

Dangerous, Affected, and Insanitary Buildings Policy

2021

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REVISION HISTORY

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Department:	Operations
Responsible Officer:	Manager Planning
Sponsor:	General Manager – Operations
Approved by:	Chief Executive Officer

1. Introduction

This Policy is the Mackenzie District Council Dangerous, Affected, and Insanitary Buildings Policy 2021.

This Policy shall come into force on 16 November 2021 and applies to all buildings within the Mackenzie District, even if a building consent, code of compliance certificate or other form of certificate has been issued.

This Policy has been made pursuant to section 131 of the Building Act 2004 which requires Council to have a policy on dangerous, affected, and insanitary buildings.

This Policy does not relate to Earthquake Prone Buildings which are assessed separately under the methodology prepared by the Ministry of Business, Innovation and Employment.

2. Purpose

The purpose of this Policy is:

- to provide a clear and reasonable framework of how Council will manage dangerous, affected, and insanitary buildings within the Mackenzie District; and
- to reduce the risk posed to residents and visitors in the Mackenzie District by dangerous, affected, and insanitary buildings.

3. Principles

This Policy has been developed considering the purpose and principles of the Building Act 2004 which, amongst other things, seeks to ensure that:

- people who use buildings can do so safely without endangering their health; and
- people who use a building can escape from the building if it is on fire.

4. Interpretations

For the purposes of this Policy the following definitions shall apply. Where a definition has the same meaning as a definition in the Building Act 2004 (the Act), the definition for the purposes of this Policy includes any subsequent amendment to the definition in the Act.

For the avoidance of doubt, where a definition in the Act differs from a definition in the Policy, the definition in the Act takes precedence.

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Act	the Building Act 2004
Affected Building	the same meaning provided in section 121A of the Act: a building adjacent to, adjoining, or nearby – (a) a dangerous building as defined in section 121; or (b) dangerous dam within the meaning of section 153
Authorized Officer	the same meaning as section 222 of the Act: 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 (ii) by an order of the District Court made under section 227
Building	the same meaning as section 8 of the Act: (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and (b) includes - (i) a mechanical, electrical, or other system; and (ii) a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987; and (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long term basis; and (c) includes any two or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; and (d) includes the non-moving parts of a cable car attached to or servicing a building; (e) includes the moving parts of a cable car attached to or servicing a building
Council	the Mackenzie District Council
Dangerous Building	the same meaning provided in section 121 of the Act: 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 another property is likely. For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority— (c) 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

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	(d) if the advice is sought, must have due regard to the advice
Heritage Building	<p>the same meaning as section 7 of the Act: means a building that is included on -</p> <ul style="list-style-type: none"> (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/Nga Manawhenua o Aotearoa me ona Korero Tuturu list maintained under s 81 of the Heritage New Zealand Pouhere Taonga Act 2014
Household Unit	<p>the same meaning as section 7 of the Act:</p> <ul style="list-style-type: none"> (a) a building or group of buildings, or part of a building or group of buildings that is – <ul style="list-style-type: none"> (i) used, or intended to be used, only or mainly for residential purposes; and (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than one household, but (b) does not include a hostel, boardinghouse, or other specialised accommodation
Insanitary Building	<p>the same meaning provided in section 123 of the Act: A building is insanitary for the purposes of this Act if the building –</p> <ul style="list-style-type: none"> (a) is offensive or likely to be injurious to health because – <ul style="list-style-type: none"> (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
Inspection	<p>the same meaning as section 222 of the Act: means the taking of all reasonable steps -</p> <ul style="list-style-type: none"> (a) to determine whether – <ul style="list-style-type: none"> (i) building work is being carried out without a building consent; or (ii) building work is being carried out in accordance with a building consent; or (iii) a notice to fix has been complied with: (b) to ensure that – <ul style="list-style-type: none"> (i) in relation to buildings for which a compliance schedule is issued, the inspection, maintenance, and reporting procedures states in the compliance schedule are being complied with; or (ii) in relation to buildings that have specified systems, the requirement for a compliance schedule is being complied with: (c) to enable an authority to – <ul style="list-style-type: none"> (i) identify dangerous, earthquake-prone or insanitary buildings within its district; and (ii) carry out its functions or duties in relation to those buildings:

	(d) to satisfy a territorial authority as to whether a certificate of acceptance for building work should be issued under section 96
Owner	<p>the same meaning as section 7 of the Act:–</p> <p>(a) means the person who –</p> <ul style="list-style-type: none"> (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 <p>(b) includes -</p> <ul style="list-style-type: none"> (i) the owner of the fee simple of the land; and (ii) for the purposes of sections 32, 44, 92, 96, 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

5. Councils Approach to Dangerous, Affected, and Insanitary Buildings

5.1 Dangerous, Affected, and Insanitary Buildings

Council will first and foremost encourage all building owners to build safe and healthy buildings and to keep their buildings in good condition, suitable to the buildings intended use. It is however the building owner’s responsibility to ensure all buildings comply with the requirements of the Act. The Council can give no assurance or guarantee that any building is safe or sanitary at any time.

Council will not actively inspect all buildings within the district but will make it a priority to quickly and efficiently respond to any information received regarding potentially dangerous, affected, or insanitary buildings. A building will be deemed to be dangerous and/or insanitary when its existence is brought to Council’s attention and when, after an inspection, an authorised officer with an appropriate warrant deems it to be potentially dangerous and/or insanitary.

When dangerous and insanitary conditions are found the Council will determine whether there are any affected buildings and if so what action, if any, is appropriate. The Council may also issue a notice under section 124(2)(c) of the Act requiring work to be carried out on the dangerous and/or insanitary building to reduce or remove the danger, or to prevent the building from remaining insanitary.

Buildings that are determined dangerous, but not an immediate danger, will be subject to the minimum timeframes for the reduction of the danger of not less than 10 days in accordance with section 125(1)(d) of the Act.

Where an owner fails to address the dangerous and/or insanitary state of a building or the requirements within the notice are not proceeding with reasonable speed, Council may invoke its powers under section 126 of the Act and apply to the District Court to gain authorisation to carry out the building work on the owner’s behalf.

If Council carries out the building work, it is entitled to recover all costs associated with that work from the building owner, as set out in section 126(3) of the Act.

Council will address all situations with respect to the owner's privacy and discretion and will keep all affected parties informed throughout the process.

Council will endeavour to strike a balance between the threats posed by dangerous, affected, and insanitary buildings and the broader social and economic issues affecting the community that are involved.

Council may seek expertise from Fire and Emergency New Zealand, New Zealand Pouhere Taonga, the New Zealand Police and/or any other professional where it is necessary and appropriate to do so.

5.2 Buildings with Heritage Values

This Policy applies to dangerous, affected, and insanitary buildings that have or may have significant historic value. Heritage Buildings are buildings listed in the:

- Operative Mackenzie District Plan Heritage Schedule;
- The Building Act 2004; and
- The Heritage New Zealand Pouhere Taonga Act 2014.

If the building is a scheduled heritage building, the Council will take into account its heritage values in determining an appropriate course of action.

Council will consult Heritage New Zealand Pouhere Taonga and the landowner before taking any action on any heritage building deemed to be dangerous and/or insanitary.

Where a heritage building is deemed to be an affected building, Council will notify Heritage New Zealand Pouhere Taonga as required by section 125 of the Building Act 2004 and the landowner.

Where a heritage building is deemed to be dangerous, Council will proceed as they would with any other dangerous building. Where the situation is not urgent and a notice is issued, Council will notify Heritage New Zealand Pouhere Taonga as required by section 125 of the Act.

To ensure work on heritage buildings is done in a manner that protects its heritage value, the Council will:

- support the owner of such buildings to find solutions in matter that sustainably manages the important heritage values of such buildings; and
- provide longer time frames to buildings with significant heritage values for danger to be reduced or removed or insanitary conditions to be prevented except where the building presents an immediate danger or health hazard to people within and/or around it.

5.3 Immediate Danger

If a building presents an immediate danger or health hazard to people within and/or around it, or to surrounding buildings, Council may invoke its powers under section 129 of the Act to remove the danger or fix the insanitary conditions. This may include the demolition of the building.

5.4 States of Emergency

Where a State of Emergency has been declared (or following a State of Emergency, when a transition period has been declared) the Council may exercise powers under the Civil Defence Emergency Management Act 2002 instead of, or in addition to, powers under the Act.

6. Councils Procedure for Dangerous and Insanitary Buildings

6.1 Detect and Assess

When Council receives information that buildings are potentially dangerous and/or insanitary, it will:

- check the details of the property against Council Records;
- have an authorised officer(s) undertake an inspection of the building to assess the buildings condition in terms of section 121 and 123 of the Act and current building code requirements. In doing so, Council may seek advice from any professional or organisation deemed appropriate; and
- prepare an Inspection Record.

Authorised officers are entitled during working hours (8.30am to 5pm) to inspect any building to identify any dangerous or insanitary conditions and may enter any premises for this purpose unless the building is a household unit. If the building is a household unit which is being used as a household unit, the Council must either obtain consent from the occupier or an order from the District Court before it can enter to carry out an inspection.

6.2 Act

Once Council is satisfied that a building is dangerous and/or insanitary, it will:

- consult with the owner of the affected building to further determine the circumstances and decide on an appropriate course of action.
- invoke its powers under section 124, 126 or 129 of the Act where a mutually acceptable outcome cannot be reached, or where the situation requires. Actions that may be taken include:
 - erecting a hoarding or fence to prevent people from approaching the building that is not safe;
 - placing a notice that warns people not to approach the building;
 - issuing a notice requiring work to be carried out on the building to either;
 - reduce or remove the danger; or
 - prevent the building from remaining insanitary.
- inform complainants, if any, of the inspection results and Council's intended course of action to deal with the situation.
- Council will monitor and review actions taken to ensure sufficient progress or compliance has been made.

6.3 Priorities

Council will give priority to buildings that have been determined to be immediately dangerous. Immediate action will be required in these situations to remove the danger, such as prohibiting any person from occupying or using the building. If necessary, the building will be secured to prevent entry.



6.4 Record Keeping

Any buildings identified as being dangerous and/or insanitary will have a requisition placed on Council's property database for the property on which the building is situated until the dangerous or insanitary condition is remediated.

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

- copies of any notices issued where a building is dangerous, affected or insanitary and requires evacuation of the building;
- copies of any letters sent to the owner, occupier and any other person where a building is dangerous or insanitary; and
- copies of any notices given under section 124(1) which identifies the work to be carried out on a building and the timeframe given to reduce or remove the danger or insanitary condition.

7. Disputes

Where a building owner disputes a Council decision or proposed activity, relating to the exercise of the Council's powers under sections 124 and 129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Business, Innovation, and Employment. Such a determination is binding on the Council.



Mackenzie

DISTRICT COUNCIL