

STATEMENT OF PROPOSAL



REVIEW OF WAIROA DISTRICT COUNCIL'S DANGEROUS, INSANITARY AND AFFECTED BUILDINGS POLICY

REASON FOR THE PROPOSAL

Under legislation Council must use the special consultative procedure to review the Wairoa District Council Dangerous, Insanitary and Affected Buildings Policy. The proposed amendments include updates due to legislative changes and updates for currency e.g. replacing references to the Fire Service with Fire and Emergency New Zealand.

Council is considering whether it should adopt amendments to the Wairoa District Council Dangerous, Insanitary and Affected Buildings Policy. It considers that this is a matter for local communities to provide feedback, there is also a legislative requirement for the special consultative procedure to be used. Council is therefore seeking feedback from its communities on whether they believe Council should adopt these proposed amendments to the policy.

More Information

Where to get a copy of the submission form

The submission form may be collected from the Council's Main Office in Wairoa, or filled out online on the Council's website www.wairoadc.govt.nz

Period for Consultation

Written submissions may be made until **4.30pm Monday 18 March 2019**.

Those who make a written submission may choose to make an oral submission. Hearing of oral submissions are tentatively scheduled for **Tuesday 2nd April 2019 at 10am**.

Please indicate on your submission form if you wish to speak to your submission.

If you have any questions about this bylaw or the submission process please contact Charlotte Knight, Policy & Governance Team Leader on 06 838 7309

TE KAUPAPA HERE MŌ NGĀ WHARE MŌREAREA, NGĀ POKE ME NGĀ WHAKAAWENGA

DANGEROUS, INSANITARY, AND AFFECTED BUILDINGS POLICY

CATEGORY:	Office of the Chief Executive	STATUS:	Draft
DATE POLICY ADOPTED:	[insert meeting date]	APPROVAL BY:	Council
REVIEW PERIOD:	5 years	NEXT REVIEW DUE BY:	2024
DATE PREVIOUSLY ADOPTED:	8 November 2011	REVISION NUMBER:	2

PURPOSE

One of the key purposes of the Act, as set out in Part 1, subpart 1 (3), is to ensure “people who use buildings can do so safely and without endangering their health”. (Refer Appendix B).

Council believes the safety of people is of paramount importance and this policy reflects this. The objectives of this policy are:

- To reduce the risks of ill health and danger caused to the community by dangerous, insanitary and affected buildings, by identifying and taking appropriate action to remediate those risks.
- To ensure that Council appropriately discharges its statutory obligations under the Building Act 2004 in relation to buildings in the Wairoa District that are suspected or confirmed as dangerous, insanitary or affected.

ADOPTION AND REVIEW OF POLICY

In developing and adopting this dangerous, insanitary and affected buildings policy, Council has followed consultative procedure set out in Section 83 of the Local Government Act 2002.

As per section 132 of the Building Act, this policy may be amended or replaced only in accordance with the special consultative procedure.

As soon as practicable after this policy is adopted Council must provide a copy to the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE). When reviewed or amended Council may be required to provide a copy to MBIE and this is to be ascertained at the time.

Section 132 of the Act requires the policy to be reviewed within five years of being adopted and then at five yearly intervals with any replacement or amendment being subject to the consultative procedures in the Local Government Act 2002.

This policy does not cease to have effect because it is due for review or being reviewed.

BACKGROUND

Section 131 of the Building Act 2004 requires that Wairoa District Council adopt a policy on dangerous, insanitary and affected buildings.

Section 132 of the Act requires the policy to be reviewed within five years of being adopted and then at five yearly intervals with any replacement or amendment being subject to the consultative procedures in the Local Government Act 2002.

This document sets out the policy adopted by Wairoa District Council (herein after referred to as the “Council”) in accordance with the requirements of the Building Act 2004 (herein after referred to as the “Act”). The policy is required to state:

- Council’s approach to performing its functions under the Act;
- Council’s priorities in performing those functions;
- How the policy will apply to heritage buildings.

Earthquake-prone buildings are addressed under the Act itself, and are therefore excluded from this policy.

DANGEROUS BUILDINGS

Buildings may become dangerous for a number of reasons e.g. due to a change of use (for example commercial building used for residential purposes), or unauthorised alterations being made, or as a result of its use by an occupant. Or this could be the result of using a property for the manufacturing process of illicit substances such as methamphetamine. Clandestine Laboratories (Clan Lab) operators often have limited knowledge of the chemical hazards and little concern for public safety or the environment. In these instances Council will follow processes as advised by our Environmental Health Department.

INSANITARY BUILDINGS

Buildings may become insanitary due to a number of reasons, such as following a natural disaster e.g. flooding or as a result of poor maintenance, or misuse by the occupant.

AFFECTED BUILDINGS

Affected buildings are those buildings close to a dangerous building.

DEFINITIONS

The meanings of dangerous, insanitary and affected buildings are set out in Section 121(1) and Section 123 respectively of the Act. These are:

TERM	DEFINITION
Dangerous Building	Section 121 1. <i>“A building is dangerous for the purpose of the 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 another property is likely.”</i>
Affected building	Section 121A <i>A building is an affected building for the purposes of the Act if it is adjacent to, adjoining, or nearby- a. dangerous building as defined in section 121 b. a dangerous dam within the meaning of section 153.</i>
Insanitary Building	Section 123 1. <i>A building is insanitary for the purpose of the 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.</i>

PRINCIPLES

All decisions and activity relating to dangerous, insanitary and affected buildings should be guided by the provisions and principles contained in the Building Act, The Building Code, the Health Act and any relevant standards.

This Policy shall be consistent with the Community Outcomes set out in the 2018-2028 Long Term Plan and contribute to establishing A Community that Values and Promotes its Culture and Heritage; A Safe and Secure community; A Lifetime of Good Health and Wellbeing; and An Environment that is Appreciated, Protected and Sustained for Future Generations.

This policy contributes by ensuring homes and other structures are safe to live in or visit and are not injurious to occupant's health and has a positive influence on reducing the incidence of neglected, inadequately maintained, fire damaged or non-compliant buildings impacting on the community.

Council will consult with its communities in developing and reviewing this policy and endeavour to strike a balance between the threats that dangerous, insanitary and affected buildings may present, and the broader social and economic issues associated with implementing the policy.

Owners of properties deemed to be unsafe or insanitary, shall bear all costs related to restoring the building to a condition that complies with the requirements of the Act and the current Building Code. Costs shall include costs incurred by Council to assess and enforce compliance. As per Section 126, the Council may carry out work if work required under a notice issued is not completed within the prescribed time, and recover the costs from the owner.

POLICY APPROACH

It is very likely that in many, but not all, cases a building's dangerous, insanitary or affected status will not be readily apparent. For this reason, any attempt to identify these buildings proactively is unlikely to be successful as this would require considerable resources to undertake inspections and evaluations of buildings.

As it is impractical to inspect every building in the District on a regular basis Wairoa District Council's Dangerous, Insanitary and Affected Buildings Policy embodies a passive approach to the identification of dangerous, insanitary or affected buildings in the District relying on complainants to provide information and activation by building consent applications.

Council is reactive in responding to situations when notified of a potentially dangerous, insanitary or affected building when:

- the state of a building has been brought to its attention via complaints; and where
- the building has been subject to a change of use, an alteration or an addition.

PROCESS

IDENTIFYING DANGEROUS, INSANITARY AND AFFECTED BUILDINGS

Most potentially dangerous, insanitary and affected buildings will be notified to Council through reports or complaints from building occupants, or neighbours, members of the public, or inspections by the Police, Fire and Emergency New Zealand or other government agencies authorised to inspect buildings. Others may become evident to Council Officers in the course of their duties and through building consent application for works on buildings.

The Council may exercise any of its powers under the Subpart 6A of the Act if it believes a part of a building is dangerous or insanitary within Section 123A.

ASSESSMENT CRITERIA

For practical purposes, dangerous and/or insanitary buildings are defined as those that fall within the provisions of Sections 121 and 123 of the Act.

Council will use the Building Code and the Ministry of Business, Innovation and Employment acceptable solutions or verification methods issued under Section 22 of the Act as its preferred basis for defining technical requirements and criteria.

TAKING ACTION

Once Council has received information regarding a potentially dangerous, insanitary or affected building Council will set the following procedures in motion:

- Respond and investigate all building complaints or notification from internal sources or third parties. However Council may not respond to anonymous complaints.
- In the office:
 - Check the details of the property against Council records.
 - Attempt to determine the potential risk or harm to people and property by identifying buildings that fall within the scope of a dangerous, insanitary and/or affected building under the Act.
- Undertake a full and extensive inspection by Council's Building Compliance staff and/or Environmental Health Officer to assess the performance of those buildings in relation to Section 121 and 123 of the Act and the Building Code. Available resources and potential for risk or harm will determine the time frame for this inspection. Where the potential for risk or harm is immediate and/or severe, priority will be given to these buildings and these will be investigated as soon as possible with the aim to be within 24 hours. A check sheet (Appendix A) will be used to assess whether a building is dangerous, insanitary or affected.
- On reporting back, the Team Leader with direction from the Chief Executive Officer or delegated officer will reach a decision as to whether the building is deemed to be dangerous, insanitary or affected. Where necessary, expert opinion (written report) will be sought on whether the situation is dangerous, insanitary or affected. This could include

Environmental Health Officer, Environmental Risk Management Authority (ERMA), chartered professional engineer, Fire and Emergency New Zealand, Occupational Safety and Health, or other sources of expert advice.

- Each case is to be assessed at the time and Council will exercise their judgment as to the most appropriate action under the Act e.g. if a derelict building has a history of squatters who place themselves at risk, a notice will be served on the owner to remove or reduce the danger, possibly through demolition.
- Where Council has determined that a building is dangerous insanitary or affected, it will liaise and work with the owner to achieve an acceptable outcome. Where possible a course of action and timeframe that is mutually agreed will be sought.
- Council will advise owners of the results of the Council's assessment and invite them, within a limited timeframe, to meet with Council officers to discuss requirements to remedy a dangerous, insanitary and/or affected building situation. Where the necessary work required on a building is complex, it is appropriate for Council to determine the nature of any remedial work in consultation with building owners. Where it is obvious that the expense of remedial work will place an unreasonable cost burden on the owner, this will be discussed with the owner and other alternatives, such as demolition or temporary hoardings may be considered.
- Where an acceptable outcome cannot be reached or where an immediate hazard exists, Council may, at its sole discretion, invoke its powers under Sections 124-129 of the Act. The situation in each case will be different and Council will weigh up these elements when deciding what approach should be taken to remove or minimise the danger a building may present.

SERVING NOTICE

- Once the deadline for meeting Council has passed, it is fitting to serve notice, under Section 124 of the Act, on owners of all buildings requiring remedial work to be carried out.
- The notice should clearly set out the time in which the required action is to be completed, being not less than 10 days, to reduce or remove the danger or conditions contributing to the insanitary state. Each case is to be assessed at the time and Council will exercise their judgement as to the most appropriate timeframe to suit the situation.
- Copies of the notice will be provided to the building owner, the occupier and every person who has an interest in the land, or is claiming interest in the land, as well as Heritage New Zealand Pouhere Taonga if the building is a heritage building, and the owner of any affected buildings.
- The process for serving notices on owners will be transparent. Notices must:
 - be in writing;
 - be fixed to the building concerned;
 - state the timeframe within which the building work must be carried out; and
 - state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.

The timeframe which the building work must be carried out must not be less than 10 days after the notice is given, or a period reasonably sufficient to obtain a building consent if required, whichever period is longer.

- Council will 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.
- When there is non-compliance with a notice or an immediate danger is apparent Council consider enforcement action and use the powers available under sections 126 and 129 of the Act and apply to the district court for an order authorising Council to carry out the work. Council will advise the building owner of its intention to apply to the court at least ten (10) days prior to making the application.

WHERE THE DANGER IS ASSESSED AS IMMEDIATE

Due to the urgent nature of the risk that dangerous and insanitary buildings pose to users, Council will in the first instance act to ensure no person uses or occupies the building or permits another person to use or occupy the building until such work is undertaken to reduce or remove the danger or to fix the insanitary conditions. Council may undertake any of those measures outlined in Section 129 of the Act (Refer Appendix B) to mitigate or remove the danger or fix insanitary conditions.

Where it is deemed immediate action is necessary to mitigate a dangerous or insanitary situation, Council reserves the right to appoint any contractor it deems competent to undertake the work.

Where a dangerous or insanitary building poses an immediate risk, Council may take remedial action first and then consult with the owner as soon as practicable thereafter by warrant issued under the chief executive of the Council's signature.

COUNCIL MAY CARRY OUT WORK

Where owners may not be cooperative or cannot be located Council may apply to the District Court, under Section 126, (refer Appendix B) for an order authorising the Council to carry out building work if any work required under a notice is not completed within the time stated or any further time that the Council may allow.

Council must give the owner of the building not less than ten (10) days' written notice of its intention to apply to the District Court. If the Council carries out work under the authority of a Court order the owner of the building is liable for the costs of the work and the Council may recover those costs from the owner and the amount recoverable becomes a charge on the land on which the work was carried out (Refer s126 Appendix B.)

Any work required or authorised may include the demolition of all or part of a building.

In every case where Council conducts any of the remedial work required of a building owner, or where Council is forced to take action to mitigate a dangerous or insanitary situation, all costs incurred will be recoverable from the owner and the amount will become a charge against the land on which the building is situated.

POWERS OF COUNCIL

Powers of Council are outlined under Section 124 (Refer to Appendix B).

Council will attempt to consult with building owners prior to taking action on a dangerous or insanitary building but this will not delay taking necessary action within the provisions of the Act, especially when the danger posed by the building is significant.

OFFENCES

Section 116B of the Act states it is an offence to use a building for use for which it is not safe or not sanitary, or it has inadequate means of escape from fire. Council is able to take action, when appropriate, against owners and occupiers of buildings when the Council has not taken or has not been able to take, any of the actions provided under Section 124.

A person who failed to comply with a notice issued under Section 124(2)(c) that requires work to be carried out on the building to reduce or remove the danger or prevent the building from remaining insanitary under Section 125(2) commits an offence and is liable to a fine not exceeding \$200,000.

A person who failed to comply with Section 128(2) by using or occupying a building, or permitting another person to use or occupy the building, commits an offence and is liable on conviction to a fine not exceeding \$200,000. In the case of a continuing offence, the person is liable on conviction to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

INTERACTION BETWEEN THIS POLICY AND OTHER PROVISIONS OF THE BUILDING ACT 2004

The following sections of the Act could initiate action under Council policy relating to dangerous, insanitary and affected buildings:

- S96 Territorial authority may issue certificate of acceptance in certain circumstances
- S108 Annual building warrant of fitness
- S112 Alteration to existing buildings
- S115 Code compliance requirements: change of use
- S121 Meaning of dangerous building
- S121A Meaning of affected building
- S123 Meaning of insanitary building
- S123A Application of this subpart to parts of buildings
- S124-130 Powers of territorial authorities in respect to dangerous, affected, or insanitary buildings

- S131-132A Policy on dangerous and insanitary buildings
- S164 Issue of notice to fix
- S216 Territorial authority must keep information about buildings.

When the owner of a dangerous or insanitary building on whom notice has been served, but who has not yet undertaken the required remedial work, applies for building consent for action covered by Sections 112 to 116A, (Appendix B), Council is to require that the action necessary to reduce or remove danger be undertaken at the same time (or before if appropriate) the building work set out in the consent application.

SECTION 112: ALTERATIONS TO EXISTING BUILDINGS

Whenever a building consent application is received for significant upgrading or alteration of a building that is dangerous or insanitary then, irrespective of the general priorities set by Council for dealing with dangerous or insanitary buildings, Council will not issue a building consent unless it is satisfied that the building is not dangerous or insanitary and that the building work will not detrimentally affect the buildings' compliance with the Building Code.

If the building is shown to be dangerous or insanitary, then the Council will require that the situation be rectified as necessary to comply as nearly as is reasonably practicable with the provisions of the Building Code and that the building is made safe.

SECTION 115: CODE COMPLIANCE REQUIREMENTS: CHANGE OF USE

Whenever a building consent application is received for change of use of a building that is dangerous or insanitary then the Council will require as part of that building consent that the scope of the work so authorised, include further building work to such an extent that the building will not continue to be dangerous and/or insanitary after the change of use.

RECORDING THE STATUS OF A DANGEROUS, INSANITARY OR AFFECTED BUILDING AND ACCESS TO THIS INFORMATION

Any buildings identified as being dangerous, insanitary and/or affected will be recorded on Council's register of dangerous, insanitary and affected buildings until the danger is remedied. This is also noted electronically on the property file.

All information, including correspondence and notices relating to current dangerous, insanitary and affected buildings will be held on the dangerous, insanitary and affected buildings folder and when rectified will be filed on the relevant property file.

This information will be included on any Land Information Memorandum (LIM) issued in respect of that property. This information is to be also placed on a Project Information Memorandum (PIM) where it affects any proposed building work.

HERITAGE BUILDINGS

A heritage building is any building that is included on the New Zealand Heritage List/Rārangi Kōrero maintained under the Heritage New Zealand Pouhere Taonga Act 2014. Heritage buildings play an important role in the social and cultural fabric of New Zealand society, but their nature and age mean that even simple rectification requirements may present design and cost challenges for owners.

While Council will follow the process described in relation to dangerous, insanitary and affected buildings that have or may have significant heritage value (defined here as buildings in the District Plan register, New Zealand Heritage List/Rārangi Kōrero (formerly the Historic Places Register)) Council will support owners of such buildings to find solutions to health and safety issues in a manner that sustainably manages the important heritage values of such buildings.

In relation to buildings with significant heritage values, Council may provide relatively longer timeframes for the identified danger to be reduced or removed or insanitary conditions to be prevented. In particular, when deciding on an appropriate timeframe for building work to be complete and certified, principles in Section 4(2)(d) and 4(2)(l) of the Act will be emphasised.

Where a heritage building is dangerous, insanitary or affected Council will consult with the building owner and consider seeking advice from the Heritage New Zealand Pouhere Taonga. Council will exercise their judgement concerning the nature and importance of the building and the level of risk it poses to the community. However, the fact that a building has a heritage status does not mean it can be left in a dangerous, insanitary or affected condition. The provisions of the Act will continue to apply.

Following the above consultation process, notice will be served requiring improvement or demolition within a stated and preferably agreed timeframe. Should a notice be served on a heritage building, a copy of the notice is to be sent to Heritage New Zealand Pouhere Taonga as set out in Section 125(2)(f).

**APPENDIX A: DANGEROUS, INSANITARY AND/OR
AFFECTED BUILDING INSPECTION RECORD**



DANGEROUS, INSANITARY AND AFFECTED BUILDING INSPECTION RECORD WAIROA DISTRICT COUNCIL

Address of building		
Building name		
Name of person allowing access		
Relationship to building		
Time and date of inspection		
Contact details of at least two tenants		
Name		
Relationship		
Address (Other than the address of the building)		
Phone (Home)		
Phone (Work)		
Phone (Mobile)		

Building warrant of fitness – current: Yes / No	Displayed: Yes / No
Current use described as?	
Is current use and described use the same?: Yes / No	Number:
List fire protection/detection system(s) present	Operational?
	Yes / No
	Yes / No
	Yes / No
*Note on rear of page if system has obvious defects in relation to relevant New Zealand Standards.	

Building features	
Number of floors	
How many flats?	
How many beds (total)?	
How many means of escape?	
Can you identify safe paths?	Yes / No
Have you walked the escape routes?	Yes / No
Any uncontrolled sources of ignition?	Yes / No
Adequate potable water supply?	Yes / No
Adequate sanitary facilities for intended use?	Yes / No
Has the cladding failed?	Yes / No
Is the nature of the building likely to be offensive or injurious to health	Yes / No
Do safe paths lead to exterior ground?	Yes / No
Are any escape doors fitted with locks?	Yes / No
Is any other building affected/likely to be affected by these building defects?	Yes / No

Describe the building's construction	
Describe means of escape:	
Describe purpose groups within the building:	
Describe water supply and sanitary facilities	
Describe why building (or part) is "offensive" and/or "likely to be injurious to health"	
High hazard backflow prevention:	
Required?: Yes / No	Installed:

RISK ASSESSMENT OF DANGEROUS, INSANITARY AND AFFECTED BUILDINGS

Address

Lot No.

DPS No.

Building Consent No.

Risk Factor	Rating (H/L) Score	Score
<i>Users</i>		
1. What is the maximum number of users at any one time	100 + people (H) = 10 Less than 100 people (L) = 7	
2. What is the predominant age group of the building users?	Children or Infants (H) = 10 Adults (L) = 3	
3. What is the general capability of the building?	Normal (L) = 3 Mentally handicapped/immobile (H) =	

	10 Physically handicapped but mobile (H) = 6	
<i>Usage of the building</i>		
4. What is the sleeping activity rating for the building in terms of the building code?	SD, SA, SC, (H) = 10 SR (L) = 3	
5. Is the building used for any of the following activities?		
a. Education b. Old people's home c. Hospital (private or public) d. Residential institution e. Place of Assembly f. Hotels and motels g. Backpackers and Home stays h. Attached multi-unit buildings	Children (H) = 10 Adults (L) = 5 Geriatric (H) = 10 Mobile (L) = 5 Bedridden (H) = 10 Mobile (L) = 8 Bedridden (H) = 10 Mobile (L) = 5 >100 people (H) = 10 <100 (L) = 3 >20 people (H) = 7 <5 (L) = 3 >20 people (H) = 9 <5 (L) = 5 >5 apartments (H) = 7 3-5 (L) = 5	
6. What is the crowd, working, business or storage activity for the building in terms of the building code?	WD, WM, CL, CM (H) = 10 WL, CS (L) = 3	
<i>Building Characteristics</i>		
7. Does the building have common walls with others?	>1 (H) = 5 <1 (L) = 3	
8. How many storey's does the building have? 1 2 3 4 5 6 7 8 9 (includes basements)	2 = 5 add 5 for every subsequent storey	
9. Any historic clarification or significance?	Yes = 2	
10. Is the building in the inner city, in a known geothermal area or previous seismic activity?	Yes (H) = 10	
11. What is the age and condition of the building?	Assign score 1-10 accordingly e.g. Pre 1940 = 10 Pre 1965 = 8	
12. Are there any other factors to be considered? e.g. Parapets, verandahs, attachments or adornments	Assign score 1-10 accordingly	
TOTAL SCORE (out of approx 100) Note: < 40 Low Risk 40-60 = Moderate Risk >60 = High Risk		

APPENDIX B: RELEVANT SECTIONS OF THE BUILDING ACT 2004

Part 1, Subpart 1, 3 Purposes

This Act has the following purposes:

(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—

(i) people who use buildings can do so safely and without endangering their health; and

(ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and

(iii) people who use a building can escape from the building if it is on fire; and

(iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:

(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

Part 1, Subpart 1, 4 Principles to be applied in performing functions or duties, or exercising powers, under this Act

(2) In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:

(d) the importance of recognising any special traditional and cultural aspects of the intended use of a building:

(l) the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value.

Section 12 Role of building consent authority and territorial authority

(2) Under this Act, a territorial authority—

(j) performs functions relating to dangerous, earthquake-prone, or insanitary buildings.

Section 116B Offence to use building for use for which it is not safe or not sanitary, or if it has inadequate means of escape from fire

(1) No person may—

(a) use a building, or knowingly permit another person to use a building, for a use for which the building is not safe or not sanitary; or

(b) use a building, or knowingly permit another person to use a building, that has inadequate means of escape from fire.

(2) A person who fails to comply with subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

Section 121 Meaning of dangerous building

(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

(b) if the advice is sought, must have due regard to the advice.

Section 121A Meaning of affected building

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](#).

Section 123 Meaning of Insanitary Building

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.

Section 123A Application of this subpart to parts of buildings

(1) If a territorial authority is satisfied that only part of a building is dangerous (within the meaning of section 121) or insanitary (within the meaning of section 123),—

(a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and

(b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.

(2) To the extent that a power or function of a territorial authority under this subpart relates to affected buildings,—

- (a) the territorial authority may exercise the power or perform the function in respect of all or part of an affected building; and*
- (b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.*

Section 124 Dangerous, affected, or insanitary buildings: powers of territorial authority

(1) This section applies if a territorial authority is satisfied that a building in its district is a dangerous, affected, or insanitary building.

(2) In a case to which this section applies, the territorial authority may do any or all of the following:

(a) put up a hoarding or fence to prevent people from approaching the building nearer than is safe:

(b) attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building:

(c) except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to—

(i) reduce or remove the danger; or

(ii) prevent the building from remaining insanitary:

(d) issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

(3) [Repealed]

Section 125 Requirements for notice requiring building work or restricting entry

(1) A notice issued under section 124(2)(c) must—

(a) be in writing; and

(b) be fixed to the building in question; and

(c) be given in the form of a copy to the persons listed in subsection (2); and

(d) state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer; and

(e) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.

(1A) A notice issued under section 124(2)(d)—

(a) must be in writing; and

(b) must be fixed to the building in question; and

(c) must be given in the form of a copy to the persons listed in subsection (2); and

(d) may be issued for a maximum period of 30 days; and

(e) may be reissued once only for a further maximum period of 30 days.

(2) A copy of the notice must be given to—

(a) the owner of the building; and

(b) an occupier of the building; and

- (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and*
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and*
 - (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and*
 - (f) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.*
- (3) However, the notice, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).*

Section 126 Territorial authority may carry out work

- (1) A territorial authority may apply to the District Court for an order authorising the territorial authority to carry out building work if any work required under a notice issued by the territorial authority under section 124(2)(c) is not completed, or not proceeding with reasonable speed, within—*
- (a) the time stated in the notice; or*
 - (b) any further time that the territorial authority may allow.*
- (2) Before the territorial authority applies to the District Court under subsection (1), the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so.*
- (3) If a territorial authority carries out building work under the authority of an order made under subsection (1),—*
- (a) the owner of the building is liable for the costs of the work; and*
 - (b) the territorial authority may recover those costs from the owner; and*
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.*

Section 127 Building work includes demolition of building

Any work required or authorised to be done under section 124(2)(c) or section 126 may include the demolition of all or part of a building.

Section 128 Prohibition on using dangerous, affected, or insanitary building

- (1) This section applies if a territorial authority has done any of the following:*
- (a) put up a hoarding or fence in relation to a building under section 124(2)(a);*
 - (b) attached a notice warning people not to approach a building under section 124(2)(b);*
 - (c) issued a notice restricting entry to a building under section 124(2)(d).*
- (2) In any case to which this section applies, and except as permitted by section 124(2)(d), no person may—*
- (a) use or occupy the building; or*
 - (b) permit another person to use or occupy the building.*

Section 128A Offences in relation to dangerous, affected, or insanitary buildings

(1) A person who fails to comply with a notice issued under section 124(2)(c) that is given to that person under section 125(2)—

(a) commits an offence; and

(b) is liable to a fine not exceeding \$200,000.

(2) A person who fails to comply with section 128(2)—

(a) commits an offence; and

(b) is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

Section 129 Measures to avoid immediate danger or to fix insanitary conditions

(1) This section applies if, because of the state of a 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.

(2) The chief executive of a territorial authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgment to—

(a) remove that danger; or

(b) fix those insanitary conditions.

(3) If the territorial authority takes action under subsection (2),—

(a) the owner of the building is liable for the costs of the action; and

(b) the territorial authority may recover those costs from the owner; and

(c) the amount recoverable by the territorial authority becomes a charge on the land on which the building is situated.

(4) The chief executive of the territorial authority and the territorial authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2).

Section 130 Territorial authority must apply to District Court for confirmation of warrant

(1) If the chief executive of a territorial authority issues a warrant under section 129(2), the territorial authority, on completion of the action stated in the warrant, must apply to the District Court for confirmation of the warrant.

(2) On hearing the application, the District Court may—

(a) confirm the warrant without modification; or

(b) confirm the warrant subject to modification; or

(c) set the warrant aside.

(3) Subsection (1) does not apply if—

(a) the owner of the building concerned notifies the territorial authority that—

(i) the owner does not dispute the entry into the owner's land; and

(ii) confirmation of the warrant by the District Court is not required; and

(b) the owner pays the costs referred to in section 129(3)(a).

Section 131 Territorial authority must adopt policy on dangerous and insanitary buildings

(1) A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous and insanitary buildings within its district.

(2) The policy must state—

(a) the approach that the territorial authority will take in performing its functions under this Part; and

(b) the territorial authority's priorities in performing those functions; and

(c) how the policy will apply to heritage buildings.

Section 132 Adoption and review of policy

(1) A policy under section 131 must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.

(2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.

(3) A territorial authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.

(4) A territorial authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.

(5) A policy does not cease to have effect because it is due for review or being reviewed.

Section 132A Policy must take into account affected buildings

(1) A policy under section 131 must take into account affected buildings.

(2) A territorial authority must amend an existing policy to take into account affected buildings at the latest within a reasonable period following the next review of its policy required under section 132(4).

(3) In subsection (2), existing policy means a policy existing at the date of this section coming into force.