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# Dangerous, Affected and Insanitary Buildings Policy 2019

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## 1.0 INTRODUCTION

The purpose of this policy is to identify and manage dangerous, affected and insanitary buildings in the Whakatāne District, in order to reduce the risk of injury, death, ill health or damage that may occur as a result of dangerous and/or insanitary buildings.

Under section 131 of the Building Act 2004 (the Act), all territorial authorities are required to adopt a policy on dangerous and insanitary buildings. Council adopted such an Earthquake Prone, Dangerous and Insanitary Buildings Policy in 2012. In 2013, the Act was amended to require councils to also consider 'affected buildings' in their policies.

In 2016, a further amendment was made to the Act, which required local bodies to remove all reference to 'earthquake-prone' in their policies. The purpose of this change was to provide a nationally consistent approach to managing the risks posed by earthquake-prone buildings, rather than local councils having to develop their own systems for identifying and managing these risks. The approach for identifying and managing potentially earthquake-prone buildings is now governed by the provisions of the Building Act.

This policy replaces Council's Earthquake Prone, Dangerous and Insanitary Building Policy 2016.

The policy sets out:

- The approach that Council will take in performing its functions under the Act in relation to dangerous, affected and insanitary buildings;
- Council's priorities in performing these functions; and
- How the policy will apply to heritage buildings.

## 2.0 OBJECTIVES

- (1) The overall objective of this policy is to ensure that people who use buildings can do so safely and without endangering their health.
- (2) This policy fulfils Council's responsibilities under section 131 of the Act, with respect to dangerous, affected and insanitary buildings. Council's responsibility is to ensure that when dangerous, affected or insanitary buildings are found, the danger is appropriately reduced or removed within an acceptable timeframe.

## 3.0 DEFINITIONS

**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 New Zealand Fire Service who have been notified to the territorial authority by the Fire Services 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 Operative District Plan or registered by the Historic Places Trust 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.”

## 4.0 POLICY APPROACH

- (1) This policy aims to:
  - a. Ensure that people who use buildings do so safely and without endangering their health; and
  - b. Provide a clear framework on how Council will manage unsatisfactory building conditions.
- (2) Whakatāne District Council will maintain a reactive approach to the management of dangerous, affected and insanitary buildings. Council will rely on external sources such as building occupants, neighbours, fire and emergency, the police and other agencies to inform them of dangerous, affected and insanitary buildings.
- (3) In setting this policy, the Council has endeavoured to strike a balance between the risks proposed by dangerous, affected and insanitary buildings and the broader social and economic issues affecting the communities in the Whakatāne District.
- (4) 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, the New Zealand Historic Places Trust 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 the New Zealand Historic Places Trust where a heritage building has been identified as an insanitary building.

### 4.1 Council's priorities under the Building Act

- (1) Priority will be given to buildings requiring work to be carried out urgently<sup>1</sup> 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 eg. hospital, school, cultural heritage;

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<sup>1</sup> 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.

- c. The 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; and
- f. The age of the building and its expected life.

## **5.0 DANGEROUS OR AFFECTED BUILDINGS**

### **5.1 Identifying Dangerous or Affected Buildings**

Once a building has been brought to Council's attention, Council will:

- a. Inspect and assess the condition of the building in accordance with section 121(1) of the Act;
- b. Identify any buildings that are dangerous;
- c. Consider if any of the powers provided in the Act should be invoked;
- d. Inform the owner and occupier of the building to take action to reduce or remove the danger as required by sections 124 and 125 of the Act; and
- e. Liaise with Fire and Emergency New Zealand (FENZ) when Council deems it appropriate, as outlined in section 121 (2) of the Act.

### **5.2 Taking Action on Dangerous or Affected Buildings**

- (1) Once a building has been deemed to be dangerous or affected, in accordance with s124 and s125 of the Act the Council:
  - a) Will advise and liaise with the owner(s) of the building;
  - b) May request a written report on the building from FENZ;
- (2) If the building is found to be dangerous or affected, 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, as well

- as the 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 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 persons using or occupying the building and demolition of all or part of the building); and
  - b. Take action to recover costs from the owner(s) if the Council must undertake works to remove the danger.
  - c. The owner(s) will also be informed that the amount recoverable by 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 urgently<sup>2</sup> 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 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.
- (5) Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of the Department of Building and Housing in accordance with Section 177(3)(f) of the Building Act 2004.

### 5.3 Recording of Dangerous or Affected Buildings

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<sup>2</sup> 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.

- (1) Where a building is identified as 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.

## **6.0 INSANITARY BUILDINGS**

### **6.1 Identifying Insanitary Buildings**

Once a building has been brought to the Council's notice, the Council will:

- a. Respond to and investigate all insanitary building complaints received;
- b. Inspect and assess the condition of the building in accordance with section 123 of the Act;
- c. Identify from these investigations any buildings that may be considered to be insanitary;
- d. Inform the owner(s) of the building to take action to prevent the building from remaining insanitary; and
- e. Liaise with the Bay of Plenty District Health Board when required to assess whether the occupants may be neglected or infirm.

### **6.2 Taking Action on Insanitary Buildings**

- (1) The Council will advise and liaise with the owner(s) of the buildings identified as being insanitary.
- (2) Where the building is found to be insanitary, 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, as well as the New Zealand Historic Places Trust, if the building is a heritage building;

- c. Where the insanitary conditions are the result of non-consented work, formally request the owner(s) to provide an explanation as to how the work occurred and who carried it out;
  - d. 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
  - e. 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 urgently<sup>3</sup> 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.

### 6.3 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.

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<sup>3</sup> 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.