



**MARLBOROUGH
DISTRICT COUNCIL**

Building Act 2004

INSANITARY OR DANGEROUS BUILDING POLICY 2021

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DANGEROUS and INSANITARY BUILDINGS POLICY 2021

1. Introduction

- 1.1 This Dangerous and Insanitary Buildings Policy (“the Policy”) has been prepared to comply with section 131 of the Building Act 2004 (“the Act”), which requires the Council to have a policy on Dangerous and Insanitary Buildings.
- 1.2 The definition of a dangerous building is set out in s121 (1) of the Building Act 2004. It says:
“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 because of fire hazard or the occupancy of the building.”
- 1.3 The Act also requires the Policy to state the Council’s policy approaches regarding affected buildings, which are buildings adjacent to, adjoining or nearby to a dangerous building or dam.
- 1.4 It is important that the Council protects public health through a balanced risk-based approach to ensuring buildings are structurally sound, do not pose health risks and perform their function without putting the health of building users, residents and visitors at risk.

2. Policy principles

- 2.1 This policy has been developed and will be implemented using a pragmatic approach.
- The approach addresses the following considerations:
- intent and provisions of the Building Act,
 - government’s broader concern with the life safety of the public in buildings.
- 2.2 In considering these principles the Policy seeks to ensure that people who use buildings can do so safely without endangering their health;
- 2.3 In preparing the Policy, the Council has endeavored to strike a balance between the risks posed by dangerous, affected and insanitary buildings and broader social and economic issues involved.
- 2.4 The Council will take a pragmatic approach to administering the Act and the Policy in a fair and reasonable way.

3. Polycscope

- 3.1 The Policy applies to all buildings within the Marlborough District Councils territorial authority district.
- 3.2 The Policy sets out:
 - the approach that the Council will take in performing its functions under Part 2 of the Act;
 - the Council's priorities in performing those functions;
 - the Council's approach to dangerous, affected and insanitary heritage buildings.

4. Policy objectives

- a) To discharge the Council's responsibilities under the Act that relate to dangerous, affected and insanitary buildings.
- b) To clearly state the Council's approach to identifying dangerous, affected or insanitary buildings, what powers it can exercise when such buildings are found, and how it will work with building owners to prevent buildings from remaining dangerous or insanitary, particularly where a dangerous building is affecting or potentially affecting another building.
- c) To explain its approach where the building concerned is a District Plan Scheduled or Heritage New Zealand listed heritage building or landmark.
- d) To ensure building owners understand that the Council may exercise its powers to take steps on the owner's behalf and may recover any resulting costs from the owner.

5. Council's role

- 5.1 A building may become dangerous, affected or insanitary due to a number of reasons, such as unauthorized alterations being made, fire, natural disaster or other external factors, or as a result of its use by an occupant.
- 5.2 When the Council becomes aware that a building may be dangerous, affected or insanitary, it will investigate and determine whether the building is dangerous, affected or insanitary.
- 5.3 If a building is found to be dangerous, affected or insanitary, the Council will work with the building owner(s), and if necessary use powers it has available, to ensure appropriate action is taken to make the building, its occupants and the public safe.

6. Working with other agencies

- 6.1 The Council will work with Heritage New Zealand Pouhere Taonga, Fire and Emergency New Zealand, the New Zealand Police and other relevant agencies to achieve the purpose of the Act.

7. Council policies

7.1 Approach to identifying dangerous, affected or insanitary buildings

- 7.2 The Council will not actively inspect all buildings within the District but may from time to time undertake proactive information collection on possible dangerous, affected or insanitary buildings.

On receiving information or a complaint regarding a possible dangerous, affected or insanitary building, the Council will quickly and efficiently respond to information received and to ascertain the extent of any issues.

The procedures taken by the Council to resolve any issues found are detailed in section 9 of the Policy.

7.3 Application of the Policy to heritage buildings

The Policy applies to heritage buildings in the same way it applies to all other buildings. Where the Council is assessing a building that is listed on the New Zealand Heritage List/Rārangi Kōrero the Council will seek advice from Heritage New Zealand Pouhere Taonga where practicable.

When considering heritage buildings under the Policy, account will be taken of:

- a) The importance of recognising any special traditional or cultural aspects of the intended use of the building;
 - b) The need to facilitate the preservation and ongoing use of buildings and areas of significant cultural, historical, or heritage value;
 - c) The circumstances of each owner and each building, including whether the building has undergone any recent building work
- 7.4 When considering what action to take with a listed or scheduled heritage building that is deemed dangerous or insanitary, the Council will take into account the heritage values of the building in determining possible courses of action and seek to avoid demolition wherever possible. Suitably qualified professionals with heritage expertise will be engaged where necessary to advise and recommend on possible actions.

8.1 Costs

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

- 8.1.1 If the Council carries out building work, under Section 126 of the Act or under a warrant issued under Section 129, it is entitled to recover costs associated with that work from the building owner.

9. Procedures

- 9.1 When the Council receives information regarding a potentially dangerous, affected or insanitary building, it will:
- a) Check the details on the property held in Council records;
 - b) Have an authorised officer undertake an inspection of the building. In doing this, the Council may seek advice from Fire and Emergency New Zealand, New Zealand Police or any other professional organisation deemed appropriate by Council; and
 - c) Prepare an inspection record.
- 9.2 All inspections of potentially dangerous, affected or insanitary buildings will involve assessment of the condition of the building in terms of the definitions in Sections 121, 121A and 123 of the Act. Inspection records will be prepared in all cases.
- 9.3 Authorised officers are entitled at all times during normal working hours to inspect any building to identify any dangerous or insanitary buildings, and may enter any premises for that purpose, unless the building is a household unit. If the building is a household unit which is being used as a household unit, the Council must either obtain consent from the occupier or an order from the District Court before it can enter to carry out an inspection.
- 9.4 Once the Council is satisfied that a building is dangerous, affected or insanitary it will:
- a) Consult with the building owner(s) to further determine the circumstances and decide on an appropriate course of action, which may include not taking any action, particularly where the owner is aware of and dealing with the issues.
 - b) Inform the complainant(s) of the inspection results and the Council's intended course of action to deal with the situation.
 - c) Assess whether there are any potentially affected buildings and consult with the owner(s) of any affected building regarding appropriate risk management approaches before taking enforcement action under Section 124 of the Act.
 - d) If notification is received from Fire and Emergency New Zealand that a building is dangerous, (whether by request of the Council under Section 121(2), or at the initiation of Fire and Emergency New Zealand) the Council will also liaise with Fire and Emergency New Zealand to discuss any proposed action.
 - e) If the building is a scheduled heritage building, the Council will take into account its heritage values in determining a course of action. Where practicable this will follow the provisions in section 7.3 of the Policy.
- 9.5 In undertaking its monitoring and enforcement functions under the Act and the Policy, the Council will utilise the 4E's model, (Engage, Educate, Enable and Enforce) strategy to target compliance activities. This approach is in alignment with Council enforcement policy
- 9.6 If the Council is satisfied that a building is a dangerous, affected, or insanitary building it may use its powers under Sections 124, or 126 of the Act. This may include:
- a) erecting a hoarding or fence to prevent people from approaching the building nearer than is safe
 - b) placing a notice that warns 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) issuing 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.

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.

9.7 Immediate Danger

9.7.1 If a building presents an immediate danger or health hazard to people within and/or around it, or to surrounding buildings, the Chief Executive of the Council may decide it is necessary to use the powers under Section 129 of the Act to remove the danger or fix insanitary conditions. This may include demolition of the building.

Immediate danger may apply to a building that is likely to be used in a dangerous manner. A particular example is an assessment of immediate danger from fire and, in the event of a fire, injury or death to persons in or around the building is likely.

9.7.2 If notification is received from Fire and Emergency New Zealand that a building is dangerous, (whether by request of the Council under section 121(2), or at the initiation of Fire and Emergency New Zealand) the Council will liaise with Fire and Emergency New Zealand to discuss any proposed action.

9.7.3 If the building is a scheduled heritage building, the Council will take into account its heritage values in determining a course of action. Where practicable this will follow the provisions in section 7.3 of the Policy.

10. Related legislation

In considering how to address non-compliance it is likely the Council must be mindful of any matters that require consideration under other legislation or compliance mechanisms. In particular, in addition to the Building Act 2004 the Council needs to consider the following:

- Local Government Act 2002
- Resource Management Act 1991
- 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
- Christchurch Regeneration Act

Note: Provisions also exist in the Health Act 1956 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). The Council may decide to use powers under the Health Act instead of or in addition to the Building Act.

11. Disputes

11.1 If a building owner disputes a Council decision, or proposed action, relating to the exercise of the Council's powers under sections 124 or 129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Building, Innovation and Employment, as set out in the Act. Such a determination is binding on the Council.

12. Information disclosure

- 12.1 The Local Government Official Information and Meetings Act 1987 (section 44A) requires the Council to include information concerning any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority on the Land Information Memorandum (LIM) for a property:
- 12.2 In particular, the Council will include information relating to notices that have been issued by Council regarding dangerous and insanitary conditions, or affected building status that are not resolved.
- 12.3 The Council is required (under section 216 of the Act) to hold a summary of any written complaint concerning alleged breaches of the Act, and the Council's response. This information will be provided upon request, subject to the requirements of section 217.

13. Policy review

- 13.1 The Policy must be reviewed at least every five years.
- 13.2 The Council may decide to review the Policy at any time within the five year review requirement.
- 13.3 If, following the review, or at any other time, the Council decides to amend or replace the Policy it must do so by using the special consultative procedure in section 83 of the Local Government Act 2002.
- 13.4 The Policy does not cease to have effect because it is due for review or is being reviewed.

14. Definitions

Affected building (s121A Building Act 2004) means a building that is at risk of damage or other impact from a dangerous building or dam that it is adjacent to, adjoining, or nearby.

Authorised officer (s222 Building Act 2004) means an officer of a territorial authority to whom either or both of the following applies:

- a) he or she is authorised to carry out inspections; or
- b) he or she is authorised to enter the land –
 - (i) by this Act; or
 - (ii) by an order of the District Court made under section 227.

Building (s8 Building Act 2004) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and

- a) includes—
 - (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
 - (iv) a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 metres in height above the point of its attachment or base support (except a dish aerial that is less than 2 metres wide); and
- b) 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
- c) includes the non-moving parts of a cable car attached to or servicing a building; and
- d) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.

Council means the Marlborough District Council

Dangerous building (s121 Building Act 2004) means a building that:

- 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.

Heritage building (s7 Building Act 2004) means a building that is included on —

- a) the New Zealand Heritage List/ Rārangī Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or

- b) 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.

Insanitary building (s123 Building Act 2004) means a building that:

- 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.

Inspection (s222 Building Act 2004) means the taking of all reasonable steps —

- a) to determine whether—
 - (i) building work is being carried out without a building consent; or
 - (ii) building work is being carried out in accordance with a building consent; or
 - (iii) a notice to fix has been complied with:
- b) to ensure that —
 - (i) in relation to buildings for which a compliance schedule is issued, the inspection, maintenance, and reporting procedures stated 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:
- c) to enable a territorial authority to —
 - (i) identify dangerous, earthquake-prone, or insanitary buildings within its district; and
 - (ii) carry out its functions or duties in relation to those buildings:
- d) to satisfy a territorial authority as to whether a certificate of acceptance for building work should be issued under section 96.

Owner (s7 Building Act 2004) means, 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 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 (s7 Act Building Act 2004) means

- a) 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 a territorial authority, or a building on or proposed to be built on any 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 a 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 Local Government is the territorial authority under section 22 of the Local Government Act 2002.