



Dangerous, Affected and Insanitary Building Policy 2023

Owner: Executive Manager
Regulatory and Customer
Services

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1. Policy Objectives

- 1.1 To implement Ruapehu District Council's (Council) responsibilities under the Building Act 2004 that relate to dangerous, affected, and insanitary buildings.
- 1.2 To clearly state Council's approach to identifying dangerous, affected, or insanitary buildings, what powers it can exercise when such buildings are found, and how it will work with building owners to prevent buildings from remaining dangerous or insanitary, particularly where a dangerous building is affecting or potentially affecting another building.
- 1.3 To explain its approach where the building concerned is a District Plan Scheduled or Pouhere Taonga (formally known as Heritage New Zealand) listed heritage building or landmark.
- 1.4 To ensure building owners understand that the Council may exercise its powers to take steps on the owner's behalf and may recover any resulting costs from the owner.

2. Definitions

2.1 Dangerous building

Section 121 of the Building Act 2004 (the Act) states that

- (1) *"A building is dangerous for the purpose of this 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 is likely.*

2.2 Affected building

Section 121A of the Act states that *"A building is an affected building for the purpose of this Act if it 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"*

2.3 Insanitary building

Section 123 of the Act states that

'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.'*

2.4 Heritage Building means

- (a) *in subpart 6B of Part 2-*
 - (i) *a building that is included on the New Zealand Heritage List/Rarangi*

- Korero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or*
- (ii) *a building that is included on the National Historic Landmarks/Nga Manawhenua o Aotearoa me ona Korero Tuturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or*
 - (iii) *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 the Act; or*
 - (iv) *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*
 - (v) *a place, or part of a place, that is included in a schedule of a district plan because of its heritage value:*

3. Principles

- 3.1 The relevant principles of section 4 of the Act have been taken into account in preparing the Policy.
- 3.2 In considering these principles the Policy seeks to ensure that people who use buildings can do so safely without endangering their health. In preparing the Policy, the Council has endeavored to strike a balance between risks posed by dangerous, affected and insanitary buildings and broader social and economic issues involved.
- 3.3 The policy seeks to uphold Council's following focus and community wellbeing outcomes:
- (a) Social-Safe, Healthy Communities
 - Excellent standards of safety and welfare are promoted and respected.
 - Preparation, planning and timely responses protect people and property from natural hazards.
 - (b) Cultural- Vibrant and Diverse Living
 - Excellence and achievement in sport, arts/ cultural pursuits, community services and business is supported.
 - (c) Environmental – Sustaining Beautiful Environments
 - Our environment is accessible, clean and safe and our water, soil and air meets required standards.
 - (d) Economic – thriving economy.
 - Regulatory services and reliable infrastructure help the economy prosper.
 - (e) Strong Leadership and Advocacy
 - Council is proactive, transparent and accountable.

4. Background

4.1 Policy Scope

Section 131 of the Act requires territorial authorities to adopt a policy that states:

- (a) the approach that Council will take in performing its functions under the Act in relation to dangerous, affected, and insanitary buildings; and
- (b) its priorities in performing those functions; and
- (c) how the policy will apply to heritage buildings

5. Policy Statement

BUILDING(s) ESTABLISHED AS DANGEROUS, AFFECTED, OR INSANITARY BUILDING

- 5.1 Council is formally notified about dangerous, affected and insanitary buildings through:
- (a) public queries/complaints and
 - (b) undertaking monitoring.
- 5.2 Upon being notified that a building is dangerous, affected or insanitary, Council will consult with the building owner(s) to further determine the circumstances and decide on an appropriate course of action.
- 5.3 During this process, Council may seek the advice of Fire and Emergency New Zealand (FENZ) or any other relevant expert(s).
- 5.4 Following the inspection and consideration of any advice or recommendations of FENZ and or relevant expert(s), Council will determine whether or not the building is dangerous, affected and or insanitary. In making this decision Council will consider the provisions of Sections 121 and 123 of the Act.
- 5.5 Council will inform the complainant(s) of the inspection results and the Council's intended course of action to deal with the situation.
- 5.6 If Council is satisfied that a building is a dangerous, affected, or insanitary, it may use its powers under Sections 124, or 126 of the Act. This may include:
- (a) *putting up a hoarding or fence to prevent people from approaching the building nearer than is safe;*
 - (b) *attaching in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building;*
 - (c) *except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to-*
 - (i) *reduce or remove the danger; or*
 - (ii) *prevent the building from remaining insanitary*
 - (d) *issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.*

Explanatory note

Before any actions are taken, Council will consult with building owners to inform them about Council's action plan. Council seeks to minimise uncertainty in the management of dangerous, affected and insanitary buildings.

- 5.7 In forming its view as to the work or action that is required to be carried out on the building to remedy the conditions contributing to the building being insanitary or dangerous, Council may take the following matters into account:
- (a) Seek out expert advice (such as that of a Senior Building Control Officer)
 - (b) The size of the building;
 - (c) The complexity of the building;
 - (d) The location of the building in relation to other buildings, public places and natural hazards;
 - (e) The life of the building;
 - (f) How often people visit the building;
 - (g) How many people spend time in the building or are within the vicinity and close

- enough to be impacted by the dangerous or insanitary conditions;
- (h) The current or likely future use of the building, including any special traditional and cultural aspects of the current or likely future use;
 - (i) The expected useful life of the building and any prolongation of that life;
 - (j) The reasonable practicality of any work concerned;
 - (k) Any special historical or cultural value of the building; and
 - (l) Any other matters that Council considers to be relevant by taking into account the particular set of circumstances.
- 5.8 Following the inspection of the building, after receiving advice from FENZ (and or relevant expert(s)) and considering the matters listed above, Council will then decide whether immediate action should be taken to avoid the danger or to fix the affected and insanitary conditions pursuant to the provisions of Section 129 of the Act.
- 5.9 If Council resolves that immediate action under Section 129 of the Act is not required, Council will issue a notice under Sections 124 and 125 of the Act requiring the owner to carry out the necessary work, to obtain a building consent and to commence work. The time required to obtain a building consent and commence work will depend on the particular set of circumstances but shall not exceed the period specified in the notice; from the time notice was served on the owner. Completion of the work for which a building consent has been issued shall depend on the particular set of circumstances of each case but shall not exceed the period of time set out in the building consent.
- 5.10 Where a property owner has failed to carry out the work within the time specified, Council may apply to the District Court for an order authorising it to carry out the work pursuant to Section 130 of The Act. The full costs of carrying out such works will be recovered from the property owner.

Explanatory note

- (a) *Section 129 of the Act gives territorial authorities the power to remove the danger or fix insanitary conditions. This may include demolition of the building.*
- (b) *As per section 125 of the Building Act, a notice about what works will be carried out to the building, must be given to Heritage New Zealand Pouhere Taonga, if the building is a heritage building.*

6. Relevant Legislation

- 6.1 Relevant legislation is as follows:
- (a) Building Act 2004
 - (b) Local Government Act 2002
 - (c) Resource Management Act 1991
 - (d) Civil Defence Emergency Management Act 2002
 - (e) Heritage New Zealand Pouhere Taonga Act 2014
 - (f) Protection of Personal and Property Rights Act 1998
 - (g) Health Act 1956

7. Annotations

Date	Description
2006	First adopted
2023	Reviewed and updated to meet current legislative requirements

8. Policy Version Control

Policy drafted by	The Policy Team
Policy reviewed by	The Policy Team and the Regulatory and Building Team
Policy reviewed and recommended by the Information System Governance Group (ISGG)	N/A
Policy reviewed and recommended by the Audit and Assurance Committee	N/A
Policy reviewed and adopted by Council	27 September 2023

