

Dangerous, Affected, and Insanitary Buildings Policy



Approved by:	Council		
Sponsor:	Regulatory and Compliance Group Manager		
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POLICY OVERVIEW

1. Purpose

To reduce the potential risk posed to residents in the district by dangerous, affected and insanitary buildings.

To provide a clear framework of how Council will manage dangerous, affected and insanitary buildings.

2. Scope

This policy applies to all buildings within the Waimate District Council Territorial Authority District.

3. Associated Documents

- Building Act 2004
- Building (Earthquake-prone Buildings) Amendment Act 2016
- Heritage New Zealand Pouhere Taonga Act 2014
- WDC Dangerous, Affected, and Insanitary Buildings Procedures

4. Definitions

The Act

means the Building Act 2004.

Affected Buildings

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; or
- (b) a dangerous dam within the meaning of section 153.

Authorised Officer

has the same meaning as section 222 of the Act, as follows: means an officer of a territorial authority to whom either or both of the following applies:

- (a) he or she is authorised to carry out inspections; or
- (b) he or she is authorised to enter the land –
 - (i) by this Act; or
 - (ii) by an order of the District Court made under section 227.

Building

has the same meaning as section 8 of the Act, as follows: 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) a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987; 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
- (c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; and
- (d) includes the non-moving parts of a cable car attached to or servicing a building; and
- (e) includes the moving parts of a cable car attached to or servicing a building.

Council

means the Waimate 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 –
 - (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.
- (2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority –
 - (a) may seek advice from members of the Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
 - (b) if the advice is sought, must have due regard to the advice.

Heritage Building

has the same meaning as section 7(a)(i) and 7(a)(ii) of the Act, as follows:

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/Nga Manawhenua o Aotearoa me ona Korero Tuturu list maintained under s 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or

is specified as a Heritage building in the Operative District Plan or Proposed District Plan.

Household Unit

has the same meaning as section 7 of the Act, as follows:

- (a) means a building or group of buildings, or part of a building or group of buildings, that is –
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than one household: but
- (b) does not include a hostel, boardinghouse, or other specialised accommodation.

Insanitary Building

has the same meaning as section 123 of the Act, as follows: 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.

Inspection

has the same meaning as section 222 of the Act, as follows: means the taking of all reasonable steps –

- (a) to determine whether –
 - (i) building work is being carried out without a building consent; or
 - (ii) building work is being carried out in accordance with a building consent; or
 - (iii) a notice to fix has been complied with:
- (b) to ensure that –
 - (i) in relation to buildings for which a compliance schedule is issued, the inspection, maintenance, and reporting procedures states in the compliance schedule are being complied with; or
 - (ii) in relation to buildings that have specified systems, the requirement for a compliance schedule is being complied with:
- (c) to enable an authority to –
 - (i) identify dangerous, earthquake-prone or insanitary buildings within its district; and
 - (ii) carry out its functions or duties in relation to those buildings:
 - (iii) to satisfy a territorial authority as to whether a certificate of acceptance for building work should be issued under section 96.

Owner

has the same meaning as section 7 of the Act, as follows: 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.

Territorial Authority

has the same meaning as section 7 of the Act, as follows:

- (a) means a city council or district council named in Part 2 of schedule 2 of the Local Government Act 2002; and
 - (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 territorial authority; and
 - (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
- (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.

POLICY

5. Approach to detecting dangerous, affected or insanitary buildings

- 5.1 Council will not proactively inspect all buildings within the district.
- 5.2 Council will leverage its professional relationships with partner agencies (such as emergency services and social/ health agencies) and its existing workforce undertaking business as usual activities to identify potentially dangerous, affected or insanitary buildings.
- 5.3 Council will quickly and efficiently respond to any information received regarding potentially dangerous, affected or insanitary buildings.
- 5.4 Council will give priority to buildings that have been determined to be immediately dangerous. Immediate action will be required in these situations to remove the danger, such as prohibiting any person from occupying or using the building. If necessary, the building will be secured to prevent entry.

6. Priorities and considerations of Council in acting on detected dangerous, affected or insanitary buildings

- 6.1 Once an identified building is assessed and confirmed as dangerous, affected or insanitary, Council will determine how to act on a case-by-case basis based on the circumstances of the matter.
- 6.2 Council will require the property owner to provide it with a plan outlining how they intend to address and remove the confirmed risk/s. Under the Act, Council's role is to assess whether a plan will result in the removal of the confirmed risk/s within a reasonable and proportionate timeframe.

- 6.3 Council officers will consider the following factors when accessing a property owner's plan to remove a confirmed risk/s:
- (i) Facilitating the safety and wellbeing of affected persons.
 - (ii) The ability for risks to be mitigated.
 - (iii) The protection of heritage and cultural amenities.
- 6.4 The potential unintended consequences of any decisions or actions. If Council is the decisionmaker due to a District Court order, it will apply the same criteria and considerations in preparing its plan to remove the confirmed risk.
- 6.5 If a building presents an immediate danger or health hazard to people within and/or around it, or to surrounding buildings, Council may choose to invoke its powers under section 129 of the Act.

7. Application of the Policy to heritage buildings

- 7.1 This policy applies to heritage buildings in the same way that it applies to all other buildings.
- 7.2 Council will encourage the protection of heritage buildings and cultural amenities wherever possible. For example, Council will encourage lower-impact or invasive methods where a risk can be remediated without compromising heritage values. However, such initiatives will not be permitted where they would undermine safety considerations.
- 7.3 Where Council receives information regarding heritage buildings, it will seek advice from and involve Heritage New Zealand Pouhere Taonga and Council's District Planning Unit, unless any immediate risk/s precludes this.
- 7.4 Council will adhere to any relevant, heritage-related statutory requirements and processes, such as the Heritage New Zealand Pouhere Taonga Act 2014 and the Operative District Plan. For example, the demolition of buildings constructed prior to 1900 may trigger the archaeological provisions of the Heritage New Zealand Pouhere Taonga Act 2014.

8. State of emergency

- 8.1 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.

9. Costs

- 9.1 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.
- 9.2 If work required under such a notice issued by Council is not completed or proceeding with reasonable speed, Council may invoke 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.

- 9.3 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.

10. Monitoring

- 10.1 The success of this policy in achieving its purposes will be indicated by:
- (i) MBIE Performance Monitoring Assessment Reports; and
 - (ii) Feedback from Council employees and partner agencies.