



KĀPITI COAST DISTRICT COUNCIL

DANGEROUS, AFFECTED, AND INSANITARY BUILDINGS POLICY 2024

November 2024

Version Control

Version	Policy title	Policy date	Reason for change
1.0	Earthquake-prone, dangerous and insanitary building policy 2006	May 2006	Review due and requirement to remove earthquake-prone building from Policy.
2.0	Dangerous and Insanitary Buildings Policy 2018	May 2018	Review due and requirement to add-in 'affected buildings' to Policy.
3.0	Dangerous, Affected, and Insanitary Buildings Policy 2024	Nov 2024	

DANGEROUS, AFFECTED, AND INSANITARY BUILDINGS POLICY 2024

1 Policy Approach

- 1.1 The development and ongoing management of a Dangerous, Affected, and Insanitary Buildings Policy is a requirement under the [Building Act 2004](#).
- 1.2 It is important that people who use buildings can do so safely and without endangering their health. This Policy takes a balanced and risk-based approach to ensure that buildings are structurally sound, do not pose health risks and perform their function without putting the health or safety of any building users, residents, and visitors at risk.
- 1.3 Council will implement this Policy in a fair and reasonable way and take a pragmatic approach to administering the Act. Council will investigate complaints and information received, rather than proactively seeking out dangerous, affected, or insanitary buildings. Through this targeted approach Council will optimise resources whilst balancing risk to the community.
- 1.4 This Policy sits within Council's broader social and economic policy context. In implementing this Policy, Council will balance the risks posed by dangerous, affected, and insanitary buildings against wider social, heritage, and economic impacts. Council will consider the costs and benefits of action regarding threats to safety arising from a building, against the wider cost to the community of removing a building or taking it out of active use, or if housing, the impact on housing supply and affordability.

2 Definitions

Act

Unless otherwise specified, reference to the Act is reference to the Building Act 2004, and any reference to a section is reference is to a section of that Act.

Affected building

The meaning of affected building is set out in [section 121A](#) of the Act:

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.

Dangerous building

The definition of a dangerous building is set out in [section 121\(1\)](#) of the Act:

A building is dangerous for the purposes of this Act if-

- (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause-
 - (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or

- (ii) damage to other property; or*
- (b) in the event of fire, injury or death to any person in the building or to persons on other property is likely.*

Insanitary building

The meaning of insanitary building is set out in [section 123](#) of the Act:

A building is insanitary for the purposes of this Act if the building—

- (a) is offensive or likely to be injurious to health because—*
 - (i) of how it is situated or constructed; or*
 - (ii) it is in a state of disrepair; or*
- (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or*
- (c) does not have a supply of potable water that is adequate for its intended use; or*
- (d) does not have sanitary facilities that are adequate for its intended use.*

Heritage building

[Heritage building](#) means—

- (a) in [subpart 6B](#) of Part 2—*
 - (i) a building that is included on the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or*
 - (ii) a building that is included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or*
 - (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:*
- (b) elsewhere in this Act, a building referred to in paragraph (a)(i) or (ii)*

3 Determining dangerous and affected buildings

3.1 Assessment criteria – dangerous and affected buildings

- 3.1.1 The Council must first be satisfied that the building in question is dangerous or affected.
- 3.1.2 Whether a building is considered ‘dangerous’ or ‘affected’ under the Act will depend on the individual circumstances of each case. The Council will consider each case and determine the appropriate course of action based on the particular set of circumstances that exist.
- 3.1.3 On receiving a complaint or information expressing concern that the building is dangerous or affected, the Council:
 - a. will consult the owner of the building where time permits,

- b. will inspect the building and site (following the procedure documented in the Council's Quality Assurance System),
- c. may obtain advice of relevant technical experts (e.g. structural, fire and geotechnical engineers) to establish the validity of any potential s124 notice,
- d. may obtain written advice from Fire and Emergency New Zealand,
- e. may liaise with legal counsel for high-profile buildings or situations with a greater risk to public safety.

3.1.4 Following the inspection and taking into account any advice or recommendations of Fire and Emergency New Zealand, the Council will determine whether the building is dangerous or affected. In making this decision the Council will take into account the provisions of [sections 121](#) and [121A](#) of the Act.

3.1.5 In forming its view as to the work or action that is required to be carried out on the building to prevent it from remaining dangerous or affected, the Council will take the following matters into account:

- a. The size of the building;
- b. The complexity of the building;
- c. The location of the building in relation to other buildings, public places, and natural hazards;
- d. The life of the building;
- e. How often people visit the building;
- f. How many people spend time in, or in the vicinity of, the building;
- g. The current or likely future use of the building, including any special traditional and cultural aspects of the current or likely future use;
- h. The expected useful life of the building and any prolongation of that life;
- i. The reasonable practicality of any work concerned;
- j. Any special historical or cultural value of the building; and
- k. Any other matters that the Council considers may be relevant, taking into account the particular set of circumstances.

3.1.6 The Council will then decide whether immediate action should be taken to reduce or remove the danger pursuant to the provisions of [s129](#) of the Act.

3.2 *Taking action - dangerous and affected buildings*

3.2.1 If the Council decides that immediate action is not required, then the Council will issue a notice under:

- a. [s124](#) of the Act requiring the owner to carry out the necessary work, and to obtain a building consent for that work, and commence the required work, and/or
- b. issue a notice that complies with [section 125\(1A\)](#) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

3.2.2 Nothing in this policy overrides other consent requirements of the Act,

i.e. [alterations to existing buildings \(s112-113\)](#) and [change of use, extension of life or subdivision of buildings \(s114-116A\)](#).

- 3.2.3 A notice will be attached to the building and will specify a timeframe for carrying out the necessary works not being less than 10 days, to reduce or remove the danger.
- 3.2.4 A timeframe will be given to obtain a building consent and to commence remediation work. The timeframe will depend on the circumstances but shall not exceed 6 months from the time notice was served on the owner(s). Completion of the work for which a building consent has been issued shall depend on the circumstances of each case but shall not exceed a period of six months from the time the building consent was issued.
- 3.2.5 The Council will give copies of the notice to the building owner, occupier, and every person who has an interest in the land, or is claiming an interest in the land, as well as Heritage New Zealand Pouhere Taonga (if the building is listed or pre-1900).
- 3.2.6 The Council will contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with.
- 3.2.7 If the notice requirements are not met, the Council may pursue enforcement action under the Act and in accordance with the Council's Compliance and Enforcement Policy.
- 3.2.8 Where a property owner has failed to carry out the work within the time specified, the Council may apply to the District Court for an order authorising it to carry out the work pursuant to [s130](#) of the Act. The full costs of carrying out such works will be recovered from the property owner. Affected building owners will be advised of the action(s) taken by the Council.

3.3 *Urgent works - dangerous and affected buildings*

- 3.3.1 If the building is considered immediately dangerous, the Council will:
 - a. take any action necessary to remove the danger (this may include prohibiting persons using or occupying the building, or demolition of all or part of the building); and
 - b. take action to recover costs from the owner(s) if the Council must undertake works to remove the danger; and
 - c. inform the owner(s) of:
 - i. the action(s) that the Council will take;
 - ii. when the Council will act
 - iii. the amount recoverable by the Council that will become a charge on the land on which the building is situated; and,
 - iv. that under [s41](#) of the Act, the Council may decide that a building consent is not required for any immediately necessary

building work. This will be discussed with the owner(s) and will require an agreed scope of works.

- 3.3.2 Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of the Ministry of Business, Innovation and Employment in accordance with [s177\(3\)\(f\)](#) of the Act.

3.4 *Recording - dangerous and affected buildings*

- 3.4.1 Where a building is identified as dangerous, the Council will place a requisition on the relevant property file. This requisition will remain until the danger is remedied.
- 3.4.2 A copy of the following information will be placed on the LIM for the land and/or PIM (if any proposed building work is affected):
- the notice issued informing the owner that the building is dangerous;
 - a copy of the letter to owner, occupier and any other affected parties that the building is dangerous;
 - any notice of the requirement to evacuate;
 - a copy of the notice given under section [124\(2\)\(c\)](#) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger.
- 3.4.3 The Council will maintain a register of dangerous and affected buildings. The Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002 regarding access to information concerning dangerous and affected buildings.

3.5 *Heritage buildings – dangerous and affected buildings*

- 3.5.1 Heritage buildings will not be given automatic dispensation under this Policy.
- 3.5.2 Dispensation will be considered when a heritage building is a dangerous or affected building, but the risk is minor and full compliance would result in significantly negative impacts on the heritage values.
- 3.5.3 The Council will seek (in consultation with Heritage New Zealand Pouhere Taonga) to ensure, as far as reasonably practicable, that any work carried out will maintain the heritage values of the building. Property owners must take all reasonable steps to ensure that this objective is achieved, and that risk is mitigated as far as practicable.
- 3.5.4 If full compliance with the Building Act would detract from recognised heritage values, then a case-by-case consideration of any dispensations will be considered by delegated Council officers.

4 Insanitary buildings

The provisions of the Act reflects the Government's concern with the health and

safety of people occupying buildings that may endanger their health.

4.1 *Identification - insanitary buildings*

4.1.1 The Council will:

- a. investigate complaints that are received and determine whether a building is insanitary.
- b. inform owners of any actions needed to rectify the situation.
- c. liaise with the Health New Zealand (Te Whatu Ora) where occupants may be neglected or infirm.
- d. work with other agencies where required to assist occupants to be relocated, if necessary.
- e. may liaise with legal counsel for high-profile buildings or situations with a greater risk to public health.

4.2 *Assessment criteria – insanitary buildings*

4.2.1 The Council will assess insanitary buildings in accordance with:

- a. [s123](#) of the Building Act;
- b. case law;
- c. advice from a Medical Officer of Health; and
- d. the Building Code, using the following relevant clauses:
 - i. E1 (Surface Water)
 - ii. E2 (External Moisture)
 - iii. E3 (Internal Moisture)
 - iv. G1 (Personal Hygiene)
 - v. G3 (Food Preparation)
 - vi. G4 (Ventilation)
 - vii. G12 (Water Supplies)
 - viii. G13 (Foul Water)

4.2.2 The Council will consider:

- a. the use of the building,
- b. whether the insanitary conditions reasonably pose a risk to the health of any occupants, and,
- c. if the building is occupied, the following will be considered:
 - i. adequacy of available sanitary facilities;
 - ii. adequacy and availability of drinking water;
 - iii. ventilation;
 - iv. separation of kitchen and other sanitary facilities;
 - v. potential for moisture penetration taking into account construction materials and any defects in roof and walls; and
 - vi. the extent to which the building is offensive to adjacent and nearby properties.

4.3 *Taking action - insanitary buildings*

4.3.1 If a building is found to be insanitary, the Council will:

- a. advise and work with the owner(s) of the building
- b. attach a written notice to the building. The notice will state:
 - i. work to be carried out to remedy the insanitary issue,

- ii. timeframe for work to be undertaken (not less than 10 working days),
 - iii. give copies of the notice to building owner(s), occupier(s) and every person who has an interest in the land, and,
 - iv. if it is a heritage building, a copy to Heritage New Zealand Pouhere Taonga,
 - v. where the insanitary conditions are the result of non-consented work, issue a Notice to Fix.
- c. issue a notice that complies with [section 125\(1A\)](#) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

4.4 *Urgent works – insanitary buildings*

- 4.4.1 If immediate works are required to address insanitary conditions, the Council will:
- a. take any action necessary to fix the insanitary conditions;
 - b. recover the costs from the owner(s) of any works to remedy the insanitary conditions;
 - c. inform the owner(s) of the amount recoverable by the Council that will become a charge on the land on which the building is situated; and
 - d. under s41 of the Act, the Council may decide that a building consent is not required for any immediately necessary building work. This will be discussed with the owner(s) and will require an agreed scope of works.
- 4.4.2 Building owners may appeal the Council’s decision through the determination process overseen by the Ministry of Business Innovation and Employment.
- 4.4.3 The Council may also use powers under the Health Act 1956 to deal with nuisance conditions associated with housing (such as overcrowding, insanitary conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation).

4.5 *Recording - insanitary buildings*

- 4.5.1 If a building is identified as insanitary, the Council will place information on the relevant property file to identify this. The information will remain on the file until the insanitary issue is resolved.
- 4.5.2 This information will be placed on any LIM for the relevant land and/or PIM (if any proposed building work is affected) and will include a copy of:
- a. the notice informing the owner(s) that the building is insanitary
 - b. the letter to all relevant parties advising that the building is insanitary.
 - c. any notice requiring evacuation of the building.
 - d. the notice that identifies the work required to be carried out on the

building to resolve the issue and the timeframes given for the work to be carried out.

- e. any report that describes work that has been undertaken to remedy the insanitary conditions.

4.5.3 The Council will maintain a register of insanitary buildings. The Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002 regarding access to information concerning insanitary buildings.

4.6 *Heritage buildings – insanitary buildings*

4.6.1 Heritage buildings will not be given automatic dispensation under this Policy.

4.6.2 Where the non-compliance is minor and correction would involve the destruction of identified heritage values, then dispensation may be considered.