

COUNCIL POLICY

TITLE:	Dangerous and Insanitary Buildings
EFFECTIVE DATE:	1 August 2019
FILE REFERENCE:	304100
REVIEW:	June 2024

1. BACKGROUND

The Building Act 2004 (the Act) requires councils to adopt a policy on dangerous and insanitary buildings. The policy must state the approach the council will take to performing its functions under the Act, council's priorities in undertaking those functions, and how the policy will apply to heritage buildings. It must take into account affected buildings, as defined in the legislation.

The policy must be reviewed every five years.

2. POLICY OBJECTIVES

The objectives of this policy are to:

- Improve the control of, and encourage better practice in design and construction
- Reduce the danger to people caused by dangerous, affected or insanitary buildings
- Establish the approach Council will take in performing its functions under the Act
- Set out the priorities Council has in performing those functions.

3. DEFINITIONS

Act means the Building Act 2004 and its amendments.

Affected building (section 121A of the Act) means a building that is adjacent to, adjoining, or nearby:

- a) a dangerous building; or
- b) a dangerous dam as defined in the Act.¹

Building owner (section 7 of the Act) means

- a) The person who

¹ There are no dams in the Kawerau District.

- 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) 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.

Council means the Kawerau District Council or any officer authorised to exercise the authority of Council.

Dangerous building (section 121 of the Act)

1. A building is dangerous 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 it or to persons on other property is likely.
2. For the purpose of determining whether a building is dangerous in terms of subsection 1b) a territorial authority—
 - a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
 - c) if the advice is sought, must have due regard to the advice.

Insanitary building (section 123 of the Act)

A building is insanitary 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 adequate for its intended use; or
- d) does not have sanitary facilities adequate for its intended use.

Notice means a notice requiring building work to be done or restricting entry to a dangerous, affected, or insanitary building, set out according to the requirements of section 125 of the Act.

4. COUNCIL APPROACH

4.1 Functions

Council's functions in relation to dangerous, affected or insanitary buildings are to:

- Identify or respond to notifications about potentially dangerous, affected or insanitary buildings,
- Assess the buildings; and
- Take action in relation to the buildings.

4.2 Approach

Council approaches its functions in accordance with the model of enforcement remedies it has developed for a range of legislation, regulations and bylaws. The procedural steps are shown in the table below:

Informal Non-Statutory	Formal Statutory	Formal Statutory
Co-operative/Coercive	Directive	Punitive
1. Education/Awareness	5. Verbal Instruction	7. Infringement Notice
2. Warning	6. Written Instruction	8. Prosecution
3. Instruction (Verbal)		
4. Instruction (Written)		

4.3 Priorities

Council's priorities for action under this policy are determined by the following:

1. The potential to cause harm to people and the likely degree of harm
2. The potential to damage other property and the likely level of damage
3. The building's importance to the public e.g. a school, health facility or marae
4. The number of people who use the building
5. The level of vulnerability of people who use the building
6. The location of the building in relation to key infrastructure
7. The size of the building
8. The age of the building and its expected life.

5. POLICY STATEMENT

5.1 Identifying dangerous, affected or insanitary buildings

Council will respond to building complaints received from the public, the Fire Service or any other person or organisation with a health and safety interest in a particular building.

5.2 Assessing whether a building is dangerous, affected or insanitary

Council will investigate every building identified as being potentially dangerous, affected or insanitary. An investigation will establish the building's level of risk in accordance with Council's priorities for action under this policy.

The risk assessment, any required remedial work and guidelines and a timeframe for completion will be recorded in a written report. Council will give the report to the building owner and include a copy on the relevant property file and any LIM report produced.

5.3 Taking action

Council will take action in relation to every building which is dangerous, affected or insanitary in accordance with its powers under section 124 of the Act. These powers include any or all of the following:

- 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 that warns people not to approach the building
- c) except in the case of an affected building, issuing a notice 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 restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

5.4 Copy of notices

In addition to the building owner, Council will also provide a copy of all notices to:

- The occupier/s of the building;
- Every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952;
- Every person claiming an interest in the land which is protected by a caveat lodged and in force under the Land Transfer Act 1952;
- Any statutory authority, if the land or building has been classified; and
- The New Zealand Historic Places Trust if the building is a heritage building.

Notice will not be invalid only because a copy is not given to any or all of the above persons.

5.5 Working with the building owner

In every case where Council takes action in relation to a dangerous or insanitary building, it will make contact with the building owner. A reasonable attempt will be made to contact the owner before or at the same time as the issue of a notice. Where a dangerous or insanitary building poses an immediate risk, Council may take remedial action first and then consult with the owner as soon as is practicable thereafter.

Council will give all building owners the opportunity to discuss their circumstances and future plans for their buildings and will take these into consideration. Where the expense of remedial work will place an unreasonable cost burden on the owner, this will be discussed with the owner and other alternatives, such as demolition or temporary hoardings will be considered.

5.6 Remedial work

Where a notice requires remedial work, Council will discuss with the owner the most suitable approach.

In most cases it will be sufficient to use hoardings or similar to prevent the public from approaching the building until the remedial building work has been carried out.

If an owner fails to either undertake remedial work or to complete the work within the required timeframe, Council may obtain a district court order to carry out the work. The work may include the demolition of the building.

5.7 Relationship with other provisions of the Building Act

When a building owner applies for a building consent to alter an existing building, Council may assess the building as dangerous or insanitary if the alterations would affect:

- The means of escape in the event of a fire, and/or
- The ability of disabled persons to use the building, and/or
- The ability of the building to continue to meet the Building Code.

When a building owner applies for a building consent for remedial work required by a notice, Council will ensure the owner also makes the building compliant with Building Code requirements for people with disabilities.

A building owner will be required to comply with any outstanding notice before Council will issue a building consent for any work unrelated to the notice.

5.8 Heritage buildings

There are no buildings in Kawerau carrying heritage classification and Council has yet to assess Kawerau's built heritage or develop a heritage strategy. While this is a reflection that Kawerau has a relatively young building stock, Council will nevertheless consider the heritage values of buildings on their merits.

A heritage building will be assessed in the same way as other potentially dangerous or insanitary buildings.

RELEVANT DELEGATIONS

The Chief Executive Officer or his/her nominee has delegated authority for the implementation of this policy.

REFERENCES AND RELEVANT LEGISLATION

Building Act 2004
Health Act 1956
Historic Places Act 1993
Kawerau Operative District Plan