



Kaupapa Whakamātau Whare Whakamōrearea, Pātahi,  
Whakapoke o Tūranga 2024

Gisborne Dangerous, Affected, and Insanitary Buildings  
Policy 2024



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Made by Gisborne District Council

Resolution of Council dated **25 January 2024**

Review date **25 January 2029**

## 1. Purpose

The purpose of this Policy is to reduce the risk of injury, death, ill health or damage within Tairāwhiti communities by identifying and managing dangerous, affected and insanitary buildings in the region.

## 2. Interpretation

**The Act** means the Building Act 2004.

**Building** has the same meaning as the Act. Requirements for Earthquake-prone Buildings are covered separately by sections of the Act.

**Dangerous Building** has the same meaning as the Act.

**Affected Building** has the same meaning as the Act.

**Insanitary Building** has the same meaning as the Act.

**Heritage Building** has the same meaning as the Act and includes buildings identified under the Heritage New Zealand Pouhere Taonga Act 2014 and buildings scheduled or protected under the Tairāwhiti Resource Management Plan.

## 3. Scope of application

This document sets out the policy for such buildings as adopted by the Gisborne District Council (Council) and applies to all buildings within the region.

## 4. Review

Council will undertake a review of this policy at least once every five years. It does not cease to have effect because it is due for or under review.

## 5. Policy Principles

Council is committed to ensuring that our region is a safe place to live and work as well as fairly and reasonably fulfilling its statutory obligations under the Act. Council recognises varying social, economic and cultural factors impact implementation of the dangerous, affected, and insanitary building provisions in the Act and will at all times take a sensitive approach to compliance.

## 6. Identifying Dangerous, Affected, or Insanitary Buildings

6.1 When responding to complaints, advice received from Fire and Emergency New Zealand (FENZ), or when dangerous, affected, or insanitary buildings come to its attention Council will:

- a. investigate and resolve all complaints and identified issues related to buildings
- b. identify any buildings considered dangerous, affected, or insanitary and the risk there is to human life, health, or other property
- c. require the owner(s) and or occupier(s) of the building to take action to prevent the building from remaining dangerous, affected, or insanitary.

## 7. Assessment Criteria

7.1 The Council will assess dangerous, affected and insanitary buildings in accordance with sections 121, 121A, 123 or 123A of the Act. Affected building assessment will be subject to the same criteria as dangerous or insanitary buildings. Assessment will consider the following:

- a. Occupation and use to which the building is put.
- b. Likelihood of the building causing harm.
- c. Whether the building conditions present a danger to the health of occupants or adjacent occupants.
- d. Potential for damage to other property.
- e. Whether a fire hazard exists.
- f. Whether the building is affected by another dangerous building.
- g. The extent of separation of the kitchen from other sanitary facilities.
- h. The adequacy of potable water.
- i. Defects in cladding.
- j. Construction materials and their current condition.
- k. If the building is offensive or likely to be injurious to health because of how it is situated or constructed.
- l. Whether or not the building is in a state of disrepair.
- m. The degree to which a building is offensive to adjacent and nearby property occupiers.
- n. Relevant Building Codes as appropriate which may include any of the following:
  - E1 Surface Water
  - E2 External Moisture
  - E3 Internal Moisture
  - G3 Food Preparation
  - G4 Ventilation
  - G1 Personal Hygiene
  - G2 Laundering
  - G12 Water Supplies
  - G13 Foul Water - Sanitary Plumbing.

7.2 The above list does not limit Council to only considering these factors in an assessment. There may be other factors that are assessed. Additionally, where it deems necessary, Council may seek external advice from (but not limited to):

- a. Fire and Emergency New Zealand in accordance with section 121(2) of the Act
- b. an Independently Qualified Person (IQP) with the relevant approvals under the Fire Safety Provisions of the New Zealand Building code
- c. a contracted CPEng Structural Engineer
- d. Te Whatu Ora Tairāwhiti (Medical Officer of Health) when appropriate to assess whether the occupants may be neglected or infirm, or likely to be harmed by the building in question.

## 8. Taking Action on Dangerous, Affected, and Insanitary Buildings

- 8.1 The costs to reduce or remove identified danger or insanitary conditions from any buildings will be the responsibility of the implicated property owners. If a building is assessed as being Dangerous, Affected, or Insanitary Council will:
- advise and liaise with the owner(s) of buildings
  - advise and inform the property occupier(s)
  - consult and negotiate with the property owner(s) in good faith before determining appropriate time periods for work that must be completed
  - determine time periods for interim work and permanent works according to the danger or risk to health and safety posed by the identified condition(s)
  - in accordance with section 124 and section 125 of the Act, attach written notice to the building and give written notice stating any required work to be carried out on the building within a stated timeframe of not less than 10 days
  - contact the owner in writing at least five working days prior to the expiry of the time period set down in the notice requiring an inspection appointment to assess compliance with the notice
  - consider an additional time period for an owner to comply with requirements of a notice, provided an application is received from the property owner(s) prior to the expiry date of the originating notice
  - in accordance with section 124 of the Act consider, based on the danger posed, whether to erect a hoarding, fence or warning sign.
- 8.2 Vacating the building may be necessary for agreement to a prolonged compliance period.
- Where the danger is the result of non-consented building work, a Notice to Fix will be issued.
- 8.3 In accordance with section 129 of the Act, if a building presents immediate danger or risk, Council may take any necessary action to remedy that situation. This may include prohibiting persons from using or occupying the building and repair or demolition of all or part of the building.
- 8.4 Time periods for both interim work and full compliance work to reduce or remove the danger, or prevent the building from remaining insanitary, may be negotiated at the sole discretion of Council.

## 9. Priorities for Performing Functions under Part 2 of the Act

- 9.1 The Council will allocate priority to buildings where it has been determined that immediate action is necessary to remediate immediate danger or insanitary conditions. In these situations, immediate action will be required, such as prohibiting occupation or use of a building, erecting a hoarding or fence, or demolition of part or all of a building likely to collapse.
- 9.2 Buildings that are determined to be dangerous, affected, or insanitary, but not requiring immediate action will be subject to timeframes, being not less than 10 days, to remove the danger or prevent the building from remaining insanitary.

## 10. Enforcement

- 10.1 Failure to comply with the requirements of a notice within the stated time period, or any additional time period determined appropriate by the Council, can lead to prosecution or an infringement notice being served.
- 10.2 The Council may initiate prosecution if buildings are used after notices or hoardings are in place. Where owners fail to comply with the notice, or where work is not completed, or not proceeding with reasonable speed, the Council will, after giving no less than 10 days written notice of its intention to do so, apply to the District Court to carry out the work to remove the danger or insanitary conditions.
- 10.3 In such cases where the Council must undertake work itself, including immediate action taken under Section 129 of the Act, the owners of the building are liable for costs, and the Council will recover the costs from the property owners.
- 10.4 The Council recognises that in some circumstances the economic impact of this policy may cause individual hardship. The Council will convey its duty under the Act through implementation of this policy in a fair and reasonable manner with the intent of improving health and safety of people who use or are affected by buildings.
- 10.5 Due process will be followed to recover costs incurred by the Council in meeting its statutory obligations from implicated property owners. Where owners are liable for costs, the Council will inform the owners that the amount recoverable by the Council will become a charge on the land on which the building is situated.
- 10.6 Building owners have the right of appeal by applying a determination with the Ministry of Business, Innovation and Employment in accordance with Section 177(3)(f) of the Act.

## 11. Interaction between this policy and other provisions of the Building Act 2004

- 11.1 Per Section 41: In cases where a building is assessed as being immediately dangerous or affected, the Council may not require building consent to be obtained for any building work required to remove the danger immediately. In every case, the owners must discuss with Council and obtain a decision as to whether this provision applies prior to commencing any work.
- 11.2 Per Section 123B: Where a building is located in an area that has been designated as affected by an emergency under subpart 6B of the Act, then Dangerous, Affected, or Insanitary notices shall not apply if issued while the designation is in force. However, any action taken or notices issued prior to any emergency designation shall continue to apply.
- 11.3 Per Section 133BM: notices issued under the designated emergency may continue to apply when the Responsible Person (as defined by Section 133BK) decides, before the state of emergency or transition period ends, that any notice should continue in force.

## 12. Recording of Dangerous, Affected, and Insanitary Buildings

- 12.1 Any buildings identified as being dangerous, affected, or insanitary will have a copy of the notice served and a schedule of work required placed on the corresponding property file held by the Council until the condition is remedied.
- 12.2 In addition, during the period that the building is deemed dangerous, affected, or insanitary, the following information will be placed on any Land Information Memorandum (LIM) or a Project Information Memorandum (PIM), where the status affects proposed building work.
- A statement that the building is dangerous, affected, or insanitary
  - A copy of the notice given under 124(1) identifying the work to be carried out on the building and the time period given to achieve compliance with the notice
  - A copy of the letter to owner, occupier and any other affected parties that the building is dangerous, affected, or insanitary, and if issued, a notice of the requirement to evacuate.
- 12.3 Information concerning dangerous, affected, and insanitary buildings will be contained on the relevant LIM or PIM. In granting access to information concerning dangerous, affected, and insanitary buildings, the Council will conform to the requirements of the Local Government Official Information Act 1987 and the Local Government Act 2002.

## 13. Heritage Buildings

- 13.1 The Act recognises the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value. Council recognises that Heritage Buildings are:
- tangible symbols of Aotearoa New Zealand's history
  - a vital part of our identity
  - of regional and national importance
  - inter-generational assets and their protection contributes to our wellbeing.
- 13.2 The provisions of the Act apply to Heritage Buildings. Dangerous and insanitary assessment of Heritage Buildings will be completed in the same manner as other buildings under this policy. Council recognises that heritage buildings may require a variation to our usual approach if their unique heritage values are to be maintained and not compromised.
- 13.3 Where a heritage building is deemed dangerous or insanitary the Council will consult with the building owner(s), seek advice from Heritage New Zealand Pouhere Taonga, and consider seeking advice from an Independently Qualified Person(s) with heritage expertise, where necessary, to advise and recommend on possible actions.
- 13.4 Council will advise heritage building owners of any funding assistance available, such as the National Heritage Preservation Incentive Fund and New Zealand Lotteries Commission, to help with costs associated with heritage buildings. Council encourages heritage building



owners to seek funding for preservation before any building deteriorates to a state where its vital heritage characteristics become vulnerable to disrepair.

13.5 Buildings that meet the heritage definition may not be demolished without first consulting with Council. Any matters concerning demolition of a heritage building requires sufficient information be supplied to Council to enable peer review. Review will include consultation with Heritage New Zealand Pouhere Taonga.

13.6 Demolition of buildings constructed prior to 1900 requires an Archaeological authority from Heritage New Zealand Pouhere Taonga Act 2014<sup>1</sup> therefore early consultation with Council and Heritage New Zealand Pouhere Taonga is advised.

13.7 Except where constituting emergency works under the Resource Management Act 1991<sup>2</sup>, demolition of buildings listed under a district plan requires resource consent.

13.8 Council may consider dispensation for issues of safety and sanitary conditions for heritage buildings in achieving the desired level of compliance. Examples of possible situations where a dispensation may be granted include:

- the building meets the definition of a dangerous building but the risk is minor
- no accidents are known to have occurred in the past
- full compliance would result in significantly negative impacts upon heritage value.

13.9 Any proposed alternative approaches would still need to demonstrate mitigation of the identified risks. In cases where compliance with any aspect of the Act would so damage the attributes of a place to the extent that its very role as a valued heritage building is compromised then case-by-case consideration of a dispensation or waiver may be negotiated. Any such waiver will be at the sole discretion of Council.

13.10 In accordance with section 125 (2) (f) of the Act, a copy of any notice issued under section 124 of the Act will be sent to Heritage New Zealand Pouhere Taonga when that notice identifies a heritage building as being dangerous, affected, or insanitary.

## 14. Links to Other Legislation

### 14.1 Health Act 1956

The Council may decide to use powers under the Health Act 1956 instead of or in addition to, the Building Act. Provisions exist in the Health Act to deal with nuisance conditions associated with housing, including overcrowding and insanitary conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation. When conditions exist that cause a building to be injurious to health or to be insanitary the Council can require of the property owner abatement of the condition, cleansing, repairs or subsequent closure of the building to occupation.

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<sup>1</sup> Sections 6(a)(i), section 42, and section 43(1)(a) of the Heritage New Zealand Pouhere Taonga Act 2014

<sup>2</sup> Section 330 of the Resource Management Act 1991



#### 14.2 Resource Management Act 1991 (RMA)

The Council administers provisions of the RMA in the Gisborne District. One purpose of the Act is avoiding, remedying, or mitigating any adverse effects from activities on the environment. While provisions of the RMA are not directly related to dangerous or insanitary buildings, amenity issues arising from the offensive nature of a building can be considered under RMA provisions and related regulatory policies contained within Regional and District Plans.



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