

# DRAFT DANGEROUS, AFFECTED AND INSANITARY BUILDINGS POLICY 2024



<b>Policy type</b>	Council		
<b>Authorised by</b>	Council		
<b>First adopted</b>	7 March 2006	<b>Minute reference</b>	<b>M06/15.6</b>
<b>Revisions/amendments</b>	6 March 2011 11 February 2020	<b>Minute references</b>	<b>M11/13.6</b> <b>PO3/20/6</b>
<b>Review date</b>	<p><del>March 2024</del></p> <p><b>INSERT DATE 4 YEARS FROM LAST REVIEW</b></p> <p>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.</p>		

## 1. PURPOSE

- 1.1 To set out Council's approach to identifying and managing dangerous, affected and insanitary buildings.
- 1.2 To help ensure people who use buildings can do so safely without endangering their health.

## 2. SCOPE

- 2.1 This policy applies to all buildings within Tauranga.
- 2.2 This policy sets out:
  - the approach that the council will take in performing its functions under Part 2 of the Building Act 2004
  - Council's priorities in performing those functions
  - Council's approach to dangerous, affected and insanitary buildings.

## 3. DEFINITIONS

<b>Term</b>	<b>Definition</b>
Affected building	a building that is at risk of damage or other impact from a dangerous building or dam that is adjacent to, adjoining, or nearby. (Section 121A Building Act 2004 or any subsequent amendments)

Authorised officer	<p>an officer of the council to whom either or both of the following applies:</p> <ul style="list-style-type: none"> <li>(a) he or she is authorised to carry out inspections; or</li> <li>(b) he or she is authorised to enter the land <ul style="list-style-type: none"> <li>(i) by the Building Act 2004; or</li> <li>(ii) by an order of the District Court made under section 227.</li> </ul> </li> </ul> <p>(Section 222 Building Act 2004 or any subsequent amendments)</p>
Building	<p>defined under section 8 of the Building Act 2004 (or any subsequent amendments) and means any temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery or chattels).</p>
Dangerous building	<p>defined under section 121 of the Building Act 2004 (or any subsequent amendments). In summary it is a building that, for reasons other than earthquakes, is likely to cause injury or death, by collapse or otherwise; or it is likely to cause damage to other property.</p>
Heritage building	<p>a building that is included on:</p> <ul style="list-style-type: none"> <li>(a) Appendix 7A, 'Register of Built Heritage, Chapter 7 of the Tauranga City Plan</li> <li>(b) the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or</li> <li>(c) 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.</li> </ul> <p>(Section 7 Building Act 2004 or subsequent amendments)</p>
Insanitary building	<p>a building that:</p> <ul style="list-style-type: none"> <li>(a) is offensive or likely to be injurious to health because <ul style="list-style-type: none"> <li>(i) of how it is situated or constructed; or</li> <li>(ii) it is in a state of disrepair; or</li> </ul> </li> <li>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</li> <li>(c) does not have a supply of potable water that is adequate for its intended use; or</li> <li>(d) does not have sanitary facilities that are adequate for its intended use.</li> </ul> <p>(section 123 of the Building Act 2004 or any subsequent amendments)</p>

#### 4. PRINCIPLES

- 4.1 The relevant principles of section 4 of the Building Act 2004 (Act) have been taken into account in preparing this policy, **in particular the need to ensure that harmful events on human health are prevented or minimised.**
- 4.2 Council has a legislative responsibility to ensure the safety of the community when they are in buildings.
- 4.3 **Alignment with the council's community and inclusivity principle of ensuring that people feel safe in their community.**
- 4.4 Council will endeavour to make sure existing buildings are maintained and made safe in conjunction with the owner of a building.
- 4.4 Building owners have a responsibility to ensure their buildings are safe and healthy.

#### 5. COUNCIL'S APPROACH

- 5.1 Council has a **passive and** reactive approach to the **management-identification** of dangerous, affected and insanitary buildings. The council will use external sources such as building occupants, neighbours, Fire and Emergency New Zealand, New Zealand Police and other agencies to inform them of dangerous, affected and insanitary buildings.

#### 6. DANGEROUS AND AFFECTED BUILDINGS

- 6.1 On receiving information or a complaint regarding a possible dangerous **or affected** building, the council will:
  - (a) inspect and assess the condition of the building in accordance with section 121 of the Act
  - (b) identify any buildings that are dangerous
  - (c) assess whether there are any potentially affected buildings (in accordance with section 121A of the Act) and consult with the owners and occupiers of any affected buildings regarding appropriate risk management approaches before taking action under section 124 of the Act
  - (d) liaise with Fire and Emergency New Zealand (FENZ) when Council deems it appropriate, as outlined in section 121 (2) of the Act.
- 6.2 If a building is found to be dangerous or affected, the council will **inform and** work with the building owner's **/occupants** and if necessary, use powers it has available, to ensure appropriate action is taken to make the building, its occupants and the public safe.
- 6.3 **Council will exercise its statutory power under section 124 of the Act where action is required to avoid immediate danger or in circumstances where an acceptable solution cannot be reached by the building owner.**
- 6.4 The building owner's responsibility is to undertake works to remove or reduce the danger, make the building safe and assume full financial responsibility.
- 6.5 **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.**

## **7. INSANITARY BUILDINGS**

- 7.1 On receiving information or a complaint regarding a possible insanitary building, the council will:
- (a) inspect and assess the condition of the building in accordance with section 123 of the Act
  - (b) identify from these investigations any buildings that may be considered to be insanitary
  - (c) inform the owner(s) of the building to take action to prevent the building from remaining insanitary
  - (d) liaise with the Medical Officer of Health when required to assess whether the occupants may be neglected infirm.
- 7.2 If a building is found to be insanitary, the council will work with the building owner/s and if necessary, use powers it has available, to ensure appropriate action is taken to make the building, its occupants and the public safe.
- 7.3. The building owner's responsibility is to undertake works to make the building safe and sanitary and assume full financial responsibility.

## **8. HERITAGE BUILDINGS**

- 8.1 If a building which is deemed to be dangerous, affected or insanitary is also classified as a heritage building the approach is the same as for dangerous affected or insanitary buildings which are not heritage buildings. However, the council and the building owner/s will work in conjunction with the Heritage New Zealand Pouhere Taonga to remedy the building.
- 8.2 When considering heritage buildings under the policy, consideration will be taken of the:
- (a) importance of recognising any special traditional or cultural aspects of the intended use of the building
  - (b) need to facilitate the preservation and ongoing use of buildings and areas of significant cultural historical or heritage value.

## **9 COUNCIL'S PRIORITIES UNDER THE BUILDING ACT**

- 9.1 Priority will be given to buildings requiring work urgently to address dangerous, affected and/or insanitary conditions. Clause 41(1)(c) of the Act defines this as for the purpose of saving or protecting life or health or preventing serious damage to property.
- 9.2 Where the council does need to prioritise work on buildings, the following issues will be taken in to account:
- 1) potential risk to human health and life
  - 2) importance of the building to the community e.g. hospital, school
  - 3) level of use and number of people using the building
  - 4) location of the building in relation to key infrastructure components
  - 5) size of the building
  - 6) age of the building.

**10. RECORDING INFORMATION ABOUT DANGEROUS, AFFECTED AND INSANITARY BUILDINGS**

- 10.1 Council will maintain a register of all potentially dangerous, affected or insanitary buildings that they investigate.
- 10.2 All notices to fix issued under section 164 of the Act and dangerous, affected and insanitary building notices issued under section 124 will be kept on the public file and included in any Land Information Memorandum (LIM) report prepared by council.

**11. DISPUTES**

- 11.1 If a building owner disputes a council decision or proposed action, relating to the exercise of the council's powers under sections 124 or 129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Building Innovation and Employment, as set out in the Act.

**11. RELEVANT DELEGATIONS**

- 11.1 The Tauranga City Council Chief Executive has delegated authority and the authority to subdelegate the implementation of this policy.

**12. REFERENCES AND RELEVANT LEGISLATION**

Building Act 2004

Civil Defence Emergency Management Act 2002

New Zealand Pouhere Taonga Act 2014

Tauranga City Plan

Health Act 1956