



# 4.1 DANGEROUS, AFFECTED AND INSANITARY BUILDING POLICY

Date Adopted	Next Review	Officer Responsible
		Manager, Building Services

## 1 Introduction

Under **Section 131** of The Building Act 2004 (the Act) all territorial authorities are required to adopt a policy on Dangerous, Affected and Insanitary Buildings

The Building Act 2004 contains septate requirements for management of dam safety that is administered by the Regional Council.

### Purpose of the Policy

The purpose of the Policy is to clearly outline:

- The approach Council will take in performing its functions under the Act.
- The priorities that Council has in performing these functions
- How the policy will apply to heritage buildings

### Policy Principles

The provisions of the Act in respect to dangerous, affected and insanitary buildings reflect the government’s broader concern with the safety of the public in buildings. The Council is committed to ensuring that the Rotorua District is a safe place in which to live and work.

### Economic Impact

In setting this policy the 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 that are involved.

### Review

This policy was first adopted in 2006 followed by revisions in 2020. This policy must be reviewed every 5 years using the special consultative provisions of the Local Government Act if amending or replacing the policy.

A copy of the adopted policy must be provided to the Ministry of Business Innovation and Employment.

## 2 Definitions

The relevant definitions arising from The Building Act 2004 are as follows;

### **Section 121 Meaning of dangerous building**

- (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
  - (j) in the event of fire, injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.
- (2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority -
- (a) may seek advice from members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and
- (b) if the advice is sought, must have due regard to the advice.

### **Section 121A Meaning of affected building**

A building is an affected building for the purposes of this Act if it is adjacent to, adjoining to, or nearby -

- (a) a dangerous building as defined in section 121; or
- (b) a dangerous dam within the meaning of section 153.

### **Section 123 Meaning of insanitary building**

- (1) 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.

## 3 Identifying Dangerous, Affected and Insanitary Buildings

Council will not proactively inspect all buildings within the district but will make it a priority to quickly and efficiently respond to information received regarding potentially dangerous, affected or insanitary buildings to ascertain the extent of any issues.

Rotorua District Council recognizes that 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 and Emergency.

Priority will be given to buildings requiring work to be carried out urgently to address the dangerous, affected and/or insanitary conditions.

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

- Potential risk to human life and adjoining property;
- The importance of the building to the community e.g. hospital, school, cultural heritage;
- The level of use and number of people using the building;
- The location of the building in relation to key infrastructure and components;
- The size of the building; and
- The age of the building and life expectancy.

## **4 Assessing Buildings**

Once a building has been brought to Council's attention, Council will:

- Inspect and assess the condition of the building in accordance with sections 121(1), 123 of the Act;
- Identify any buildings that are dangerous, affected or insanitary;
- Consider if any of the powers provided in the Act should be invoked;
- Inform the owner and occupier of the building to take action to reduce or remove the danger or prevent the building remaining insanitary as required by sections 124 and 125 of the Act; and
- Liaise with Fire and Emergency New Zealand (FENZ) when Council deems it is appropriate, as outlined in section 121 (2) of the Act; and
- Liaise with suitably qualified persons in relation to historical or culturally significant buildings.
- Liaise with other professionals or organisations deemed appropriate by Council.

All findings are documented and saved as a general complaint.

## **5 Taking Action on Dangerous, Affected and Insanitary Buildings**

Once a building has been deemed to be dangerous or affected, in accordance with s124 and s125 of the Act the Council:

- Will advise and liaise with the owner(s) and occupiers of the building to determine the circumstances and decide the appropriate course of action.

If the building is found to be dangerous, affected or insanitary and no immediate action is required, the Council may do any of the following:

- Put up a hoarding or fence to prevent people from approaching the building.
- Attach in a prominent place a notice warning people not to approach the building.

- Attach written notice to the building requiring work to be carried out on the building within a time stated in the notice being not less than 10 days, to reduce or remove the danger or prevent the building remaining insanitary;
- Issue a notice that restricts entry for a particular purpose, particular groups or persons.
- Give copies of the notice to the building owner's 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 a heritage building;
- Contact the owner at the expiry of the time period of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with;
- Where the danger is the result of non-consented building work the owner will formally be requested to provide an explanation as to how the work occurred, who carried it out, and under whose instructions; and
- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as other non-compliance matters.

If the building is considered to be immediately dangerous, affected or insanitary, the Council may:

- 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;
- 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.
- 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.

The issue of a notice and supporting documents will be saved against the property where the building is situated.

## **6 Heritage Buildings**

This policy applies to heritage buildings in the same way it applies to all other buildings.

Where Council receives information regarding buildings which have a heritage classification, either in the District Plan or under Heritage New Zealand, in addition to consulting with affected owners Council will consider seeking advice from Heritage New Zealand.

## **7 Interaction between the Policy and the Building Act**

Where the building is assessed as requiring work to be carried out urgently to address the dangerous, affected or insanitary conditions, the Council may not require that a building consent be obtained for any of the immediately necessary building work.

However, prior to any remedial action being taken, Council will require from owners, and discuss with them, 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.

Per Section 123B: Where a building is 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.

Per Section 133BM: notices issued under the designated emergency may continue to apply when the Responsible Person (as defined by Section 133BK) decides, before the state of emergency or transition period ends, that any notice should continue in force.

## **8 Disputes**

Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of Ministry of Business Innovation and Employment in accordance with Section 177(3)(f) of the Act.

## **9 Recording Dangerous, Affected and Insanitary Buildings**

Where a building is identified as dangerous, affected or insanitary, a notice will be placed on the property file for the property where the building is situated. This notice will remain on the file, along with any other information showing the danger, insanitary conditions have been remedied. In addition, this same information will be placed on any LIM produced for the property.

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

## **10 Other Legislation**

This Policy should be read in conjunction with relevant sections of the following legislation:

- Building Act 2004
- Health Act 1956
- Local Government Act 2002
- Resource Management Act 1991
- Civil Defence Emergency Management Act 2002
- Heritage New Zealand Pouhere Taonga Act 2014