

Draft Dangerous, Affected and Insanitary Building Policy



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Draft Dangerous, Affected and Insanitary Building Policy

1. INTRODUCTION

- 1.1. This policy sets out Kawerau District Council's approach in respect to the identification, assessment and management of dangerous, affected and insanitary buildings.
- 1.2. A combination of aging buildings, lack of maintenance, overcrowding and unauthorised building alterations can cause serious building problems for occupants and those who use buildings.
- 1.3. Failure to obtain a building consent or use a building for a purpose for which it is not suitable can also result in a building no longer complying with the building code and posing a danger to the occupants, the general public or other properties.

2. POLICY PURPOSE

- 2.1. The purpose of this policy is to meet the legislative requirements under s131 of the Building Act 2004 ('the Act') which requires Council to adopt and maintain a policy on dangerous, affected and insanitary buildings.
- 2.2. This policy sets out:
 - Councils approach to performing its functions under part 2 of the Act; and
 - Councils priorities in performing those functions; and
 - How the policy will apply to heritage buildings.

3. POLICY OBJECTIVE

- 3.1. The objectives of this policy are to:

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- To improve the control of, and encourage better practice in design and construction; and
- To reduce the potential risk posed to residents in the district by dangerous, affected or insanitary buildings;
- To provide a clear framework on how Council will manage unsatisfactory building conditions.

4. DEFINITIONS

4.1. **Act** means the Building Act 2004 and its amendments.

4.2. **Affected building** (section 121A of the Act or subsequent amendments)

- (1) A 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 153.¹

4.3. **Council** means the Kawerau District Council.

4.4. **Dangerous building** (section 121 of the Act or subsequent amendments)

- (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 persons in the building or to persons on other property is likely.
- (2) For the purpose of determining whether a building is dangerous in terms of subsection 1b) a territorial authority—
- (a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
 - (b) if the advice is sought, must have due regard to the advice.

4.5. **Heritage Buildings** (section 7 of the Building Act 2004 or subsequent amendments)

- (a) in subpart 6B of Part 2,—
 - (i) a building that is included on the New Zealand Heritage List/Rārangi Kōrero 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/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or

¹ There are no dams in the Kawerau District.

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- (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 that 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.
- 4.6. **Insanitary building** (section 123 of the Act or subsequent amendments) 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 adequate for its intended use; or
 - d) does not have sanitary facilities adequate for its intended use.
- 4.7. **Notice** (section 125 of the Act or subsequent amendments) means
- (1) A notice issued under section 124(2)(c) must—
 - (a) be in writing; and
 - (b) be fixed to the building in question; and
 - (c) be given in the form of a copy to the persons listed in subsection (2); and
 - (d) state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer; and
 - (e) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.
 - (1A) A notice issued under section 124(2)(d)-
 - (a) must be in writing; and
 - (b) must be fixed to the building in question; and
 - (c) must be given in the form of a copy to the persons listed in subsection (2); and
 - (d) may be issued for a maximum period of 30 days; and
 - (e) may be reissued once only for a further maximum period of 30 days.
 - (2) A copy of the notice must be given to—

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- (a) the owner of the building; and
 - (b) an occupier of the building; and
 - (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 2017; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 138 of the Land Transfer Act 2017; and
 - (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
 - (f) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
- (3) However, the notice, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).
- 4.8. **Owner** (section 7 of the Act or subsequent amendments) in relation to land and any buildings on the land, -
- a) means the person who -
 - i) is entitled to the rack rent from the land, or
 - ii) would be so entitled if the land were let to a tenant at a rack rent; and
 - b) Includes -
 - i) the owner of the fee simple of the land; and
 - ii) for the purposes of section 32, 44, 92, 96 97 and 176(c), any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force.

5. POLICY APPROACH

- 5.1. The provisions of the Act in regard to dangerous, affected or insanitary buildings reflect the government's broader concern with the safety of buildings. However, Council recognises that public safety must be balanced against the broader economic issues and in relation to other council policies.
- 5.2. Council will continue to encourage the public to discuss their development plans with Council and obtain building consents prior to commencing building work. This is particularly important to help avoid creating dangerous or insanitary conditions or safety risks that may arise from a change in building use, that could be injurious to the health of occupants.
- 5.3. Sections 124 to 130 of the Act provide the authority for Council to take appropriate action regarding dangerous, affected or insanitary buildings and sets out how this action is to be taken. This includes:

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- Inspecting and assessing buildings;
- Issuing formal notices;
- Requiring building owner(s) to carrying out remedial work;
- Council undertaking the remedial work where required; and/or
- The demolition of buildings.

5.4. Council will seek immediate or early resolution of any defect to minimize potential risk to public health and safety and where possible will work pro-actively with building owners to ensure the best outcome for all parties.

6. ECONOMIC IMPACT OF POLICY

6.1. In setting this policy, 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 community.

6.2. 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 low.

6.3. Council will be conscious of the costs of any work required to remove dangerous, affected or insanitary conditions, however this must be consider alongside the broader social and economic context for the community.

7. COUNCILS PRIORITIES

7.1. Council will give priority to buildings where it has been determined urgent action² is necessary to fix dangerous, affected or insanitary conditions.

7.2. Buildings determined dangerous, affected or insanitary, but not requiring urgent action, will be subject to timeframes in order to prevent the building from remaining dangerous or insanitary.

7.3. Where Council needs to prioritise work on buildings, the following matters will be taken into account:

- (a) The potential to cause harm to people and the likely degree of harm;
- (b) The potential to damage other property and the likely level of damage;
- (c) The building's importance to the community public e.g. a school, health facility, or marae;
- (d) The number of people who use the building;
- (e) The level of vulnerability of people who use the building;
- (f) The location of the building in relation to key infrastructure;

² Building Act 2004, section 41(1)(c) defines urgently as the the purpose of saving or protecting life or health or preventing serious damage to property.

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- (g) The size of the building;
- (h) The age of the building and its expected life.

8. IDENTIFYING DANGEROUS, AFFECTED OR INSANITARY BUILDINGS

- 8.1. Council recognises most dangerous, affected and insanitary buildings will be identified by complaints received from occupants, members of the public and adjoining property owners or through investigations by Police or Fire Emergency New Zealand ('FENZ').
- 8.2. Council will actively respond and investigate all building complaints received to identify dangerous, affected or insanitary buildings.

9. ASSESSING DANGEROUS, AFFECTED OR INSANITARY BUILDINGS

- 9.1. Council will investigate and assess every building identified as being potentially dangerous, affected or insanitary in accordance with sections 121, 121A and 123 of the Act.
- 9.2. Where a building is assessed as being dangerous, affected or insanitary, the risk level of the building will be established, in accordance with Council's priorities.
- 9.3. During the assessment of any building, and prior to setting actions, Council may seek advice from:
 - A subject matter expert;
 - Fire and Emergency New Zealand (dangerous or affected buildings);
 - Medical Officer of Health (insanitary buildings).
- 9.4. The risk assessment, any required remedial work and guidelines for undertaking remedial work, including the timeframe for completion, will be recorded in a written report. Council will give the report to the building owner and include a copy on the relevant property file.

10. TAKING ACTION ON DANGEROUS, AFFECTED AND INSANITARY BUILDINGS

- 10.1. Once a building has been deemed to be dangerous or affected, in accordance with s124 and s125 of the Act, the Council will:³
 - a) Liaise with building owner(s);
 - b) Require a hoarding of fence to prevent people approaching an unsafe building;

³ Building Act 2004, section 124

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- c) Attach a notice to the building requiring work to be carried out, within a set timeframe (not less than 10 days) to reduce or remove danger or make sanitary;
 - d) Give copies of the notice to the building owner, occupier and to every person who has an interest in the land, or is claiming an interest in the land, including Heritage New Zealand Pouhere Taonga where the building is a heritage building.
 - e) On the expiry of any notice issued, Council will contact the owner in order to ascertain whether the notice has been complied with.
- 10.2. Where any building is assessed as immediately dangerous, affected or insanitary, the Council will:⁴
- a) Cause an action to be taken to remove the danger (this may include prohibiting persons using or occupying the building and the demolition of all or part of the building) and;
 - b) Take action to recover costs from the owner(s) if the Council must undertake work to remove the danger or prevent the building remaining insanitary.
 - c) The owner(s) will also be informed that the amount recoverable by Council will become a charge on the land upon which the building is situated.
- 10.3. Where any building is assessed as requiring urgent work to address the dangerous, affected or insanitary conditions, the Council may not require a building consent. However, prior to any remedial action being taken, Council will require from owners, a written scope of work. The owner must, as soon as practicable after the completion of the building work, apply for a Certificate of Acceptance.
- 10.4. Where the danger is a result of non-consented building work, the owner will be formally requested to provide an explanation as to who carried out the work, and under whose instructions.
- 10.5. It is the building owner's responsibility is to undertake works required to reduce danger, by making the building safe and sanitary, including covering the financial responsibility for those works.

11. WORKING WITH BUILDING OWNERS

- 11.1. Council will take all reasonable steps to make contact with the owner(s) of any building assessed as dangerous, affected or insanitary, before any action is taken or notice issued under s124 of the Act.
- 11.2. Council will give the building owner(s) the opportunity to discuss and take into account, the owner(s) circumstances and future plans for the building. Where

⁴ Building Act 2004, section 129

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the expense of remedial work will place an unreasonable cost burden on the owner, this will be discussed with the owner and other alternatives, such as demolition or temporary hoardings will be considered.

- 11.3. Where a dangerous or insanitary building poses an urgent risk, Council may take remedial action first, where initial contact is unsuccessful, and then consult with the owner as soon as is practicable thereafter.

12. RELATIONSHIP WITH OTHER BUILDING ACT 2004 PROVISIONS

- 12.1. When a building owner applies for a building consent to alter an existing building, Council may assess the building as dangerous or insanitary if the alterations would affect:

- The means of escape in the event of a fire, and/or
- The ability of disabled persons to use the building, and/or
- The ability of the building to continue to meet the Building Code.

- 12.2. When a building owner applies for a building consent for remedial work required by a notice, Council will ensure the owner also makes the building compliant with building code requirements including those for people with disabilities.

- 12.3. A building owner will be required to comply with any outstanding notice before Council will issue a building consent for any work unrelated to the notice.

13. DISPUTES

- 13.1. Building owners may appeal Council's decision, relating to Council's exercise of powers under the Act, by lodging an application for a determination with the Chief Executive of the Ministry of Building Innovation and Employment, in accordance with section 177(3)(f) for the Act.

14. RECORDING THE STATUS OF DANGEROUS, AFFECTED AND INSANITARY BUILDINGS

- 14.1. Council will keep a register of all dangerous, affected or insanitary buildings, recording the status of requirements to remedy, and remedies undertaken.

- 14.2. Where a building is identified as dangerous, affected or insanitary, a notice will be placed on the associated property file. This notice will remain on the file, along with any other information showing the requirements to remedy and the remedies undertaken.

- 14.3. Information relating to dangerous, affected an insanitary buildings will be included on any Land Information Memorandums (LIMS) and Project Information Memorandum (PIMS) produced for the associated properties, until all remedial actions have been completed and approved by Council.

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- 14.4. In granting access to information concerning dangerous, affected or insanitary buildings, Council will comply with the requirements of the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.

15. HERITAGE BUILDINGS

- 15.1. Kawerau district currently has no buildings classified as heritage and Council is yet to assess Kawerau's built heritage or develop a heritage strategy. While this is a reflection that Kawerau having a relatively young building stock, Council will consider the heritage values of each building on their merits.
- 15.2. Where a building is deemed dangerous, affected or insanitary and is considered to hold heritage values, it will be assessed in the same way as other potentially dangerous or insanitary buildings.
- 15.3. Council will work with the building owners and if appropriate, Heritage New Zealand Pouhere Taonga to identify mutually acceptable remedy for the building, while respecting the heritage values.
- 15.4. When considering heritage values under this policy, consideration will be given to:
- The importance of recognising any special traditional or cultural aspects of the intended use of the building; and
 - The need to facilitate the preservation and ongoing use of buildings and areas of significant cultural historical or heritage value.