

# **Waitomo District Council**

## **Dangerous and Insanitary Buildings Policy**

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# INTRODUCTION | KUPU ARATAKI

The provisions of the Building Act 2004 (the Act) reflect the governments concern with the safety of the public in buildings and in terms of dangerous and insanitary buildings, the need to reduce the danger to the public posed by such buildings. The Act also requires the Policy to state the Council’s policy approach regarding affected buildings, which are buildings adjacent to, adjoining or nearby to a dangerous building or dam.

The Act leaves it up to each territorial authority to determine the approach to be taken to the management of dangerous and insanitary buildings. The approach can either be active or passive.

# PURPOSE AND SCOPE | TE ARONGA ME TE KORAHĪ

1. The purpose of this policy is to:
  - Reduce the potential risk posed to residents in the District by dangerous, affected and insanitary buildings; and
  - Provide a clear framework for how Council will manage dangerous, affected, insanitary and heritage buildings.
  
2. The policy sets out:
  - The approach Waitomo District Council takes in performing its functions under the Building Act 2004;
  - Waitomo District Council priorities in performing those functions; and
  - How the policy applies to dangerous, affected, insanitary and heritage buildings
  
3. This policy applies to all buildings within the Waitomo District Council territorial authority district.

# DEFINITIONS | NGĀ WHAKAMĀRAMATANGA

**Affected Building** Defined in s121A of the Act;

A building is an affected building for the purpose 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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**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

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- (ii) by an order of the District Court made under section 227.

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**Building owner**

Defined in section 7 of the Act;

Owner in relation to any land or 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

for the purposes of sections 32,44,92, 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.

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**Council**

Means the Waitomo District Council

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**Dangerous Building**

Defined in section 121 of the Act;

- (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 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

If the advice is sought, must have due regard to the advice

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**Heritage Building**

Defined in section 7 of the Act;

Means a building that is included on:

- (a) the New Zealand Heritage List / Rarangi Korero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
- (b) the National Historic Landmarks / Ngaa Manawhenua o Aotearoa me onaa korero Tuturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.
- (c) a place, or part of a place, that is subject to a heritage covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 and is registered under section 41 of that Act; or
- (d) a place, or part of a place, that is subject to a heritage order within the meaning of section 187 of the Resource Management Act 1991; or
- (e) a place, or part of a place, that is included in a schedule of a district plan because of its heritage value:
- (f) elsewhere in this Act, a building referred to in paragraph (a)(i) or (ii)

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**Immediate danger**

Defined in section 129 of the Act;

- (1) This section applied if, because of the state of the building;
  - (a) Immediate danger to the safety of people is likely in terms of section 121 or 123; or
  - (b) Immediate action is necessary to fix insanitary conditions.

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**Insanitary Building**

Defined in section 123 of the Act;

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
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- (d) does not have sanitary facilities that are adequate for its intended use.
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**Property file and register** A record of legal information the Council is required to maintain in terms of section 216 of the Act.

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**Territorial Authority** Within the context of this policy means Waitomo District Council.

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**The Act** The Building Act 2004

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## **POLICY | KAUPAPA HERE**

### **4. Council's Role**

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

### **5. Heritage Buildings**

- 5.1 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. Council recognises heritage buildings as important infrastructure that add character and history to the district.

A number of heritage buildings are listed with the New Zealand Historic Places Trust and/or are listed in the Heritage section of the District Plan.

When considering heritage buildings under this Policy, consideration will be given to:

- a) The importance of recognising any special traditional and cultural aspects of the building and the intended use of a building, and
- b) The need to facilitate the preservation of buildings of significant cultural, historical or heritage value.

### **6. Assessment Procedure**

- 6.1 When Council receives information from any person that indicates that a building is potentially dangerous, affected, or insanitary it will assess the building in order to determine whether or not it is a dangerous, affected or an insanitary building. This will involve (but not be limited to):

- c) Checking the details of the property against Council records;
- d) An authorised officer undertaking a full and extensive inspection of the building;
- e) Where necessary, seeking advice from the NZ Fire Service; and
- f) Preparing an inspection record.

## **7. Building Act 2004 Requirements**

7.1 Where a building is determined to be a dangerous, affected or an insanitary building, Council will work with the building owners to find a mutually acceptable plan of action before exercising its powers under the Act. Council will, however, exercise its statutory powers under the Act where action is required to avoid immediate danger or in circumstances where an acceptable solution cannot be negotiated with the building owner.

## **8. Approach Applied**

8.1 In forming its view as to the work or action that is required to be carried out on the building to prevent it from remaining a dangerous, affected or insanitary building, or where Council needs to prioritise work on buildings, the following issues will be taken into account:

- a) The size of the building;
- b) The complexity of the building;
- c) The location of the building in relation to other buildings, public places and natural hazards;
- d) The life of the building;
- e) How often people visit the building;
- f) How many people spend time in the building;
- g) How many people spend time in the vicinity of the building;
- h) The current or likely future use of the building;
- i) The reasonable practicality of any work concerned; and
- j) Any other matters Council considers may be relevant, taking into account the particular set of circumstances.

## **9. Cost To Owners**

9.1 The owner of a building which is determined to be a dangerous, affected or an insanitary building, will bear all costs incurred in meeting the requirements of the Act. These costs include assessment and enforcement costs incurred by Council.

## **10. Council Records**

10.1 Council will retain all information relating to dangerous, affected and insanitary buildings on the relevant property file. This includes a copy of the inspection record and any action taken.