



Dangerous, Affected and Insanitary Buildings Policy

Commencement: 14 August 2025
Amendments:
Next review date: 14 August 2030
Review frequency: 5 year intervals
Relevant Legislation: Section 131 of the Building Act 2004
and the Local Government Act 2002.

Introduction – *Kupu Arataki*

Section 131 of the Building Act 2004 (the Act) requires territorial authorities (Council's) to adopt a policy on dangerous buildings and insanitary buildings. The Building Amendment Act 2013 added section 132A which required the Council's policy to consider affected buildings.

Section 132(4) of the Act requires our policy to be reviewed at intervals of not more than five years. This policy replaces the "Dangerous, Affected and Insanitary Buildings Policy 2019".

1.0 Objectives – *Ngā whainga*

- (1) To ensure that people who use buildings can do so safely and without endangering their health.
- (2) To ensure that when dangerous, affected or insanitary buildings are found, the risk is appropriately reduced or removed within an acceptable timeframe.

2.0 Definitions – *Ngā Tikanga o ngā kupu*

Affected building is defined as any building that is adjacent to, adjoining, or nearby-

- a) a dangerous building as defined in section 121 of the Act; or
- b) a dangerous dam within the meaning of section 153 of the Act.

Dangerous building is defined under Section 121 of the Act as:

- “(1) A building is dangerous for the purposes of the 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 a fire, injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”
- “(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 (FENZ) who have been notified to the territorial authority by the Fire and Emergency National Commander as being competent to give advice; and
- (b) if the advice is sought, must have due regard to the advice.”

Heritage building is defined as any building identified as a Significant Cultural Heritage building in the District Plan or registered by Heritage New Zealand Pouhere Taonga in its Register of Historic Places.

Insanitary building is defined under Section 123 of the Act as:

“A building is insanitary for the purpose 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.”

3.0 Policy – *Te Kaupapa here*

- (1) This policy defines:
 - a. The approach that Council will take in performing its functions under the Act in relation to dangerous, affected and insanitary buildings
 - b. Council’s priorities in performing these functions; and
 - c. How the policy will apply to heritage buildings
- (2) Heritage buildings will be assessed in the same way as other potentially dangerous, affected or insanitary buildings. Discussions will be held with owners and if appropriate, Heritage New Zealand Pouhere Taonga to identify a mutually acceptable way forward. As per s125 (2) (f) of the Act a copy of any notice issued under s124 of the Act will be sent to Heritage New Zealand Pouhere Taonga where a heritage building has been identified as dangerous, affected or insanitary building.

- (3) Council will apply a risk-based and proportional approach when determining enforcement actions for dangerous, affected, and insanitary buildings. Each case will be assessed based on the level of risk to occupants, the broader community impact, and the obligations under the Building Act 2004. Where possible, Council will work collaboratively with building owners to achieve compliance before escalating enforcement actions.

3.1 Council's priorities under the Building Act

- (1) Priority will be given to buildings requiring work to be carried out urgently¹ to address the dangerous, affected and/or insanitary conditions.
- (2) Where the Council needs to prioritise work on buildings, the following issues will be taken into account:
 - a. Potential risk to human life and adjoining property
 - b. The importance of the building to the community e.g. hospital, school, building of cultural significance or heritage value
 - c. The frequency and level of use, and number of people using the building
 - d. The location of the building in relation to key infrastructure components
 - e. The size of the building
 - f. The age of the building and its expected life.

4.0 Dangerous or affected buildings

4.1 Identifying dangerous or affected buildings

The Whakatāne District Council will approach the management of dangerous and insanitary buildings primarily through responding to complaints and information from parties such as building occupants, neighbours, emergency services, and other agencies.

The Council does not consider it necessary to take a more proactive approach to identifying dangerous and affected buildings in the district.

¹ The Building Act (2004) Clause 41(1)(c) defines this as for the purpose of saving or protecting life or health or preventing serious damage to property.

This does not preclude this policy being enforced as a result of information from qualified staff discovered during the normal course of their duties.

Once a building has been brought to Council's attention, it will aim to assess the reported dangerous or affected building within 48 hours, where practicable. If access is delayed due to site conditions or other factors, the Council will prioritise its inspections based on public safety risk, in accordance with section 121(1) of the Act. This assessment will:

1. Include an inspection of the condition of the building in accordance with section 121(1) of the Act
2. Identify if the building is considered dangerous or affected
3. Consider if any of the powers provided in the Act should be invoked.

4.2 Taking action on dangerous or affected buildings

(1) Once a building has been found to be dangerous or affected, Council will:

- a. Inform the owner and occupier of the building.
- b. Provide instruction or actions that need to be taken to reduce or remove the danger as required by sections 124 and 125 of the Act.
- c. May liaise with FENZ and request a written report on the building from FENZ as outlined in section 121(2) of the Act.

(2) In implementing section 5.2(1), the Council will:

- a. 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.
- b. 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. This will also include Heritage New Zealand Pouhere Taonga if the building is a heritage building.
- c. 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.
- d. Where the danger is the result of non-consented building work, the owner will formally be requested to provide an explanation as to how the work occurred, who carried it out, and under whose instructions; and
- e. Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time, typically 10 days for

dangerous buildings and 30 days for affected buildings, as well as any other non-compliance matters.

- (3) If the building is considered to be immediately dangerous or affected, the Council will:
- a. Cause any action to be taken to remove that danger. This may include prohibiting people using or occupying the building or demolition of all or part of the building; and
 - b. Take action to recover costs from the owner(s) if the Council undertakes work to remove the danger.
 - c. The owner(s) will also be informed that the amount recoverable by the Whakatane District Council will become a charge on the land upon which the building is situated.
- (4) Where a building is assessed as requiring work to be carried out urgently² to address the dangerous and/or affected conditions, the Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any remedial action being taken, Council will require from the owners a written scope of the work. The owner must, as soon as practicable after completion of the building work, apply for a Certificate of Acceptance.
- (5) Council will consider issuing a notice under Section 124 of the Building Act 2002 where a building or buildings are found to be dangerous or affected.
- (6) Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of the Ministry of Business, Innovation and Employment in accordance with Section 177(3)(f) of the Building Act 2004.

4.3 Recording of dangerous or affected buildings

- (1) Where a building is found to be dangerous or affected, a notice will be placed on the building file for the property where the building is situated. This notice will remain on the file, along with any other information showing the danger has been remedied. In addition, this same information will be placed on any LIM produced for the property.
- (2) In granting access to information concerning dangerous or affected buildings, the Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

² The Act, section 41(1)(c)(i) defines this as for the purpose of saving or protecting life or health or preventing serious damage to property.

- (3) Where remedial work on a dangerous or affected building constitutes an alteration under Section 112, a change of use under Section 115, or is part of a subdivision affecting a building under Section 116A, the Council will ensure compliance with relevant provisions of the Building Act 2004. Additional consents or assessments may be required to align with these statutory requirements

5.0 Insanitary buildings

5.1 Identifying insanitary buildings

The Whakatāne District Council will approach the management of insanitary buildings primarily through responding to complaints and information from parties such as building occupants, neighbours, emergency services, and other agencies.

The Council does not consider it necessary to take a more proactive approach to identifying insanitary buildings in the district.

This does not preclude this policy being enforced as a result of information from qualified staff discovered during the normal course of their duties.

Once a building has been brought to Council's attention, Council will aim to assess the condition of the building within 48 hours, where practicable, in accordance with section 121(1) of the Act. This assessment will:

1. Include and inspection of the condition of the building in accordance with section 123 of the Act.
2. Identify if the building is considered to be insanitary.
3. Consider if any powers provided under the Act should be invoked.

5.2 Taking action on insanitary buildings

- (1) Once a building has been found to be insanitary, Council will:
 - a. Inform the owner and occupier of the building to take action to prevent the building from remaining insanitary;
 - b. Liaise with the Medical Officer of Health when required to assess whether the occupants may be neglected infirm
- (2) In implementing section 6.2(1), the Council will:
 - a. Attach a written notice to the building requiring work to be carried out on the building, with a time stated on the notice that is not less than 10 working days, to prevent the building from remaining insanitary;

- b. Give copies of the notice to the building owner(s), occupier, and every person who has an interest in the land or is claiming an interest in the land. This will also include Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
 - c. Contact the owner(s) 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; and
 - d. Determine if enforcement action should be pursued under the Act if the requirements of the notice are not met within a reasonable period of time.
- (3) If it is considered that immediate action is required to fix insanitary conditions the Council will:
- a. Cause any action to be taken to fix those insanitary conditions;
 - b. Take action to recover costs from the owner(s) if the Council must undertake works to remove the insanitary conditions; and
 - c. The owner(s) will also be informed that the amount recoverable by the Council will become a charge on the land on which the building is situated.
 - d. Where a building is assessed as requiring work to be carried out urgently³ to address insanitary conditions, the Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any remedial action being taken, Council will require from owners, and discuss with them, a written scope of the work. The owner must, as soon as practicable after completion of the building work, apply for a Certificate of Acceptance.
- (4) Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of Ministry of Business Innovation and Employment (MBIE) in accordance with Section 177 (3)(f) of the Building Act 2004.

5.3 Recording of insanitary buildings

- (1) Any buildings identified as being insanitary will have a requisition placed on the property file for the property on which the building is situated. A record of the requisition will remain for five years after the insanitary condition has been abated.
- (2) In granting access to information concerning insanitary buildings, the Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

³ The Act, section 41(1)(c)(i) defines this as for the purpose of saving or protecting life or health or preventing serious damage to property.

- (3) All identified insanitary buildings will have a requisition placed on the property file and remain for five years after the issue is resolved. This information will be disclosed in Land Information Memoranda (LIM) reports and, where applicable, in Project Information Memoranda (PIM) when it affects proposed building work
- (4) All identified insanitary buildings will be recorded in Council's Dangerous, Affected and Insanitary buildings register

6.0 Interaction with other Council policies

- (1). Council acknowledges that enforcement actions, including issuing Section 124 notices and requiring evacuations, may have short-term social and economic impacts, particularly where residential displacement occurs. In cases where emergency housing is needed, Council will liaise with social service agencies to minimize hardship while ensuring public safety
- (2). The economic impact of enforcing remedial actions for dangerous, affected, and insanitary buildings will be considered, particularly in cases involving small businesses or heritage buildings. Where feasible, Council will work with building owners to develop phased compliance plans that align with financial feasibility while ensuring statutory obligations are met

7.0 Review – *Te Arotake*

In accordance with sections 132(1), (2) and (4) of the Building Act 2004 this policy will be reviewed at intervals of not more than five years and any amendment or replacement of the policy must be in accordance with section 83 of the Local Government Act 2002.