



**DANGEROUS,
AFFECTED
AND
INSANITARY BUILDINGS
POLICY**

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DANGEROUS, AFFECTED AND INSANITARY BUILDINGS POLICY

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DANGEROUS, AFFECTED AND INSANITARY BUILDINGS POLICY

1.0 INTRODUCTION

1.1 Policy Purpose

The purpose of this policy is to identify and manage dangerous, affected and insanitary buildings in the Opotiki District in order to reduce the risk of injury, death, ill health or damage that may occur as a result of dangerous and / or insanitary buildings.

Section 131(1) of the Building Act requires a territorial authority to adopt a policy on dangerous and insanitary buildings within its district. Section 131(2) requires the policy to state:

- the approach that Ōpōtiki District Council will take in performing its functions under this Part; and
- its priorities in performing those functions; and
- how the policy will apply to heritage buildings.

Section 132(4) Of the Building Act states that the policy must be reviewed at least every five years. Any amendment or replacement of the policy must be in accordance with the special consultative procedure in Section 83 of the Local Government Act 2002 as required by Section 132(2) of the Building Act.

The policy document is divided into two parts:

- Dangerous and affected buildings; and
- Insanitary buildings.

The Ōpōtiki District Council Dangerous and Insanitary Buildings Policy was first adopted in 2006 and then reviewed in 2011 and 2019.

1.2 Definitions

The following definitions are used in this Policy:

Affected building has the same meaning as in the Building Act 2004.

Explanatory note

- According to section 121A of the Building Act 2004, 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](#).

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Dangerous Building has the same meaning as in the Building Act 2004.

Explanatory note

- According to section 121 of the Building Act 2004, a dangerous building means
 - (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.
 - (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.

Insanitary building has the same meaning as in the Building Act 2004.

Explanatory note

- According to section 123 of the Building Act 2004 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.

Heritage building for this policy means:

- a building listed in the Ōpōtiki District Plan schedule
- a building constructed prior to 1900
- a building on the New Zealand Heritage List/Rārangi Kōrero maintained under [section 65](#) of the Heritage New Zealand Pouhere Taonga Act 2014.

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2.0 DANGEROUS AND AFFECTED BUILDINGS

2.1 Policy Principles

This policy has been developed with the intent of a pragmatic approach to implementation. The approach addresses the following considerations:

- Intent and provision of the Building Act 2004,
- Government's broader concern with the life and safety of the public in buildings.

The Council is committed to ensuring that the Ōpōtiki district is a safe place to live and work in.

Conversions of existing aged buildings, lack of maintenance, overcrowding and illegal building alterations can cause serious building problems for occupants.

The failure to obtain a building consent or the negligent use of a building for a purpose for which it is not suitable can result in a building that no longer complies with the building code and poses a danger to the occupants. Dangers could include fire protection or means of escape, or danger of collapse.

The Council is actively involved in educating the public on the need to discuss the development plans with it and to obtain building consent. Where necessary, the Council will initiate action under the Building Act 2004.

2.2 Identifying dangerous and affected buildings

Ōpōtiki District Council will:

- Respond to and investigate all building complaints received.
- Have a proactive approach in identifying dangerous, affected and insanitary buildings
- Investigate buildings that Council staff have become aware of in undertaking Council functions
- Investigate all complaints from the community and referrals from organisations (for example from the Police, Toi Te Ora-Public Health Unit or Fire and Emergency New Zealand (FENZ).
- Inform the owner(s) and occupier(s) of the building to take action to reduce or remove the danger, as required by Sections 124 and 125 of the Building Act.
- Council will seek an immediate or early resolution to the issue so that any potential risk to public health or safety is minimised.
- Liaise with FENZ when the Council deems it appropriate, in accordance with Section 121(2) of the Building Act 2004

2.3 Assessment of dangerous and affected buildings

- The assessment of dangerous buildings will be in accordance with Section 121 of the Building Act.

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- The assessment of affected buildings will be in accordance with Section 121A of the Building Act 2004.

2.4 Taking action on dangerous and affected buildings

In accordance with Section 124 and 125 of the Building Act 2004, the Council:

- will advise and liaise with the owner(s) of buildings, and
- may request a written report on the building from FENZ

If it is found that the building is dangerous or affected, the Council will:

- attach a written notice to the building requiring work to be carried out on the building, within the timeframe stated in the notice, not being less than 10 days, to reduce or remove the danger;
- give copies of the notice to the building owner(s), occupier(s) and every person who has an interest in the land, or is claiming an interest in the land and Heritage New Zealand Pouhere Taonga (if the building is listed or pre-1900)
- contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with;
- where the danger is the result of non-consented building work, a Notice to Fix [NTF] will be issued under Section 124 of the Building Act 2004.
- If the Dangerous Building Notice requirements are not met, the Council may pursue enforcement action under the Building Act 2004.

If the building is considered immediately dangerous, the Council will:

- take any action to remove the danger (this may include prohibiting persons using or occupying the building, or demolition of all or part of the building); and
- take action to recover costs from the owner(s) if the Council must undertake works to remove the danger; and
- inform the owner(s) that the amount recoverable by Ōpōtiki District Council will become a charge on the land on which the building is situated.

Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of the Ministry of Business, Innovation, and Employment [MBIE] in accordance with Section 177 (3)(f) of the Building Act 2004.

2.5 Urgent works

If it is considered that immediate action is required (section 129, Building Act), the Council will:

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- Take any action necessary to remove the danger. This may include prohibiting persons using the building, boarding the building to prevent entry and demolition of all or part of the building
- Take action to recover costs from the owner(s) if the Council must undertake works to remove the danger
- Where a building is assessed as requiring immediate work to address the insanitary conditions, under Section 41 of the Building Act 2004 the Council may decide that a building consent is not required for any of the immediately necessary building work. However, prior to any action being taken, Council will require from owners and discuss with them, a written scope of the work.

2.6 Working with Building Owners of Dangerous and Affected Buildings

Whilst Council will work with building owners until the building is no longer considered dangerous or insanitary, a notice under section 124 under the Building Act will be issued so that the work to remedy the problem and timeframes for completion are recorded.

If the notice requirements are not met within a reasonable period of time as well as any other non-compliance matters, Council will pursue enforcement action under the Building Act taking into account the Ōpōtiki District Council Enforcement Policy.

2.7 Recording Dangerous and Affected Buildings

Where a building is identified as dangerous, Council will place a requisition on the property file. The requisition will remain until the danger is remedied.

In granting access to information concerning dangerous buildings, Ōpōtiki District Council will adhere to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

All dangerous and affected buildings shall be recorded on the property file and a Council maintained dangerous, affected and insanitary buildings internal register.

The following information will be placed on the Land Information Memorandum:

- The notice issued informing the owner that the building is dangerous, affected or insanitary and if applicable the notice of the requirement to evacuate;
- A copy of the letter to owner(s), occupier(s) and any other affected parties that the building is dangerous;
- A copy of the notice given under section 124 of the Building Act that identifies the work to be carried out on the building and the timeframe give to reduce or remove the danger.

2.8 Heritage buildings

Heritage buildings will not be given automatic dispensation under this policy relating to dangerous buildings. However innovative non-damaging approaches are encouraged and will be at heritage

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buildings in situations where the building meets the definition of a dangerous building but the risk is minor, no accidents are known to have occurred in the past, and where mitigation or full compliance would result in significantly negative impacts to the heritage value. The alternative approaches would need to demonstrate mitigation of the identified risks.

In cases where compliance with any aspect of the Building Act 2004 would so damage the attributes of a place to the extent that its role as a valued heritage building is compromised then a case by case consideration of a dispensation or waiver may be negotiated by the appropriate Council Officer acting under delegated authority.

In determining the management of a building in regard to it being dangerous or insanitary, Council will recognise the heritage status of the building and will work with owner(s) of the building and agencies such as Heritage New Zealand Pouhere Taonga or the Department of Conservation to develop a management plan in association with any requirements under section 124 of the Building Act.

3.0 INSANITARY BUILDINGS

3.1 Policy Principles

The provisions of the Act with respect to insanitary buildings reflect the Government's broader concern with health and safety of people occupying buildings that may be considered insanitary.

The Council is actively involved in encouraging people to discuss their development plans with the Council and, where necessary, to obtain a building consent prior to work beginning. This is particularly important to avoid creating insanitary conditions. The Council has and will initiate enforcement action under the Building Act 2004 when appropriate.

3.2 Identifying Insanitary Buildings

Ōpōtiki District Council will:

- Respond to, and investigate all building complaints received;
- Investigate buildings that Council staff have become aware of in undertaking Council functions
- Have a proactive approach in identifying insanitary buildings;
- Inform the owner(s) of the action necessary to prevent the building from remaining insanitary
- Work with other agencies where required to assist occupants (ie for relocation)
- Council will seek an immediate or early resolution to the issue so that any potential risk to public health or safety is minimised.

3.3 Assessment Criteria For Insanitary Buildings

The Council will assess insanitary buildings in accordance with Section 123 of the Building Act 2004, established case law, the Building Code and advice from the Medical Officer of Health

The Council will determine:

- If the building is occupied;
- What the building is being used for;

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- Whether the insanitary conditions pose a reasonable probability of being potentially dangerous to health of any occupants.

Where a building is occupied, considerations may include:

- Adequacy of available sanitary facilities;
- Adequacy and availability of drinking water;
- The separation of kitchen and other facilities;
- Potential for moisture penetration taking into account construction materials and any defects in roof and walls; and
- The extent to which the building is offensive to adjacent and nearby properties.

In accordance with the New Zealand Building Code, the following clauses are relevant:

- E1 (Surface Water)
- E2 (External Moisture)
- E3 (Internal Moisture)
- G1 (Personal Hygiene)
- G3 (Food Preparation)
- G4 (Ventilation)
- G12 (Water Supplies)
- G13 (Foul Water)

3.4 Taking Action on Insanitary Buildings

The Council will:

- Advise and work with the owner(s) of the buildings identified as being potentially insanitary.

Where a building is found to be insanitary, the Council will:

- Attach a written notice to the building requiring work to be carried out on the building to prevent the building from remaining insanitary, with a time stated on the notice that is not less than 10 working days;
- Give copies of the notice to the building owner(s), occupier(s), and every person who has an interest in the land or is claiming an interest in the land, as well the Council's Building and Planning Manager (if the building is a heritage building) and Heritage New Zealand Pouhere Taonga (if the building is listed or pre-1900).
- Where the insanitary conditions are result on non-consented work, issue a Notice to Fix [NTF];
- Contact owner(s) at the end of the time period set down in the notice to gain access to the building and determine whether the notice has been completed with;
- Determine if enforcement action should be pursued under the Act if the requirements of the notice have not been met

Where Council considers immediate action is required to fix insanitary conditions the Council will:

- Take action necessary to fix those insanitary conditions: and

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- Take action to recover the costs from the owner(s) if the Council has had to undertake work to address the insanitary conditions;
- Inform the owner(s) of the amount recoverable by the Council will become a charge on the land on which the building is situated.

Building owners may appeal the Council's decision by lodging an application for a determination with the Chief Executive Officer of the Ministry of Business, Innovation, and Employment [MBIE] in accordance with Section 177 (3)(f) of the Building Act 2004.

3.5 Urgent Works

Where a building is assessed as requiring immediate work to address the insanitary conditions, under Section 41 of the Building Act 2004, the Council may decide that a building consent is not required for any of the immediately necessary building work. However, prior to any action being taken, Council will require from owners and discuss with them, a written scope of works.

NOTE: The Council may decide to use the powers under the Health Act 1956, instead of or in addition to the Building Act 2004. Provisions exist in the Health Act to deal with nuisance conditions associated with housing, overcrowding and insanitary conditions likely to cause injury to health of persons, or a dwelling that is otherwise unfit for human habitation.

3.6 Recording of Insanitary Buildings

Where a building is identified as insanitary, the Council will place a requisition on the relevant property file. The requisition will remain until the danger is remedied.

- In granting access to information concerning insanitary buildings, Ōpōtiki District Council will adhere to the requirements of the *Local Government Official Information and Meeting Act 1987* and the *Local Government Act 2002*
- All insanitary buildings shall be recorded on the property file and a Council maintained dangerous, affected and insanitary buildings internal register.

The following information will be placed on the Land Information Memorandum:

- The notice issued informing the owner(s) that the building is insanitary and if applicable the notice of the requirement to evacuate;
- A copy of the letter to owner(s), occupier(s) and other relevant person(s) advising the building is insanitary;
- A copy of the notice given under section 124 of the *Building Act* that identifies the work to be carried out on the building and the timeframe given to reduce or remove the insanitary conditions
- Any report that describes work that has been undertaken to remedy the insanitary conditions.

3.7 Heritage Buildings

Heritage buildings will not be given automatic dispensation under this policy relating to insanitary buildings. However, where the non-compliance is minor, and where to correct the situation would involve destruction or visual compromise of high-value items, the appropriate Council Officer acting under delegated authority may negotiate a dispensation of waiver.

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Low impact methods such as repairing leaks or cleaning rubbish will be encouraged to help remedy insanitary conditions without compromising heritage values.

4.0 RELEVANT LEGISLATION

Building Act 2004
Health Act 1956

5.0 REVIEW

Section 132(4) of the Building Act requires that the Policy is reviewed every five years.

If an issue arises consideration will be given to the review of the Policy. When amending or replacing the Dangerous, Affected, Insanitary buildings policy, Council will undertake a special consultative procedure in terms of s83 of the Local Government Act 2002

If amended, a copy is to be provided to MBIE as specified by s132(3) of the Building Act 2004.

The next review of the Policy will be due in 2029.

The Regulatory Manager is responsible for the review of the Policy.