or insanitary buildings in accordance with sections 121, 121A, 123 or 123A of the Act. An affected building assessment will be subject to the same criteria as dangerous or insanitary buildings.
3. Identify buildings considered dangerous, affected, and/ or insanitary and assess the risk that it presents to human life, health, or other property, and
4. Require the owner(s) and or occupier(s) of the building to take action to mitigate the dangerous, affected, or insanitary conditions.



The following will be assessed when Council undertake an investigation to determine whether a building is dangerous, affected and / or insanitary:

- Occupation and existing use of that building.
- Likelihood of that building to cause harm to people and property.
- Whether the building conditions present a danger to the health of occupants or adjacent building (Affected building).
- Whether that building is in a state of disrepair due to, but not limited to, lack of maintenance, neglect, fire damage, flood damage, earthquake damage or other form of damage.
- Whether the building has adequate potable water.
- Whether the building has water penetration through exterior claddings or roofing, and
- Whether the building has adequate sanitary facilities for its intended use.

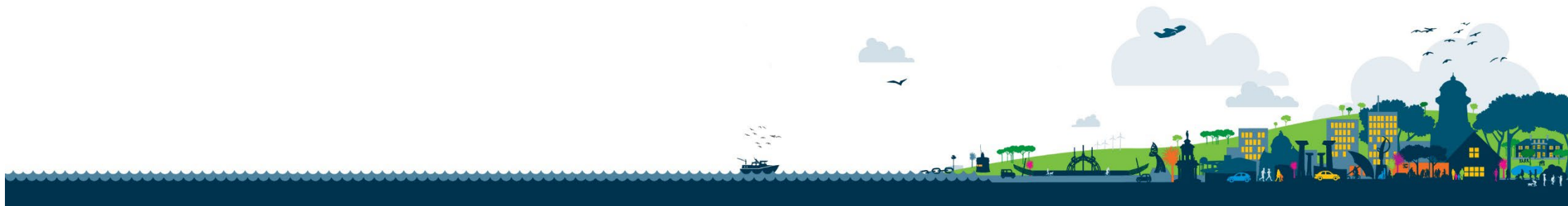
Compliance to the relevant sections of the building code will be considered where appropriate during assessment.

Taking actions on dangerous, insanitary and/or affected building(s)

When a building is brought to the Council's attention, it will be inspected and assessed before taking actions prescribed in this policy and the Act.

When a building is determined as being dangerous, affected, and/ or insanitary, Council will:

1. Liaise with the owner(s) to remove the dangerous, affected and/ or Insanitary condition(s) of the building.
2. Inform the occupier(s) of the building that the building is determined as being dangerous, affected, and/ or insanitary.
3. Consult and negotiate with the owner(s) to determine an appropriate timeframe for work that must be completed.
4. Determine the timeframe needed for interim work and/or permanent works to remove or repair the danger or risk to health and safety posed by the identified condition(s), noting that such timeframes are negotiated at Council's discretion.



5. Under section 124 and section 125 of the Act, attach written notice to the building and give written notice to the owner stating any required work to be carried out on the building within a stated timeframe of not less than 10 days.
6. Contact the owners(s) at least five working days prior to the expiry of the time period set down in the notice to request an appointment to assess compliance with the notice.
7. Consider an additional time period for an owner to comply with requirements of a notice, provided an application is received from the property owner(s) prior to the expiry date of the originating notice, and
8. Under section 124 of the Act consider, based on the danger posed, whether to erect a hoarding, fence or warning sign to restrict entry to the building.

Under section 126 of the Act, where appropriate Council may undertake work to address problems relating to a dangerous and/ or insanitary building, through either a Court Order or Chief Executive Warrant. Council reserves the right to appoint an independent contractor to carry out the required work.

Council will hold the owner liable for the cost of any work required to remove or repair the danger posed by that building to human life, health, or other property. The work may include the demolition of the building and clearance of the site at the owner's cost. Where appropriate, fees will be charged in accordance with the Fees and Charges Schedule for the financial year in which the work is undertaken.

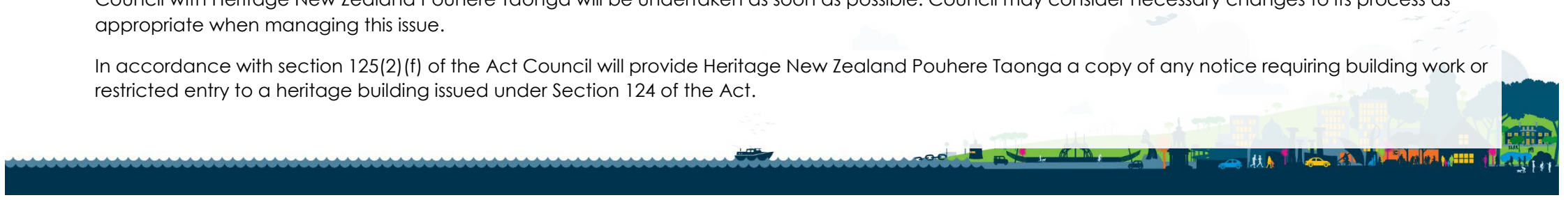
If Council acts on a complaint the complainant may be requested to provide a signed written statement. The complainant will be advised that the Council may request an appearance in the District Court to give evidence concerning the complaint.

Under section 129 of the Act Council may take swift action to remove immediate dangerous and/or insanitary conditions of a building through service of a notice to the owner(s). Such actions include but are not limited to prohibiting occupation or use of a building, erecting a hoarding or fence, or demolition of part or all of a building likely to collapse.

Council on a case-by-case basis may prioritise its response to dealing with dangerous, affected and/ or insanitary building if the identified dangerous, affected and/ or insanitary condition(s) pose a danger to human life, health, or other property. If the danger or risk stems from unauthorized construction, a notice to fix will be issued.

This policy will apply regardless of whether or not the building is a heritage building, although its heritage status will be considered when determining the appropriate action needed. In assessing a building which is classified as a heritage building, Council will consult Heritage New Zealand Pouhere Taonga provided that the time required for consultation will not materially increase the physical danger to people and other property. Any such consultation by Council with Heritage New Zealand Pouhere Taonga will be undertaken as soon as possible. Council may consider necessary changes to its process as appropriate when managing this issue.

In accordance with section 125(2)(f) of the Act Council will provide Heritage New Zealand Pouhere Taonga a copy of any notice requiring building work or restricted entry to a heritage building issued under Section 124 of the Act.



Recording of Dangerous, Affected, and/ or Insanitary Building(s)

Any buildings identified as being dangerous, affected, and/or insanitary will have a copy of the notice served and a schedule of work required placed on the corresponding property file held by the Council until the condition is remedied.

Information concerning dangerous, affected, and insanitary buildings will be contained on the relevant LIM or PIM with the following information:

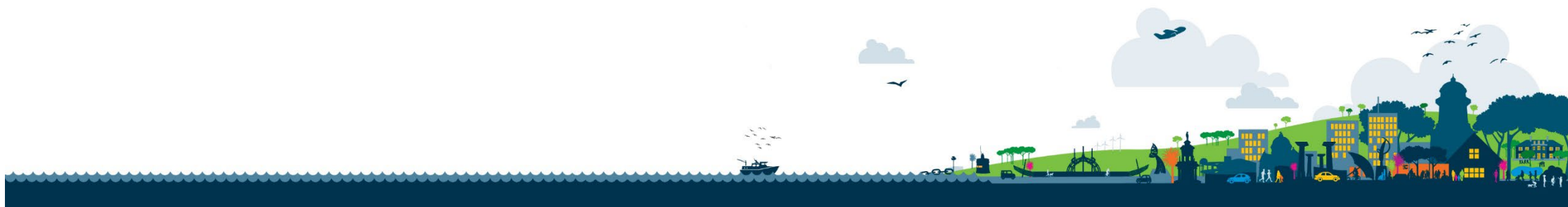
1. A statement that the building is dangerous, affected, or insanitary.
2. A copy of the notice given under 124(1) identifying the work to be carried out on the building and the time period given to achieve compliance with the notice, and
3. A copy of the letter to owner, occupier and any other affected parties that the building is dangerous, affected, or insanitary, and if issued, a notice of the requirement to evacuate.

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

Monitoring and enforcement of notified buildings

In undertaking monitoring and enforcement functions under the Act and the Policy, Council will utilise a risk-based strategy to target its compliance activities. This approach recognises that most people and businesses are willing to voluntarily comply with their regulatory obligations or can be encouraged to do so; and monitoring and enforcement responses are tailored according to the degree of harm to individuals, amenities or the environment.

In practice, this means that by preference, Council's monitoring approach will be to liaise with owners of buildings which have been assessed as dangerous, affected and/or insanitary to encourage and support action to address the conditions contributing to that condition, both before and after issue of a notice. Enforcement options will be considered in the context of risk and when voluntary action has not proved successful.



Enforcement entails prosecution for failure to comply with the requirements of a notice within the stated time period, or any additional time period, determined appropriate by the Council, may lead to prosecution or an infringement notice being served.

Council may initiate prosecution if buildings are used after notices or hoardings are in place. Where owners fail to comply with the notice, or where work is not completed, or not proceeding with reasonable speed, Council will, after giving no less than 10 days written notice of its intention to do so, apply to the District Court to carry out the work to remove the danger or insanitary conditions.

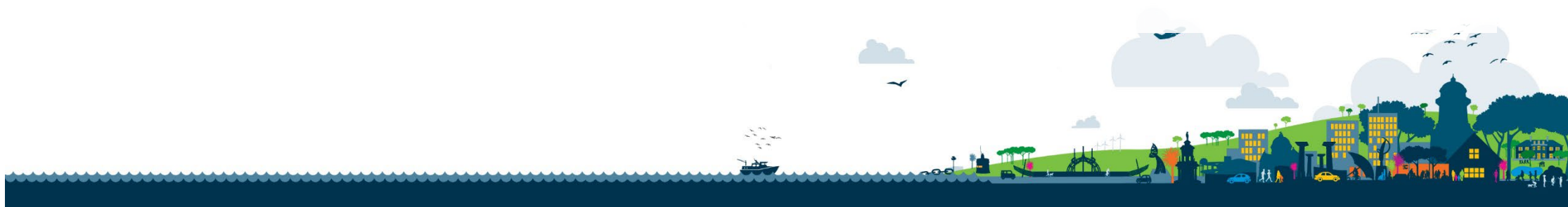
In such cases where Council must undertake work itself, including immediate action taken under Section 129 of the Act, the owners of the building are liable for costs, and Council will recover the costs from the owner(s).

Council recognises that in some circumstances the economic impact of this policy may cause individual hardship. Council will convey its duty under the Act through the implementation of this policy fairly and reasonably with the intent of improving the health and safety of people and property, within the capacity of Council resource allocation.

Due process will be followed to recover costs incurred by the Council in meeting its statutory obligations from implicated owners. Where owners are liable for costs, Council will inform the owners that the amount recoverable by the Council will become a charge on the land on which the building is situated.

Dispute

If an owner disputes a Council decision, or proposed action, relating to the exercise of the Council's powers under sections 124 or 130 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Building, Innovation and Employment, under section 177(3)(f) of the Act. Such a determination is binding upon the Council.



Interaction between this policy and other provisions of the Building Act 2004

Sections 112, 115 and 116A of the Building Act 2004 provide mechanisms to allow for older building(s) to be upgraded over time to prevent them from eventuating into a dangerous and/ or insanitary state if left neglected. Administering these sections during the building consent process can lead to improvements in the building stock over time and a lower chance of them being considered dangerous, affected or insanitary in the future.

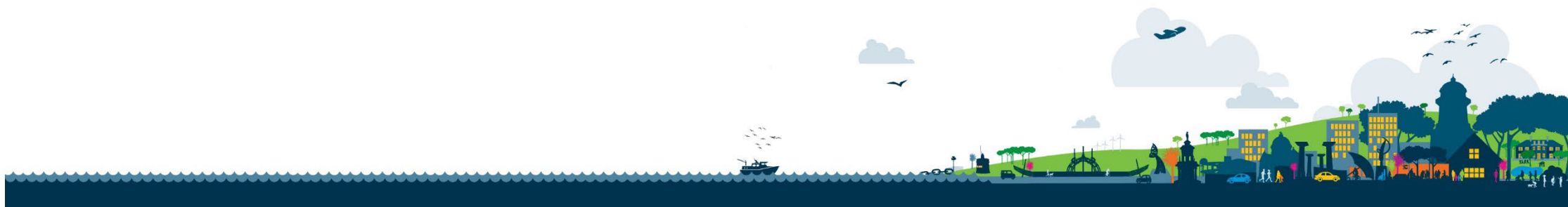
When a building is located in an area that has been designated as affected by an emergency under subpart 6B of the Act, then dangerous, affected, or insanitary notices shall not apply if issued while the designation is in force. However, any action taken or notices issued prior to any emergency designation shall continue to apply.

The notices issued under the designated emergency may continue to apply when the Responsible Person (as defined by Section 133BK) decides, before the state of emergency or transition period ends, that any notice should continue in force.

Health Implication

Sections 29 and 42 of the Health Act 1956 also enable Council to deal with nuisance conditions related to certain matters that are likely to cause injury to the health of people in relation to insanitary buildings.

Council will work with appropriate parties and use the most effective mechanism in addressing potential health related issues.



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| Revision History: | November 2018 |
| Effective Date: | 1 September 2024 |
| Review Period: | This policy will be reviewed every five (5) years unless an earlier review is required due to legislative change, or is warranted by another reason requested by Council. |
| New Review Date: | September 2029 |
| Associated Documents / References: | |
| Supersedes: | Dangerous Buildings Policy 2018 and Insanitary Buildings Policy 2018 |
| Reference Number: | A5275462 |
| Policy Owner: | Manager- Planning and Building Services |
| Relevant roles: | Compliance specialist- Building |

