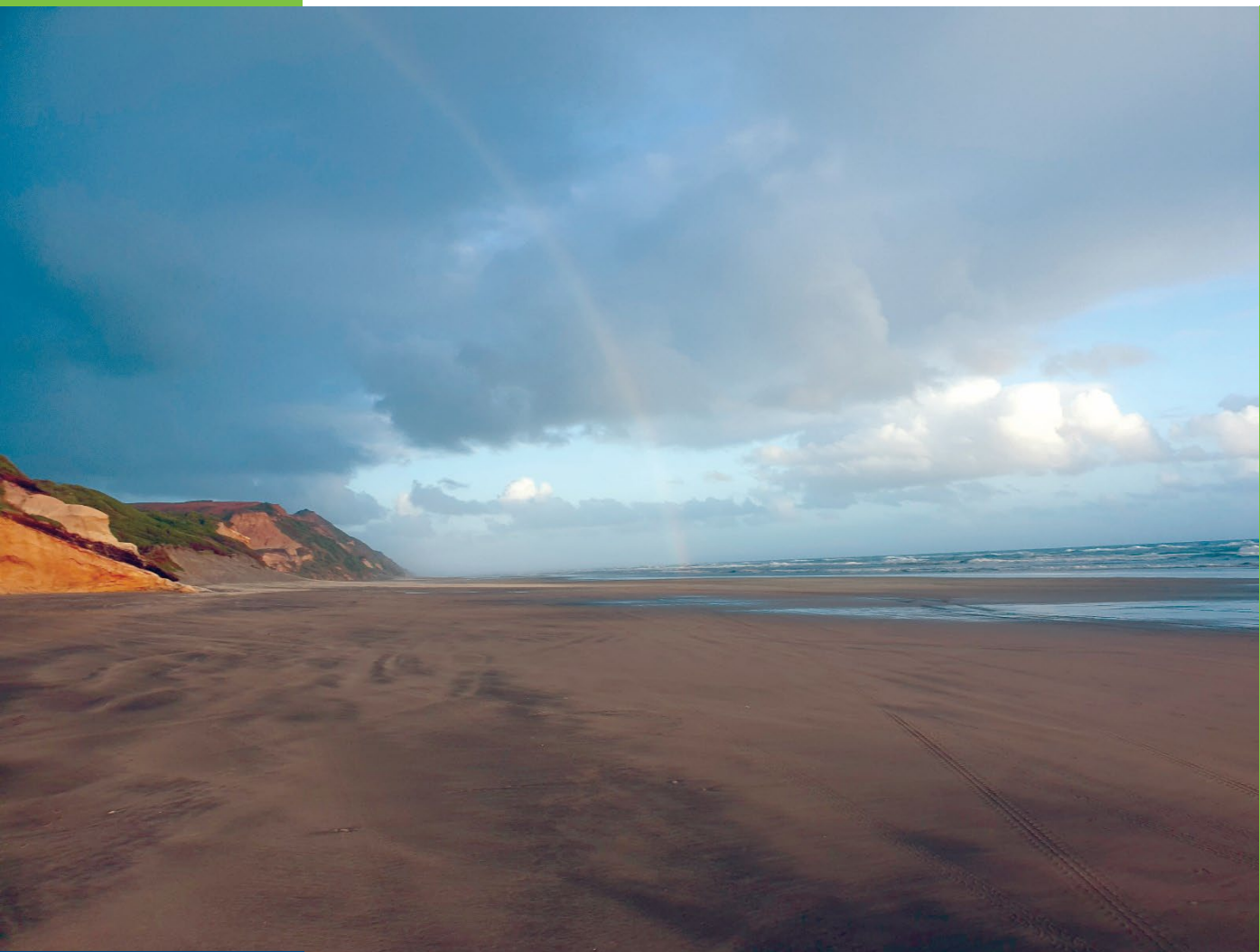


Dangerous, Affected, and Insanitary Building Policy



Kaipara te Oranganui • Two Oceans Two Harbours

Dangerous, Affected and Insanitary Buildings Policy

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1. Introduction

- 1.1 Conversions of existing aged buildings, lack of maintenance, overcrowding, and unauthorised building alterations can cause serious risks and building problems for occupants and those who use them. The failure to obtain a building consent or using a building for a purpose that is not suitable can result in a building no longer complying with the Building Code and posing a danger to occupants, the general public, and/or other properties.
- 1.2 In accordance with s131 of the Building Act 2004 (the Act), Kaipara District Council (Council) is required to adopt a policy that covers the identification, assessment, and management of any dangerous, affected, and insanitary buildings (DIAB) within its District, including historical buildings.
- 1.3 Council to follow the special consultative procedure when amending or replacing the DAIB policy in accordance with s83 of the Local Government Act 2002. A copy of the amended Policy will be forwarded to MBIE as required under s132(3) of the Act.
- 1.4 The DAIB policy is reviewed at intervals of not more than five years, as required by s132(4) and that, if amended, a copy is provided to MBIE as specified by s132(3). A version history is held detailing dates when originally created, reviewed or amended.
- 1.5 This DAIB Policy details how Council will manage these buildings to ensure that any risks that these buildings pose to public health and safety or any other buildings within proximity are either mitigated or eliminated.

If Council is satisfied that a building or part of a building is dangerous, affected, or insanitary, Council may exercise any of its powers or perform any of its functions applicable to that building or part of the building under the Dangerous, Affected, and Insanitary Buildings Policy (the DAIB Policy) or the Act's provisions.

- 1.6 When exercising its power under the DAIB Policy, Council must be satisfied that the thresholds of dangerous, affected, or insanitary have been met under the provisions set out in the Act. In some instances, dependent on the complexity of a case, Council will seek professional advice as required and must give due regard to that advice as part of their investigation.
- 1.7 The DAIB Policy is supported by Risk and Assessment frameworks, that are contained in the Additional Information document. This document will be used by Council staff when investigating a possible dangerous, affected, and/or insanitary building.
- 1.8 The Additional Information document does not form part of the Policy but is included at the end of this document for completeness and to support understanding.

2. Definitions

- 2.1 Where a term is used in this Policy that has a meaning defined in the Building Act 2004 (Act), that term will have the same meaning as provided in subpart 2 of the Act.

3. Legislative requirements

- 3.1 Part 61 of the Act requires TA to determine whether buildings in their district are dangerous, affected and/or insanitary. In doing so, a TA may seek advice from employees, volunteers and contractors of Fire

Emergency New Zealand (FENZ) as being competent to give advice. If advice is sought, the TA must give due regard to that advice. Under s.131 a TA must adopt a policy on dangerous and insanitary buildings, which states:

- it's approach to performing functions under the Act
- it's priorities in performing these function
- how it applies to Heritage Buildings
- How it applies to affected buildings

3.2 The policy is required to be adopted, amended or replaced at least every 5 years, in accordance with the special consultative procedure set out in Section 83 of the Local Government Act 2002. When this has occurred, Council is required to provide a copy to the Chief Executive of the Ministry of Business Innovation and Employment (MBIE).

4. Purpose

4.1 The purpose of this Policy is to:

- protect public health and safety from potentially dangerous, affected and/or insanitary buildings
- recognise that historic buildings may require a variation to the general approach if their particular heritage values could be compromised.

4.2 The objective of the Policy is to achieve compliance with the Act and protect public health and safety.

5. General Approach

5.1 Wherever possible, Council will seek the co-operation of the owner and occupant to achieve compliance without resorting to the Act's formal notice provisions (s124); however, this may not always be possible.

5.2 Council will adopt a flexible approach to achieve the overall co-operation objective, as it is aware of the diversity and dynamics which result in dangerous, affected, or insanitary buildings. Factors in determining the approach to be taken are included in this policy, as well as in the Additional Information (AI) supporting documents. The AI documents are used to support Policy implementation, and do not form part of this Policy.

5.3 Some of the important factors in determining the approach that Council will take:

- an assessment of the scale and immediacy of risk to occupants and the public
- an evaluation of the likelihood of harm to adjoining properties
- an assessment of environmental impacts including contamination of water bodies
- the availability and viability of alternative options.

6. Identifying dangerous, affected and/or insanitary buildings

6.1 Council does not have the resources to carry out a systematic survey of the standard of buildings across the district, nor does it need to. Rather, an investigation into whether a building is dangerous, affected or insanitary will be triggered by one or more of the following:

- the observations of its staff or contractors
- information or complaints received from members of the public or members of professional bodies such as Engineering New Zealand etc.
- events arising following natural or human-made disasters

- notification from the Ministry of Business Innovation and Employment
 - notification from FENZ.
- 6.2 Building issues may also be identified by Council staff incidentally in the process of dealing with alterations to existing buildings, change of use enquiries and code compliance processes (Refer to sections 112 to 116A of the Act)
- 6.3 In determining whether a building is dangerous or affected with respect to a fire hazard, Council may seek the advice of FENZ. Similarly, in determining whether a building is insanitary concerning drinking water, waste disposal or weather tightness, Council may seek advice from appropriate experts, such as Council's Environmental Health staff, technical building specialists, testing laboratories, geo-technical, fire, or structural engineers.
- 6.4 Council may also be guided by relevant legislation, codes, or bylaws, and may choose to seek legal advice. The Act itself provides several statutory tools for managing identified dangerous, affected and/or insanitary buildings. These include, but are not limited to:
- issuing formal notices under section 124.;
 - owner carrying out remedial work;
 - Council undertaking the necessary remedial action/work;
 - demolition.

7. Heritage Buildings

- 7.1 Heritage buildings that are entered on the Heritage New Zealand/Pouhere Taonga List (in accordance with the Heritage New Zealand Pouhere Taonga Act 2014) and as scheduled in the Kaipara District Plan, recognise Section 4(2)(d) and (l) of the Building Act 2004 relating to cultural and heritage values. These buildings will be evaluated in a manner consistent with assessments for other potentially dangerous, affected and/or insanitary buildings. Council is aware of the protection mechanisms and heritage values that these buildings hold, which is why special efforts will be made to meet heritage objectives.
- 7.2 Discussions will be held with owners and Heritage New Zealand/Pouhere Taonga to identify a mutually acceptable way forward. Where practicable, adaptive reuse is encouraged and demolition of heritage buildings considered as a last resort.
- 7.3 If demolition should occur, it must be undertaken in a controlled deconstruction manner to maximise the building information retained, including through digital recording and/or scanning of materials, recording of the construction methodology and any building changes over time. any request/requirement for demolition includes an assessment of alternative options considered to avoid demolition.
- 7.4 If a dangerous, affected, or insanitary building notice is issued for a heritage building, a copy of the notice will be sent to the Heritage New Zealand/Pouhere Taonga as required by the Act.

8. Affected Buildings

- 8.1 Affected buildings are those that are within close proximity to either a dangerous building or a dangerous dam. It allows Council to assess and determine a management plan with the owner and/or occupant.

9. Investigation

- 9.1 Council will respond to and investigate all notifications received about any dangerous and/or insanitary building. The investigation will utilise the RFAC document, and will include as part of the inquiry the following points:
- review Council records before a site visit
 - understand what consents have been approved for this site; whether a Compliance Schedule exists
 - the status of the Building Warrant of Fitness/ IQP reports; Notices to Fix, etc.)
 - review GIS/aerials prior to site visit
 - understand whether there are any natural or human-made hazards or other issues to be aware of
 - how Council was made aware of the situation
 - location of the building
 - actual site conditions
 - previous and current use of the building
 - occupancy numbers
 - ownership/occupancy details
 - whether the public has access to the building, e.g. via the building or adjacent land and waterways
 - what aspects of the building are dangerous (all, or only parts of the building)
 - whether any neighbouring properties are affected by the potentially dangerous, and/or insanitary building or dam
 - what aspects of the building are considered insanitary, e.g. lack of potable drinking water, sanitary fixtures and waste disposal, light, and ventilation or vermin
 - how and to what extent these aspects are non-compliant with the Building Code
 - who is or was responsible for creating this hazard (e.g. whether authorised or unauthorised work is in progress/completed)
 - whether the land or building has heritage status, and
 - priorities (the immediacy) of the issue.

10. Criteria for determining priority of an issue

- 10.1 A building (or part of a building) will be classified as dangerous or affected if it is likely to cause injury, or death to the occupants, public or other property. A building (or part of a building) will be classified as insanitary if it is likely to be harmful to the health of occupants, public, or people on other property.

Another factor will depend on whether the building is occupied and the level of immediate danger it poses to the public health and safety, or other property. For example:

- the land is unstable
- the building is structurally unsound and considered dangerous to occupants, the public and/or other property
- the building has a high fire risk
- the building lacks sufficient protection to occupants, public or other property (i.e. unfenced pool or large-scale excavations)

- the building which has poor sanitation and poses an immediate impact on the health of the occupants or the public
 - the building is inadequately protected against moisture penetration, (i.e. not weather- tight).
- 10.2 A building is less likely to be classified as dangerous, affected, or insanitary if it is unoccupied; however, the risk to the public and other properties must still be considered. Council will need to carefully evaluate these issues and determine whether they warrant immediate action to prevent injury or death. Each case must be assessed based on its own merits.
- 10.3 Examples of different approaches include:
- if the risk is significant and cannot be managed or mitigated to ensure public health and safety, immediate action may be warranted.
 - if the risk is substantial but can be managed to minimise the risk to the point that provides public health and safety, then the Council may seek a different approach.
- 10.4 There are always risks associated with an event of a fire where death or injury can occur. However, there must be 'particular features' for this risk to be deemed 'likely to occur'.
- 10.5 Therefore, Council must first focus on whether the building complies with the Building Code. If the answer to that question is NO, the next consideration must focus on what feature/s do not comply with the Building Code which make the building dangerous under the dangerous building definition, contained in the Building Act 2004. A building may be non-compliant with the Building Code; however, this does not make a building dangerous.
- 10.6 Following the site visit and preliminary investigations, Council will determine whether the building is dangerous, affected, and/or insanitary, and if so, whether to issue a notice and/ or take other actions.
- 10.7 Council will consider the cost of effecting remedial work when assessing the various means of reducing the hazard to human life presented by a building that has been identified as dangerous, affected, and/or insanitary. The Council will explore the availability of alternatives to continued use and occupation of the building, both in the short and long term with the owner/occupants.
- 10.8 Below is an example of how Council would apply this Policy and the Risk Framework and Assessment Criteria (RFAC) to investigate and assess a possible risk and produce possible management options for the owner to consider.
- 10.9 Example scenario: This scenario involves multiple people living in transient accommodation (e.g. a 'backpackers' accommodation), which does not have a fire alarm system. The risk is the loss of life or severe injury occurring due to people being unable to escape in the event of a fire (i.e. not aware of fire or smoke in the building).

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|------------------------------------|--------------------------------------|
| Risk factor | Extreme |
| Risk type | Fire hazard |
| Building occupied | Yes |
| Death or injury likely | Yes |
| Can risk be eliminated immediately | No |
| Can risk be eliminated eventually | Yes - by installing compliant alarms |

| | | |
|--|--|---|
| Can risk be minimised immediately with options | Yes: Interim measures: <ul style="list-style-type: none"> • Have evacuation plans in place • Provide a security guard 24/7 who could raise the alarm in the event of an emergency | No: <ul style="list-style-type: none"> • Evacuate the building • Apply for building consent or complete work under urgency • Obtain CCC/CoA and compliance schedule |
|--|--|---|

10.10 In each assessment situation, timing may also impact on the outcome of the site visit. In the above scenario, the risk is extreme because there is sleeping accommodation in the building. If the site assessment is conducted early in the day, a mitigation management plan could be agreed upon between the proprietor and Council by the end of the day, and occupancy may be allowed to continue in the short term.

10.11 If conducted late in the day, then this option may not be available, and immediate evacuation and closure of the building may be necessary until a plan has been developed and implemented.

11. Enforcement Actions

11.1 If Council is satisfied that a building is dangerous, affected, and/or insanitary, it may exercise any or all of its power contained between sections 123B to 130 of the Act, including issuing notices under s124 and any follow up monitoring required.

11.2 Council has, in accordance with s129 of the Act, the ability to use its powers to take swift action to remove immediate danger or fix insanitary conditions without first serving notice on owners.

11.3 In accordance with s126 of the Act, Council may apply to the District Court for an Order authorising Council to carry out building work, if the owner has failed to undertake work within the specified timeframe as required under the notice served by Council under s124 (2)(c). Building work may include demolition of all or part of a building.

11.4 Council may take enforcement action in accordance with s128A to a person who fails to comply with the notice issued under s124(2)(c) that has been given to that person under s125(2).

12. Records

12.1 Where a building is identified as dangerous, Council will have a building note (requisition) placed on the property file where the building is situated. This building note will remain until the danger is remedied. In granting access to information concerning dangerous buildings, Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the provisions of the Local Government Act 2002.

12.2 In addition, the following information will be placed on the Land Information Memorandum (LIM):

- the notice issued informing the owner that the building is dangerous and the necessary notice of the requirement to evacuate
- a copy of the letter issued to the owner, occupier and any other person to inform them that the building is dangerous
- a copy of the notice given under section 124(1) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger.

13. Relevant Legislation

- The Building Act 2004
- The Heritage New Zealand Pouhere Taonga Act 2014