



**The Extraordinary Meeting of the
Kawerau District Council will be
held on Wednesday 14 August 2024
commencing at 11.00am**

A G E N D A

GUIDELINES FOR PUBLIC FORUM AT MEETINGS

1. A period of thirty minutes is set aside for a public forum at the start of each Ordinary Council or Standing Committee meeting, which is open to the public. This period may be extended on by a vote by members.
2. Speakers may address meetings on any subject. However, issues raised must not include those subject to legal consideration, or be issues, which are confidential, personal, or the subject of a formal hearing.
3. Each speaker during the public forum is permitted to speak for a maximum of three minutes. However, the Chairperson has the discretion to extend the speaking time.
4. Standing Orders are suspended for the duration of the public forum.
5. Council and Committees, at the conclusion of the public forum, may decide to take appropriate action on any of the issues raised.
6. With the permission of the Chairperson, members may ask questions of speakers during the period reserved for public forum. Questions by members are to be confined to obtaining information or clarification on matters raised by the speaker.

**The Extraordinary Meeting of the Kawerau District Council
will be held on Wednesday 14 August 2024
commencing at 11.00am**

A G E N D A

1 Karakia Timatanga | Opening Prayer

2 Apologies

3 Leave of Absence

4 Declarations of Conflict of Interest

Any member having a “conflict of interest” with an item on the Agenda should declare it, and when that item is being considered, abstain from any discussion or voting. The member may wish to remove themselves from the meeting while the item is being considered.

5 Meeting Notices

6 Nga Mihimihi | Acknowledgements

7 Public Forum

8 Electoral Processes and Decisions regarding the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 (Communications & Engagement Manager) (101200)

Pgs. 1 - 6

Attached is a report from the Communications and Engagement Manager covering the Electoral Processes and Decisions regarding the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024.

Recommendations

1. *That the report “Electoral Processes and Decisions regarding the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024” be received.*
2. *That Council resolves to:*

EITHER

- a) *rescind the resolution made on 22 November 2023 to introduce Māori Wards to the Kawerau District; and either completes a shortened representation review with an initial proposal required by 13 September 2024; or continue with the existing arrangements of eight councillors and the mayor elected ‘at large’;*

OR

b) reaffirm Māori wards as per the resolution made on 22 November 2023 for at least the 2025 triennial elections; and holds a poll at the 2025 triennial elections asking the community if they wish to reaffirm Māori Wards or not.

9 Dangerous, Affected and Insanitary Policy Submission Received (Group Manager, Regulatory and Planning) (320100)

Pgs. 7 - 43

Attached is a report from the Group Manager, Regulatory and Planning covering Dangerous, Affected and Insanitary Policy Submission Received.

Recommendations

- 1. That the report "Dangerous, Affected and Insanitary Policy Submission Received" be received.*
- 2. That Council receive the submissions to the consultation document for the proposed Dangerous, Affected and insanitary Policy; and*
- 3. That Council consider the submissions, deliberate and provide direction for any amendments to the proposed Dangerous, Affected and Insanitary Policy.*

10 Karakia Whakamutunga | Closing Prayer

M Godfery

Chief Executive Officer

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Meeting: Extraordinary Council

Meeting Date: 14 August 2024

Subject: **Electoral Processes and Decisions regarding the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024**

File No.: 101200

1 Background

Council has been working through the electoral processes as required via the Local Electoral Act 2001 during the past two years in preparation for the 11 October 2025 triennial elections.

On 6 September 2023, elected members decided to retain the First Past the Post (FPP) voting system and on 22 November 2023 resolved to introduce Māori representation through Māori wards.

Therefore, Council is undertaking a representation review regarding the arrangement of the seats around the Council table with the introduction of Māori wards alongside general wards.

From March 2024, early engagement with the community was completed, followed by workshops with elected members and on 17 July 2024 Council resolved to adopt the initial proposal for formal consultation, from 22 July to 26 August 2024.

In parallel, on 4 April 2024, the Coalition Government's Local Government Minister Hon. Simeon Brown announced the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill 2024 that has now passed into law.

Council made a submission raising concerns with the Bill when it was at select committee stage and supported a submission by Local Government New Zealand (LGNZ) on behalf of some 50-plus territorial authorities with regard to the negative impact of the Bill on localism, which effectively erodes the local decision-making of elected members as elected by their community.

The Act impacts Kawerau as it is one of 13 councils that resolved to introduce Māori representation through Māori wards in 2023, to take effect for at least the 2025 and 2028 elections.

2 Impacts of the Act

In total, 45 councils are impacted by this legislative change. Kawerau is one of 13 councils that resolved to introduce Māori representation in 2023 for the upcoming two elections in 2025 and 2028. However, the Act impacts this decision made by Council in November 2023 as follows:

1. Reinstating the pre-2021 provisions for polls on Māori wards (outlined in following pages)
2. Requiring 45 councils to either reverse their decision to introduce Māori wards or hold a poll (as outlined further in following pages)
3. Adjustments to the election timing to address postal pressures. These changes include:
 - a. Slightly shorter nomination period for candidates;
 - b. extending the voting period from 22.5 days to 32.5 days to ensure postal pressures do not impact the election;
 - c. voting period will start on 9 September 2025. Voting will close at 12 noon on 11 October 2025.

3 Options Considered

The Bill was enacted in late July 2024 and requires the following decision-making pathways for Council by 6 September 2024:

EITHER

- To resolve to rescind the introduction of Māori representation through Māori wards and then either:
 - complete a shortened representation review with an initial proposal required by 13 September 2024; or
 - continue with the existing arrangements of eight councillors and the mayor elected 'at large';

OR

- To resolve to reaffirm Māori wards for at least the 2025 election and to hold a poll;
 - the poll (binding referendum) would be held along with the 11 October 2025 triennial election and would ask the community if they wish to retain Māori wards or not.

NOTE: the outcome of the 2025 poll will be in place for the 2028 and 2031 elections.

The next time a binding poll could be held (whether resolved by Council or demanded by 5% of ¹electors) would be after the 2031 elections and effective for the 2034 elections.

¹Electors refers to the number of people enrolled to vote. For Kawerau, there were 5,125 electors or people enrolled to vote, as of the 2022 elections.

4 Policy and Plan Considerations

The representation arrangements review is legislated by the Local Electoral Act 2001. Electoral processes are also determined by the new Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024.

The Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 will supersede and in effect rescind the earlier amendments to the legislation by the former government.

The Local Government Commission advises that the special consultative procedure is not required for either decision to rescind or to retain Māori wards. Councils can use general principles for decision-making in accordance with the Local Government Act 2002.

5 Risks

Council must complete the legal requirements for engagement throughout the representation review, which are currently being undertaken via the special consultative process from 22 July to 26 August 2024. Council has sufficient time for a thorough and robust process to be completed as part of the representation review therefore the risk is low.

The introduction of the Act provides an additional workload and requirements for Council and creates uncertainty for the community. The Amendment Paper to the Act made changes which differed from the versions first introduced to Parliament and for consultation at the select committee stage. The most significant change is that councils now need to resolve on their approach to Māori wards – specifically resolving whether to rescind (or disestablish - albeit disestablishing is not applicable to Kawerau) or to retain and hold a poll in 2025. This decision is required by 6 September 2024.

The Act means that Councils can no longer go to a poll at the 2025 elections 'by default' so the risk is that if no decision is made to either rescind or continue with the current representation review and hold a poll at the 11 October 2025 elections – Council would not be compliant with the legislation.

The reintroduction of the option for the community to call for a poll, means at a future date, 5% of electors (currently 256 of the 5,125¹ electors) can force Council into reviewing the decision for Māori representation. This ability applies after the 2025 elections and adds to the risk of uncertainty for the community and for unbudgeted costs for Council with rising costs of postage for a poll outside of an election cycle.

There is now clarity that if the outcome of the 2025 poll is in favour of Māori wards then Māori wards will be in place for the 2028 and 2031 elections. The next time a binding poll could be held (whether resolved by Council or demanded by 5% of¹ electors) would be after the 2031 elections and effective for the 2034 elections. If the outcome of the poll is not in favour of Māori wards, Māori wards would not be in place for the 2028 and 2031 elections and the next time Council could consider Māori wards would be after the 2031 elections and effective for the 2034 elections.

6 Financial Considerations

Funding has been set aside in the Annual Plan budgets for 2023-2025 and 2024-2025 budget election in 2025. There is likely to be an additional cost of approximately \$1,000 to conduct a poll/referendum. Aligning the poll with the elections will greatly minimise this additional cost.

A stand-alone poll (not held in conjunction with an election) adds a higher cost for the community of approximately \$20,000 to \$25,000 (based on current postal rates and fees for external services to support the poll as required).

7 Legal Considerations

Representation reviews are a statutory process prescribed in the Local Electoral Act 2001 and in addition, the new Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024.

Election Services' Managing Director Dale Ofsoske is Kawerau's Electoral Officer and the subject matter expert. Election Services will continue to guide Council and ensure all legal obligations are met as part of the Local Electoral Act 2001 and the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024. A decision is required by 6 September 2024.

8 Significance and Engagement

When making decisions, Council will consult Tangata Whenua, Kaumātua and Iwi. Council will ensure it meet its obligations with regard to the principles relating to local authorities contained in s14 of the Local Government Act, Te Tiriti o Waitangi and the Council's Significance and Engagement Policy.

9 Strategic Context

Council introduced Māori wards in 2023 to meet the future aspirations of the community and in particular, to safeguard the diversity of representation of the current Council, into the future. The Kawerau community has a rich cultural background with a multitude of ethnicities who joined the district to support the township's industry in the mid-1950s. However, the Kawerau district has a longer history with Tangata Whenua and Ngāti Tūwharetoa (Bay of Plenty) Settlement Trust honour that whakapapa. Tangata whenua beneficiaries combined with all Iwi Māori who call Kawerau home form a 62% majority in population.

This ethnic majority is reflected in the Local Electoral Act's calculation that determines the number of Kawerau Māori Ward and Kawerau General Ward councillors around the table. With an even number of councillors, Kawerau has 50:50 Māori and General representation.

The new Act makes Māori wards the only wards where a poll is now required to justify being introduced or retained.

In addition, as outlined in the submissions to the select committee by Council and LGNZ, the Act undermines the local decision-making by elected members who have been chosen by the community to act on their behalf.

10 **Conclusion**

Following earlier workshops to outline the electoral processes and the then proposed Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024, this report outlined that the act is now law and requires decision-making by Council by 6 September 2024.

Council has two decision-making pathways as outlined in Appendix 1 in this report and it should be noted that Kawerau District is within 'Group 2' of councils that will need to rescind the decision or to retain and carry out a binding poll at the 2025 elections.

With regard to the respective legislation, Council has the decision-making authority to resolve either decision if they wish at this Extraordinary Meeting today or to seek further information and reconvene at a later date on or prior to 6 September 2024.

11 **RECOMMENDATIONS**

1. That the report "Electoral Processes and Decisions regarding the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024" be received.
2. That Council resolves to:

EITHER

- a). rescind the resolution made on 22 November 2023 to introduce Māori Wards to the Kawerau District; and either completes a shortened representation review with an initial proposal required by 13 September 2024; or continue with the existing arrangements of eight councillors and the mayor elected 'at large';

OR

- b). reaffirm Māori wards as per the resolution made on 22 November 2023 for at least the 2025 triennial elections; and holds a poll at the 2025 triennial elections asking the community if they wish to retain Māori Wards or not.

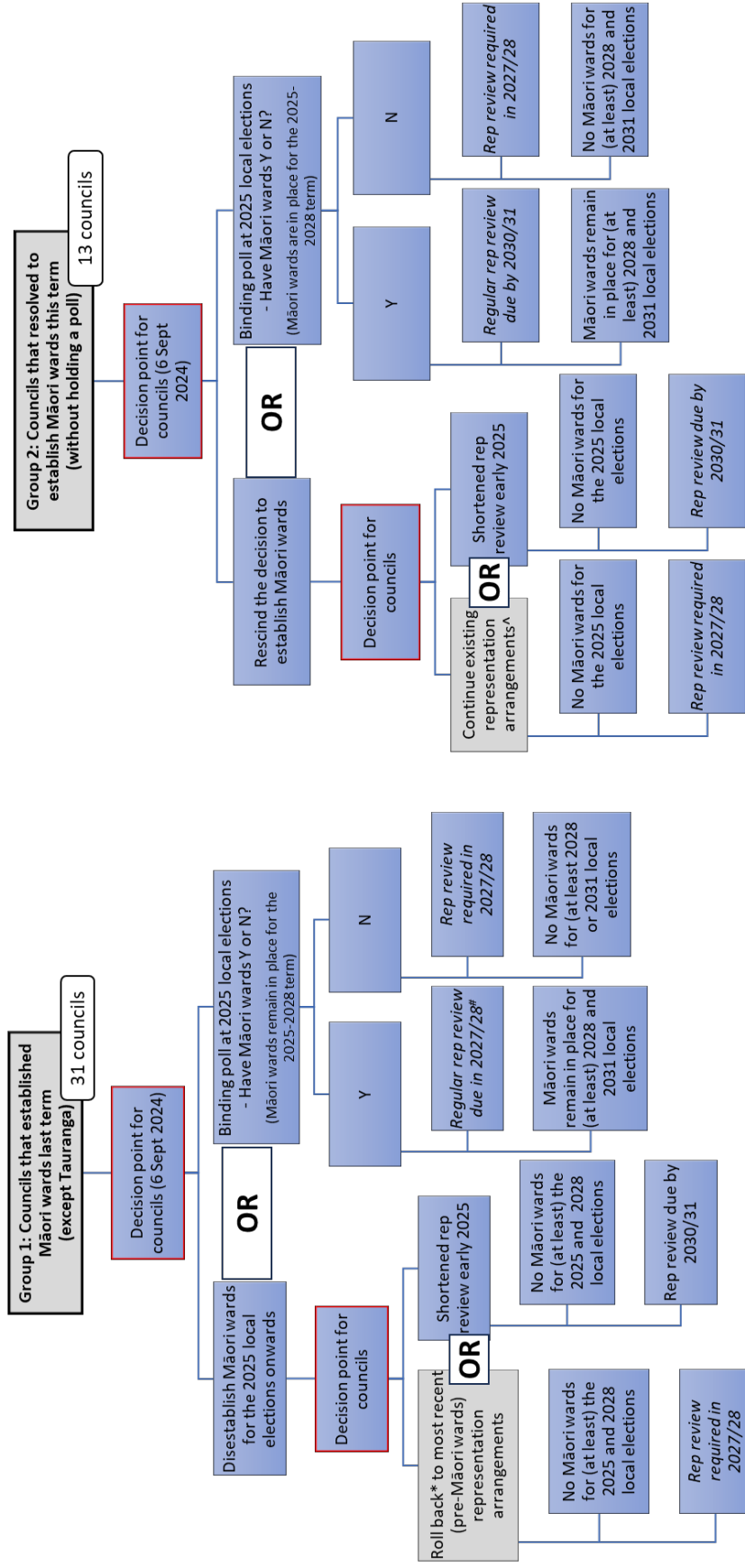


Tania Humberstone

Manager Communications and Engagement

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Transitional options for councils – Poll at 2025 elections or reverse Māori wards decisions



* Councils can only take this option if they would still meet the fair and representation requirements under the rolled back model.

Far North District Council not required to complete the regular rep review until 2030/31 if it has completed a rep review in the current term.

^ This option applies differently depending on when councils completed their last rep review:

- Any councils which undertook a rep review in the 2019-2022 term may use this option.
- Councils which last completed a rep review in the 2016-2019 term can only use this option if their representation arrangements can still meet the fair and effective representation requirements.

("Rep review" = review of council representation arrangements)

Meeting: Extraordinary Council

Meeting Date: 14 August 2022

Subject: **Dangerous, Affected and Insanitary Policy Submission Received**

File No.: 320100

1 **Purpose**

The purpose of the paper is for Council to receive and deliberate on the attached submissions for the Proposed Dangerous, Affected and Insanity Building Policy.

2 **Background**

The Building Act 2004, requires Council to adopt a policy on Dangerous, Affected and Insanitary Buildings and to review the policy every five years. Council's current policy was enacted on 1 August 2019 and a review has been undertaken.

On 12 June 2024, Council approved the proposed draft Dangerous, Affected and Insanitary Building Policy and the Statement of Proposal. On the same date Council approved the commencement of the special consultative procedure.

The special consultative process commenced on 24 June 2022 and closed on Friday 19 July 2024.

Two submissions were received during the consultation period and are attached for your information.

Further information was received from one external party who wish not to make an official submission, rather choosing to discuss and provide written information to Council staff. The special consultative process does not prevent a local authority from considering advice or comments from any person, before the decision is made. Details are outlined later in this report.

A meeting was set for 31 July 2024 to hear those who wished to speak to their submissions. Those who submitted on the Proposed Dangerous, Affected and Insanitary Buildings Policy did not request to speak to their submission, so this hearing will not held.

The Dangerous, Affected and Insanitary Buildings Policy is scheduled for adoption at the Council meeting on 28 August 2024.

3 **Considerations of Submissions**

In summary, I have outlined the key points of the two submissions and made comments to help guide consideration and discussion around the submissions made.

Submission 1

Policy Clause	Submission Recommendation	Staff Comments
10.1b	Can you change 10.1b wording to say require a hoarding OR fence ? if that is its intention.	Typo – correct as required

Submission 2

The second submission provided a significant level of feedback and included an amended policy. The key points in the submission are outlined below. Further comments have been added to the amended policy attached below.

Policy Clause	Submission Recommendation	Staff Comments
1.1 and 8.1, 8.2	<p>Include definitions of buildings</p> <p>Although descriptions are given in the Building Act, providing definitions in the Policy will help to aid knowledge and understanding.</p> <ul style="list-style-type: none"> - Mention that the buildings include permanent and temporary structures (immovable or movable) for occupation by people, animals, machinery, or chattels. - Define types of usages, e.g. Residential (which also includes vehicles and motor vehicles that are both immovable and used for permanent or long-term residential purposes), Community (residential and non-residential), Commercial, Industrial, Outbuildings and Ancillary. 	<p>Not all definitions recommended should be included as they are not required and create more confusion than assistance.</p> <p>Further comment on the amended policy attached.</p>
	<p>Consider adding some extra points/wording to sections in the Policy</p> <p>See attached draft Policy with suggestions for consideration in purple font.</p> <p>Possible typos are in red font.</p>	<p>There are significant additions as per attached submissions – Staff comments on submission itself</p> <p>Typos – correct as required</p>
	<p>Place section 4: Definitions as an Appendix: Definitions</p> <p>(Rationale: The list will be lengthier with descriptions of types of buildings.)</p> <p>(With the removal of section 4, the sections that follow to be renumbered.)</p>	<p>Definitions are best close to start of document to enable understanding as you read through – no need to relocate</p>

	Incorporate section 15: Heritage buildings with section 5: Policy approach (and renumber as section 4). (Rationale being that the sections that follow “Policy approach” also have applicability to Heritage buildings.)	Section 15 relates specifically to Heritage Buildings, and should be separate from the general Policy Approach.
	Insert another section: Section 12: Related legislation. e.g. Local Government Act 2002, Resource Management Act 1991, Civil Defence Emergency Management Act 2002, Heritage New Zealand Pouhere Taonga Act 2014, & Health Act 1956	New policy template has section for related documents – related document such as Acts can be incorporated there.
	Consider adding as the ‘new’ last section: Section 15: Monitoring, implementation and review.	This information is legislated and not required in the policy. Some items are a double up. Further comment on the amended policy attached.
	Consider adding a Contents page (and include page numbers).	Policy should be placed into new policy template, contents will help find information.

4 Other Considerations

4.1. Informal External Feedback Received

Additional feedback was received from an external organisation. No formal submission was received, however there is value in the additional feedback which was provided from a health prospective.

Section 83 of the Local Government Act sets out the requirements for the special consultative process. This provision does not prevent Council from considering advice or views from any person, prior to making a decision.

Recommendations received largely related to outlining the links between the Building Act 2004 and the Health Act 1956. While there are clear links, Council does need to focus the policy on the obligations around Dangerous, Affected and Insanitary Buildings.

I have outlined, in the same method used for submission, for the ease of understanding, those recommendation which hold benefit in consideration.

Policy Clause	Recommendation	Staff Comments
1.2	Amend wording "...can cause ill health and safety issues for occupants and those who use buildings"	Safety issues could be included, however ill health is not clear within scope of the definitions of Dangerous and Insanitary buildings. ill health may suggest the scope of the policy is larger than available under the Act.
1.3	Amend wording "...and posing a danger and health risk to the occupants..."	Health risk is under the definitions of Dangerous and Insanitary and could be included.
5.4	Amend wording "...work pro-actively with building owners and occupants.."	While it is the owners responsibility, we could include and where appropriate building occupants.
8.1	Information could also come via local hospital and health services, public health service, who go into homes all the time. Perhaps reference other local government agencies.	Information comes from many sources (tenancy tribunals etc) and we could broaden to include other organisations.
8.1 and 8.2	Identification of dangerous, affected and insanitary buildings will be by receiving information from..... It isn't only by complaint.	Replace the word complaints with information, as we often receive information rather than a specific complaint.
11.3	Replace urgent with immediate risk as this is the usual terminology.	Update to use immediate rather than urgent, as both are used in the Building Act and immediate works well here.
12.1	Suggest that change of use is considered. A change of use is often the catalyst for creating or likely to create insanitary situation. For instance, a home turning into a boarding house or other accommodation facility is likely to affect the ability for an OSET system to effectively manage the waste of the occupants, indoor air quality is likely to be reduced due to over-crowding, and the importance of having a potable water supply is greater because of the increased level of disease as a result..	Change of use should be included and additional points will need to be added in clause to address specific requirements under s115 of the Act.

Additional feedback received which has not been recommended relate to completing pro-active inspections, which is not possible due to staffing requirements, and including items that sit outside the scope of the policy.

4.2. Re-Format Policy

A new policy document has been developed to standardise the look and format of Council policies. It is recommended the Dangerous, Affected and Insanitary Building Policy is transferred to the new policy document as part of this review.

This will not require a change in content, only a change in the look of the overall document.

5 **RECOMMENDATIONS**

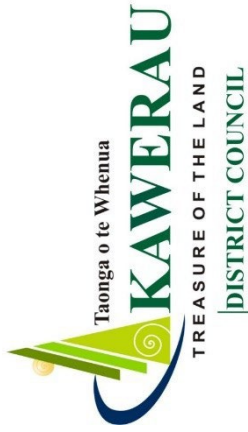
1. That the report "Dangerous, Affected and Insanitary Policy Submission Received" be received.
2. That Council receive the submissions to the consultation document for the proposed Dangerous, Affected and Insanitary Policy; and
3. That Council consider the submissions, deliberate and provide direction for any amendments to the proposed Dangerous, Affected and Insanitary Policy.



Michaela Glaspey

Group Manager Regulatory and Planning

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Kawerau District Council

Proposed Dangerous, Affected and Insanitary Building Policy Submissions

Two Submissions received as at the closing date Friday, 19 July 2024

1	<p>Submitter Rachael Savage rachaelsavage@icloud.com</p>	<p>Community Feedback Hi team Can you change 10.1b wording to say require a hoarding OR fence ? if that is its intention.</p>
		<p>Cheers</p>
2	<p>Submitter Submitter 1 (Name and Contact detail requested to be confidential)</p>	<p>Community Feedback Mōrena, Thanks for the opportunity to comment on the draft Dangerous, Affected and Insanitary Buildings Policy. Council hearing on 31 July 2024: No, I don't wish to present my submissions in person.</p>

Privacy Statement: Yes, I would like my name & contact details to be kept confidential.

My feedback follows:

My perspective on the draft Policy is as a visitor over a number of years to Kawerau's schools, Public Library, shops and motels.

Thumbs up!

- The proposed Policy aligns with the Council's functions under the Building Act 2004.
- The approach to be taken by Council and building owners; the Council's priorities; and how the Policy will apply to heritage buildings are clearly set out.

Suggestions:

1. Include definitions of buildings

Although descriptions are given in the Building Act, providing definitions in the Policy will help to aid knowledge and understanding.

- Mention that the buildings include permanent and temporary structures (immovable or movable) for occupation by people, animals, machinery, or chattels.
- Define types of usages, e.g. Residential (which also includes vehicles and motor vehicles that are both immovable and used for permanent or long-term residential purposes), Community (residential and non-residential), Commercial, Industrial, Outbuildings and Ancillary.

2. Consider adding some extra points/wording to sections in the Policy

See attached draft Policy with suggestions for consideration in purple font. Possible typos are in red font.

3. Place section 4: Definitions as an Appendix: Definitions

(Rationale: The list will be lengthier with descriptions of types of buildings.)
(With the removal of section 4, the sections that follow to be renumbered.)

	<p>4. Incorporate section 15: Heritage buildings with section 5: Policy approach (and renumber as section 4). (Rationale being that the sections that follow “Policy approach” also have applicability to Heritage buildings.)</p> <p>5. Insert another section: Section 12: Related legislation. e.g. Local Government Act 2002, Resource Management Act 1991, Civil Defence Emergency Management Act 2002, Heritage New Zealand Pouhere Taonga Act 2014, & Health Act 1956</p> <p>6. Consider adding as the ‘new’ last section: Section 15: Monitoring, implementation and review.</p> <p>7. Consider adding a Contents page (and include page numbers).</p> <p>NOTE: Submitter provided an amended copy of the Policy as attached below.</p>
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Draft Dangerous, Affected and Insanitary Building Policy



Date First Adopted:	30 May 2006
Last Reviewed :	1 August 2019
Next Review Date:	
Engagement Required:	Special Consultative Procedure (s83 LGA)
Document Number:	POL 001
Responsibility:	Group Manager, Regulatory and Planning

Feedback on the draft Policy

The proposed Policy aligns with the Council's functions under the Building Act 2004. The approach to be taken by Council and building owners; the Council's priorities; and how the Policy will apply to heritage buildings are clearly set out.

Suggest that the Policy also includes information about the types of buildings that are applicable that are intended for occupation by people, animals, machinery, or chattels - Residential (which also includes vehicles and motor vehicles that are both immovable and used for permanent or long-term residential purposes); Community (residential and non-residential); Commercial; Industrial; Outbuildings; and Ancillary.

Plus, consider the following:

- Add additional wording in some of the sections - see purple font on the following pages.
Possible typos are in red font.
- Place section 4: Definitions as an Appendix: Definitions
(Rationale: The list will be lengthier with descriptions of types of buildings)
- Incorporate section 15: Heritage buildings with section 5: Policy approach (and renumber as section 4).
(Rationale being that the sections that follow "Policy approach" also have applicability to Heritage buildings.)
- Insert another section: Section 12: Related legislation.
- Add as the 'new' last section: Section 15: Monitoring, implementation and review.
- Add a Contents page and include page numbers.

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Commented [MG1]: Content pages will assist and can be incorporated.

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 Under the Building Act 2004 ("the Act"), the term "building" means any temporary or permanent movable or immovable structure intended for occupation by people, animals, machinery, or chattels; and includes buildings of cultural historical or heritage value.

Commented [MG2]: Include partly in definition section

1.3 A combination of aging buildings, lack of maintenance, overcrowding, and unauthorised building alterations can cause a building to become dangerous or contaminated and neighbouring buildings classified as 'affected'.

1.4 The 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 and/or other properties.

Dangers

could include inadequate fire protection, or means of escape, or danger of collapse.

Commented [MG3]: No need to define dangers. To outline all dangers would be endless and may be limiting

1.5 Council's focus is on ensuring that residential, business and public buildings are designed, constructed and maintained for the wellbeing of our community; thus contributing to the Council's Vision: "To create a resilient and sustainable Kawerau that meets the needs of the future".

Commented [MG4]: Council is not responsible for designing and maintaining and we need to focus on our core responsibilities.

2. POLICY PURPOSE

2.1. The purpose of this Policy is to meet the legislative requirements under section 131 of the Building Act 2004 ("the Act") which requires Council to adopt and update every five years a policy on dangerous, affected and insanitary buildings. Accordingly, this Policy supersedes the Council's "Dangerous and Insanitary Buildings Policy" which was first adopted on 31 May 2006 and last reviewed on 1 August 2019.

Commented [MG5]: This is an old practice to repeal previous versions – this is no longer required in policy documents

2.2 This Policy sets out:

- Council's approach to performing its functions under Part 2 of the Act;
- Council's priorities in performing those functions; and
- How the Policy will apply to:
 - (a) Types of structures considered to be a 'building' under the Act, and
 - (b) Buildings also identified as being of heritage value under the Heritage New Zealand Pouhere Taonga Act 2014.

Commented [MG6]: This provision sets out the Building Act requirements for a policy (s131 (2)) The amended wording does not reflect the requirements. Structures comes under Building definition.

Note: This Policy no longer includes earthquake-prone buildings which are covered separately by sections 133AG – 133AY of the Act. The Building (Earthquake prone Buildings) Amendment Act 2016, which came into force on 1 July 2017, created a national policy framework for managing buildings deemed to be earthquake prone.

Commented [MG7]: Not relevant to policy – focus should be on the required information

2.3 Definitions of the terms “Building”, “Heritage”, “Dangerous”, “Affected”, and “Insanitary”, and of other terms used in this Policy are provided below in Appendix: Definitions.

Commented [MG8]: This is self-explanatory by including the definitions section and not required. Contents page will also provide details of where located.

3. POLICY OBJECTIVE

3.1 The objectives of this Policy are:

- To improve the control of building performance standards and encourage better practice so that buildings are designed and constructed, and able to be used in ways that promote sustainable development within the Kawerau district.
- To increase awareness of the following types of buildings that are applicable under the Act to this Policy:
 - (a) Structures (temporary or permanent, movable or immovable) that are defined as “buildings” when used for the following purposes: Residential (which also includes vehicles and motor vehicles that are both immovable and used for permanent or long-term residential purposes); Community (residential and non-residential); Commercial; Industrial; Outbuildings; and Ancillary; and
 - (b) Buildings defined as “heritage buildings” under the Heritage New Zealand Pouhere Taonga Act 2014;
- To reduce the potential risk of fire, injury, ill-health or death to people (residents, workers and visitors) and their animals (pets and livestock); and damage to machinery, chattels, and adjacent buildings, posed by dangerous, affected or insanitary buildings;
- To ensure buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
- To provide a clear framework of how Council will manage unsatisfactory building conditions.:

Commented [MG9]: This re-wording changes the meaning of the statement. Performance standards are set by Government and Council cannot improve control around these. Retain existing wording.

Commented [MG10]: The policy objective should be aligned around dangerous, affected and insanitary buildings, rather than types of buildings. Both (a) and (b) refer to definitions which do not belong in the objectives.

Commented [MG11]: Risk should be all encompassing, additional wording could be seen to limit the risk to key areas.

Commented [MG12]: This may have the effect of extending Council’s function beyond those available. It is not Council’s role to determine and ensure what is appropriate to health, physical independence and well-being. Council is guided by the Building Code and requirements of the Act.

4. POLICY APPROACH

4.1 Policy’s principles:

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

Commented [MG13]: Addition heading throughout document – not sure these are necessary

economic issues, the cultural and heritage value of a building, and in relation to other Council policies.

4.2 Building consents:

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.

4.3 Heritage buildings: [Transfer to here from draft Policy's Section 15]

- 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 of Kawerau having a relatively young building stock, Council will consider the heritage values of each building on their merits:
- Heritage buildings must be maintained and adapted for changing needs such as providing access for people with disabilities or protection from fire.
- 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.
- Council will work with the building owners and, if appropriate, Heritage New Zealand Pouhere Taonga, to identify a mutually acceptable remedy for the building, while respecting the heritage values.
- If a building is built before 1900, notification is to be given to Heritage New Zealand Pouhere Taonga, and if the building is to be demolished or repiled, an archaeological authority is to be obtained first from them.
- When considering heritage values under this Policy, consideration will be given to:
 - (i) The importance of recognising any special traditional or cultural aspects of the intended use of the building; and
 - (ii) The need to facilitate the preservation and ongoing use of buildings and areas of significant cultural historical or heritage value.
- Where a building is identified as having heritage value, the Council will advise the owner/s of any funding assistance available, such as the National Heritage Preservation Incentive Fund and New Zealand Lotteries Commission's Lottery Environment and Heritage grant, to help with costs associated with heritage buildings.

Commented [MG14]: This is not part of the policy approach should remain at 15

Commented [MG15]: This sits outside the scope of the policy

Commented [MG16]: This is a combination of a definition and reference to notification. Kawerau District does not have pre 1900 buildings and the notification is addressed within the policy later.

Commented [MG17]: Out of scope of Council – We do not hold this information

Commented [MG18]: As set out above – not sure the extra heading are required

4.4 Council's actions:

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:

- (a) Council responding to building complaints received from the public, or any person or organisation that has a health and safety interest in a particular building, or from investigations by New Zealand Police and Fire and Emergency New Zealand (FENZ);
- (b) Inspecting and assessing buildings (a subject matter expert, and/or Heritage New Zealand Pouhere Taonga may be required to assist);
- (c) Issuing formal notices, and considering if it should erect a hoarding or fence or warning sign;
- (d) Requiring building owner(s) to carrying out remedial work;
- (e) Council undertaking the remedial work where required when a building poses an urgent risk; and/or
- (f) The demolition of buildings; and
- (g) A record of all dangerous, affected and insanitary buildings being kept on the property file which building owners are able to access and will be provided on any LIM (Land Information Memorandum) and Project Information Memorandum (PIM) produced for the property.

Commented [MG19]: Covered elsewhere in policy. Not required in policy approach

Commented [MG20]: Covered elsewhere in policy. Not required in policy approach

Commented [MG21]: Covered elsewhere in policy. Not required in policy approach

Commented [MG22]: Covered elsewhere in policy. Not required in policy approach

4.5 Intended outcome:

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.

5. ECONOMIC IMPACT OF POLICY

- 5.1 In setting this Policy, Council has endeavoured to strike a balance between the threats posed by dangerous, affected and insanitary buildings and the broader social and economic issues affecting the community.
- 5.2 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.
- 5.3 Council will be conscious of the costs of any work required to remove dangerous, affected or insanitary conditions; however, this must be considered alongside the broader social and economic context for the community.

6. COUNCIL'S PRIORITIES

- 6.1 Council will give priority to buildings where it has been determined urgent action is necessary to fix dangerous, affected or insanitary conditions. (Building Act 2004,

section

41(1)(c) defines urgently as the purpose of saving or protecting life or health or preventing serious damage to property.)

Commented [MG23]: This is already in policy within footnote (Could place into Explanatory note)

- 6.2 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.
- 6.3 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;
 - (g) The size of the building; and
 - (h) The age of the building and its expected life.

7. IDENTIFYING DANGEROUS, AFFECTED OR INSANITARY BUILDINGS

- 7.1 Council recognises most dangerous, affected and insanitary buildings will be identified by complaints received from occupants, adjoining property owners and members of the public, or through investigations by New Zealand Police or Fire Emergency New Zealand ('FENZ').
- 7.2 Information about possible defective buildings can be forwarded to Council by:
- Calling Council on 07 306 9099 or emailing office@kaweraudc.govt.nz for our Customer Services team to log a service request
 - Completing a request for service form (([Fix-It and Report a Problem form](#)) on Council's website, which will be referred to a relevant staff member.)
- 7.3 Council will actively respond and investigate all building complaints received to identify dangerous, affected or insanitary buildings.

Commented [MG24]: Outside of scope of policy

8. ASSESSING DANGEROUS, AFFECTED OR INSANITARY BUILDINGS

8.1 Once Council has received information regarding a potentially dangerous, affected or insanitary building, it will investigate and assess the building in accordance with sections 121, 121A, 123, and 123A of the Act.

8.2 Council will:

- Check the details of the property against Council records; and
- Have an authorised officer undertake an inspection of the building in question. (Authorised officers are not required to inform or obtain approval for the inspection unless the building is a household unit. Council must either obtain consent of the household occupier or an order from a District Court, unless an emergency applies.)

8.3 During the assessment of any building, and prior to setting actions, Council may seek advice from:

- A subject matter expert to assist with determining the course of action;
- Heritage New Zealand Pouhere Taonga for buildings identified as being of cultural historical or heritage value;
- Fire and Emergency New Zealand (dangerous or affected buildings);
- Medical Officer of Health / Health Protection Officer (insanitary buildings). (Sections 29 and 42 of the Health Act 1956 also enable Council to deal with "nuisance" conditions where overcrowding and insanitary conditions make the dwelling unfit for habitation.)

8.4 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.

8.4 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.

9. TAKING ACTION ON DANGEROUS, AFFECTED AND INSANITARY BUILDINGS

9.1 Notification:

Once a building has been deemed to be dangerous or affected, in accordance with sections 124 and 125 of the Act, the Council will:

Commented [MG25]: This section has been reworded – No significant change. Initial wording provides consistent approach throughout document. Include s123A

Commented [MG26]: Not required in Policy, this relates more to internal procedures.

Commented [MG27]: Heritage New Zealand Pouhere Taonga does not have the expertise in determining the assessment of dangerous affected or insanitary building. Clause 15.2 and 15.3 address this in the proposed policy

Commented [MG28]: Not required in Policy – Council will include our Environmental Health Offices in the assessment of a building – part of Council internal procedures

Commented [MG29]: Not sure heading is required

- (a) Advise and liaise with the building owner(s);
- (b) Advise and inform the property occupier(s);
- (c) Consider whether to do all or any of the following:
- Put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
 - Attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building;
 - 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 (a) reduce or remove the danger; or (b) prevent the building from remaining insanitary;
 - Issue a notice that complies with section 125(1A) of the Act restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons. (This notice may be issued for a maximum period of 30 days; and may be reissued once only for a further maximum period of 30 days.);
- (d) 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 the danger or make sanitary;
- (e) Where the danger is the result of non-consented building work, issue a Notice to Fix under section 124 of the Building Act 2004;
- (f) Give copies of the notice/s 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 (if the building is listed or pre-1900).
- (g) On the expiry of any notice issued, Council will contact the owner in order to ascertain whether the notice has been complied with.

Commented [MG30]: Not a legal requirement, however can include as follows "If required and appropriate, advise and inform property occupiers"

Commented [MG31]: Consider retaining some areas and reword to fit proposed policy

- Already in policy
- Include
- Already in policy
- Keep in part (change wording to fit policy)

Commented [MG32]: Not required as part of policy as this is not specific to Dangerous, Affected and insanitary buildings. Where building is consider dangerous etc notice would be issued under provision set out in the policy. Referenced wrong section

Commented [MG33]: Not required and does not add value

9.2 Building assessed as requiring Immediate action:

Where any building is assessed as immediately dangerous, affected or insanitary, the Council will **under section 129 of the Act:**

Commented [MG34]: Not sure this is required – set out in first line

Commented [MG35]: Currently in footnote

- (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 (if demolishing or repiling a building built before 1900, an archaeological authority to be obtained first from Heritage New Zealand Pouhere Taonga).

Commented [MG36]: This was reword – no significant change except reference to Heritage building which is addressed under clause 15

(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.

9.3 Building consent:

- 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

owner/s 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.

- 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.

9.5 Financial responsibility:

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.

Commented [MG37]: Not sure headings are required

10. WORKING WITH BUILDING OWNERS

10.1 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 section 124 of the Act:

(a) 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.

(b) Where there is an agreement between the Council and the building owner to rectify any deficiency, the Council may elect to forego the issue of a formal notice, but will retain details of the building in the property file and register.

Commented [MG38]:

(c) Where an acceptable agreement between the building owner and the Council cannot be obtained, the Council will exercise its powers and issue a notice under section 124 of the Act. The section 124 notice will outline the danger to be removed and a timeframe to achieve the necessary result.

Commented [MG39]: Comments are not required in policy as this is discretionary. Notices address under previous provisions.

10.2 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 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.

10.3 The Council may apply to the District Court for an order authorising the Council to carry out building work if any work required under a notice issued by the Council

under section

124(2)(c) is not completed, or not proceeding with reasonable speed, within—

(a) the time stated in the notice; or

(b) any further time that the Council may allow.

Before applying to the District Court, the Council will give the owner of the building not less than 10 days' written notice of its intention to do so.

10.4 If the Council carries out building work under the authority of a District Council order

(a) the owner of the building is liable for the costs of the work; and

(b) the Council may recover those costs from the owner; and

(c) the amount recoverable by the Council becomes a charge on the land on which the work was carried out.

Commented [MG40]: This should be included using terminology to match the policy. Inclusion should be under Taking Action section, not working with building owners.

11. RELATIONSHIP WITH OTHER BUILDING ACT 2004 PROVISIONS

- 11.1 When a building is located in an area that has been designated as affected by an emergency under subpart 6B of the Act, then dangerous, affected, or insanitary notices shall not apply if issued while the designation is in force. However, any action taken or notices issued prior to any emergency designation shall continue to apply.
- 11.2 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.
- 11.3 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.
- 11.4 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.

12. RELATED LEGISLATION

- 12.1 In considering how to address non-compliance, Council may consider other legislative requirements or compliance mechanisms in addition to the Building Act 2004.

This may include consideration of the following:

- Local Government Act 2002
- Resource Management Act 1991
- Civil Defence Emergency Management Act 2002
- Heritage New Zealand Pouhere Taonga Act 2014
- Health Act 1956

Commented [MG41]: No required in Policy and related documents/legislation is part of new policy format.

- 12.2 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 Policy and the Civil Defence Emergency Management Act 2002 instead of, or in addition to, its powers under the Building Act 2004.

Commented [MG42]: This should be included in policy, but better suited under a scope section.

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 (MBIE), in accordance with section 177(3)(f) of the Act.

- 13.2 The determination ruling by MBIE is binding on all parties.

Commented [MG43]: This is not 100% correct as decisions have been taken to Court and overturned.

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 Memorandum (LIM) and Project Information Memorandum (PIM) produced for the associated properties, until all remedial actions have been completed and approved by Council.
- 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. MONITORING, IMPLEMENTATION AND REVIEW

- 15.1 The implementation of this Policy will be monitored by the Council's Group Manager, Regulatory and Planning.
- 15.2 The Policy will be reviewed at least every five (5) years, as required under section 132 of the Act, unless an earlier review is required due to changed legislative and statutory requirements change, or is warranted by another reason requested by Council.
- 15.3 The Policy does not cease to have effect because it is due for review or is being reviewed.
- 15.4 The Policy's review will take place using the special consultative procedures under section 83 of the Local Government Act 2002
- 15.5 A copy of the Policy is provided to the Chief Executive of the Ministry of Business Innovation and Employment (MBIE) once it has been adopted or amended.

Commented [MG44]: Section not required as cover in legislation and does not add to policy.
 15.1 – Responsibility is set out at start of document
 15.2 – Review is set out at start of document
 15.3 – Part of Review process and not required in policy
 15.4 – Use of special consultative process is set out at start of document
 15.5 – Policy provide to MBIE CEO is part of Council requirements and not required in policy.

APPENDIX: DEFINITIONS

Act	<p>Means the Building Act 2004 and its amendments.</p> <p>The Act seeks to achieve the following purposes:</p> <ul style="list-style-type: none"> • People who use buildings can do so safely and without endangering their health; • Buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; • People who use a building can escape from the building if it is on fire; and • Buildings are sustainably designed, and constructed, and able to be used in ways that promote sustainable development.
Building Code	(Schedule 1 of the Building Regulations 1992) Sets the minimum performance standards buildings must meet
Buildings	(Section 8 of the Act or subsequent amendments) Means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels);
	<p>Examples of the types of buildings listed in the Act include:</p> <ul style="list-style-type: none"> • a mechanical, electrical, or other system attached to the structure; • any means of restricting or preventing access to a residential pool used for swimming, wading, paddling, or bathing; and • a vehicle or motor vehicle that is immovable and is occupied by people on a permanent or long-term basis;

Commented [MG45]: Do not need to set out purpose of Act

Commented [MG46]: Not required

- a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); and
- a cable car attached to or servicing a building.

Commented [MG47]: Should include – reference to sections only due to large nature of the two sections – May consider adding explanatory note

Buildings - Heritage

(Section 7 Building Act 2004 or subsequent amendments)

- (a) 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
 - 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.
- (b) 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
 - a heritage order within the meaning of section 187 of the Resource Management Act 1991; or
 - is included in a schedule of a district plan because of its heritage value;
- (c) A building constructed prior to 1900.

Commented [MG48]: Definition amendments do not correspond to Act. Definition should remain as stated in Act

Building uses

Types of building uses include: Housing, Residential, Communal residential, Communal non-residential, Commercial, Industrial, Outbuildings, and Ancillary.

See definitions below:

Commented [MG49]: Definitions between Building Uses and Building Defect are not required and could create more confusion than assistance in understanding the policy.

Housing

(Under section 1 of the Building Code) Applies to buildings or use where there is self-care and service (internal management).

There are three types:

- Detached dwellings** where a group of people live as a single household or family. Examples: a holiday cottage, boarding house accommodating fewer than 6 people, dwelling or hut.
- Multi-unit dwelling** which contains more than one separate household or family. Examples: an attached dwelling, flat or multi-unit apartment.
- Group dwelling where** groups of people live as one large extended family. Examples: within a commune or marae.

<i>Household unit</i>	<p>Means a building or group of buildings, or part of a building or group of buildings, that is—</p> <ul style="list-style-type: none"> (i) used, or intended to be used, only or mainly for residential purposes; and (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but (iii) does not include a hostel, boarding house, or other specialised accommodation. <p>(Section 7 of the Act)</p>
<i>Residential</i>	<p>Means any place used predominantly as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place, and includes:</p> <ul style="list-style-type: none"> (i) a hotel, motel, inn, hostel, or boarding house; <ul style="list-style-type: none"> <u>(ii) a convalescent home, nursing home, or hospice;</u> <u>(iii) a rest home or retirement village;</u> <u>(iv) a camping ground;</u> <u>(v) any similar place.</u>
<i>Communal residential</i>	<p>(Section 3 under the Building Code)</p> <p>Applies to buildings or use where assistance or care is extended to the principal users.</p> <ul style="list-style-type: none"> (i) Community service where limited assistance or care is extended to the principal users. Examples: A boarding house, hall of residence, holiday cabin, backcountry hut, hostel, hotel, motel, nurses' home, retirement village, time-share accommodation, a work camp, or camping ground. (ii) Community care where large degree of assistance or care is extended to the principal users. There are two types: <ul style="list-style-type: none"> (a) Unrestrained; where the principal users are free to come and go. Examples: A hospital, an old people's home or a health camp. (a) Restrained; where the principal users are legally or physically constrained in their movements. Examples: A borstal or drug rehabilitation centre, an old people's home where substantial care is extended, a prison or hospital. <p>(Section 4 of the Building Code)</p>
<i>Communal non-residential</i>	<p>Applies to a building or use being a meeting place for people where care and service is provided. There are two types:</p>

(i) Assembly service

Examples: a church, cinema, clubroom, hall, museum, public swimming pool, stadium, theatre, or wharehau (meeting house).

(ii) Assembly care

Examples: A day care institution, early childhood education and care centre, kindergarten, school, college, university, or centre for persons with disabilities

(Section 5 of the Building Code)*Commercial*

Applies to a building or use in which any natural resources, goods, services or money are either developed, sold, exchanged or stored.

Examples:

An amusement park, auction room, bank, car-park, catering facility, coffee bar, computer centre, fire station, funeral parlour, hairdresser, library, office (commercial or government), Police station, post office, public laundry, radio station, restaurant, service station, shop, showroom, storage facility, television station or transport terminal.

(Section 6 of the Building Code)

Applies to a building or use where people use material and physical effort to:

Industrial

(a) extract or convert natural resources,

(b) produce goods or energy from natural or converted resources,

(c) repair goods, or

(d) store goods (ensuing from the industrial process).

Examples: An agricultural building, agricultural processing facility, aircraft hangar, factory, power station, sewage treatment works, warehouse or utility.

(Section 7 of the Building Code)

Applies to a building or use not intended for human habitation, and are accessory to the principal use of associated buildings.

Outbuildings

Examples: A carport, farm building, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.

(Section 7 & 8 of the Act & section 8 of the Building Code)

Applies to a building or use not for human habitation but which are required to comply with structural and safety-related aspects of the Building Code.

Ancillary

Examples:

A bridge, derrick, fence, free-standing outdoor fireplace, jetty, mast, path, platform, pylon, retaining wall, tank, tunnel or dam.

Building defects

Section 121 of the Act or subsequent amendments, provides the following interpretation of dangerous, affected and insanitary buildings.

Commented [MG50]: As Above

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.

(Section 129 of the Act or subsequent amendments)

- (1) This section applies if, because of the state of the building;
- (a) immediate danger to the safety of people is likely in terms of section 121 or 123; or
 - (b) immediate action is necessary to fix insanitary conditions.

Commented [MG51]: Definition not required and this section does not provide the definition

(Section 121A of the Act or subsequent amendments)

Immediate danger

- (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.
- (Note: There are no dams in the Kawerau District)

Commented [MG52]: Included in footnote already

(Section 123 of the Building Act 2004 or subsequent amendments)

Affected building

- 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 (i.e. safe to drink & complies with the drinking water standards) that is adequate for its intended use; or
- (d) does not have sanitary facilities that are adequate for its intended use; e.g. washing &/or toilet facilities; machines for washing dishes and clothes).

Commented [MG53]: Definition from Act – should not insert additional wording

Insanitary building

Council

The Kawerau District Council.

LIM (Land Information Memorandum)

A report that is prepared by Council in relation to matters affecting land and buildings on a particular property that includes the following information, if applicable:

- Any special feature of the land including potential erosion, falling debris, sinking, slipping, silting or build-up of land, flooding or likely hazardous pollutants known to the Council.
- Private and public drains and easements known to Council.
- Government valuation of the property and rates struck and owing for the current year. (Note: This will also include water rates where applicable).
- Council consents, certificates, notices, orders and requisitions affecting the land and any buildings on that land.
- Zoning of the property and how the land can be used.
- Certificates issued by a building certifier.
- Any information that has been submitted to Council by other outside statutory organisations or network utility operators relating to the site or general locality.

Commented [MG54]: Definition not required

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—
- (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).

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.

An owner is responsible for—

- (a) obtaining any necessary consents, approvals, and certificates:
- (b) ensuring that building work carried out by the owner complies with the building consent or, if there is no building consent, with the building code;
- (c) ensuring compliance with any notices to fix.

Commented [MG55]: Definition is from the Act – should not be amended - Owner responsibilities is not required under the definition and these relate to works outside of scope of policy etc before becoming Dangerous etc

Project Information Memorandum (PIM) A project information memorandum (PIM) issued by Council to provide information about land and about the requirements of other Acts that might be relevant to proposed building work.

Commented [MG56]: Not required

Property file and register A record of legal information the Council is required to maintain in terms of 216 of the Act.

Commented [MG57]: Not required

Territorial Authority (Section 7 of the Act or subsequent amendments)

- (a) Means a City Council or District Council named in Part 2 of Schedule 2 of the Local Government Act 2002; and
- (i) in relation to land within the district of the territorial authority,
- or a building on or proposed to be built on such land, means that territorial authority; and
- (II) in relation to any part of a coastal marine area (within the meaning of the Resource Management Act 1991) that is not within the district of the territorial authority, or a building on or proposed to be built on any such part, means the territorial authority whose district is adjacent to that part; and
- (b) includes the Minister of Conservation or the Minister of Local Government, as the case may be, in any case in which the Minister of Conservation or the Minister of Local Government is the territorial authority under section 22 of the Local Government Act 2002.

Commented [MG58]: Consider including due to other definitions referring to territorial authority.

Date First Adopted:	30 May 2006
Last Reviewed :	1 August 2019
Next Review Date:	
Engagement Required:	Special Consultative Procedure (s83 LGA)
Document Number:	POL 001
Responsibility:	Group Manager, Regulatory and Planning

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:
 - 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 dangerous building as defined in section 121; or
 - 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, -
- in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause -
 - injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or
 - damage to other property; or
 - 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—
- 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
 - 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,—
- a building that is included on the New Zealand Heritage List/Rārangī Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - 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.

- (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—

- (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:

- 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.

- (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

- 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 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

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.

- 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.