

Draft Dangerous, Affected and Insanitary Buildings Policy

Approved by:	Timaru District Council, Standing Committee
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1. Introduction

- 1.1. The Dangerous, **Affected** and Insanitary Buildings Policy (Policy) has been prepared by the Timaru District Council to comply with section 131 of the Building Act 2004 (the Act). The Act requires Council to have a policy on Dangerous, **Affected** and Insanitary Buildings.
- 1.2. This policy supersedes Council's Dangerous and Insanitary Buildings Policy 2018 and sets out the policy adopted by Timaru District Council in accordance with the requirements of the Act.
- 1.3. All requirements regarding earthquake-prone building were removed from the Policy on 27 November 2018, as they are now covered by sections 133AG - 133AY of the Act.
- 1.4. Early detection and rectification of dangerous, **affected** or insanitary buildings has a strong relationship with Council's strategy for a safe district. It is important that Council protects public health through a balanced, risk-based approach to ensure buildings are structurally sound, do not pose health risks, and perform their function without putting the health of residents and visitors at risk.

2. Purpose of the policy

- 2.1. The purpose of the Policy is to:
 - Reduce the potential risk posed to residents in the District by dangerous, **affected** and insanitary buildings;
 - Improve the control of, and encourage better practice in design and construction; and
 - Provide a clear framework of how Council will manage dangerous, **affected** and insanitary buildings.

- 2.2. In setting the 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. The relevant principles of section 4 of the Act have been taken into account in preparing the Policy, and will be taken into account in the performance of Council's functions, powers and duties.

3. Policy Scope

- 3.1. The Policy applies to all buildings within the Timaru District Council Territorial Authority District.
- 3.2. The Policy sets out:
- The approach Council will take in performing its functions under Part 2 of the Act;
 - Council's priorities in performing those functions; and
 - How the Policy will apply to heritage buildings.

4. Definitions

- 4.1. For the purposes of the Policy the definitions in the table below shall apply.
- 4.2. Where a definition has the same meaning as a definition in the Act, the definition for the purposes of the 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 the 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 –

	<p>(a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and</p> <p>(b) includes -</p> <p>(i) a mechanical, electrical, or other system; and</p> <p>(ii) a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987; and</p> <p>(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</p> <p>(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</p> <p>(d) includes the non-moving parts of a cable car attached to or servicing a building; and</p> <p>(e) includes the moving parts of a cable car attached to or servicing a building.</p>
Council	means the Timaru District Council
Dangerous Building	<p>has the same meaning as section 121 of the Act, as follows:</p> <p>(1) A building is dangerous for the purposes of this Act, if -</p> <p>(a) In the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause -</p> <p>(i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or</p> <p>(ii) damage to other property; or</p> <p>(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 -</p> <p>(a) may seek advice from members of the 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</p> <p>(b) if the advice is sought, must have due regard to the advice.</p>
Heritage building	<p>has the same meaning as section 7 of the Act, as follows: means a building that is included on -</p> <p>(a) the New Zealand Heritage List/Rarangi Korero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or</p> <p>(b) the National Historic Landmarks/Nga Manawhenua o Aotearoa me ona Korero Tuturu list maintained under s 81 of the Heritage New Zealand Pouhere Taonga Act 2014.</p>
Household unit	has the same meaning as section 7 of the Act, as follows:

	<p>(a) means a building or group of buildings, or part of a building or group of buildings, that is –</p> <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 one household; but <p>(b) does not include a hostel, boardinghouse, or other specialised accommodation.</p>
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 states 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 an 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.
Owner	<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 form the land; or

	<ul style="list-style-type: none"> (ii) would be so entitled if the land were let to a tenant at a rack rent; and <p>(b) includes -</p> <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.
Territorial authority	<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 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 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. 5.2. A building may become dangerous or insanitary due to a number of reasons such as unauthorised alterations being made from a fire, a natural disaster, or as a result of use by an occupant.
- 5.3. 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 Council's attention. **Council is also required to consider whether any other buildings may be affected by a dangerous building and if so, what action, if any, is appropriate.**
- 5.4. 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 (see section 4 for definitions).

6. Policy

Approach to dangerous, affected or insanitary buildings

- 6.1. Council will not actively inspect all buildings within the District, but will make it a priority to quickly and efficiently respond to any information received regarding potentially dangerous, affected or insanitary buildings.

Application of the Policy to heritage buildings

- 6.2. 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.

Co-operation with other agencies

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

Costs

- 6.4. 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.
- 6.5. 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.

Immediate danger

- 6.6. 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.

7. Procedures

Detect

7.1. Once Council has received 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. In doing this, Council may seek advice from Fire and Emergency New Zealand, or any other professional or organisation deemed appropriate by Council; and
- c. Prepare an inspection record.

Assess

7.2. All inspections of potentially dangerous, affected or insanitary buildings will involve an assessment of the building's condition in terms of the definitions in sections 121 and 123 of the Act, and the current building code requirements. Inspection records will be prepared in all cases.

Act

7.3. Once Council is satisfied that a building is dangerous, affected or insanitary, it may:

- a. Consult with the owner of the **affected** building to further determine the circumstances and decide on an appropriate course of action.
- b. Inspect any building, except a household unit, to identify whether it is dangerous, **affected** or insanitary. Authorised officers are entitled at all times, during normal working hours, to inspect any building to identify any dangerous or insanitary buildings and 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 the case of a household unit Council must either obtain consent of the occupier of the household unit or an order from a District Court.
- c. Invoke its powers under Section 124, 126 or 126 or 129 of the Act where a mutually acceptable outcome cannot be reached, or where the situation requires.
- d. Inform complainants of the inspection results and the council's intended course of action to deal with the situation.

Priorities

7.4. Council will give priority to buildings that have been determined to be immediately dangerous. Immediate action will be required in these situations to remove the danger, such as prohibiting any person from occupying or using the building. If necessary, the building will be secured to prevent entry.

Record keeping

- 7.5. Any buildings identified as being dangerous or insanitary will have a requisition placed on Council's property database for the property on which the building is situated until the dangerous or insanitary condition is remediated.
- 7.6. In addition, the following information may be placed on any Land Information Memorandum (LIM):
 - a. copies of any notices issued where a building is dangerous, **affected** or insanitary and requires evacuation of the building;
 - b. copies of any letters sent to the owner, occupier and any other person where a building is dangerous or insanitary; and
 - c. copies of any notices given under s 124(1) which identifies the work to be carried out on a building and the timeframe given to reduce or remove the danger or insanitary condition.

State of emergency

- 7.7. 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.

8. Amendments

- 8.1. The Policy may be amended when required, subject to the provisions of the Act.

9. Application and review

- 9.1. This Policy will be reviewed at least every five years as required by section 132(4) of the Building Act 2004.
- 9.2. This Policy will take effect from **[date to be confirmed]** which is the date it was formally adopted by the council.
- 9.3. This Policy does not cease to have effect because it is due for review or it is being reviewed.