



Dangerous, Affected and Insanitary Buildings Policy 2019

Adopted: 11 September 2019



1.0 Introduction

- 1.1 The Dangerous, Affected and Insanitary Buildings Policy 2019 (“the Policy”) has been prepared by Council to comply with section 131 of the Building Act 2004 (“the Act”), which requires Council to have a policy on Dangerous, Affected and Insanitary Buildings.
- 1.2 This policy supersedes Council’s Earthquake-prone, Dangerous and Insanitary Buildings Policy 2016.

2 Policy Purpose

- 2.1 The purpose of this policy is to:
- Reduce the potential risk posed to residents in the district by Dangerous, Affected or Insanitary buildings;
 - Improve the control of, and encourage better practice in design and construction; and
 - Provide a clear framework of how Council will manage unsatisfactory building conditions.
- 2.2 In setting this policy, 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.
- 2.3 This policy sets out:
- The approach that Council will take in performing its functions under the Building Act 2004 in relation to Dangerous, Affected and Insanitary Buildings;
 - Council’s priorities in performing these functions; and
 - How the policy will apply to Heritage buildings.
- 2.4 The relevant principles of section 4 of the Act have been taken into account in preparing this policy, and will be taken into account in the performance of Council’s functions, powers and duties.

3 Policy Scope

- 3.1 This policy applies to all buildings within the Matamata-Piako District.
- 3.2 Earthquake-prone buildings were previously addressed by Council in the Earthquake-prone, Dangerous and Insanitary Buildings Policy 2016, but they are now managed under the Building (Earthquake-prone Buildings) Amendment Act 2016 and are therefore excluded from this policy.

4 Definitions

- 4.1 For the purposes of this policy the definitions in the table below shall apply.
- Where a definition has the same meaning as a definition in the Act, the definition for the purposes of this 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 this 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 – (a) a dangerous building as defined in section 121; or (b) a dangerous dam within the meaning of section 153.
"Authorised Officer"	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: (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"	has the same meaning as section 8 of the Act, as follows: In this Act, unless the context otherwise requires, building – (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— 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 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); 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) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.
"Council"	means the Matamata-Piako District Council.
"Dangerous building"	has the same meaning as section 121 of the Act, as follows: (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 (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 — (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.

“Heritage building”	<p>means a building that is included on —</p> <ul style="list-style-type: none"> (a) the New Zealand Heritage List/Rārangi 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 (c) At it’s discretion Council may also consider recognised character buildings, such as from within the Te Aroha Special Character Area under the Operative Matamata-Piako District Plan (as at the date of this Policy) and marae buildings as Heritage Buildings.
“Household unit”	<p>has the same meaning as section 7 of the Act, as follows:</p> <ul style="list-style-type: none"> (a) means a building or group of buildings, or part of a building or group of buildings, that is — <ul style="list-style-type: none"> (i) used, or intended to be used, only or mainly for residential purposes; and (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but (b) does not include a hostel, boardinghouse, or other specialised accommodation.
“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> <ul style="list-style-type: none"> (a) is offensive or likely to be injurious to health because — <ul style="list-style-type: none"> (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”	<p>has the same meaning as section 222 of the Act, as follows: means the taking of all reasonable steps —</p> <ul style="list-style-type: none"> (a) to determine whether— <ul style="list-style-type: none"> (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 — <ul style="list-style-type: none"> (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 — <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: (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>	<p>has the same meaning as section 7 of the Act, as follows: in relation to land and any buildings on the land —</p> <ul style="list-style-type: none"> (a) means the person who — <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 (b) includes — <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.
<p>“Territorial authority”</p>	<p>has the same meaning as section 7 of the Act, as follows:</p> <ul style="list-style-type: none"> (a) means a city Council or district Council named in Part 2 of Schedule 2 of the Local Government Act 2002; and — <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 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 Matamata-Piako District Council Dangerous, Affected and Insanitary Buildings Policy 2017 Page 7 of 10 16087892 Term Definition Conservation or the Minister of Local Government is the territorial authority under section 22 of the Local Government Act 2002.

5 Council’s Role

- 5.1 When buildings that may be Dangerous or Insanitary come to the attention of Council, Council will act promptly to investigate and if determined to be Dangerous or Insanitary ensure they are made safe.
- 5.2 Buildings may become Dangerous or Insanitary due to a number of reasons, such as unauthorised alterations being made, from a fire, from a natural disaster, or as a result of its use by an occupant.
- 5.3 Council has a statutory responsibility to act promptly to ensure the safety of persons or property when buildings that may be Dangerous or Insanitary come to the Council’s attention. Council is also required to consider whether any other buildings may be Affected by a Dangerous or Insanitary building and if so, what action, if any, is appropriate.
- 5.4 The concept of an Affected Building arises in the context of a Dangerous building that is physically close enough to potentially pose a danger to people within the Affected Building. Note: Affected Buildings are defined as buildings which are adjacent to, adjoining, or nearby a Dangerous building.
- 5.5 Council recognises principles 4(d) and (l) of the Act which illustrates, “the importance of recognising any special traditional and cultural aspects of the intended use of a building” and “the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value” respectively.

6 Council Policies

6.1 Council approach to Dangerous, Affected or Insanitary buildings

- 6.1.1 Council will not actively 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.

6.2 Application of policy to Heritage buildings

- 6.2.1 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 under Heritage New Zealand Pouhere Taonga, in addition to consulting with affected owners Council will consider seeking advice from Heritage New Zealand Pouhere Taonga. Council recognises heritage buildings as important infrastructure that add character and history to the district.
- 6.2.2 A number of heritage buildings are listed with the New Zealand Historic Places Trust and/or are listed in 'Schedule 1 - Heritage Sites' of the District Plan.
- 6.2.3 Section 3.1.2 of the Operative Matamata-Piako District Plan (as at the date of this Policy) discusses 'Natural Environment and Heritage' issues and in particular Policy 2 states; *"Activities in the Victorian/Edwardian areas of Te Aroha should be managed in such a way as to ensure their distinctive heritage character is fostered and enhanced"*. This policy recognises that parts of Te Aroha have a unique character which requires a broad unifying approach to control the use and management of public and privately owned properties to maintain and enhance the character of the whole area.
- 6.2.4 When considering heritage buildings under the Dangerous and Insanitary Buildings Policy, consideration will be given to:
- a. the importance of recognising any special traditional and cultural aspects of the intended use of a building, and
 - b. the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value.

6.3 Co-operation with other agencies

- 6.3.1 Council will work with Heritage New Zealand Pouhere Taonga, the Fire and Emergency New Zealand, the New Zealand Police and other agencies to achieve the purpose of the Building Act 2004.

6.4 Costs

- 6.4.1 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.
- 6.4.2 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.

6.5 Immediate danger

- 6.5.1 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.

6.6 Building Owners

- 6.6.1 Council encourages owners of all buildings to look after their buildings by undertaking maintenance and upgrades to help prevent the buildings from becoming Dangerous or Insanitary buildings.

7 Procedures

7.1 Detect

- 7.1.1 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 the New Zealand Fire Service, or any other professional or organisation deemed appropriate by Council; and
- Prepare an inspection record.

7.2 Assess

- 7.2.1 All inspections of potentially Dangerous, Affected or Insanitary buildings will involve assessment of the building's condition in terms of the definitions in Section 121 and 123 of the Act and the current building code requirements. Inspection records will be prepared in all cases.

7.3 Act

- 7.3.1 Once Council is satisfied that a building is Dangerous, Affected or Insanitary it will:

- Consult with the owners of the Affected building to further determine the circumstances and decide on an appropriate course of action.
- Take appropriate measures to secure the building; this may include but is not limited to, fences, hoardings or warning notices.
- If a heritage building is identified as being at risk, Council may consult with Heritage New Zealand or encourage building owners to do so.
- Council will advise owners of any funding assistance available, either through Council or (for example) the Heritage New Zealand Incentive and New Zealand Lotteries funds where owners can apply for funding for heritage buildings to help with any costs to be incurred.
- Authorised Officers 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 these circumstances Council must either obtain consent of the occupier of the household unit or an order from a District Court.
- Where a mutually acceptable outcome cannot be reached, or where the situation requires, Council may invoke its powers under Section 124, 126 or 129 of the Act.

- Inform complainants of the inspection results and Council's intended course of action to deal with the situation.

7.4 Monitor

- 7.4.1 All information relating to Dangerous, Affected or Insanitary buildings will be filed on the relevant property file. This will include a copy of the original inspection record and any further action taken. This information will also be included on any land information memorandum (LIM) prepared for the property.

8 Amendments

- 8.1 This policy may be amended when required subject to the provisions of the Act.

9 Application and review

- 9.1 The policy will be reviewed at least every five (5) years, as required by section 132(4) of the Building Act 2004.
- 9.2 Clause 9.1 does not preclude this policy from being reviewed within the time frame stated in the Act to meet the needs of Council and best practice.
- 9.3 The policy will take effect from 11 September 2019 which is the date it was formally adopted by Council.