

# **Dangerous, Affected and Insanitary Buildings Policy 2023**

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# Dangerous, Affected and Insanitary Buildings Policy 2023

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## 1 Introduction

- 1.1.1 The Dangerous, Affected and Insanitary Buildings Policy (Policy) has been prepared by Council to comply with sections 131 and 132A of the Building Act 2004 (Act), which require Council to have a policy on dangerous, affected and insanitary Buildings.
- 1.1.2 The Act requires the Policy to state the Council's approach to performing its functions, and its priorities, in relation to dangerous and insanitary buildings, and how the Policy will apply to heritage buildings. The Policy must also take into account affected buildings. These are buildings adjacent to, adjoining, or nearby to a dangerous building.

## 2 Policy Purpose

- 2.1.1 The purpose of this Policy is to:
- reduce the potential risk posed to residents in the district by dangerous, affected or insanitary buildings;
  - outline the approach the Council will take and clarify the Council's priorities in performing its functions under the Building Act 2004 relating to dangerous, affected and insanitary buildings; and
  - set out how the Policy will apply to heritage buildings.
- 2.1.2 In setting this Policy, Council has endeavoured to strike a balance between the threats posed by dangerous, affected and insanitary buildings and the broader social and economic issues affecting the community that are involved.
- 2.1.3 The relevant principles of section 4 of the Act have been taken into account in preparing this Policy, and will be taken into account in the performance of Council's functions, powers and duties.

## 3 Policy Scope

- 3.1.1 This Policy applies to all buildings within the Waipā District, except for buildings which are dams and earthquake prone buildings.

## 4 Definitions

4.1.1 For the purposes of this Policy the definitions in the table below shall apply.

4.1.2 Where a definition below refers to a definition in the Act, any amendments to the definition in the Act will apply to the meaning of that term in this Policy.

Term	Definition
Act	means the Building Act 2004.
Affected building	has the same meaning as section 121A of the Act, as follows: 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
Building	has the same meaning as section 8 of the Act, as follows: (1) In this Act, unless the context otherwise requires, building – (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and (b) includes— (i) a mechanical, electrical, or other system; and (ii) any means of restricting or preventing access to a residential pool; and (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; and (iv) a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); and (c) <i>[not applicable to Policy]</i> (d) includes the non-moving parts of a cable car attached to or servicing a building; and (e) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.  This is subject to section 9 of the Act.
Council	means the Waipā District Council.
Dangerous building	has the same meaning as section 121 of the Act, as follows: (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—

Term	Definition
	<ul style="list-style-type: none"> <li>(i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or</li> <li>(i) damage to other property; or</li> <li>(b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.</li> </ul> <p>(2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority—</p> <ul style="list-style-type: none"> <li>(a) may seek advice from members of the Fire and Emergency New Zealand who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and</li> <li>(b) if the advice is sought, must have due regard to the advice.</li> </ul>
Heritage building	<p>means a building that is included on —</p> <ul style="list-style-type: none"> <li>(a) the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or</li> <li>(b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or</li> <li>(c) the list of heritage items under the operative Waipā District Plan.</li> </ul>
Household unit	<p>has the same meaning as section 7 of the Act, as follows:</p> <ul style="list-style-type: none"> <li>(a) means a building or group of buildings, or part of a building or group of buildings, that is — <ul style="list-style-type: none"> <li>(i) used, or intended to be used, only or mainly for residential purposes; and</li> <li>(ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but</li> </ul> </li> <li>(b) does not include a hostel, boarding house, or other specialised accommodation</li> </ul>
Insanitary building	<p>has the same meaning as section 123 of the Act, as follows:</p> <p>A building is insanitary for the purposes of this Act if the building —</p> <ul style="list-style-type: none"> <li>(a) is offensive or likely to be injurious to health because— <ul style="list-style-type: none"> <li>(i) of how it is situated or constructed; or</li> <li>(ii) it is in a state of disrepair; or</li> </ul> </li> <li>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</li> <li>(c) does not have a supply of potable water that is adequate for its intended use; or</li> <li>(d) does not have sanitary facilities that are adequate for its intended use.</li> </ul>
Inspection	<p>has the same meaning as section 222(4) of the Act, as follows:</p> <p>means the taking of all reasonable steps —</p>

Term	Definition
	<p>(c) to enable a territorial authority to —</p> <ul style="list-style-type: none"> <li>(i) identify dangerous, earthquake-prone, or insanitary buildings within its district; and</li> <li>(ii) carry out its functions or duties in relation to those buildings;</li> </ul>
Owner	<p>has the same meaning as section 7 of the Act, as follows:</p> <p>in relation to land and any buildings on the land —</p> <ul style="list-style-type: none"> <li>(a) means the person who — <ul style="list-style-type: none"> <li>(i) is entitled to the rack rent from the land; or</li> <li>(ii) would be so entitled if the land were let to a tenant at a rack rent; and</li> </ul> </li> <li>(b) includes — <ul style="list-style-type: none"> <li>(i) the owner of the fee simple of the land; and</li> <li>(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.</li> </ul> </li> </ul>
Territorial authority	<p>has the same meaning as section 7 of the Act, as follows:</p> <ul style="list-style-type: none"> <li>(a) means a city Council or district Council named in Part 2 of Schedule 2 of the Local Government Act 2002; and — <ul style="list-style-type: none"> <li>(i) in relation to land within the district of a territorial authority, or a building on or proposed to be built on any such land, means that territorial authority; and</li> <li>(ii) in relation to any part of a coastal marine area (within the meaning of the Resource Management Act 1991) that is not within the district of a territorial authority, or a building on or proposed to be built on any such part, means the territorial authority whose district is adjacent to that part; and</li> </ul> </li> <li>(b) includes the Minister of Conservation or the Minister of Local Government, as the case may be, in any case in which the Minister of Conservation or the Minister of Local Government is the territorial authority under section 22 of the Local Government Act 2002.</li> </ul>

## 5 Council's Role

5.1.1 Buildings may become dangerous or insanitary due to a number of reasons, such as unauthorised alterations being made, from a fire, from a natural disaster, or as a result of its use or neglect by an owner or occupant.

5.1.2 When buildings that may be dangerous, affected or insanitary come to the attention of Council, Council will act promptly to investigate and if Council determines them to be dangerous or insanitary, ensure they are made safe.

- 5.1.3 Council has a statutory responsibility to act promptly to ensure the safety of persons or property when buildings that may be dangerous or insanitary come to the Council's attention. Council is also required to consider whether any other buildings may be affected by a dangerous building and if so, what action, if any, is appropriate.
- 5.1.4 If a building is found to be dangerous, affected or insanitary, the Council will work with the building owner(s), and if necessary use powers it has available, to ensure appropriate action is taken to make the building, its occupants and the public safe.

## **6 Related Legislation**

- 6.1.1 In considering how to address non-compliance, Council may consider other legislative requirements or compliance mechanisms in addition to the Building Act 2004. This may include in particular, consideration of the following:
- Local Government Act 2002
  - Resource Management Act 1991
  - Civil Defence Emergency Management Act 2002
  - Heritage New Zealand Pouhere Taonga Act 2014
  - Health Act 1956
- 6.1.2 Where a state of emergency has been declared (or following a state of emergency, when a transition period has been declared) the Council may choose to exercise powers under the Civil Defence Emergency Management Act 2002 instead of or in addition to powers under the Building Act 2004.

## **7 Council Policies**

### **7.1 Council's approach to dangerous, affected or insanitary buildings**

- 7.1.1 Council will not proactively inspect all buildings within the District but will make it a priority to quickly and efficiently respond to information received regarding potentially dangerous, affected or insanitary buildings to ascertain the extent of any issues.

### **7.2 Application of Policy to heritage buildings**

- 7.2.1 This Policy applies to heritage buildings in the same way it applies to all other buildings. Heritage buildings will be assessed in the same way as other buildings. However, the Policy recognises the importance of heritage buildings and will protect the value of these buildings and seek to avoid demolition wherever possible, without compromising public health and safety. When determining what action to take in relation to any identified dangerous, affected or insanitary heritage building Council will:

- (a) Inform relevant statutory organisations, including Heritage New Zealand Pouhere Taonga, of the issue where a listed building identified as dangerous, affected or insanitary;
- (b) Where appropriate, engage suitably qualified professionals with heritage expertise to advise and recommend on possible actions;
- (c) Take into account any advice received from Heritage New Zealand Pouhere Taonga or professional conservation organisation and heritage professional;
- (d) Take into account any relevant conservation report, conservation plan, condition report, management plan, heritage assessment or other document relating to the building;
- (e) Take into account the heritage values of the building and any special traditional or cultural aspects of the intended use of the building;
- (f) Take into account the need to facilitate the preservation and ongoing use of buildings and areas of significant cultural, historical, or heritage value;
- (g) Take into account the circumstances of each owner and each building, including whether the building has undergone any recent building work.

7.2.2 Council will consider working with the building owner to ensure the development of appropriate management and planning for these buildings for their protection, wherever possible.

### **7.3 Co-operation with other agencies**

7.3.1 Council will work with Heritage New Zealand Pouhere Taonga, Fire and Emergency New Zealand, the New Zealand Police and other agencies where it considers this necessary or desirable to help achieve the purposes of the Building Act 2004.

### **7.4 Costs**

7.4.1 Council may issue a notice under section 124(2)(c) of the Act requiring work to be carried out on dangerous or insanitary buildings to reduce or remove the danger, or to prevent the building from remaining insanitary. If work required under such a notice issued by Council is not completed or proceeding with reasonable speed, Council may exercise its powers under section 126 of the Act and apply to the District Court to gain authorisation to carry out building work required in the notice.

7.4.2 If Council carries out building work, it is entitled to recover costs associated with that work from the building owner, as set out in section 126(3) of the Act.

### **7.5 Immediate danger**

7.5.1 If a building presents an immediate danger to the safety of people or immediate action is necessary to fix insanitary conditions, Council may choose to exercise its powers under



section 129 of the Act. Council will consider how significant the relevant risks are and how such risks may be managed before exercising such powers.

## **8 Procedures**

### **8.1 Identifying dangerous and insanitary buildings**

8.1.1 Once Council has received information regarding a potentially dangerous, affected or insanitary building it will:

- (a) Check the details of the property against Council records;
- (b) Have an authorised officer undertake an inspection of the building in question. In doing this, Council may seek advice from Fire and Emergency New Zealand, or any other professional or organisation deemed appropriate by Council; and
- (c) Prioritise the issue in light of the perceived risks around the building.

8.1.2 All inspections of potentially dangerous, affected or insanitary buildings will involve assessment of the condition of the building in terms of the definitions in sections 121, 121A and 123 of the Act. Inspection records will be prepared to document any inspection.

8.1.3 Authorised officers are not required to inform or obtain approval for inspections to determine whether or not a building is dangerous or insanitary, unless the building is a household unit. In these circumstances Council must either obtain consent of the occupier of the household unit or an order from a District Court, unless an emergency applies.

8.1.4 Council may engage a subject matter expert to assist with determining whether a building is dangerous, affected or insanitary, and/or the course of action to rectify the issue if it is.

### **8.2 Criteria for determining priority of issue**

8.2.1 A building is less likely to be classified as dangerous, affected or insanitary if it is unoccupied; however, the risk to the public and other properties must still be considered. Council will carefully consider these issues and determine whether they warrant immediate action to prevent injury or death. Each case will be considered on its own merits.

### **8.3 Actions for dangerous, affected or insanitary buildings**

8.3.1 Taking action to resolve any dangerous and/or insanitary building is the responsibility of the building owner(s). Regardless, there may be circumstances that require Council to take action or carry out work (e.g. if we believe a building is an immediate danger or insanitary condition). If Council does have to take action or carry out work in accordance with sections 126 or 129 of the Act:

- (a) The owner of the building is liable for the costs of the work or action taken; and

- (b) Council may recover those costs from the owner; and
  - (c) The amount recoverable by the Council becomes a charge on the land on which the building is situated or the work was carried out.
- 8.3.2 The priority for action for a dangerous, affected or insanitary building will be decided after the initial assessment of the building.
- 8.3.3 In undertaking its monitoring and enforcement functions under the Act and the Policy, the Council will utilise a risk-based strategy to target compliance activities. This approach recognises graduated categories of behaviour that determine the nature of the compliance intervention – Voluntary, Assisted, Directed and Enforced (VADE). Compliance and enforcement responses escalate depending on the seriousness of the conduct, extent of the harm and public interest factors. In operational terms, 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 enforcement responses are tailored according to the degree of harm to individuals, amenities or the environment.
- 8.3.4 Council may do any or all of the following if a building is deemed dangerous, affected or insanitary:
- (a) Consult with the owners of the relevant building to further determine the circumstances and decide on an appropriate course of action. This may include voluntary rectification by the owner.
  - (b) Except for an affected building, attach a notice to the building (sections 124 & 125 of the Act) requiring the owner to undertake building work to reduce or remove the danger, or prevent the building from remaining insanitary. This may include demolishing all or part of the building.
  - (c) Put up a hording or fence to prevent people from approaching the building nearer than is safe.
  - (d) Issue a notice (section 124(2)(d) of the Act) restricting entry to the building for particular purposes or restricting entry to particular people or groups of people. The notice may be issued for a maximum of 30 days, and only re-issued once for a further period of 30 days (section 125(1A) of the Act). A copy of a notice must be issued to all people listed under section 125(2) of the Act.
  - (e) Take any action that is necessary to remove any immediate danger to the safety of people, or immediate action that is necessary to fix insanitary conditions (sections 129 and 130 of the Act). The owner is liable for the Council's costs in doing so, and the amount recoverable becomes a charge on the land.
- 8.3.5 Where a notice requiring building work to be undertaken has been attached to a dangerous or insanitary building, Council:

- (a) Will contact the owner at the end of the time period set down in the notice to gain access to the building and check whether the notice has been complied with.
- (b) If the required work has not been carried out in accordance with the notice, may carry out the required work itself on application to the District Court (section 126 of the Act). The owner is liable for the costs, and the amount recoverable becomes a charge on the land.
- (c) May pursue further enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time, or for any other non-compliance matters (e.g. if the danger or insanitary conditions are as a result of unconsented building works).
- (d) May consider any other enforcement options available to it, including the Health Act 1956 and Resource Management Act 1991.

#### **8.4 Working with building owners**

- 8.4.1 Where there is an agreement between the Council and the building owner to rectify any deficiency, the Council may elect to forego the issue of a formal notice but will retain details of the building in the property file.
- 8.4.2 Where an acceptable agreement between the building owner and the Council cannot be obtained or where more urgent action is required, the Council may exercise its powers and issue a notice under section 124 of the Act. The section 124 notice will outline the danger to be removed and a timeframe to achieve the necessary result.

#### **8.5 Recording a building's dangerous or insanitary status and access to the information**

- 8.5.1 Council will keep a record of all dangerous, affected and insanitary buildings noting the status of requirement for improvement or the results of improvements as applicable. All information relating to dangerous, affected or insanitary buildings will be filed on the relevant property file.
- 8.5.2 The Local Government Official Information and Meetings Act 1987 (section 44A) requires the Council to include information concerning any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority on the Land Information Memorandum (LIM) for a property.
- 8.5.3 In particular, the Council will include information relating to notices that have been issued by Council regarding dangerous and insanitary conditions, or affected building status that are not resolved.
- 8.5.4 The Council is required (under section 216 of the Act) to hold a summary of any written complaint concerning alleged breaches of the Act, and the Council's response. This information will be provided upon request, subject to the requirements of section 217 of the Act.

## **9 Disputes**

- 9.1.1 If a building owner disputes a Council decision, or proposed action, relating to the exercise of Council's powers under sections 124 or 129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Building, Innovation and Employment, as set out in the Act.
- 9.1.2 Such a determination is binding on all parties.

## **10 Application and review**

- 10.1.1 The Policy will be reviewed at least every five (5) years, as required by section 132(4) of the Act. If, following the review, or at any other time, Council decides to amend or replace the Policy it must do so by using the special consultative procedure in section 83 of the Local Government Act 2002.
- 10.1.2 The Policy does not cease to have effect because it is due for review or is being reviewed.
- 10.1.3 Clause 10.1.1 does not preclude this Policy from being reviewed within the time frame stated in the Act to meet the needs of Council and best practice.