

**DRAFT under review**  
**Waitomo District Council**  
**Dangerous, Affected and**  
**Insanitary Buildings Policy**

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## Introduction | Kupu Arataki

The Building Act 2004 (the Act) requires councils to adopt a policy that addresses the identification, assessment, and management of any dangerous and insanitary buildings within its District. The policy must also consider buildings that may be affected by a nearby dangerous or insanitary building, as well as detailing how the policy provisions will be applied to historical buildings.

The Dangerous, Affected and Insanitary Buildings Policy (the Policy) is adopted under section 131 of the Act. Sections 121-130 of the Act provide the specific powers and duties of council relating to dangerous, insanitary, and affected buildings.

## Purpose and scope | Te aronga me te korahi

1. The purpose of this Policy is to:
  - a) Reduce the potential risk posed to residents in the District by dangerous, affected and insanitary buildings; and
  - b) Provide a clear framework for how Council will manage dangerous, affected, insanitary and heritage buildings.
2. The Policy sets out:
  - a) The approach Waitomo District Council takes in performing its functions under the Building Act 2004;
  - b) Waitomo District Council priorities in performing those functions; and
  - c) How the Policy applies to dangerous, affected, insanitary and heritage buildings.
3. This Policy applies to all buildings within the Waitomo District Council territorial authority district.

## Definitions | Ngā whakamāramatanga

<b>Affected Building</b>	Defined in section 121A of the Act as a building that is adjacent to, adjoining, or nearby: <ol style="list-style-type: none"><li>(a) A dangerous building as defined in section 121 of the Act; or</li><li>(b) A dangerous dam within the meaning of section 153 of the Act.</li></ol>
<b>Authorised officer</b>	has the same meaning as section 222 of the Act and means an officer of a territorial authority to whom either or both of the following applies: <ol style="list-style-type: none"><li>(a) he or she is authorised to carry out inspections; or</li><li>(b) he or she is authorised to enter the land by this Act; or by an order of the District Court made under section 227 of the Act.</li></ol>
<b>Owner</b>	Owner in relation to any land or buildings on the land, <ol style="list-style-type: none"><li>(a) means the person who –</li></ol>

- (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, 97 and 176 (c) of the Act 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** Means the Waitomo District Council

**Dangerous Building** Defined in section 121 of the Act as a building that is dangerous 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.

**Heritage Building** Defined in section 7 of the Act and means a building that is included on:

- (a) the New Zealand Heritage List / Rarangi Korero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
- (b) the National Historic Landmarks / Ngaa Manawhenua o Aotearoa me onaa korero Tuturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.
- (c) a place, or part of a place, that is subject to a heritage covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 and is registered under section 41 of that Act; or
- (d) a place, or part of a place, that is subject to a heritage order within the meaning of section 187 of the Resource Management Act 1991; or
- (e) a place, or part of a place, that is included in a schedule of a district plan because of its heritage value;
- (f) elsewhere in the Act, a building referred to in paragraph ((a) or (b) above.

<b>Immediate danger</b>	Defined in section 129 of the Act:  (1) This section applied if, because of the state of the building;  (a) Immediate danger to the safety of people is likely in terms of section 121 or 123; or  (b) Immediate action is necessary to fix insanitary conditions.
<b>Insanitary Building</b>	Defined in section 123 of the Act:  A building is insanitary for the purposes of the Act if the building:  (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.
<b>Property file and register</b>	A record of legal information the Council is required to maintain in terms of section 216 of the Act.
<b>Territorial Authority</b>	Within the context of this Policy means Waitomo District Council.
<b>The Act</b>	The Building Act 2004

## Policy | Kaupapa here

### 1. Council's Role

- 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.
- 1.2. 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.
- 1.3. 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.
- 1.4. 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.

## **2. Councils approach to dangerous, affected or insanitary buildings**

- 2.1. 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.
- 2.2. To identify whether a building is dangerous, affected or insanitary, Council will use any of the following information:
  - a) the observations of employees or contractors,
  - b) information or complaints received from the public or members of professional bodies such as Engineering New Zealand,
  - c) notification from Ministry of Business, Innovation and Employment (MBIE) or from Fire and Emergency New Zealand (FENZ),
  - d) An application for a building consent under sections 112 to 116A of the Act.
- 2.3. Likely sources of information will be building occupants, neighbours, or following an inspection by Council officers, the Police, FENZ, or other agencies authorised to inspect buildings.

## **3. Heritage Buildings**

- 3.1. This Policy applies to Heritage buildings in the same way it applies to all other buildings.
- 3.2. Where Council receives information regarding buildings which have a heritage classification under Heritage New Zealand Pouhere Taonga, in addition to consulting with affected owners, Council will consider seeking advice from Heritage New Zealand Pouhere Taonga. Council recognises heritage buildings as important infrastructure that add character and history to the District.
- 3.3. A number of heritage buildings are listed with the New Zealand Historic Places Trust and/or are listed in the Heritage section of the District Plan.

When considering heritage buildings under this Policy, consideration will be given to:

- a) The importance of recognising any special traditional and cultural aspects of the building and the intended use of a building, and
- b) The need to facilitate the preservation of buildings of significant cultural, historical or heritage value.

## **4. Assessment Procedure**

- 4.1. When Council receives information about a potential dangerous, affected, or insanitary

building it will actively undertake an inspection and assessment of the buildings condition in terms of the Act, and will consider the following:

- a) The details of the property against Council records;
- b) Have an authorised officer undertake a full and extensive inspection of the building in question;
- c) Where necessary, seek advice from the FENZ or any other professional or organisation deemed appropriate by Council;
- d) Prioritise the issue in light of the perceived risks around the building; and
- e) Prepare an inspection record.

4.2. 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.

4.3. 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 or an order from a District Court, unless a state of emergency applies.

4.4. 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.

#### **4.5. Criteria for determining priority of issue**

4.6. 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.

## **5. Immediate Danger**

5.1. Where a building is determined to be dangerous, affected or insanitary, Council will work with the building owners to find a mutually acceptable plan of action before exercising its powers under the Act. Council will, however, exercise its statutory powers under section 129 the Act where action is required to avoid immediate danger or fix insanitary conditions or in circumstances where an acceptable solution cannot be negotiated with the building owner.

## **6. Actions for dangerous, affected or insanitary buildings**

- 6.1. Taking action to resolve any dangerous and/or insanitary building is the responsibility of the building owner(s). However, there may be circumstances that require Council to take action or carry out work (e.g. immediate danger as above). 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.
- 6.2. The priority for action for a dangerous, affected or insanitary building will be decided after the initial assessment of the building.
- 6.3. 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.
- 6.4. 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 following 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.

- 6.5. 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 noncompliance matters (e.g. if the danger or insanitary conditions are as a result of unconsented building works).
- 6.6. May consider any other enforcement options available to it, including the Health Act 1956 and Resource Management Act 1991.
- 6.7. Working with building owners**
- 6.8. Where there is an agreement between the Council and the building owner to rectify any deficiency, the Council may choose not to issue a formal notice but will retain details of the building in the property file.
- 6.9. 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. Council's Priorities**

- 8.1. Council will prioritise action based on:
  - a) Risk to life and public safety – Buildings posing immediate danger to occupants or the public will be addressed urgently.
  - b) Vulnerability of occupants – Priority will be given to buildings occupied by children, elderly, or other vulnerable groups.
  - c) Public access and use – Buildings with high public use (e.g. schools, community centres) will be assessed and managed promptly.
  - d) Heritage considerations – Heritage buildings will be assessed with input from Heritage New Zealand, balancing safety with preservation.
  - e) Environmental and health impacts – Insanitary buildings that pose health risks or environmental hazards will be addressed swiftly.
  - f) Resource availability – Council will allocate resources to ensure timely and effective responses, with flexibility to escalate urgent cases.

## **9. Cost To Owners**

- 9.1. The owner of a building which is determined to be a dangerous, affected or an insanitary building, will bear all costs incurred in meeting the requirements of the Act. These costs include assessment and enforcement costs incurred by Council.

- 9.2. The Council may issue a notice under section 124(2)(c) of the Act requiring work to be carried out on a dangerous or insanitary building to reduce or remove the danger, or to prevent the building from remaining insanitary. If work required under such a notice issued is not completed or proceeding with reasonable speed, the Council may use its powers under Section 126 of the Act and apply to the District Court to gain authorisation to carry out the building work required in the notice.
- 9.3. If the Council carries out building work, under section 126 of the Act or under a warrant issued under section 129, it is entitled to recover costs associated with that work from the building owner.

## **10. Council Records**

- 10.1. 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.
- 10.2. 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.
- 10.3. 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.
- 10.4. 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.

## **11. Review**

- 11.1. This Policy will be reviewed no less than once every five years. Any amendments will be done in accordance with the special consultative procedure as set out in section 83 of the Local Government Act 2002.

