



te kaunihera ā-rohe o
matamata-piako
district council



Matamata-Piako District Council
DRAFT Dangerous, Affected and
Insanitary Buildings Policy 2024
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consultation
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1. Introduction

- 1.1 The Dangerous, Affected and Insanitary Buildings Policy 2024 (“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 A building 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.
- 1.3 Affected buildings are defined as buildings which are adjacent to, adjoining, or nearby to a Dangerous building and may arise where a Dangerous building is physically close enough to potentially pose a danger to people within the Affected building.

2. 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 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.
- 2.3 The relevant principles of section 4 of the Act have been taken into account in preparing this Policy, and in the performance of Council’s functions, powers and duties.

3. Scope

- 3.1 This Policy applies to all buildings within the Matamata-Piako District.
- 3.2 Earthquake-prone buildings are managed under the Building (Earthquake-prone Buildings) Amendment Act 2016 and are therefore excluded from this Policy.

4. Context

- 4.1 Council is committed to ensuring that the district is a safe place to live and work in. This Policy is consistent with Council’s approach to deliver on the current and future social, economic, environmental, and cultural well-being of its communities.
- 4.2 Council is expecting moderate growth over the next 30 years with an expected increase in population and building stock that is ageing in some areas.
- 4.3 Lack of maintenance and unauthorised building alterations can cause serious building problems for occupants. Dangers could include inadequate fire protection or means of escape, or danger of collapse.

4.4 This Policy has been developed to reflect the local context. In doing so, 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.

5. Principles

5.1 This Policy has been developed with the intent of a pragmatic approach to implementation. Council will not actively inspect all buildings within the district; however when buildings that may be Dangerous or Insanitary come to the attention of Council, Council has a statutory responsibility to act promptly to ensure the safety of persons or property and investigate.

5.2 If a building is determined to be Dangerous or Insanitary, Council will ensure that the building is made safe through working with the building owner and utilising its powers under the Act.

5.3 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 Council will work with other agencies including Heritage New Zealand Pouhere Taonga, Fire and Emergency New Zealand (FENZ), and the New Zealand Police to achieve the purpose of the Act.

6. Policy

6.1 Identification of Potentially Dangerous, Affected or Insanitary Buildings

6.1.1 The need to undertake an inspection may be triggered by any of the following:

- the observations of its staff or contractors;
- information or complaints received from members of the public or members of professional bodies;
- events arising following natural disasters;
- notification from the Ministry of Business, Innovation and Employment (MBIE);
- notification from FENZ.

6.1.2 When Council receives information regarding a potentially Dangerous, Affected or Insanitary building it will:

- a) Check the details of the property against Council records;
- b) Have an Authorised Officer undertake an inspection of the building in question to assess the condition of the building. In doing this, Council may seek advice from FENZ, or any other professional or organisation deemed appropriate by Council; and,
- c) Prepare an inspection record.

6.2 Assessment of Potentially Dangerous, Affected or Insanitary Buildings

6.2.1 All inspections of potentially Dangerous, Affected or Insanitary buildings will involve assessment of the building's condition in terms of the definitions in sections 121 (dangerous buildings), 121A (affected buildings) and 123 (insanitary buildings) of the Act and the current building code requirements.

- 6.2.2 Council may engage a subject matter expert to assist with determining the course of action.
- 6.2.3 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 obtain an order from the District Court.

6.3 Actions for Dangerous, Affected or Insanitary Buildings

- 6.3.1 The priority for action for a Dangerous, Affected or Insanitary building will be decided after the initial assessment of the building.
- 6.3.2 Where notification has been received from FENZ of a Dangerous building, Council will contact them to discuss proposed action.
- 6.3.3 Once Council is satisfied that a building is Dangerous, Affected or Insanitary it will:
- a) Consult with the owners of the relevant building to further determine the circumstances and decide on an appropriate course of action.
 - b) Take appropriate measures to secure the building. This may include but is not limited to, fences, hoardings or warning notices.
 - c) Except for an Affected building, issue a notice under section 124(2)(c) requiring the building owner to undertake building work to reduce or remove the danger, or prevent the building from remaining Insanitary.
 - d) Work with the building owner to achieve a mutually acceptable outcome. Where the situation requires, Council may invoke its powers under section 124, 126, 128A and 129 of the Act.
 - e) Take any action that is necessary to remove any immediate danger to the safety of people, or immediate action that is necessary to fix insanitary conditions (section 129 of the Act). The building owner is liable for the Council's costs in doing so, and the amount recoverable becomes a charge on the land.
 - f) Inform complainants of the inspection results and Council's intended course of action to deal with the situation.

6.4 Application of Policy to Heritage Buildings

- 6.4.1 This Policy applies to heritage buildings in the same way it applies to all other buildings.
- 6.4.2 Council recognises principles in section 4(2)(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.
- 6.4.3 Council recognises heritage buildings as important infrastructure that add character and history to the district. This includes heritage buildings listed with the New Zealand Historic Places Trust and/or areas that may be referenced in Schedule 1 (Heritage sites) or Schedule 2 (Heritage – waahi tapu) of the operative Matamata-Piako District Plan.
- 6.4.4 Council will work with the building owner to ensure the development of appropriate management and planning for heritage buildings for their protection wherever possible. This will be achieved by:

- a) Recognising the heritage buildings that exist in the district, as per the definition of heritage building in the Act.
- b) Informing relevant statutory organisations, including Heritage New Zealand Pouhere Taonga, with regards to any listed building identified as Dangerous or Insanitary.
- c) Ensuring the consideration of any advice received from Heritage New Zealand Pouhere Taonga or a professional conservation organisation or heritage professional (if relevant).
- d) Consideration of any relevant conservation report, conservation plan, condition report, management plan, heritage assessment or other document.
- e) Advising building owners of any funding assistance that may be available for heritage buildings to help with any costs to be incurred, either through Council (for example, the Natural, Cultural and Built Heritage Grant) or through an external organisation (for example, the Heritage New Zealand Pouhere Taonga National Heritage Preservation Incentive Fund and New Zealand Lotteries funds).

7. Costs

- 7.1 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.
- 7.2 If Council carries out building work required under a notice issued in accordance with section 124(2)(c) of the Act, it is entitled to recover costs associated with that work from the building owner, as set out in Section 126(3) of the Act.

8. Immediate Danger

- 8.1 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.

9. Building Owners

- 9.1 Building owners are legally responsible for ensuring the maintenance and compliance of their buildings. Council encourages building owners to look after their buildings by undertaking timely maintenance to help prevent the buildings from becoming Dangerous or Insanitary.

10. Building Information

- 10.1 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.

11. Amendments

- 11.1 This Policy may be amended when required subject to the provisions of the Act.

12. Application and review

- 12.1 This Policy will be reviewed at least every five (5) years, as required by section 132(4) of the Act.
- 12.2 Clause 12.1 does not preclude this Policy from being reviewed within the time frame stated in the Act to meet the needs of Council and to reflect best practice.
- 12.3 This Policy will take effect from **TBC** which is the date it was formally adopted by Council.

13. Definitions

- 13.1 For the purposes of this Policy the definitions in the table below shall apply.
- 13.2 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
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

Term	Definition
	(e) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.
Building Owner	<p>has the same meaning as section 7 of the Act as follows: Owner in relation to any land or 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, 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>
Council	means the Matamata-Piako District Council
Dangerous Building	<p>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.</p> <p>(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.</p>
Heritage building	<p>has the same meaning in section 7 of the Act, as follows: (a) a building that is included on the New Zealand Heritage List/Rāangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or (b) a building that is included on 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) a place, or part of a place, that is subject to a heritage covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 and is registered under section 41 of that Act; or (d) a place, or part of a place that is subject to a heritage order within the meaning of section 187 of the Resource Management Act 1991. (e) a place, or part of a place, that is included in the schedule of a district plan because of its heritage value.</p> <p>At it's discretion Council may also consider recognised character buildings, such as from within the Te Aroha Special Character Area</p>

Term	Definition
	under the Operative Matamata-Piako District Plan (as at the date of this Policy) and marae buildings as heritage buildings.
Household unit	has the same meaning as section 7 of the Act, as follows: (a) means a building or group of buildings, or part of a building or group of buildings, that is — (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, boarding house, or other specialised accommodation.
Immediate danger	has the same meaning as section 129 of the Act, as follows: (1) This section applies if, because of the state of the building; (a) immediate danger to the safety of people is likely in terms of section 121 or 123; or (b) immediate action is necessary to fix insanitary conditions.
Insanitary building	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 — (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	has the same meaning as section 222 of the Act, as follows: 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.
Territorial authority	has the same meaning as section 7 of the Act, as follows: (a) means a city Council or district Council named in Part 2 of Schedule 2 of the Local Government Act 2002; and —

Term	Definition
	<p>(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</p> <p>(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</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>
The Act	means the Building Act 2004.

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