

Waitaki District Council



**POLICY ON DANGEROUS AND INSANITARY BUILDINGS
2018**

Adopted: 4 December 2018

**Effective:
10 December 2018**

**Next review date:
December 2023**

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**WAITAKI DISTRICT COUNCIL
DANGEROUS AND INSANITARY BUILDINGS
POLICY 2018**

1. Introduction and Background

- 1.1 Section 131 of the Building Act 2004 (“the Act”) requires territorial authorities (“TAs”) to have a policy on dangerous and insanitary buildings. Additionally, Council is now also required to take into account affected buildings¹.
- 1.2 One of the key purposes of the Act, as set out in Section 3, is to ensure ‘people who use buildings can do so safely and without endangering their health.’ Section 4 details the principles to be applied in performing functions under the Act and specifically states that TAs must take these principles into account in the adoption and review of their dangerous and insanitary building policies.
- 1.3 This policy was originally adopted by the Waitaki District Council (“Council”) in 2006 in accordance with the requirements of the Building Act 2004.
- 1.4 The policy is required to state²: The approach that the Council will take in performing its functions under the Act; Council’s priorities in performing those functions; and how the policy will apply to heritage buildings.
- 1.5 In reviewing, amending and adopting this policy, Council has followed the special consultative procedure set out in Section 83 of the Local Government Act 2002.
- 1.6 In many, but not all, cases whether a building is dangerous, affected or insanitary status will not be readily apparent. For that reason, any attempt to identify these buildings proactively is unlikely to be successful unless Council has considerable resources to undertake inspections and evaluations of buildings.
- 1.7 As a consequence, the most likely sources of information concerning dangerous, affected or insanitary buildings continues to be from building occupants, neighbours, or as the result of an inspection by the Police, the Fire Service or other agencies authorised to inspect buildings. Other sources of information will be known directly by Council, possibly following a significant weather event.
- 1.8 Relying on complaints to provide information concerning potentially dangerous or insanitary buildings continues to be the most practical way in which Council can identify both these buildings and affected buildings within the district and undertake its statutory responsibilities.
- 1.9 The Dangerous and Insanitary Buildings Policy will no longer cover earthquake-prone buildings. Earthquake-prone buildings are now covered under Section 133 of the Act.

2. Definitions

The following definitions, contained in the Building Act 2004, will be used to determine whether a building is insanitary, dangerous or earthquake-prone:

- **Dangerous:** (s121(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 person in the building or to persons on other property is likely.”

- **Insanitary:** (s123) “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; does not have sanitary facilities that are adequate for its intended use.”

- **Affected building:** (s121A) “The 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.”

- **Heritage building:** “a building that is included on -

- a) The New Zealand Heritage List/ Rārangi Kōrero maintained under Section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or

- b) 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”

- c) The Waitaki District Plan Heritage Values Section 2

- **Land Information Memorandum:** document drawn from council records containing -

- a) Any special features or natural hazards of the land for example: Potential erosion, falling debris, subsidence, inundation, likely presence of hazardous substances

- b) Information on private and public storm water and sewerage drains

- c) Valuation and rating information, including any rates owing

- d) Any consents, certificates, notices, orders, or requisitions affecting land or buildings

- **Other Provisions contained in the Act**

- a) Section 123A defines “parts of a building”

- b) Section 124 describes powers of territorial authorities in respect of dangerous, affected buildings

- c) Sections 125-130 describe procedures to be applied in the exercise of those powers

- d) Section 131 provides that a territorial authority must adopt a policy on dangerous buildings

3. Policy Approach

3.1 Policy Principles

Provisions of the Act with regard to dangerous, affected or insanitary buildings reflect the government’s broader concern with the safety of the public in buildings, and with the health and safety of people occupying buildings that may be considered to be dangerous, affected or insanitary. However, Council recognises that public safety must be balanced against the other broader economic issues and in relation to other Council Policy. This policy replaces any previous iterations of this or similar acts or policies.

3.2 Overall Approach

- (i) Sections 124 to 130 of the Act provide the authority necessary for TAs to take action on dangerous, affected or insanitary buildings and set out how this action is to be taken.
- (ii) Council will continue to encourage the public to discuss their development plans with Council and to obtain building consent for work Council deems is necessary prior to any work commencing. This is particularly important in order to avoid creating dangerous or insanitary conditions that could be injurious to the health of occupants, particularly children and the elderly, or where safety risks are likely to arise from a change in use.
- (iii) Council has in the past relied upon complaints from various sources to identify dangerous or insanitary buildings and will continue with this passive approach.
- (iv) All new buildings must meet guidelines

3.3 Identifying Dangerous, Affected or Insanitary Buildings

- (i) Council will:
 - Take a passive approach to identification of buildings.
 - Actively respond to and investigate all buildings complaints received.
 - Identify from these investigations any buildings that are dangerous, affected or insanitary.
 - For dangerous buildings, inform the owner(s) and occupier of the building to take action to reduce or remove the danger; as is required by Sections 124 and 125 of the Act; (and liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with Section 121(2) of the Act).
 - For insanitary buildings, inform the owner(s) of the building to take action to prevent the building from remaining insanitary as is required by Sections 124 and 125 of the Act (and liaise with the Medical Officer of Health when required).
- (ii) For affected buildings, inform the owner(s) of the building only when restricting entry to the building.

3.4 Assessment Criteria

- (i) Council will assess dangerous, affected or insanitary buildings in accordance with the Act and established case law, as well as the building code.
- (ii) Council will:
 - Investigate as to whether the building is occupied.
 - Assess the use to which the building is put.
 - Assess whether the dangerous or insanitary conditions pose a reasonable probability of danger to occupants or visitors, or to the health of any occupants of the building. Upon the determination that a building is dangerous assess whether the dangerous building poses a reasonable probability of danger to occupants or visitors of any adjacent, adjoining or nearby buildings.
- (iii) Considerations as to dangerous assessment where a building is either occupied or not may include:
 - Structural collapse.
 - Loose materials/connections.
 - Overcrowding.
 - Use which is not fit for purpose.
 - Advice from the New Zealand Fire Service³.

- (iv) Considerations as to insanitary assessment where a building is occupied may include:
- Adequate sanitary facilities for the use.
 - Adequate drinking water.
 - Separation of use for kitchen and other sanitary facilities.
 - Likelihood of moisture penetration.
 - Natural disaster.
 - Defects in roof and walls/poor maintenance/occupant misuse.
 - The degree to which the building is offensive to adjacent and nearby properties.
- (v) A building will be deemed to be an affected building if it is adjacent, adjoining or nearby a building which Council has assessed as being a dangerous building.
- (vi) If, following a seismic event or other disaster, a building had previously been assessed as not dangerous or insanitary, the Council will reassess the building under the conditions laid out in this policy.

3.5 Taking Action

- (i) In accordance with Sections 124 and 125 of the Act the Council will:
- Advise and liaise with the owner(s) of the buildings identified as being dangerous, affected or insanitary.
 - As a consequence of a building being identified as dangerous consider whether any buildings should be regarded as being an affected building for the purposes of the Act.
 - Request a written report on the dangerous building from the New Zealand Fire Service.
- (ii) If found to be dangerous or insanitary:
- Attach a 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 ten (10) days, to reduce or remove the danger.
 - 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.
 - 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.
 - Where the danger is the result of non-consented building work, Council will formally request the owner(s) to provide an explanation as to how the work occurred and who carried it out and under whose instructions; (and apply for a Certificate of Acceptance if applicable).
 - Pursue enforcement action under Section 328 of the Act if the requirements of the notice are not met within a reasonable period of time as well as any other noncompliance matters.
- (iii) Where Council has determined under Section 121A of the Act that a building is an "affected building" Council may do any or all of the following:
- Erect a hoarding or put up a fence around the building;
 - Attach a notice warning people not to approach the building;
 - Issue a written notice restricting entry to the affected building for particular purposes or to particular groups of people for a maximum period of thirty (30) days. Such notice may be reissued once for a further thirty (30) days.

- Liaise with the New Zealand Fire Service when Council deems it appropriate, in accordance with Section 121 (2) of the act.
- (iv) If the building is considered to be immediately dangerous or insanitary Council may:
- Cause any action to be taken to remove that danger or insanitary condition (this may include prohibiting persons using or occupying the building and demolition of all or part of the building); and
 - Take action to recover costs from the owner(s) if Council must undertake works to remove the danger or insanitary condition.
 - Inform the owner(s) that the amount recoverable by Council will become a charge on the land on which the building is situated.
 - Prosecute building owners under section 375 of the Building Act.
- (v) Options for immediate action include:
- Prohibiting any person from occupying or using the building;
 - If necessary, erecting barriers and warning signs, plus securing the building to prevent entry until such time that remedial action can be taken;
 - Undertaking remedial action under Section 129 of the Act. Note that in the case of insanitary buildings, Council reserves the right to use powers available under Section 34 of the Health Act 1956.
- (vi) All owners have a right of appeal as defined in the Act, which can include applying to the Department of Building and Housing for a determination under Section 177 of the Act.
- 3.6 Interaction between the Dangerous and Insanitary Buildings policy and related sections of the Act:
- (i) Section 41: Building consent not required in certain cases under Section 41(1) of the Act.
- (ii) In cases where a building is assessed as being immediately dangerous or insanitary Council may not require prior building consent to be obtained for any building work required so as to remove the dangerous or insanitary condition immediately. However, where Council has issued a notice under Section 125(1) of the Act it must advise the owner of the building if a building consent will be required prior to the owner commencing any remedial works to the building.
- (iii) Prior to the lodging of a building consent application for the work required under the notice it is imperative that building owners discuss any works with Council. In those circumstances where Council has not required a building consent to be issued prior to the commencement of the remedial works required by the notice, the building owner will still be required to apply for a certificate of compliance as required by the Act.
- 3.7 Record Keeping
- (i) Any buildings identified as being dangerous or insanitary will have a notation placed on the property file for the property on which the building is situated until the danger or insanitary condition is remedied.
- (ii) A notation will be placed on the property file of an affected building until such time as the dangerous condition of the adjacent, adjoining or nearby building has been rectified.
- (iii) In addition, the following information will be placed on the Land Information Memorandum (LIM):

- Notice issued that the building is dangerous, insanitary or is an affected building.
- Copy of letter to owner(s), occupier and any other person that the building is dangerous, insanitary or is an affected building.
- Copy of the notice given under Section 124(1) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger or insanitary condition.

3.8 Economic Impact of Policy

Due to the lower number of dangerous, affected or insanitary building encountered annually by Council, the economic impact of this policy is, at this date, considered to be low. However, Council will be conscious of the costs of any work required to remove dangerous or insanitary conditions in the broader social and economic context of the community.

3.9 Access to Information

- (i) Information concerning dangerous, affected or insanitary buildings will be contained on the relevant LIM and Council records.
- (ii) In granting access to information concerning dangerous, affected or insanitary buildings, Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987 and Local Government Act 2002.

3.10 Dealing with Building Owners

- (i) Before exercising its powers under Section 124 of the Act, Council will seek, within a defined time-frame, to discuss options for action with owners on a mutually acceptable approach leading to receipt of a formal proposal from the owners for dealing with the dangerous, affected, or insanitary situation under Section 124 of the Act, or action being taken under the Health Act 1956.
- (ii) In the event that discussions do not yield a mutually acceptable approach and proposal, Council may commence with proceedings in accordance with Section 124 of the Act.
- (iii) Where parties other than the building owner have access to the building, Council will exercise its powers without delay in the interests of protecting the public. The owner will be kept fully informed of the process.

4. **Heritage Buildings**

- 4.1 Council believes it is important that heritage buildings within the District do not pose a risk to the safety of occupants or other buildings. However, Council does not wish to see the intrinsic heritage value of such buildings adversely affected by structural improvement measures.
- 4.2 Heritage buildings (that is those buildings identified in the Waitaki District Council Operative District Plan or by Heritage New Zealand Pouhere Taonga) will be assessed in the same way as other dangerous or insanitary buildings.
- 4.3 Where a heritage building has been identified as dangerous or insanitary, discussions will be held with owners of the building, Heritage New Zealand Pouhere Taonga and other stakeholders to identify a mutually acceptable way forward. Special efforts will be made to meet heritage objectives specified in the Operative District Plan.
- 4.4 The fact that a building has heritage status does not mean that it can be left in a dangerous or insanitary condition. As per Section 125(2) (f) of the Act, a copy of any notice issued under Section 124 of the Act will be sent to Heritage New Zealand Pouhere Taonga where a heritage building has been identified as a dangerous,

affected or insanitary building. Council will support heritage buildings whenever possible but ultimately, safety will take priority over heritage.

5. Priorities

5.1 The Council will give priority to buildings where it has been determined that immediate action is necessary to fix dangerous or insanitary conditions. Immediate action will be required in those situations to fix those dangerous or insanitary conditions such as prohibiting occupation of the property, putting up a hoarding or fence or taking prosecution action where necessary.

5.2 Buildings that are determined to be dangerous or insanitary, but not requiring immediate action to fix those dangerous or insanitary conditions, will be subject to the minimum timeframes to prevent the building from remaining dangerous or insanitary (not less than ten (10) days) as set in Section 124(1)(c) of the Act.

5.3 Council will use the following matrix to determine the timeframe in which the initial assessment will commence.

Assessment priority matrix

Risk calculator (Level of risk x Consequence of Failure)

Level of Risk	CONSEQUENCE OF FAILURE				
	Negligible (1)	Minor (2)	Moderate (3)	Major (4)	Extreme (5)
Very High (5)	5	10	15	20	25
High (4)	4	8	12	16	20
Medium (3)	3	6	9	12	15
Low (2)	2	4	6	8	10
Very Low (1)	1	2	3	4	5

Priority	Score	Working Days
Immediate	≥ 15	2
High	10-14	3
Medium	6-9	10
Low	≤ 5	20

Definitions

Level of Risk:

- **Very high:** accessed daily by large groups of people (e.g. hospital, education facilities, police/fire stations, prisons, community centres, supermarkets).
- **High:** accessed regularly by small groups of people (e.g. offices, shops, apartments).
- **Medium:** accessed daily (e.g. personal dwellings).
- **Low:** infrequent access, or exposure to hazard (e.g. detached garages, workshops, and sleepouts).
- **Very low:** unlikely to be occupied, space typically used for storage only (e.g. sheds, barns, storage units).

Consequence of failure:

- **Negligible:** no injuries, no inconvenience to building users, no impact on adjacent buildings/property.
- **Minor:** no injuries, some inconvenience to building users, unlikely to impact adjacent buildings/property.
- **Moderate:** No injuries, inconvenience to building owners, likely to impact adjacent buildings/property.
- **Major:** serious injury or death, evacuation or short term sheltering may be required.
- **Extreme:** multiple deaths/ serious injuries, failure of building likely to impact on adjacent buildings/property, evacuation or short term sheltering is required.

6. Policy Review

This policy will be reviewed on a 5 yearly basis from the date of adoption as required by Section 132(4) of the Building Act 2004. The Policy can be amended when required, subject to provisions of building code.

Notes

- 1 Section 132(a) Building Act 2004 which came into force on 27 November 2013
- 2 Section 131(2) of the Building Act 2004
- 3 Section 121(2)(a) of the Building Act 2004