

Dangerous, Affected and Insanitary Building Policy

Date first adopted by Council	25 May 2006
Resolution Number	06/RDC/144
Date last reviewed	25 June 2020 <u>xxxx</u>
Resolution	20/RDC/211 <u>xxxx</u>
Relevant Legislation	Building Act 2004, Local Government Act 2002
Statutory or Operational Policy	Statutory
Included in the LTP	No

1. Introduction & Background

1.1 Section 131 of the Building Act 2004 (“the Act”) requires ~~€~~Territorial ~~a~~Authorities (“TAs”) to have a policy on dangerous, ~~and~~ insanitary ~~and buildings~~ Additionally, Council is now also required to take into account affected buildings¹.

~~1.21.1 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 building policies.~~

~~1.31.1 The definition of a dangerous building is set out in Section 121 (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~~

~~a. injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property, or
b.a. damage to other property; or~~

~~b.a. in the event of fire, injury or death to any person in the building or to persons on other property is likely.”~~

¹ Section 132A Building Act 2004 which came into force on 28 November 2013,

~~1.41.1~~ The definition of an insanitary building is set out in Section 123 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.a. has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or~~

~~c.a. does not have a supply of potable water that is adequate for its intended use; or~~

~~d.a. does not have sanitary facilities that are adequate for its intended use.”~~

~~1.51.1~~ The definition of an affected building is set out in Section 121A of the Act:

~~“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; or~~

~~b.a. a dangerous dam within the meaning of Section 153.”~~

1.2 This policy was first originally adopted by Rangitikei District Council (“Council”) on 25 May 2006 in accordance with the requirements of the Building Act 2004.

1.3 This policy will be reviewed every 5 years, in accordance with the Act.

~~1.61.4~~ In reviewing, amending and adopting this policy, Council has followed the special consultative procedure set out in Section 83 of the Local Government Act 2002.

2 Purpose of the Policy

~~1.72.1~~ The purpose of this policy is to meet the legislative requirements of the Act, which requires the policy is required to state²:

- The approach that the Council will take in performing its functions under the Act;
- Council’s priorities in performing those functions; and
- How the policy will apply to heritage buildings.

~~1.82.2~~ In reviewing, amending and adopting this policy, Council has followed the special consultative procedure set out in Section 83 of the Local Government Act 2002. One of the key purposes of the Act, as set out in section 3, is to ensure ‘people who use

² Sec 131(2) of the Building Act 2004

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, affected and insanitary building policies.

3 Definitions

3.1 The definition of an **Affected Building** is set out in Section 121A of the Act defined as:

~~a. “A building is an affected building for the purposes of this Act if it **a building is adjacent to, adjoining, or nearby –**~~

~~i. a dangerous building as defined in Section 121; or~~

~~ii. a dangerous dam within the meaning of Section 153.”~~

3.2 The definition of a **Dangerous Building** is set out in Section 121 (1) of the Act defined as:

~~“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.”~~

3.3 **Heritage Building** is defined as:

a. a building that is included on the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or

b. a building that is included on 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

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

3.4 The definition of an **insanitary building** is set out in Section 123 of the Act defined as:

“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.”

4 Approach to Dangerous, Affected and Insanitary Buildings

4.1 Sections 124 to 130 of the Act provide the authority necessary for TAs to take action on dangerous, affected ~~or~~ and insanitary buildings **and dams** and set out how this action is to be taken.

4.2 In many, but not all, cases, a building's ~~is~~ dangerous, affected or insanitary status will not be readily apparent. For that reason, any attempt to identify these buildings proactively is unlikely to be successful unless Council has considerable resources to undertake inspections and evaluations of buildings.

4.3 As a consequence, the most likely sources of information concerning dangerous, affected ~~and~~ insanitary buildings continues to be from building occupants, neighbours, or as the result of an inspection by the police, the fire service or other agencies authorised to inspect buildings. Other sources of information will be known directly by Council, possibly following a significant weather event.

1.94.4 The Council will continue to encourage the public to discuss their development plans with Council and to obtain building consent for work Council deems is necessary prior to any work commencing. This is particularly important in order to avoid creating dangerous or insanitary conditions that could be injurious to the health of occupants, particularly children and the elderly, or where safety risks are likely to arise from a change in use.

1.104.5 Relying on complaints to provide information concerning potentially dangerous or insanitary buildings continues to be the most practical way in which Council can identify both these buildings and affected buildings within the district and undertake its statutory responsibilities. ~~Council has in the past relied upon complaints from various sources to identify dangerous or insanitary buildings and~~ Council will continue with this passive approach.

~~2~~ — ~~POLICY APPROACH~~

~~2.15~~ Policy Principles

~~2.1.15.1.1~~ Provisions of the Act in regard to dangerous, affected ~~and/or~~ insanitary buildings reflect the government's broader concern with the safety of the public in buildings, and with the health and safety of people occupying buildings that may be considered to be dangerous, affected ~~and/or~~ insanitary. However, Council recognises that public safety must be balanced against the other broader economic issues and in relation to other Council Policies.

~~2.2~~ Overall approach

~~2.2.11.1.1~~ Sections 124 to 130 of the Act provide the authority necessary for TAs to take action on dangerous, affected or insanitary buildings and set out how this action is to be taken.

~~2.2.21.1.1~~ The Council will continue to encourage the public to discuss their development plans with Council and to obtain building consent for work Council deems is necessary prior to any work commencing. This is particularly important in order to avoid creating dangerous or insanitary conditions that could be injurious to the health of occupants, particularly children and the elderly, or where safety risks are likely to arise from a change in use.

~~2.2.31.1.1~~ Council has in the past relied upon complaints from various sources to identify dangerous or insanitary buildings and will continue with this passive approach.

~~2.36~~ Identifying Dangerous, Affected ~~and/or~~ Insanitary Buildings

~~2.3.16.1~~ The Council will:

- Take a passive approach to identification of buildings.
- Actively respond to and investigate all buildings complaints received. Council will endeavor to contact the owner(s) prior to entering a privately owned building to investigate any complaints.
- Identify from these investigations any buildings that are dangerous, affected ~~and/or~~ insanitary.
- For dangerous buildings, inform the owner(s) and occupier of the building to take action to reduce or remove the danger, as is required by Section 124 and 125 of the Act; (and liaise with Fire and Emergency New Zealand when Council deems it is appropriate, in accordance with Section 121 (2) of the Act).
- For insanitary buildings, inform the owner(s) of the building to take action to prevent the building from remaining insanitary as is required by Section 124 and 125 of the Act (and liaise with the Medical Officer of Health when required to assess whether the occupants may be neglected or infirm).

~~2.4~~ For affected buildings, inform the owner(s) of the building only when restricting entry to the building.

6.2 If a building is considered to be affected, the owner(s) of the building will only be informed of their building's status if entry is to be restricted to the affected building.

2.57 **Assessment criteria**

2.5.17.1.1 The Council will assess dangerous, affected ~~and/or~~ insanitary buildings in accordance with the Act and established case law, as well as the building code.

2.5.27.2 The Council will:

- Investigate as to whether the building is occupied.
- Assess the use to which the building is put.
- Assess whether the dangerous or insanitary conditions pose a reasonable probability of danger to occupants or visitors, or to the health of any occupants of the building. Upon the determination that a building or dam is dangerous assess whether the dangerous building or dangerous dam pose a reasonable probability of danger to occupants or visitors of any adjacent, adjoining or nearby buildings.

2.5.37.3 Considerations that Council may take into account when deciding if a dangerous building can continue to be occupied or not include~~as to dangerous assessment where a building is either occupied or not may include:~~

- Risk of Sstructural collapse.
- Presence of Loose materials/connections.
- Presence of Overcrowding.
- Use which is not fit for purpose.
- Seeking aAdvice sought from Fire and Emergency New Zealand ³
- Risk of Life safety features detailed on building compliance ~~are being~~ inoperative.
- Risk of an Activity within the building compromises the safety of other users.

2.5.47.4 Considerations as to insanitary assessment where a building is occupied may include:

- Assessment of an Adequate sanitary facilities for the use.
- Assessment of Adequate drinking water.
- Whether there is Separation between of use for kitchens and other sanitary facilities.
- Likelihood of moisture penetration.
- Risk due to Natural disasters.
- Presence of Defects in roof and walls/poor maintenance/occupant misuse.
- The degree to which the building is offensive to adjacent and nearby properties.

2.5.57.5 A building will be deemed to be an affected building if it is adjacent, adjoining or nearby a building which Council has assessed as being a dangerous building or a dam which Horizons Regional Council has by writing notified Council that it is deemed to be a dangerous dam pursuant to section 153 of the Act (Meaning of dangerous dam).

³ Sec 121(2)(a) Building Act 2004

2.68 Taking Action

2.6.18.1 In accordance with Section 124 and Section 125 of the Act the Council ~~will~~:

- Will Aadvise and liaise with the owner(s) of buildings identified as being dangerous, affected or insanitary.
- Will, Aas a consequence of a building or dam being identified as dangerous, consider whether any buildings should be regarded as being an affected building for the purposes of the Act.
- May request a written report on the dangerous building from Fire and Emergency New Zealand.
- May seek advice from relevant technical experts (e.g. structural and geotechnical engineers) to establish the validity of a potential s124 notice as required.

2.6.28.2 If found to be dangerous or insanitary:

- Attach written notice to the building requiring work to be carried out on the building, within a time stated in the notice being not 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~~ Heritage New Zealand Pouhere Taonga, 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, Council will formally request the owner(s) to provide an explanation as to how the work occurred and who carried it out and under whose instructions; (and apply for a Certificate of Acceptance if applicable).
- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as any other non-compliance matters.

2.6.38.3 Where Council has determined under section 121A of the Act that a building is an “affected building” Council may do any or all of the following:

- Erect a hoarding or put up a fence around the building;
- Attach a notice warning people not to approach the building;
- Issue a written notice restricting entry to the affected building for particular purposes or to particular groups of people for a maximum period of 30 days. Such notice may be reissued once for a further 30 days.

2.6.48.4 If the building is considered to be immediately dangerous or insanitary the Council may:

- Cause any action to be taken to remove that danger or insanitary condition (this may include prohibiting persons using or occupying the building and 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, or insanitary condition executed under a warrant issued by the Chief Executive as described in s129 of the Act
- 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.

8.5 All owners have a right of appeal as defined in the Act, which can include applying to the Department of Building and Housing Ministry of Business, Innovation and Employment for a determination under Section 177 of the Act.

~~2.6.5~~ 2.6.6 Council may apply to the District Court for an order authorising Council to carry out any required work, and recover costs as described in s126 of the Act if the work is not completed or not proceeding with reasonable speed within the time stated in the notice or within any further time Council may allow.

2.7.9 **Interaction between the Dangerous, Affected and Insanitary Buildings pPolicy and related sections of the Act**

~~Section 41: Building consent not required in certain cases.~~

~~2.7.1~~ 2.7.19.1 If a building is considered to be an immediate danger or insanitary, Council can waive the need to obtain a building consent to allow for the immediate dangerous or insanitary condition to be addressed under section 41 of the Act.

~~2.7.2~~ 2.7.29.2 ~~In cases where a building is assessed as being immediately dangerous or insanitary the Council may not require prior building consent to be obtained for any building work required so as to remove the dangerous or insanitary condition immediately. However, w~~Where Council has issued a notice under section 125(1) of the Act it must advise the owner of the building if a building consent will be required prior to the owner commencing any remedial works to the building.

~~2.7.3~~ 2.7.39.3 Prior to the lodging of a building consent application for the work required under the notice it is imperative that building owners discuss any works with the Council. In those circumstances where Council has not required a building consent to be issued prior to the commencement of the remedial works required by the notice the building owner will still be required to apply for a certificate of compliance as required by the Act.

2.8.10 **Record Keeping**

~~2.8.1~~ 2.8.110.1 Any buildings identified as being dangerous or insanitary will have the building inspection report a requisition placed on the property file for the property on which the building is situated until the danger or insanitary condition is remedied.

~~2.8.2~~ 2.8.210.2 A note will be placed on the property file of an affected building until such time as the dangerous condition of the adjacent, adjoining or nearby building or dam has been rectified.

~~2.8.3~~10.3 In addition, the following information will be placed on the [Land Information Memorandum \(LIM\)](#) and [Project Information Memoranda \(PIM\)](#):

- Notice issued that the building is dangerous, insanitary or is an affected building.
- Copy of [the](#) letter to owner(s), occupier and any other person that the building is dangerous, insanitary or is an affected building.
- Copy of the notice given under section 124(1) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger or insanitary condition.

2.9.11 Economic impact of policy

~~2.9.11.1~~ Due to the low number of dangerous, affected or insanitary buildings encountered annually by the Council, the economic impact of this policy is, at this date, considered to be low.

2.10.12 Access to information

~~2.10.12.1~~ Information concerning dangerous, affected ~~and/or~~ insanitary buildings will be contained on the relevant LIM, [PIM](#) and Council records.

~~2.10.2~~12.2 In granting access to information concerning dangerous, affected ~~and/or~~ insanitary buildings Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.

~~3.13~~ HERITAGE BUILDINGS

~~3.13.1~~ ~~No special dispensation will be given to heritage buildings under this policy.~~ [Heritage buildings will be assessed in the same way as other dangerous or insanitary buildings.](#)

~~3.2~~13.2 The fact that a building has heritage status does not mean that it can be left in a dangerous or insanitary condition. As per Section 125(2)(f) of the Act a copy of any notice issued under s124 of the Act will be sent to the Heritage New Zealand Pouhere Taonga where a heritage building has been identified as a dangerous, affected or insanitary building.

4.14 PRIORITIES

~~4.14.1~~ The Council will give priority to buildings where it has been determined that immediate action is necessary to fix dangerous or insanitary conditions. Immediate action will be required in those situations to fix those dangerous or insanitary conditions such as prohibiting occupation of the property, putting up a hoarding or fence and taking prosecution action where necessary.

14.2 Buildings that are determined to be dangerous or insanitary, but not requiring immediate action to fix those dangerous or insanitary conditions, will be subject to the minimum timeframes to prevent the building from remaining dangerous or insanitary (not less than 10 days) as set in Section 124(1)(c) of the Act.

515 Version History

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