

Dangerous, Insanitary and Affected Buildings Policy

**Council policy on the approach, identification, assessment, and action to
be taken, to deal with dangerous, insanitary and affected buildings**

TASMAN DISTRICT COUNCIL – DANGEROUS, INSANITARY AND AFFECTED BUILDINGS POLICY [2018 – 2023]

[Adopted 18 April 2019]

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Introduction

We are committed to ensuring that Tasman District is a safe place to live, visit, and work in. We need to make sure buildings do not pose a danger to members of the public going about their daily lives. This policy outlines how we will identify and take action on dangerous, insanitary and affected buildings in Tasman District.

Technical Background

The Building (Earthquake-prone Buildings) Amendment Act 2016 was introduced on 1 July 2017, and requires us to review and amend our previous *“Earthquake-prone, Dangerous and Insanitary Buildings Policy”* dated 2006.

The Building Amendment Act 2013 also requires us to amend any existing policy to take into account affected buildings.

This document sets out the policy adopted by Tasman District Council in accordance with the requirements of the Building Act 2004 (“**Act**”) [e.g. Subpart 6, Sections 121 – 132A, and 222].

As required by Section 131(2) of the Act, the policy sets out:

- The approach that the Council will take in performing its functions under this Part; and
- The Council’s priorities in performing those functions; and
- How the policy will apply to heritage buildings.

We have followed the special consultative procedure (set out in section 83 of the Local Government 2002) in developing and adopting this policy.

1. Policy approach

1.1 Policy Principles

The Council is committed to ensuring Tasman District is a safe place to live, visit, and work in. This policy has a strong relationship with our vision and strategic challenges for creating and promoting a safe district for all people.

The policy is based, in part, on the *“Dangerous and Insanitary Building Provisions of the Building Act 2004 – Policy Guidance for Territorial Authorities”* published by the former Department of Building and Housing on 1 October 2005.

We don't intend to copy all the relevant sections of the Act that relate to dangerous, insanitary and affected buildings (see Table 1). However, just because a section of the Act may not be referred to or cross-referenced within this policy, it does not mean any statutory obligations are reduced, overruled, obsolete, or are of no effect. The same applies to any other related legislative mechanism (e.g. infringement fees regulated under Section 402 of the Building Act 2004).

There may be circumstances where a building may need to be assessed for being both dangerous and insanitary at the same time.

1.2 Overall Approach

This policy aims to ensure that:

- (i) People who use buildings do so safely and without endangering their health; and
- (ii) People who use a building can escape from the building if it is on fire; and
- (iii) In the ordinary course of events, buildings are unlikely to cause injury or death to persons on other property, or damage to other property.

Examples of what could be a dangerous, insanitary or affected building, include (but are not limited to) those listed in Table 1 below.

1.3 Identifying dangerous, insanitary and affected buildings

Common actions we will take to identify dangerous, insanitary, and affected buildings include:

- Respond to and investigate all building complaints received (most commonly from tenants or neighbours).
- While undertaking site inspections for another reason (e.g. in relation to a building consent), our Building Inspector may observe an issue that he/she believes needs to be referred back to the Council.
- Undertake site inspection(s) in accordance with Section 222 of the Act to determine whether a building is dangerous or insanitary.

Other possible actions, which could be unique to the different types of buildings include, but are not limited to, those identified in Table 2 below.

A dangerous, insanitary or affected building could be “*part*” of a building (Section 123A of the Act).

Dangerous – Definition: Sec 121(1) Building Act 2004	Insanitary – Definition: Sec 123 Building Act 2004	Affected – Definition: Sec 121A Building Act 2004
<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>“A building is insanitary for the purposes of this Act if the building,-</p> <p>(a) is offensive or likely to be injurious to health because-</p> <p>(i) of how it is situated or constructed; or</p> <p>(ii) it is in a state of disrepair; or</p> <p>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</p> <p>(c) does not have a supply of potable water that is adequate for its intended use; or</p> <p>(d) does not have sanitary facilities that are adequate for its intended use.”</p>	<p>“A building is an affected building for the purposes of this Act if it is adjacent to, adjoining, or nearby -</p> <p>(a) a dangerous building as defined in section 121; or</p> <p>(b) a dangerous dam within the meaning of section 153.</p> <p>153 Meaning of dangerous dam A dam is dangerous for the purposes of this Act if the dam-</p> <p>(a) is a high potential impact dam or a medium potential impact dam; and</p> <p>(b) is likely to fail-</p> <p>(i) in the ordinary course of events; or</p> <p>(ii) in a moderate earthquake (as defined in the regulations); or</p> <p>(iii) in a moderate flood (as defined in the regulations).</p>
<p>Examples of a dangerous building</p>	<p>Examples of an insanitary building</p>	<p>Examples of an affected building</p>
<p>Buildings not constructed in accordance with the NZ building code. Buildings affected by a natural disaster or event (excluding earthquakes). Specified systems not being properly maintained which could affect the means of escape from fire. Buildings that have become unstable or loss of structural integrity. A ‘change of use’ has occurred (not notified by the owners) which has increased the risk to people in or around a building. Overcrowding of sleeping occupancies.</p>	<p>Buildings affected by natural disaster (excluding earthquakes) or extreme weather event. Inadequate provision of sanitary facilities for the intended use of the building. Inadequate supply of potable water for the intended use of the building. Defective or poorly maintained roof and/or wall claddings that have allowed the ingress of external moisture causing dampness likely to affect people’s health (e.g. mould or fungal growth), or decaying structural framing. Inadequate separation between sanitary facilities and food preparation areas.</p>	<p>A building, or buildings, located next to or nearby to a dangerous building (or part thereof) which is likely to collapse on an affected building, or impede the means of escape from fire.</p> <p>An affected building could be on the same property / parcel of land as the dangerous building or dam, or on a neighbouring property / parcel of land (which may or not be under separate ownership).</p>

Table 1: Definitions and examples of dangerous, insanitary and affected buildings

1.3 Identifying dangerous, insanitary and affected buildings		
Dangerous buildings	Insanitary buildings	Affected buildings
<p>We may seek the advice of Fire and Emergency New Zealand (FENZ) under Sec 121(2)(a) and (b) of the Act, and must have due regard to that advice.</p>	<p>We may refer, and seek the assistance and guidance of, Council's Environmental Health Officers.</p> <p>We may liaise with the Nelson Marlborough Public Health Service (Medical Officer of Health, or Health Protection Officers).</p> <p>We may use any other appropriate measures to investigate, and assist in determining, if a building is offensive or likely to be injurious to health, or any other provisions stated in Sec 123 of the Act.</p>	<p>We will assess if a building(s), or part thereof, is affected for the purposes of the Act if it is adjacent to, adjoining, or nearby to a dangerous building (Sec 121) or a dangerous dam (Sec 153).</p> <p>We may instruct the owner(s) of the dangerous building or dam to seek their own specialist structural engineering advice, from a chartered professional engineer [CPEng] to identify the likely effects their building may have on any affected building(s) or part thereof a building.</p>
1.4 Assessment of buildings		
Dangerous buildings	Insanitary buildings	Affected buildings
<p>Assessment will include:</p> <ul style="list-style-type: none"> • If the building is occupied; • The use of the building; • If the building is likely to cause injury or death to people; • If the building is likely to damage other property; • If the condition of the building will present a danger to the health of the occupants; • If the building constitutes a fire hazard, including affecting the means of escape from fire. • Assess the risk of harm to persons outside, or in close proximity to, a dangerous building but on the same property. <p>We will also assess if the building(s), or part of the building, presents an <i>immediate</i> danger (Sec 129 of the Act).</p>	<p>Assessment will include:</p> <ul style="list-style-type: none"> • If the building is occupied or inhabited, (irrespective of whether this may be temporary / transient, or permanent). • The use of the building. • Are there adequate sanitary facilities for the intended use of the building? • Is there an adequate supply of potable water for the intended use of the building? • Likelihood of moisture penetration and vulnerability to dampness. • Lack of natural and/or artificial light. • Provision of adequate natural and/or mechanical ventilation. • Defects in roof and walls (e.g. moisture ingress that may cause dampness and subsequent decay of structural or non-structural elements). • If the building is likely to be injurious to health (e.g. dampness in a building that has caused decay, mould, or fungal growth). <p>We will also assess if the building(s), or part thereof, is in an <i>immediate</i> insanitary condition (Sec 129 of the Act).</p>	<p>Assessment will include:</p> <ul style="list-style-type: none"> • If the affected building is occupied; • The use of the affected building; • If the dangerous building or dam is likely to cause injury or death to people in the affected building; • Assess the slope of the land, and corresponding location and proximity between the dangerous building or dam and the affected building(s); • Assess the likely mode of collapse of the dangerous building, or part of the building, and how this impacts on the affected building; • If the dangerous building or dam presents a fire hazard to an affected building, including the means of escape from fire; • Assess if the whole of the building is affected, or only a part thereof. <p><i>Rule of thumb:</i> for determining an affected building that is "nearby", this will be taken as 1.5 x height of the dangerous building (or part thereof) on level or gently sloping ground. This factor will increase by 'X' for moderate or steeply sloping ground.</p>

Table 2: Identifying, and assessment, of dangerous, insanitary and affected buildings

1.4 Assessment of buildings

The assessment could include any of the items listed in Table 2 above. The list is not exhaustive, and buildings will be assessed on a case-by-case basis.

We will record our observations and findings from the site inspections either on an in-house check sheet, or by using the MBIE rapid building assessment forms (e.g. if the assessment is as a result of a natural disaster or event), or electronic inspection report (as part of the Council's operating system).

Backcountry accommodation buildings managed by the Department of Conservation ("DoC") will not be declared insanitary in relation to potable water, provided there is clear signage that meets the Department of Conservation "Hut Service Standards" (QD Code VC/1199, version 2, dated 14 May 2014, section 2.7) indicating that treatment of water is recommended.

1.5 Taking action on dangerous, insanitary and affected buildings

The actions we will take on dangerous, insanitary and affected buildings are summarised in Table 3 below, along with options for building owners.

1.6 Fixing dangerous and insanitary buildings

Taking action to fix any dangerous and/or insanitary building is the responsibility of the building owner(s). Regardless, there may be circumstances that require us to take action or carry out work (e.g. if we believe a building is an *immediate* danger or insanitary condition). If we do have to take action or carry out work in accordance with Sections 126 and 129 of the Act:

- The owner of the building is liable for the costs of the work or action taken; and
- We may recover those costs from the owner; and
- The amount recoverable by the Council becomes a charge on the land on which the building is situated or the work was carried out.

A notice issued under Section 124(2)(c) and 125 of the Act must state, amongst other items, whether the owner of the building has to obtain a building consent in order to carry out the work required by the notice. This will depend on the circumstances of each dangerous and/or insanitary building.

1.7 Interaction between dangerous, insanitary and affected buildings policy and other provisions of the Building Act 2004

In certain cases where a building is assessed as being *immediately* dangerous or insanitary (Section 129 of the Act), we may not require a building consent to be obtained by the owner(s) first for any building work required to remove the danger, or fix the insanitary conditions, *immediately*. However, the owners must discuss these building works with us first. If both parties agree, the owner(s) can subsequently apply for a Certificate of Acceptance (COA) as soon as practicable after completing the building works (Section 42 of the Act).

1.5 Taking action on dangerous, insanitary and affected buildings		
Dangerous buildings	Insanitary buildings	Affected buildings
<p>We will communicate (verbally if appropriate, but at the very least, in writing) with the building owner(s).</p> <p>If the building is deemed to be dangerous or insanitary, we:</p> <ul style="list-style-type: none"> • May attach a notice to the building (Sec 124 & 125 of the Act) requiring the owner to undertake building work to reduce or remove the danger, or prevent the building from remaining insanitary. • May put up a hoarding or fence to prevent people from approaching the building nearer than is safe. • May attach a notice warning people not to approach the building in a prominent place on, or adjacent to, the building. • May issue a notice (Sec 124(2)(d) of the Act) restricting entry to the building for particular purposes or restricting entry to particular people or groups of people. The notice may be issued for a maximum of 30 days, and only re-issued once for a further period of 30 days (Sec 125(1A) of the Act). • A copy of a notice must be issued to all people listed under Sec 125(2) of the Act. • May carry out work on application to the District Court (Sec 126 of the Act). The owner is liable for the costs, and the amount recoverable becomes a charge on the land. • Building work may include demolition of all or part of a building (Sec 127 of the Act). • May take any action that is necessary to remove any <i>immediate</i> danger to the safety of people, or <i>immediate</i> action that is necessary to fix insanitary conditions (Sec 129 and 130 of the Act). The owner is liable for the costs, and the amount recoverable becomes a charge on the land. • Will contact the owner at the end of the time period set down in the notice to gain access to the building and check whether the notice has been complied with. • Will pursue further enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time, or for any other non-compliance matters (e.g. if the danger or insanitary conditions are as a result of unconsented building works). • Will consider any other statutory options available to it, including the Health Act and Resource Management Act e.t.c. <p>All building owners have the right of appeal, which can include applying to MBIE for a determination (under Sec 177(3)(f) of the Act).</p> <p>Prohibition on using a dangerous or insanitary building(s) is stated in Sec 128 and 128A of the Act.</p>		<p>We will communicate (verbally if appropriate, but at the very least, in writing) with the building owner(s).</p> <p>If the building is deemed to be affected, we:</p> <ul style="list-style-type: none"> • May put up a hoarding or fence to prevent people approaching the building nearer than is safe. • May attach a notice that warns people not to approach the building in a prominent place on, or adjacent to, the building. • May issue a notice restricting entry to the building for particular purposes or restricting entry to particular people or groups of people (Sec 124(2)(d) of the Act). The notice may be issued for a maximum of 30 days, and only re-issued once for a further period of 30 days (Sec 125(1A) of the Act). • Prohibition on using an affected building(s) as stated in Sec 128 and 128A of the Act.

Table 3: Taking action on dangerous, insanitary and affected buildings

1.8 Dealing with building owners

We will continue to assist building owners if they are dealing with a dangerous or insanitary building situation, and provide advice on obtaining a building consent when required. We will also continue to provide information online (www.tasman.govt.nz/property/building-and-alteration/), and provide a Duty Building Consent Officer service to respond to any public enquiries about the building and consenting process.

When required, we will take enforcement action when dealing with dangerous, insanitary and affected buildings. This reflects that the safety and health of people who live in, work, and visit the Tasman District is of paramount importance. This should also act as a deterrent to property owners who may create a dangerous or insanitary situation or conditions by their actions or inactions.

1.9 Recording the status of dangerous, insanitary and affected buildings

To record the status of a dangerous, insanitary or affected building, we will:

- Have a requisition placed on the relevant property file, which will remain as a permanent record.
- Once a notice has been complied with, an associated note will be added to the same property file to confirm compliance.
- Any Land Information Memorandum (“LIM”) will include a copy of the notice, plus associated letter, issued to the owner and any other persons listed under Section 125(2) of the Act.
- Any Section 124 notice fixed to the building also makes the information public. We will remove any such notice from the building once it has been complied with.

We will comply with the Local Government Official Information and Meetings Act 1987 and Local Government Act 2002 in granting access to information concerning dangerous, insanitary and affected buildings.

1.10 Economic impact of policy

The Council receives very few complaints about dangerous, insanitary or affected buildings. As such, and bearing in mind not all complaints may be upheld, the economic impact of the policy is considered low. No specific assessment has been carried out because a large range of possible variables for each case, would be difficult to quantify, and any economic impact would therefore need to be considered on an individual basis.

2. PRIORITIES

We will prioritise buildings that have been determined to be *immediately* dangerous and/or insanitary. Immediate action will be required in these situations to reduce or remove the danger, or prevent the building from remaining insanitary. That may include prohibiting anyone occupying, approaching or using the building.

Buildings that are determined to be dangerous or insanitary, but not *immediately* dangerous or insanitary, will require building work to be carried out in a period of not less than 10 days of the notice being served (Sec 125 of the Act).

We will also prioritise affected buildings that have been directly or indirectly influenced by other's dangerous buildings (Section 121 of the Act). The owners of the dangerous building must act immediately to reduce or remove the danger. We may prohibit anyone occupying, approaching or using any affected building(s). This recognises the fact that the owner of an affected building may be disadvantaged by another building that is dangerous and under separate ownership, which could have a number of consequences (e.g. preventing or limiting occupation of a building, and have social, economic and environmental impacts).

3. HERITAGE BUILDINGS

A dangerous, insanitary or affected building could be a heritage building (reference Annex 1).

We do not wish to see the intrinsic heritage values of these buildings negatively affected by this policy, and we will take all reasonable steps to minimise the potential impacts on them. Regardless, in all cases, the overarching priority is that any building is safe for people to approach, access, use and occupy.

We will take reasonable steps to liaise with the owners of any dangerous, insanitary or affected heritage buildings, and the relevant agencies, to identify ways to address any concerns. However, this may not always be possible in the case of an *immediately* dangerous or insanitary building.

We will send a copy of any notice issued under Sections 124 and 125 of the Building Act 2004 to Heritage New Zealand, or the relevant agency for the particular category of heritage building.

Heritage building means:

- Any building that falls under the Heritage New Zealand Pouhere Taonga Act 2014 and is recorded on the New Zealand Heritage List; or
- Any building listed as an historic heritage item in the Tasman Resource Management Plan; or
- Any historic building that has been listed as part of a plan or strategy prepared under the Conservation Act 1987; or
- Any historic building listed in a reserve management plan prepared under the Reserves Act 1977; or
- Any building within a reserve established by the Maori Land Court under the Te Ture Whenua Maori Act 1993 / Maori Land Act 1993 for historic and cultural purposes; or
- Any building of importance to tangata whenua that has been listed in an iwi management plan; or
- Any structures or buildings associated with a historic cemetery or memorial; or
- Any building managed for heritage purposes by any agency such as Heritage New Zealand, Ministry of Culture and Heritage, Department of Conservation, or the Council; or

- Any building that is subject to a heritage covenant or other protective covenant for heritage purposes.