



Kaikoura District Council

Dangerous and Insanitary Buildings Policy 2019

1. Introduction

- a) 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.
- b) The Policy replaces the Council’s Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006 (Reviewed 2012). All requirements regarding Earthquake-prone Buildings have been removed from the Policy as they are now covered by sections 133AG – 133AY of the Act.
- c) 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.
- d) 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

- a) The relevant principles of section 4 of the Act have been taken into account in preparing the Policy
- b) In considering these principles, the Policy seeks to ensure that people who use buildings can do so safely without endangering their health;
- c) 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.
- d) The Council will take a pragmatic approach to administering the Act and the Policy in a fair and reasonable way.

3. Policy scope

- a) The Policy applies to all buildings within the Kaikoura District Council territorial authority district.
- b) The Policy sets out:
 - i. The approach that the Council will take in performing its function under Part 2 of the Act;
 - ii. The Council’s priorities in performing those functions;
 - iii. 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

- a) 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.
- b) 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.
- c) 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.

7. Working with other agencies

- a) 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.

8. Approach to identifying dangerous, affected or insanitary buildings

- a) 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.
- b) 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.
- c) The procedures taken by the Council to resolve any issues found are detailed in section 10 of the Policy.

9. Application of the policy to Heritage buildings.

- a) 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.

10. Procedures

- a) When the Council receives information regarding a potentially dangerous, affected or insanitary building, it will:
 - i. Check the details on the property held in Council records;
 - ii. Have an authorized 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 organisations deemed appropriate by Council; and prepare an inspection report
- b) 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.
- c) Authorised council 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.
- d) Once the Council is satisfied that a building is dangerous, affected or insanitary it will:
 - i. 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.
 - ii. Inform the complainant(s) of the inspection results and the Council's intended course of action to deal with the situation.
 - iii. 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.
 - iv. 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.
 - v. If the building is a scheduled heritage building, the Council will take into account its heritage values in determining a course of action.
 - vi. In undertaking its monitoring and enforcement functions under the Act and the Policy, the Council will utilise a risk-based strategy to target compliance activities. This approach recognises graduated categories of behaviour that determine the nature of the compliance intervention – Voluntary, Assisted, Directed and Enforced (VADE). Compliance and enforcement responses escalate depending on the seriousness of the conduct, extent of the harm and public interest factors. In operational terms, this approach recognises that most people and businesses are willing to voluntarily comply with their regulatory obligations or can be encouraged to do so; and enforcement responses are tailored according to the degree of harm to individuals, amenities or the environment.
- e) 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.
- f) 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.
- g) IMMEDIATE DANGER (Items h to i below)
- h) 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.
- i) 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.

11. Related legislation

- a) 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 (in no particular order):
 - i. Local Government Act 2002
 - ii. Resource Management Act 1991
 - iii. Civil Defence Emergency Management Act 2002
 - iv. Heritage New Zealand Pouhere Taonga Act 2014
 - v. Protection of Personal and Property Rights Act 1988
 - vi. Health Act 1956
 - vii. Mental Health Act 1992

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.

12. Disputes

- a) 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.

13. Information disclosure

- a) 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:
- b) 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.
- c) 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.

14. Policy review

- a) The Policy must be reviewed at least every five years.
- b) The Council may decide to review the Policy at any time within the five-year review requirement.
- c) 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.
- d) The Policy does not cease to have effect because it is due for review or is being reviewed.

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 Kaikoura 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) Appendix C of Kaikoura District Plan;
- b) The New Zealand Heritage List/ Rārangī Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or 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: 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.