

Dangerous, Affected and Insanitary Buildings Policy



Approved by:	Timaru District Council
Group:	Environmental Services
Responsibility:	Building Control Manager
Date adopted:	TBC The policy becomes effective the day after the date of adoption
Review:	Every 5 years as required by the Building Act 2004, or as required This Policy does not cease to have effect because it is due for review, or being reviewed
Consultation:	Required – in accordance with s 83 LGA 2002 (Special Consultative Procedure)
Policy Type	Council External Operational

Policy Purpose

1. To reduce the potential risk posed to residents in the District by dangerous, affected and insanitary buildings; and
2. To provide a clear framework of how Council will manage dangerous, affected and insanitary buildings.

Scope

3. The Policy applies to all buildings within the Timaru District Council Territorial Authority District.

Definitions

4. For the purposes of the Policy the definitions in the table below shall apply.
5. Where a definition has the same meaning as a definition in the Act, the definition for the purposes of the Policy includes any subsequent amendment to the definition in the Act. For the avoidance of doubt, where a definition in the Act differs from a definition in the Policy, the definition in the Act has precedence.

Term	Definition
The Act	means the Building Act 2004
Affected building	has the same meaning as section 121A of the Act, as follows: a building is an affected building for the purposes of this Act if it is adjacent to, adjoining, or nearby – <ol style="list-style-type: none"> (a) a dangerous building as defined in section 121; or (b) a dangerous dam within the meaning of section 153.

Authorised officer	<p>has the same meaning as section 222 of the Act, as follows: means an officer of a territorial authority to whom either or both of the following applies:</p> <ul style="list-style-type: none"> (a) he or she is authorised to carry out inspections; or (b) he or she is authorised to enter the land – <ul style="list-style-type: none"> (i) by this Act; or (ii) by an order of the District Court made under section 227.
Building	<p>has the same meaning as section 8 of the Act, as follows: In this Act, unless the context otherwise requires, building –</p> <ul style="list-style-type: none"> (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and (b) includes - <ul style="list-style-type: none"> (i) a mechanical, electrical, or other system; and (ii) a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987; and (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long term basis; and (c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; and (d) includes the non-moving parts of a cable car attached to or servicing a building; and (e) includes the moving parts of a cable car attached to or servicing a building.
Council	<p>means the Timaru District Council</p>
Dangerous Building	<p>has the same meaning as section 121 of the Act, as follows:</p> <ul style="list-style-type: none"> (1) A building is dangerous for the purposes of this Act, if - <ul style="list-style-type: none"> (a) In the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause – <ul style="list-style-type: none"> (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 (1)(b), a territorial authority –

	<p>(a) may seek advice from members of the 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</p> <p>(b) if the advice is sought, must have due regard to the advice.</p>
Heritage building	<p>has the same meaning as section 7 of the Act, as follows: means a building that is included on -</p> <p>(a) the New Zealand Heritage List/Rarangi Korero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or</p> <p>(b) the National Historic Landmarks/Nga Manawhenua o Aotearoa me ona Korero Tuturu list maintained under s 81 of the Heritage New Zealand Pouhere Taonga Act 2014.</p>
Household unit	<p>has the same meaning as section 7 of the Act, as follows:</p> <p>(a) means a building or group of buildings, or part of a building or group of buildings, that is –</p> <p>(i) used, or intended to be used, only or mainly for residential purposes; and</p> <p>(ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than one household; but</p> <p>(b) does not include a hostel, boardinghouse, or other specialised accommodation.</p>
Insanitary building	<p>has the same meaning as section 123 of the Act, as follows: a building is insanitary for the purposes of this Act if the building –</p> <p>(a) is offensive or likely to be injurious to health because -</p> <p>(i) of how it is situated or constructed; or</p> <p>(ii) it is in a state of disrepair; or</p> <p>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</p> <p>(c) does not have a supply of potable water that is adequate for its intended use; or</p> <p>(d) does not have sanitary facilities that are adequate for its intended use.</p>
Inspection	<p>has the same meaning as section 222 of the Act, as follows: means the taking of all reasonable steps -</p> <p>(a) to determine whether –</p> <p>(i) building work is being carried out without a building consent; or</p>

	<ul style="list-style-type: none"> (ii) building work is being carried out in accordance with a building consent; or (iii) a notice to fix has been complied with: <p>(b) to ensure that –</p> <ul style="list-style-type: none"> (i) in relation to buildings for which a compliance schedule is issued, the inspection, maintenance, and reporting procedures states in the compliance schedule are being complied with; or (ii) in relation to buildings that have specified systems, the requirement for a compliance schedule is being complied with: <p>(c) to enable an authority to –</p> <ul style="list-style-type: none"> (i) identify dangerous, earthquake-prone or insanitary buildings within its district; and (ii) carry out its functions or duties in relation to those buildings: <p>(d) to satisfy a territorial authority as to whether a certificate of acceptance for building work should be issued under section 96.</p>
Owner	<p>has the same meaning as section 7 of the Act, as follows: in relation to land and any buildings on the land –</p> <p>(a) means the person who -</p> <ul style="list-style-type: none"> (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 <p>(b) includes -</p> <ul style="list-style-type: none"> (i) the owner of the fee simple of the land; and (ii) for the purposes of sections 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.
Territorial authority	<p>has the same meaning as section 7 of the Act, as follows:</p> <p>(a) means a city council or district council named in Part 2 of schedule 2 of the Local Government Act 2002; and -</p> <ul style="list-style-type: none"> (i) in relation to land within the district of a territorial authority, or a building on or proposed to be built on any such land, means 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 a territorial authority, or a building on or proposed to be built on any such part, means the

	<p>territorial authority whose district is adjacent to that part; and</p> <p>(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.</p>
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Policy Statements

Approach to detecting dangerous, affected or insanitary buildings

6. Council will not proactively inspect all buildings within the District.
7. Council will leverage its professional relationships with partner agencies (such as emergency services) and its existing workforce undertaking business as usual activities to identify potentially dangerous, affected or insanitary buildings.
8. Council will prioritise quickly and efficiently respond to any information received regarding potentially dangerous, affected or insanitary buildings.
9. Council will give priority to buildings that have been determined to be immediately dangerous. Immediate action will be required in these situations to remove the danger, such as prohibiting any person from occupying or using the building. If necessary, the building will be secured to prevent entry.
10. If a building presents an immediate danger or health hazard to people within and/or around it, or to surrounding buildings, Council may choose to invoke its powers under section 129 of the Act.

Priorities and considerations of Council in acting on detected dangerous, affected or insanitary buildings

11. Once an identified building is assessed and confirmed as dangerous, affected or insanitary, Council will determine how to act on a case-by-case basis based on the circumstances of the matter.
12. Council will consider the following factors when determining how a property owner is to remove a confirmed risk:
 - (i) Facilitating the safety and wellbeing of affected persons.
 - (ii) The ability for risks to be mitigated.
 - (iii) The potential unintended consequences of any decisions or actions.

Application of the Policy to heritage buildings

13. This Policy applies to heritage buildings in the same way that it applies to all other buildings.
14. Where Council receives information regarding buildings which have a heritage classification under Heritage New Zealand Pouhere Taonga and/or under the Operative District Plan, it will

consider seeking advice from Heritage New Zealand Pouhere Taonga and Council's District Planning Unit.

15. Council will adhere to any relevant, heritage-related statutory requirements and processes.

State of emergency

16. Where a state of emergency has been declared (or following a state of emergency, when a transition period has been declared) the council may choose to exercise powers under the Civil Defence Emergency Management Act 2002 instead of or in addition to powers under the Building Act 2004.

Costs

17. Council may issue a notice under section 124(2)(c) of the Act requiring work to be carried out on dangerous or insanitary buildings to reduce or remove the danger, or to prevent the building from remaining insanitary. If work required under such a notice issued by Council is not completed or proceeding with reasonable speed, Council may invoke its powers under section 126 of the Act and apply to the District Court to gain authorisation to carry out building work required in the notice.

18. If Council carries out building work, it is entitled to recover costs associated with that work from the building owner, as set out in section 126(3) of the Act.

Monitoring

19. The success of this policy in achieving its purposes will be indicated by:

- (i) MBIE Performance Monitoring Assessment Reports; and
- (ii) Feedback from Council employees, partner agencies, stakeholders and owners of dangerous, affected and insanitary buildings.

Reporting

20. This policy will not be reported against on a regular basis.

21. The Environmental Services Committee will:

- (i) Be advised if any dangerous, affected or insanitary buildings are detected in the district; and
- (ii) Receive a report at the conclusion of the incident which indicates how this policy performed and any identified opportunities for improvement.

Delegations, References and Revision History

Delegations

Identify here any delegations related to the policy for it to be operative or required as a result of the policy

Delegation	Delegations Register Reference
To determine whether a building is dangerous, including seeking advice from Fire and Emergency NZ (FENZ) - Building Control Officer Team Leader Approvals; Building	5.8

Control Officer Team Leader Inspections, Building Control Officer Team Leader Compliance					
To determine whether a building is insanitary. – Building Control Officer Team Leader Approvals; Building Control Officer Team Leader Inspections, Building Control Officer Team Leader Compliance			5.8		
Authority to take action in relation to dangerous and insanitary buildings. Building Compliance Officer, Building Compliance and Enforcement Advisor			5.8		
References					
Include here reference to any documents related to the policy (e.g. operating guidelines, procedures)					
Title				Relevant Reference within Document	
Building Act 2004				N/A	
Revision History					
Summary of the development and review of the policy					
Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
1 (as the Earthquake-Prone, Dangerous and Insanitary Buildings Policy)	Building Advisory Services Manager	31 October 2006	Council	-	#383300
2 (as the Dangerous, Affected and Insanitary Buildings Policy)	Building Control Manager	27 November 2018	Environmental Services Committee	Within 12 months of adoption	#1209973
3	Building Control Manager	26 November 2019	Council	By November 2024	#1308032
4 – this document	Building Control Manager	TBC	Council	TBC	#1687446

Appendix A: Procedures

Detect

Once Council has received information regarding a potentially dangerous, affected or insanitary building, it will:

- Check the details of the property against Council records;
- Have an authorised officer undertake an inspection of the building in question. In doing this, Council may seek advice from Fire and Emergency New Zealand, or any other professional or organisation deemed appropriate by Council, such as structural engineer, fire engineer, or legal counsel; and
- Prepare an inspection record.

Assess

All inspections of potentially dangerous, affected or insanitary buildings will involve an assessment of the building's condition in terms of the definitions in sections 121, 121A and 123 of the Act, and the current building code requirements. Inspection records will be prepared in all cases.

Act

Once Council is satisfied that a building is dangerous, affected or insanitary, it will determine how to act, the actions necessary and timeframe permitted to resolve the risk, and any mitigations to be taken in the meantime.

In making these decisions it will consider the principles and factors outlined earlier in this policy, and may also:

- Consult with the owner of the affected building to further determine the circumstances and decide on an appropriate course of action.
- Inspect any building, except a household unit, to identify whether it is dangerous, affected or insanitary. Authorised officers are entitled at all times, during normal working hours, to inspect any building to identify any dangerous or insanitary buildings and are not required to inform or obtain approval for inspections to determine whether or not a building is dangerous or insanitary, unless the building is a household unit. In the case of a household unit Council must either obtain consent of the occupier of the household unit or an order from a District Court.
- Invoke its powers under section 124, 126 or 129 of the Act where a mutually acceptable outcome cannot be reached, or where the situation requires.
- Inform complainants of the inspection results and Council's intended course of action to deal with the situation.

Record keeping

Any buildings identified as being dangerous or insanitary will have a requisition placed on Council's property database for the property on which the building is situated until the dangerous or insanitary condition is remediated.

In addition, the following information may be placed on any Land Information Memorandum (**LIM**):

- copies of any notices issued where a building is dangerous, affected or insanitary and requires evacuation of the building;
- copies of any letters sent to the owner, occupier and any other person where a building is dangerous or insanitary; and
- copies of any notices given under section 124(2) which identifies the work to be carried out on a building and the timeframe given to reduce or remove the danger or insanitary condition.