



Department of
Building and Housing
Te Tari Kaupapa Whare

Dangerous and Insanitary Building Provisions of the Building Act 2004

Policy Guidance for Territorial Authorities



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Preface

The final draft of this document was prepared immediately prior to the devastation wrought by the recent hurricane in New Orleans. The aftermath of the hurricane has raised the community's awareness of the magnitude of the effects of hurricanes and other forms of natural disasters.

The hurricane has left a vast number of buildings in a state that is clearly dangerous and insanitary and that, in turn, present the US authorities with significant challenges in regard to public health and safety.

The guidance that is provided in this document is directed to the enforcement of the relevant provisions of the Building Act in the course of normal territorial authority business.

It is not intended as a guide to action in extreme circumstances such as those delivered by the hurricane in New Orleans. The Ministry of Civil Defence and Emergency Management is currently consulting on a Proposed National Civil Defence Emergency Management Plan. Information concerning this plan is at <http://www.mcdem.govt.nz/memwebsite.nsf>

INTRODUCTION

Objective of this document

This document provides background information and suggestions that may assist territorial authorities (TAs) in developing the policies on dangerous and insanitary buildings required by section 131 of the Building Act 2004 (the Act).

This is not a detailed document and does not aim to be prescriptive. It is intended to provide a resource for TAs, especially those with limited resources, in developing their individual policies. It is expected that TAs, in consultation with their communities, will develop policies that strike a balance between the need to address the risk to their communities arising from dangerous and insanitary buildings and other priorities, taking into account the social and economic implications of implementing the policy. The consultation process will likely require individual policies to balance the various, and sometimes conflicting, priorities within communities.

Notwithstanding this necessary balancing, policies on dangerous and insanitary buildings have been provided for in the Act and are required in order to protect those who use buildings from any harm arising from that use. This should be kept in mind when developing policies.

Background

LEGISLATIVE BASIS FOR A POLICY ON DANGEROUS AND INSANITARY BUILDINGS

The sections of the Building Act referring to dangerous and insanitary buildings are found in Subpart 6 of Part 2 of the Act. Section 121 defines a dangerous building and section 123 defines an insanitary building.

The definition of 'dangerous' in section 127 has been widened from the former Act. Section 64(2) of the former Act provided categories of building that had high or abnormal fire hazard, but the Building Act 2004 adds the phrase 'is likely to cause injury or death ... to any persons in it or to persons in other property.' This effectively reduces the threshold test for dangerous buildings.

Section 131 of the Act requires each TA to establish a policy on dangerous and insanitary buildings by 31 May 2006.

While the legislation requires all TAs to address issues associated with dangerous and insanitary buildings, the way in which individual TAs approach this requirement may vary according to local circumstances. However, a policy on dangerous and insanitary buildings must state:

- 1 the approach that a TA will take in performing its functions under Part 2 of the Act
- 2 the TA's priorities in performing those functions
- 3 how the policy will apply to heritage buildings.

Section 132 requires TAs to follow the consultative procedure set out in section 83 of the Local Government Act 2002.

As soon as practicable after a TA adopts a policy, it must provide a copy of the policy to the Chief Executive of the Department of Building and Housing. TAs must review their policies every 5 years.

INTENT OF THE LEGISLATION

The Building Act 2004 aims to improve control of, and encourage better practices in, building design and construction. The legislation in regard to dangerous and insanitary buildings seeks to reduce the danger to the population posed by these buildings.

The legislation also recognises that the circumstances of individual TAs will vary and that the local economic, social and other factors have an impact on the implementation of these provisions of the Act. For example, a council facing a major shortage of housing within its jurisdiction should consider broader accommodation issues within its area.

The measures in the legislation also recognise the need for a consistent, transparent and accountable approach to the implementation of the provisions in order to protect the health and safety of building users.

1 Policy approach

1.1 Policy principles

One of the key purposes of the Act, as set out in section 3, is to ensure ‘people who use buildings can do so safely and without endangering their health.’ Section 4 details the principles to be applied in performing functions under the Act and specifically states that TAs must take these principles into account in the adoption and review of their dangerous and insanitary buildings policies. The development of these policies, then, takes place in the broad context of the Act’s purposes and principles and TAs should have these in mind when fulfilling the requirements of section 131.

The Act also recognises that local factors will affect the implementation of the dangerous and insanitary buildings provisions and empowers TAs to develop their policies in consultation with their communities.

The key issues that each policy on dangerous and insanitary buildings is to address are set out in section 131; section 132 describes the policy development processes. By requiring TAs to consult with their communities in developing their policies, the Act ensures policies are open, transparent and understood by those who will be affected by them. The consultation process will enable each TA to develop a policy that strikes a balance between the threats that dangerous and insanitary buildings may present and other factors within the district, and the broader economic issues of implementing the policy. For a policy to be effective, a TA may need to ensure its other policies, such as a housing policy, complement the policy on dangerous and insanitary buildings.

In some communities local conditions may limit the options available to a TA to deal with dangerous and insanitary buildings. For example, in some cases the costs of short-term disruption arising from the evacuation of a building may be greater than the long-term danger. This is a matter for a TA’s judgement and will require consideration of the relative risks arising from continuing occupation and emptying the building. In such circumstances, a TA could require immediate, but possibly temporary, action to reduce the danger while demanding the removal of the danger over a longer period. If appropriate, a TA’s policy could refer to such, or similar, matters.

1.2 Overall approach

Sections 124 to 130 of the Act provide the authority necessary for TAs to take action on dangerous and insanitary buildings and set out how this action is to be taken. In broad terms, policies should set out how TAs propose to exercise this authority.

In developing their policies, TAs may wish to use their current practices as a starting point and consider whether they are appropriate in the light of the principles and purposes set out in the Act. In cases where a TA decides to maintain its current practices as its dangerous and insanitary buildings policy, those practices must still meet the requirements of the Act.

1.3 Identifying dangerous and insanitary buildings

It is very likely that in many, but not all, cases a building’s dangerous or insanitary status will not be readily apparent. For that reason, any attempt to identify these buildings proactively is unlikely to be successful unless a TA has considerable resources to undertake inspections and evaluations of buildings.

As a consequence, the most likely sources of information concerning dangerous or insanitary buildings will be building occupants, neighbours who believe that their amenity is threatened by the state of the building, or as the result of an inspection by the police, the fire service or other agencies authorised to inspect buildings.

Relying on complainants to provide information concerning potentially dangerous or insanitary buildings may be the only practical way in which TAs can identify these buildings within their districts and undertake their statutory responsibilities. However, the Department considers that the requirement to develop a policy on dangerous and insanitary buildings provides an opportunity for each TA to reconsider its current approach to the implementation of this legislation and to determine whether it is an adequate way in which to fulfil the intention of the Act.

1.3.1 Responses to complaints

The circumstances that may lead to a building being classified as dangerous or insanitary will not necessarily come to the notice of a TA unless the TA first receives a complaint from a building user, a member of the public or a government agency with the right to inspect buildings.

The appropriate response to a complaint is to inspect the building and determine whether it is a dangerous or insanitary building. Inspections should take place promptly on the receipt of a complaint, though TAs with limited resources may wish to establish some mechanism for assigning priority to particular types of dangerous or insanitary conditions.

In some cases, a building may become dangerous or insanitary quickly, as a result of the failure of some feature within the building, for example, the fire alarm system malfunctions, drains become blocked or a tenant stores dangerous goods without the building owner's knowledge. TAs may wish to include in their policies how they will investigate such complaints.

1.4 Assessing buildings

When a TA has reason to believe that a building may be dangerous or insanitary, the TA should investigate the matter by inspecting the building to determine whether it is dangerous or insanitary. A suggested inspection checklist is in Appendix 1.

1.5 Taking action on dangerous and insanitary buildings

Section 124 of the Act sets out the powers available to TAs to deal with dangerous and insanitary buildings. A TA may:

- put up a hoarding or a fence to prevent people approaching the building
- attach a notice that warns people not to approach the building
- give written notice requiring work to be carried out to reduce or remove the danger or prevent the building from remaining insanitary.

Section 125 deals with the mechanism by which TAs should give notice and section 126 enables them, if necessary, to undertake the required work themselves. Notices served on building owners should specify the work that needs to be carried out, the time in which it is to be completed and whether the owner of the building is required to obtain a building consent in order to carry out the specified work. The process for serving notices on owners should be transparent and in accord with a TA's overall policy on dangerous and insanitary buildings and the provisions of the Act.

Section 129 gives power to TAs to take swift action to remove immediate danger or fix insanitary conditions without first serving notice on owners.

TAs should note that the wording of section 128 of the current Act differs from section 80(1)(b) of the former Act. Under the new arrangements a person commits an offence only if he or she uses, or allows others to use, a dangerous or insanitary building **after** a TA has put up a hoarding or fence or attached a notice warning people not to approach the building.

However, section 116B provides an offence if a person uses a building that is not **safe** or not sanitary, or if it has inadequate means for escape from fire. This provision, enacted in the Building Amendment Act 2005, enables TAs to take action, when appropriate, against owners and occupiers of such buildings when the TA has not taken, or has not been able to take, any of the actions provided under section 124.

1.5.1 Consultation with owners of affected buildings

Once a TA has determined that a building is dangerous or insanitary, the TA may wish to consult with the owners of the affected building before issuing the necessary notices or erecting hoardings or signs.¹ This may enable a TA to understand the circumstances of the owner or the future plans for the site. Such knowledge could affect, for example, the time in which repairs are to be undertaken. Notwithstanding these consultations, once a TA is satisfied that a building is dangerous or insanitary in terms of the Act, it is incumbent on it to take some form of action.

¹ This would depend on the level of danger to occupants of the building in question or of adjacent buildings. TAs have power under the Act to take urgent action if anyone faces immediate danger.

1.5.2 Serving notice

In general, it would be fitting to serve notice on owners of all buildings that a TA is satisfied are dangerous or insanitary, even if the time-frame for action is an extended one. The notice should clearly set out the time in which the required action is to be completed.

It is often relevant to consult building owners prior to taking action on a dangerous or insanitary building, but TAs should not let their wish to consult delay taking necessary action within the provisions of the Act. This is especially so when the danger posed by a building is significant.

1.6 Fixing dangerous and insanitary buildings

If a TA is satisfied that a building is dangerous or insanitary, it may serve notice on the owner requiring work to be undertaken to reduce or remove the danger or prevent the building from remaining insanitary. The TA must ensure the notice is fixed to the building and copies sent to both the owner of the building and those who occupy it. Section 125 requires copies of notices to be sent to a range of other people when appropriate. At the end of the time in which the remedial work is to be completed, the TA should inspect the property.

When owners fail to undertake the work required by a notice within the stated time, a TA may seek court approval to enter a building and undertake the necessary work itself. Section 127 recognises that work necessary to remove or reduce danger authorised under sections 124 or 126 can include demolition of the building.

Section 129 permits TAs, in circumstances set out in the section, to take action to avoid immediate danger.

1.6.1 Building work to reduce or remove danger

In most cases a TA's views on the appropriate action to be taken in regard to dangerous or insanitary buildings will be based on the specific issues and dangers arising from the building in question and the requirements of the legislation. In the case of a derelict building, erecting a hoarding to prevent people from approaching or entering the building may be adequate, but, for example, if the

building has a history of use by squatters who thereby place themselves at risk, this may not be sufficient action. Serving notice on the owner to remove or reduce the danger, possibly through demolition, could be a more appropriate course of action.

Similarly, a notice requiring a reduction in danger may be the best solution in an environment where there is a critical housing shortage and removing the danger would require evacuation of the building. In such circumstances, TAs will have to exercise their judgement as to the most appropriate action under the Act.

It would be appropriate for a TA to indicate in its policy any guiding principles or processes it will follow to ensure that it pursues the most fitting response in any particular situation.

1.7 Interaction between a policy on dangerous and insanitary buildings and other provisions of the Building Act 2004

In its guidance on the development of policies on earthquake-prone buildings, the Department suggested that TAs could use sections 112 to 116A as tools in the implementation of their policies on this type of building. The ability of TAs to use these sections for a similar purpose in a policy on dangerous and insanitary buildings may be more limited.

However, when the owner of a building seeks consent to undertake building work under the provisions of these sections, a TA could inspect the building file to determine whether or not the building in its current state has been classified as dangerous or insanitary. And when the owner of a dangerous or insanitary building on whom notice has been served, but who has not yet undertaken the required remedial work, applies for a consent for action covered by sections 112 to 116A, a TA could require that the action necessary to reduce or remove danger be undertaken at the same time as (or before, if appropriate) the building work set out in the consent application.

1.8 Dealing with building owners

The success of a TA policy on dangerous and insanitary buildings will depend in large part upon the support and goodwill of building owners and, to an extent, building occupiers. Owners will have to bear the costs of any required improvements and occupiers will bear much of the inconvenience associated with the building work required to reduce or remove danger.

For this reason, there may be value in a TA making owners and occupiers aware of its plans to develop a policy on dangerous and insanitary buildings in advance of any community consultations. This could encourage owners to take action on buildings likely to be affected by the policy in advance of the policy establishment and would ensure that community consultation does not come as a surprise to owners and occupiers.

Section 125 sets out the processes TAs are to follow in serving notices. It would still be appropriate to discuss with building owners issues relating to a dangerous or insanitary building's status in advance of any notice. When the necessary work required on a building is complex, it would be appropriate for a TA to determine the nature of any remedial work in consultation with building owners. But, in cases where owners may not be cooperative, TAs should still demand the action they consider is appropriate to reduce or remove the danger or fix insanitary conditions. In extreme cases, TAs have power under section 126 to carry out any necessary work to protect the community.

1.9 Recording the status of a dangerous or insanitary building

A TA may keep a register of all buildings deemed dangerous and/or insanitary. TAs will need to consider the period for which correspondence concerning these buildings should be kept on the relevant property file. TAs may also wish to consider whether this information will be disclosed in any land information memorandum (LIM) or, where it affects any proposed building work, whether the information should be disclosed in a project information memorandum.

1.10 Economic impact of policy

The intent underlying section 131 requirements to develop policies on earthquake-prone buildings and dangerous and insanitary buildings is to improve health and safety for people who use buildings, and this should be the main focus in the development of a dangerous and insanitary buildings policy.

However, TAs should consider the costs of any action required to reduce or remove dangerous or insanitary conditions in affected buildings in the broader social and economic context of the community. For example, in some circumstances demolition may be the most appropriate way to remove danger from an occupied building, yet if there is no alternative accommodation for its occupants, it may be necessary for TAs to have in place other arrangements that can support the policy or to consider other forms of action consistent with the Act.

2 Priorities

2.1 Priorities for action

However a TA becomes aware of the existence of a dangerous or insanitary building, its policy must state the priorities for performing its functions under sections 124 to 130 of the Act. The Department considers this requires TAs, at the least, to consider their priorities in dealing with dangerous and insanitary buildings. As a minimum, a TA should consider, for example, whether any specific forms of danger within its district are likely to require speedier action than others.

In districts where some sections of the building stock may have a recognised problem that could dispose those buildings to particular dangers or insanitary conditions, TAs should consider whether to be proactive in ensuring those buildings do not represent a danger to the buildings' occupants or members of the public.

3 Heritage buildings

3.1 Dealing with heritage buildings

The Act requires TAs to state in their policies on dangerous and insanitary buildings how they will deal with heritage buildings that fall into this category.

These buildings play an important role in the social and cultural fabric of New Zealand society, but their nature and age mean that even simple rectification requirements may present design and cost challenges for owners. In cases where heritage buildings are dangerous or insanitary, TAs should, in addition to consulting with a building's owner, consider seeking advice from the Historic Places Trust. In this context, TAs should note that where a heritage building is subject to a notice, a copy of the notice must be sent to the New Zealand Historic Places Trust.

In making any specific arrangements concerning a heritage building, TAs will have to exercise their judgement concerning the nature and importance of the building and the level of risk it poses to the community. However, the fact that a building has heritage status does not mean it can be left in a dangerous or insanitary condition. The provisions of the Act continue to apply and a TA's policy should indicate how it intends to apply those provisions to heritage buildings.

4 Approaches to identification of dangerous and insanitary buildings

The Act does not specify how a TA is to gather information concerning dangerous and insanitary buildings within its district.

Essentially, there is a continuum of approaches that a TA may adopt to the identification of these buildings. They could range, for example, from a timed inspection of all buildings within a district, to an inspection of a particular range of buildings through to a totally passive approach in which a TA acts only when the state of a building has been brought to its attention. Within this range, TA policies should indicate the approach that best marries the intent of the legislation with the requirements of the local community.

Appendix 1: Template check sheet for inspections

The following template is a guide to how a building inspection report on a dangerous or insanitary building could appear. It is presented for illustrative purposes only and is not an exhaustive list of what a TA should review.

DANGEROUS AND/OR INSANITARY BUILDING INSPECTION RECORD			
Address of building			
Building name			
Name of person allowing access			
Relationship to building			
Time and date of inspection			
Contact details of at least two tenants (continue on reverse if necessary):			
Name			
Relationship			
Address (Other than the address of the building)			
Phone (Home)			
Phone (Work)			
Phone (Mobile)			
Building warrant of fitness – current:		yes/no	Displayed: yes/no
Current use described as?			
Is current use and described use the same?		yes/no	Number:
List fire protection/detection system(s) present		Operational?	
		yes/no	
		yes/no	
		yes/no	
*Note on rear of page if system has obvious defects in relation to relevant New Zealand Standards.			
Building features			
1. Number of floors		8. Adequate potable water supply? yes/no	
2. How many flats?		9. Adequate sanitary facilities for intended use? yes/no	
3. How many beds (total)?		10. Has the cladding failed? yes/no	
4. How many means of escape?		11. Is the nature of the building likely to be offensive or injurious to health? yes/no	
5. Can you identify safe paths? yes/no		12. Do safe paths lead to exterior ground? yes/no	
6. Have you walked the escape routes? yes/no		13. Are any escape doors fitted with locks? yes/no	
7. Any uncontrolled sources of ignition? yes/no		14. Is any other building affected/likely to be affected by these building defects? yes/no	

DANGEROUS AND/OR INSANITARY BUILDING INSPECTION RECORD (continued)

Describe the **building's construction**:

Describe **means of escape**:

Describe **purpose groups** within the building:

Describe **water supply and sanitary facilities**:

Describe **why building is 'offensive' and/or 'likely to be injurious to health'**:

High hazard backflow prevention:

Required?	yes/no	Installed?	yes/no
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DANGEROUS AND/OR INSANITARY BUILDING INSPECTION RECORD (continued)

Dangerous/hazardous goods:

Stored/used in building?		yes/no	
What	Where	Class	Quantity

ACTION	Complete
On attached blank pages sketch floor plans and record locations of items 5-14 in Building features above.	
Obtain copy of the current certificate of title	
Obtain copies of lease agreements	
Obtain tenants' contact details	
Obtain name of person tenants deal with	
Obtain expert reports	
Research building warrant of fitness	
Research authorised use/s	

What is your opinion of the building overall?

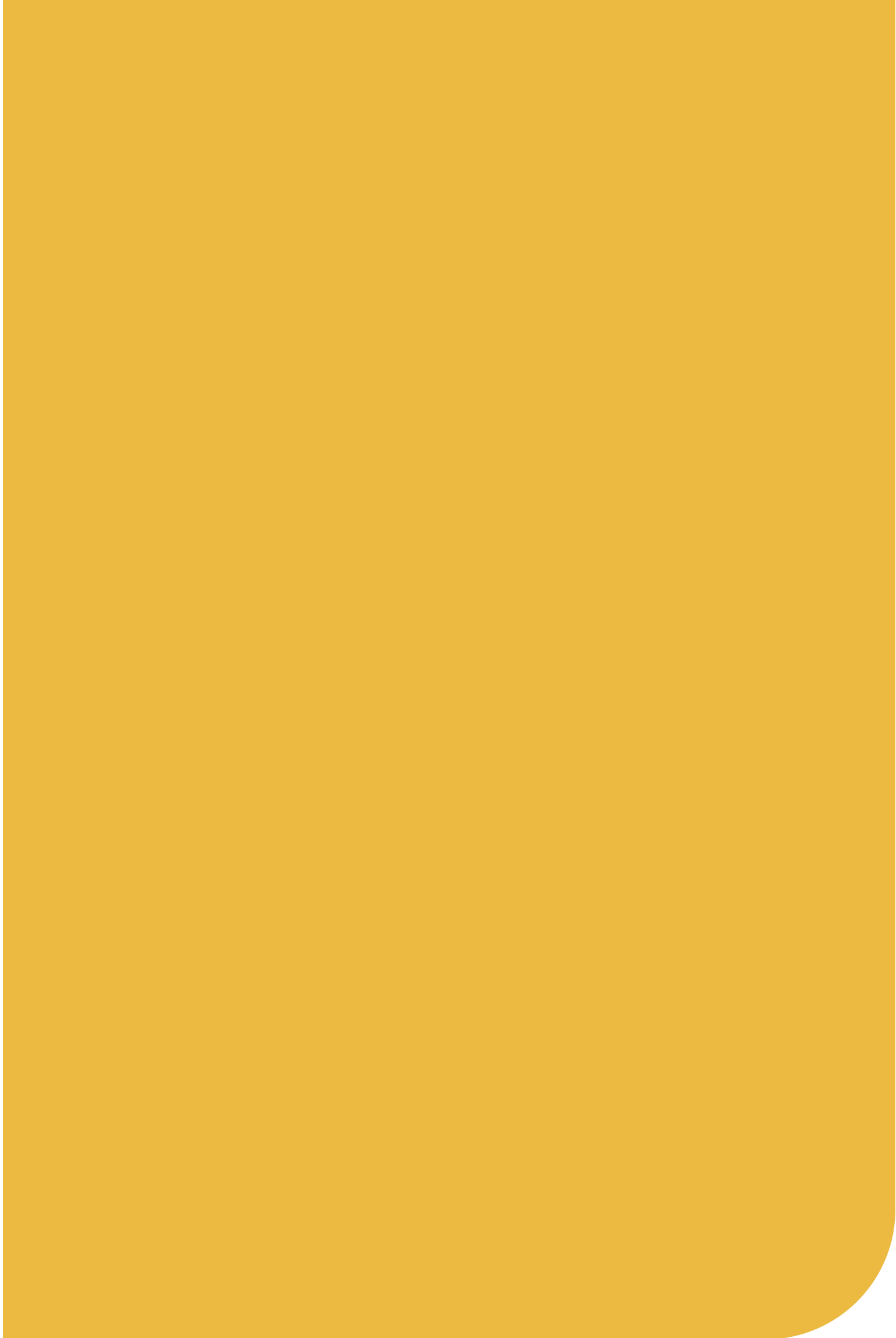
Do you believe that the building is dangerous or insanitary?	yes/no	Has this been confirmed by another party?	yes/no
Name	Agency	Address	

Reasons for YOUR decision:

Obtain copies, in writing, from any attending experts eg, fire service, fire engineers, IQPs

Signed

Date



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