MARLBOROUGH DISTRICT COUNCIL

S131 Building Act 2004

POLICY ON

DANGEROUS, AFFECTED AND INSANITARY BUILDINGS

2026

Dangerous, Affected and Insanitary Buildings Policy 2026

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1. Introduction

1.1 This document sets out Marlborough District Council's ("Councils ("the **Council**") policy on dangerous, affected and insanitary buildings ("**Policy**"), adopted in accordance with sections 131, 132 and 132A of the Building Act 2004 ("**Act**").

1.2 The Policy replaces the previous version of the policy which was adopted by Council in March 2021. The Policy ensures that Council's approach remains aligned with legislative requirements, contemporary best practice, and community expectations.

1.3 Under sections 131 and 132A of the Act, every territorial authority must adopt a policy on dangerous, affected and insanitary buildings. This Policy sets out Council's approach, priorities and decision-making framework for meeting its responsibilities in relation to dangerous, affected and insanitary buildings.

1.4 This Policy applies to all buildings within the Marlborough District, excluding dams and appurtenant structures associated with dams, which are governed by Council's separate dangerous dams, earthquake-prone dams and flood-prone dams policy . This supports Council's obligation to protect the health and safety of people and to manage risks to people, property, and buildings that are adjacent to, adjoining or nearby a dangerous building or dangerous dam.

1.5 The Policy recognises that dangerous, affected and insanitary buildings may arise as a result of building failure, fire, natural hazards, land instability, deterioration, changes in use, deficiencies in building's life safety systems, emergency events or other circumstances that may affect the safety of people and property.

1.6 This Policy has been developed having regard to the requirements of sections 131, 132 and 132A of the Act and the Ministry of Business Innovation and Employment (MBIE) Guidance for Developing Policies on Dangerous, Affected and Insanitary Buildings

2. Purpose of the Policy

2.1 The purpose of this Policy is to:

a) Describe how Council will identify, assess and manage dangerous, affected or insanitary buildings to protect public safety.

b) Describe how Council will discharge its statutory duties under sections 121–132A (Subpart 6 of Part 2) of the Act.

c) Clarify the powers available to Council, the circumstances in which those powers may be used, and how Council will work with building owners to achieve compliance.

d) Outline how the Policy applies to heritage buildings, ensuring their cultural significance is considered while prioritising life safety.

e) Provide transparency for the community about Council's approach and priorities when responding to these building issues.

f) Confirm how the Policy will complement Council enforcement processes and wider legislative responsibilities.

3. Policy Principles

3.1 The following principles guide Council's approach to administering its functions in relation to dangerous, affected and insanitary buildings:

a) Protection of human life and safety is Council's primary consideration that underpins all decisions made under this Policy.

b) Council will take a risk-based, proportionate and pragmatic approach, ensuring responses are appropriate to the level of danger or sanitary risk identified.

c) Council will exercise its powers and functions consistently with the purposes and principles of the Act.

d) Council will engage, educate, enable and enforce in accordance with its enforcement framework to support building owners while securing timely compliance.

e) Council will balance the risks posed by dangerous, affected and insanitary buildings with broader social, cultural and economic considerations, including impacts on building owners, occupants, and the community.

f) Heritage values will be recognised and respected. Where the building is scheduled in the Marlborough Environment Plan or listed by Heritage New Zealand Pouhere Taonga, Council will seek, where reasonably practicable, solutions that preserve heritage significance.

g) Council recognises the importance of housing and the potential impacts that decisions made under this Policy may have on occupants.

h) Council will act in a fair, reasonable and transparent manner, ensuring consistent application of this Policy and the Act across the district.

i) This Policy seeks to ensure that people can use buildings safely without endangering their health, including reducing risks to occupants, visitors and neighbouring properties.

j) Council may obtain and rely upon any specialist advice, including engineering, geotechnical, fire safety, heritage and public health advice, when assessing dangerous, affected or insanitary buildings.

k) Council recognises that building owners are responsible for the maintenance, operation and management of their buildings and will work with owners to achieve compliance with the Act.

4. Policy Objectives

4.1 The objectives of this Policy are to:

a) Discharge Council's statutory responsibilities under the Act in relation to dangerous, affected and insanitary buildings.

b) Provide a clear, consistent and risk-based framework for identifying, assessing and responding to dangerous, affected and insanitary buildings.

c) Protect occupants, building users, neighbouring properties and the wider public from risks associated with dangerous, affected and insanitary buildings.

d) Support building owners to understand risks, undertake corrective actions and achieve compliance with the Act.

e) Minimise risks to adjoining, adjacent or nearby buildings, particularly where a dangerous building may render another building affected.

f) Promote public confidence through transparent decision-making, appropriate information management and effective communication regarding dangerous, affected and insanitary buildings.

5. Council's Priorities in Performing these Functions

5.1 In performing its functions under Subpart 6 of Part 2 of the Act, Council will assign priorities based on the level of risk presented by the building and the potential consequences to occupants, neighbouring properties, building users and the public.

5.2 Priority will be given where immediate action is required to remove, reduce or manage risks to human life and safety.

5.3 Where immediate action is not required, Council's response will be proportionate to the level of risk identified and may take into account:

a) The level of risk to occupants, neighbouring properties and the public.

b) Whether the building affects public places, occupied buildings or critical infrastructure.

c) The nature and severity of any dangerous, affected or insanitary condition.

d) Advice received from engineering, fire safety, public health, heritage or other specialists.

e) The circumstances of the building owner and occupants.

5.4 These priorities are intended to guide Council's decision-making and resource allocation and do not limit Council's ability to respond to any dangerous, affected or insanitary building.

5.5 Marlborough District has unique environmental and community characteristics that influence the frequency and types of dangerous, affected or insanitary building risks. In applying these priorities, Council recognises that local risks may arise from:

a) Buildings damaged or compromised by severe weather events, flooding, land instability or other natural hazards, including where ongoing risks remain after emergency management measures or designations have ceased.

b) Fire-affected buildings, particularly in mixed-use, industrial or older commercial areas.

c) Buildings affected by deterioration, structural failure, disrepair or deferred maintenance.

d) Derelict buildings, including buildings that are unoccupied, abandoned or insecure, creating public safety risks.

e) Buildings located near other dangerous buildings where structural collapse, fire spread or other impacts may affect neighbouring properties.

f) Deficiencies in life-safety systems, changes in building use, or other circumstances that may increase risks to occupants or the public.

5.6 In all cases, the protection of human life and safety will be Council's primary consideration. In exercising its functions under this Policy, Council will also have regard to the protection of property, community wellbeing, economic impacts and, where relevant, heritage values.

6. Council's Approach to Performing these Functions

6.1 A building may become dangerous, affected or insanitary for a range of reasons, including (but not limited to) unauthorised alterations, structural failure, fire, natural hazard events, land instability, deterioration over time, deficiencies in life-safety systems, changes in building use, or the way a building is used or occupied.

6.2 Council may become aware of potentially dangerous, affected or insanitary buildings through complaints, notifications, inspections, audits, information provided by other agencies, emergency event responses, advice received from Council officers, or other information received by Council.

6.3 Council generally adopts a reactive approach to identifying dangerous, affected and insanitary buildings and will not proactively inspect all buildings within the district for the purpose of identifying such buildings.

6.4 Notwithstanding clause 6.2 of this Policy, Council may undertake targeted investigations, information gathering or inspections where circumstances warrant, including:

a) following significant weather events, flooding, fire events, land instability or other natural hazard events;

b) where information received from another agency indicates a potential risk;

c) where patterns of risk have been identified; or

d) where Council considers there is a potential threat to public safety.

6.5 Where Council becomes aware that a building may be dangerous, affected or insanitary, it will assess the information available and determine whether further investigation is required in accordance with the Act.

6.6 Council will adopt a risk-based and proportionate approach when determining the appropriate response to a potentially dangerous, affected or insanitary building, having regard to:

a) the level of risk to occupants, neighbouring properties and the public;

b) the likelihood and consequences of harm;

c) the nature and severity of the conditions identified;

d) any specialist advice obtained; and

e) the circumstances of the particular case.

6.7 Council may obtain and rely upon specialist advice, including structural engineering, geotechnical engineering, fire safety, heritage and public health advice, where appropriate, to assist in assessing risks and determining an appropriate course of action. It may also seek legal counsel if the situation demands.

6.8 The assessment of a potentially dangerous, affected or insanitary building will be undertaken against the relevant criteria set out in sections 121, 121A and 123 of the Act, taking into account the provisions of this Policy.

6.9 Where Council determines that a building, or part of a building, is dangerous, affected or insanitary, it will work with building owners and other relevant parties, where appropriate, to identify suitable measures to manage, reduce or remove risks to occupants, neighbouring properties and the public.

6.10 Council will generally seek to achieve voluntary compliance where this is appropriate and does not compromise public safety.

6.11 Depending on the circumstances of the case, Council may determine that the issue can be appropriately managed without issuing a notice under section 124 of the Act. In such circumstances, Council may agree on actions and timeframes with the building owner to manage, reduce or remove identified risks.

6.12 Council may monitor agreed remedial actions and undertake follow-up inspections or other compliance activities where considered necessary to ensure risks are adequately managed. Where Council considers that agreed actions have not been completed, compliance has not been achieved, or risks have increased, Council may take further action available under the Act, including issuing a notice to fix, a notice under section 124, an infringement notice, or exercising other enforcement powers available under the Act.

6.13 Council may exercise the powers available to it under the Act where necessary to protect public safety, reduce or remove identified risks and support compliance with statutory requirements.

6.14 In determining the most appropriate response, Council may also utilise other powers and processes available under the Act, where appropriate, including those relating to alterations to existing buildings, change of use, building consent functions, compliance and enforcement activities.

7. Working With Other Agencies

7.1 Council will work collaboratively with external agencies, including Heritage New Zealand Pouhere Taonga, Fire and Emergency New Zealand (**FENZ**), New Zealand Police, Medical Officers of Health, Environmental Health Officers, the Marlborough Civil Defence Emergency Management Group, and any other relevant organisations, where appropriate.

7.2 Collaboration may include:

a) sharing relevant information in accordance with applicable legislation;

b) obtaining specialist advice;

c) coordinating responses to dangerous, affected or insanitary buildings;

d) supporting enforcement and compliance activities; and

e) identifying and managing risks to people, property and the wider community.

7.3 Where a building presents, or may present, an immediate danger or significant risk to public safety, Council may coordinate its response with relevant agencies to ensure risks are appropriately managed and statutory responsibilities are fulfilled.

7.4 Council recognises that effective collaboration with other agencies can assist in achieving timely, proportionate and effective outcomes consistent with the purposes of the Act and ensure risks are managed effectively.

8. Assessment and Management of Dangerous, Affected and Insanitary Buildings

8.1 When Council receives information or a complaint indicating that a building may be dangerous, affected or insanitary, it will as soon as reasonably practicable respond to verify the concern, assess the risks, and determine the extent of any issues.

8.2 The procedures for investigation, assessment, issuing notices, and monitoring compliance are outlined below. These procedures ensure consistency, transparency and a prompt response where life safety or sanitary conditions may be compromised.

8.3 Initial Response:

When Council receives information indicating that a building may be dangerous, affected or insanitary, it may:

a) Review relevant property information and records held by Council.

b) Arrange for an authorised officer to undertake an inspection.

c) Obtain specialist advice where appropriate, including advice from Fire and Emergency New Zealand (FENZ), New Zealand Police, a Medical Officer of Health, engineers, heritage specialists, or other suitably qualified professionals.

d) Record relevant information obtained during the investigation and assessment process.

8.4 Investigation and Assessment:

Investigations and assessments will be undertaken in accordance with the Building Act 2004 to determine whether a building, or part of a building, meets the criteria of:

a) a dangerous building under section 121;

b) an affected building under section 121A; or

c) an insanitary building under section 123.

Inspection records will be completed in every case, where an on-site inspection is undertaken.

8.5 Entry for Inspection:

Authorised Council officers may enter premises at reasonable times and undertake inspections in accordance with the powers and requirements of the Act, including sections 222 to 228, for the purpose of identifying, assessing and managing dangerous, affected or insanitary buildings.

Where the building is an occupied household unit, before undertaking an inspection Council must first obtain:

a) the occupier’s consent, or

b) a District Court order.

8.6 Determination and Follow-up Actions:

Where Council determines that a building, or part of a building, is dangerous, affected or insanitary, Council may:

a) Consult with the building owner(s) to understand the circumstances and agree on an appropriate course of action to manage, reduce or remove risks.

b) Identify any potentially affected buildings and engage with those owners about risk-management measures, where appropriate.

c) Liaise with relevant agencies, including FENZ, Heritage New Zealand Pouhere Taonga, Medical Officers of Health and New Zealand Police, where appropriate.

d) Consider heritage values where the building is scheduled with heritage status in accordance with section 9 of this policy.

e) Monitor agreed actions and undertake follow-up inspections or compliance activities where necessary.

8.7 Enforcement Framework:

Council will generally apply its compliance philosophy consisting of 4E model — Engage, Educate, Enable and Enforce when performing monitoring and enforcement functions, consistent with Council's wider enforcement policy.

Council may seek voluntary compliance where appropriate and consistent with the protection of public safety.

8.8 Taking action by use of Statutory Powers:

Where a building is confirmed as dangerous, affected or insanitary, Council may exercise powers available to it under sections 124 to 127 of the Act, including by:

a) putting up a hoarding or fence to prevent people from approaching the building nearer than is safe;
b) attaching in a prominent place on or adjacent to the building, a notice warning people not to approach the building;
c) except in the case of an affected building, issuing a notice that complies with section 125(1) requiring work to be carried out on the building to—

(i) reduce or remove the danger; or

(ii) prevent the building from remaining insanitary:

d) 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.

e) applying to the District Court under section 126 for an order authorising Council to carry out building work if work required by a notice issued under section 124(2)(c) has not been completed or is not proceeding with reasonable speed;
f) recovering costs from the building owner in accordance with section 126 and any other applicable cost-recovery provisions of the Act; and
g) may consider the demolition of all or part of a building under section 127.

8.9 Immediate Danger:

Where Council considers, in good faith, that immediate action is necessary because a building poses an immediate danger to the safety of people, or immediate action is necessary to fix insanitary conditions, the Chief Executive may exercise the powers available under section 129 of the Act. Such action may include measures to remove, reduce or manage the risk, including demolition of all or part of the building where authorised by the Act.
If the Council carries out actions, under Section 129 of the Act, it is entitled to recover costs associated with that work from the building owner.

In accordance with section 130 of the Act, if the Chief Executive exercises powers under section 129 by warrant, the warrant must be confirmed by the District Court after the action has been taken, unless the owner does not dispute the entry and acknowledges that District Court confirmation is not required.

8.10 Affected Buildings arising from Dangerous Dams, Earthquake-prone dam or Flood-prone dam:

Where Council becomes aware that a building may be an affected building under section 121A of the Act as a result of being adjacent to, adjoining or nearby a dangerous dam, earthquake-prone dam or flood-prone dam, Council may undertake any assessments, actions or enforcement measures available under the Act and this Policy that are considered necessary to manage identified risks.

9. Application of the Policy to Heritage Buildings

9.1 This Policy applies to heritage buildings in the same manner as any other building. For the purposes of this Policy, a heritage building has the meaning given in section 7 of the Building Act 2004.

9.2 Section 4(2)(I) of the Building Act recognises “the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value”.

9.3 The Council recognises the importance of retaining and protecting heritage values of the building while also reducing or removing any risk posed by a heritage building.

9.4 When applying the policy to heritage buildings, Council will consider:

a) The importance of recognising significant heritage value and protecting any traditional, cultural, historical or architectural values associated with the building.

b) The need to support the preservation, adaptive reuse and continued occupation of significant heritage buildings and places.

c) The individual circumstances of the building and its owner(s), including any recent work, condition assessments, and practical constraints.

9.5 The Council will, where reasonably practicable, notify Heritage New Zealand Pouhere Taonga if it becomes aware of a dangerous, affected or insanitary building that is also a heritage building.

9.6 When dealing with dangerous, affected or insanitary heritage buildings, where reasonably practicable, the Council will seek advice from Heritage New Zealand Pouhere Taonga before undertaking actions under Subpart 6 of Part 2 of the Act.

9.7 Council may engage suitably qualified professionals with engineering expertise and/or heritage expertise to advise and recommend a course of action.

9.8 Demolition of a heritage building will be avoided where reasonably practicable and consistent with the protection of human life and safety.

9.9 The Council will record the heritage status of dangerous, affected or insanitary heritage buildings within its records management systems and property files. Relevant information may be included on Land Information Memoranda in accordance with legislative requirements.

9.10 Where a notice is issued under section 124(2)(c) or (d) of the Act in relation to a heritage building, Council will notify Heritage New Zealand Pouhere Taonga and provide a copy of the notice.

9.11 Notwithstanding the heritage value of a building, the protection of human life and safety remains Council's primary consideration.

10. Related Policies and Legislation

10.1 This Policy is made under sections 131, 132 and 132A of the Building Act 2004 and should be read together with that Act.

10.2 Nothing in this Policy limits Council's ability to exercise powers or perform functions under the Act or any other applicable policy or legislation, including:

- Marlborough District Council’s Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams Policy
- Local Government Act 2002
- Resource Management Act 1991 (and any successor legislation);
- Civil Defence Emergency Management Act 2002
- Heritage New Zealand Pouhere Taonga Act 2014
- Protection of Personal and Property Rights Act 1988
- Health Act 1956
- Mental Health Act 1992
- any other relevant enactment.

10.3 The Health Act 1956 also provides mechanisms to deal with nuisance conditions related to certain matters associated with housing (under section 29(f), overcrowding likely to be injurious to health, and

under section 42, insanitary conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation). Council may choose to use Health Act powers instead of, or alongside, Building Act powers.

11. Buildings in Designated Areas Affected by Emergencies

11.1 Where a building is affected by an emergency event or is situated within an area subject to emergency management measures or a building emergency management area designation under the Act, Council may exercise the powers available under those provisions in addition to, or instead of, the dangerous, affected or insanitary buildings provisions of the Act, where appropriate.

11.2 Council recognises that buildings affected by an emergency event may not meet the statutory threshold for a dangerous, affected or insanitary building and may instead be managed under the emergency management provisions of the Act where appropriate.

11.3 Council recognises that section 123B of the Act provides that where a dangerous or insanitary building, or a building adjacent to, adjoining or nearby a dangerous building, is located within an area designated under Subpart 6B of Part 2 of the Act, the dangerous, affected and insanitary building provisions of Subpart 6 generally do not apply for the duration of that designation, except in the circumstances specified in section 123B.

11.4 Where a building is located within a designated area affected by an emergency under Subpart 6B of Part 2 of the Act, and Council has not exercised its powers under sections 124 (put up a fence or issue notice), 126 (carry out work) or 129 (measures to avoid immediate danger or fix insanitary conditions), then;

11.5 the building will generally be managed under the emergency management provisions of Subpart 6B of Part 2 of the Act for the duration of the designation; and

11.6 upon termination of the designation, Council may assess whether the building should continue to be managed under the dangerous, affected or insanitary building provisions of the Act and this Policy.

11.7 In determining the most appropriate statutory framework, Council will have regard to:

a) the nature and severity of the risk;

b) the extent to which the risk arises from the building, the land on which the building is situated, or surrounding land;

c) whether emergency management powers remain necessary or appropriate;

d) any specialist advice received; and

e) the need to protect public safety.

11.8 Council may review a designated area or individual buildings within a designated area where it considers that exercise of powers under sections 124 to 130 of the Act would provide a more appropriate mechanism for managing ongoing risk rather than using powers under subpart 6B of Part 2 of the Act.

12. Information Disclosure

12.1 Council will maintain records relating to dangerous, affected and insanitary buildings in accordance with its statutory obligations and record management requirements.

12.2 Pursuant to section 44A of the Local Government Official Information and Meetings Act 1987, Council must include on a Land Information Memorandum (LIM) any notice, order, certificate, consent or requisition affecting the land or any building on that land.

12.3 Where a notice, order or other action relating to a dangerous, affected or insanitary building remains in force, Council may record that information on the relevant property file and disclose it through a LIM where required or authorised by law.

12.4 Where information relating to a dangerous, affected or insanitary building is relevant to proposed building work, Council may disclose that information through a Project Information Memorandum (PIM).

12.5 Council will maintain records relating to complaints, investigations, notices, determinations and enforcement actions relating to dangerous, affected and insanitary buildings in accordance with its records management requirements.

12.6 Information held by Council will be managed and disclosed in accordance with the Building Act 2004, the Local Government Official Information and Meetings Act 1987, the Privacy Act 2020 and any other applicable legislation.

13. Notifications and Public Information

13.1 Council will publish the adopted Policy on its website and provide guidance for the public on how to raise concerns regarding dangerous, affected or insanitary buildings.

13.2 Information published or provided by Council may include:

a) How to notify Council of a potentially dangerous, affected or insanitary building.

b) How Council assesses and responds to such notifications.

c) Contact information for other agencies that may have responsibilities relating to dangerous, affected or insanitary buildings, where Council considers it appropriate to do so.

d) links to relevant MBIE guidance and/or resources.

13.3 Information may be provided through Council's website, customer service channels or other communication methods considered appropriate by Council.

13.4 Nothing in this section requires Council to provide information beyond that required by law or to maintain any particular information resource, publication or website content.

14. Economic and Community Considerations

14.1 Council recognises that decisions relating to dangerous, affected and insanitary buildings may have social, cultural and economic impacts on building owners, occupants, businesses and the wider community.

14.2 Council will exercise its functions under the Act in a fair, reasonable and proportionate manner, having regard to the circumstances of each case while balancing these impacts with its statutory obligation to protect human life and safety, and manage risks associated with dangerous, affected and insanitary buildings.

14.3 Council recognises that actions taken under this Policy may affect the availability and use of housing, businesses and community facilities. Where reasonably practicable, Council will have regard to these impacts when determining an appropriate response, while remaining consistent with its statutory obligations under the Act.

14.4 Council considers that the district-wide economic impact of this Policy is generally expected to be limited due to the relatively low number of dangerous, affected and insanitary building cases requiring intervention.

15. Disputes

15.1 Any person who disputes a decision, notice, action or interpretation relating to a dangerous, affected or insanitary building under the Building Act 2004 may apply for a determination from the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) in accordance with the Building Act 2004.

15.2 A determination issued by the Chief Executive of MBIE is binding on the parties to the determination, subject to any rights of appeal provided under the Building Act 2004.

16. Policy Review

16.1 This Policy must be reviewed at intervals of not more than five years in accordance with section 132(4) of the Act.

16.2 As part of the review, Council may consider whether this Policy remains the most appropriate way to achieve the purpose of the Act, having regard to any relevant legislative changes, guidance, local circumstances and operational experience.

16.3 Council may commence a review of this Policy at any time before the expiry of the five-year review period if it considers this necessary or desirable.

16.4 If, following a review, Council determines that this Policy is no longer the most appropriate way to achieve the purpose of the Act, Council will amend or replace the Policy.

16.5 Any amendment to, or replacement of, this Policy must be adopted using the special consultative procedure set out in section 83 of the Local Government Act 2002.

16.6 As soon as practicable after adopting, amending or replacing this Policy, Council will provide a copy of the Policy to the Chief Executive of the MBIE in accordance with section 132(3) of the Act.

16.7 This Policy remains in force until it is amended, replaced or revoked by Council, and does not cease to have effect because it is due for review or is being reviewed.

17. Definitions

17.1 Unless otherwise specified, terms used in this Policy have the same meaning as in the Building Act 2004.

Affected Building has the meaning given in section 121A of the Act.

Authorised Officer has the meaning given in section 222 of the Act.

Building has the meaning given in section 8 of the Act.

Building emergency management area designation means a designation made under Subpart 6B of Part 2 of the Act.

Dangerous Building has the meaning given in section 121 of the Act.

Dangerous dam has the meaning given in section 153 of the Act.

Heritage Building has the meaning given in section 7 of the Act.

Insanitary Building has the meaning given in section 123 of the Act.

Owner has the meaning given in section 7 of the Act.

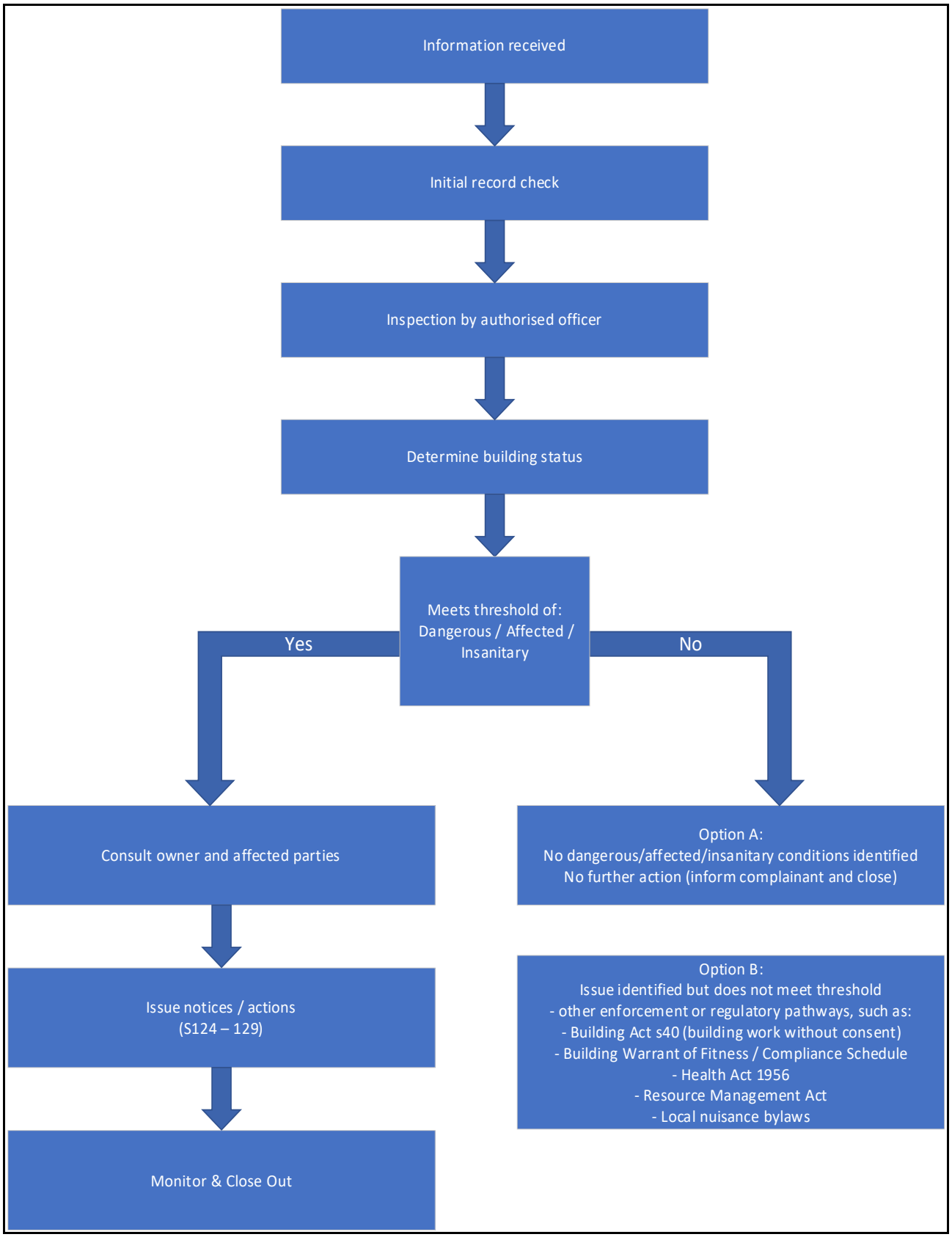
Territorial Authority has the meaning given in section 7 of the Act.

17.2 In this Policy:

Act means the Building Act 2004.

Council means the Marlborough District Council.

MBIE means the Ministry of Business, Innovation and Employment.

Appendix 1 – Process Flowchart

The following flowchart provides a high-level illustration of Council's general approach to managing notifications relating to dangerous, affected and insanitary buildings and is intended for guidance only and does not limit Council's ability to exercise any powers available under the Building Act 2004 or adopt an alternative approach where circumstances warrant.