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# ~~DANGEROUS, AFFECTED AND INSANITARY BUILDINGS POLICY~~ ~~DANGEROUS AND INSANITARY BUILDINGS POLICY~~

## ~~Revocations~~

~~The Taupō District Council Earthquake-prone, Dangerous & Insanitary Building Policy is revoked when this policy comes into force on 1 December 2014.~~

## ~~DANGEROUS BUILDINGS~~

### ~~Policy Approach~~

#### ~~Introduction and Background~~

~~Section 131 of the Building Act 2004 (“the Act”) requires territorial authorities (“TAs”) to adopt a policy on dangerous buildings by 31 December 2018.. The definition of a dangerous building is set out in 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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”~~

~~The policy states:-~~

- ~~• The approach that the Council will take in performing its functions under the Act;~~
- ~~• Council's priorities in performing those functions;~~
- ~~• How the policy will apply to heritage buildings;~~

## ~~Policy~~

### Purpose Policy Principle

1. To set out Taupō District Council's approach to identifying and managing dangerous, affected and insanitary buildings. As required under Section 131 of the Building Act 2004. The policy details:

- The approach that Council will take in performing its functions under the Act.
- Council's priorities in performing those functions.

- How the policy will apply to heritage buildings.

2. To ensure that~~That~~ the community can expect to be in safe and sanitary conditions when in a building ~~in the~~within the Taupō District.

### **Definitions**

3. Any words, phrases or expressions in this policy which have meanings assigned to them by the Building Act 2004 shall have the meanings as are respectively assigned in the Act and corresponding supplementary legislation, unless inconsistent with the context that such words occur.

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>Act</u></b>                 | <u>The Building Act 2004</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b><u>Council</u></b>             | <u>Means Taupō District Council</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b><u>Dangerous Building</u></b>  | <u>Under Section 121 of the Act a building is dangerous if,-</u><br><u>(a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause-</u><br><u>(i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or</u><br><u>(ii) damage to other property; or</u><br><u>(b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.</u>                                                                                                                  |
| <b><u>Insanitary Building</u></b> | <u>Under Section 123 of the Act a building is insanitary if the building—</u><br><u>(a) is offensive or likely to be injurious to health because—</u><br><u>(i) of how it is situated or constructed; or</u><br><u>(ii) it is in a state of disrepair; or</u><br><u>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</u><br><u>(c) does not have a supply of potable water that is adequate for its intended use; or</u><br><u>(d) does not have sanitary facilities that are adequate for its intended use.</u> |
| <b><u>Affected Building</u></b>   | <u>Under Section 121A of the Act a building is affected if the building—</u><br><u>if it is adjacent to, adjoining, or nearby—</u><br><u>(a) a dangerous building as defined in section 121; or</u><br><u>(b) a dangerous dam within the meaning of section 153.</u>                                                                                                                                                                                                                                                                                                                                               |

## DANGEROUS AND AFFECTED BUILDINGS

### Policy Approach

#### Introduction and Background

##### Overall Approach

4. The Taupō District is experiencing growth which places considerable pressure on the availability of affordable privately owned and rental accommodation. This has resulted in instances of garages, basements and sleep outs being illegally converted into minor household units or sheds and garages being constructed without consents for use as residential accommodation. Lacking any consent, these are often not undertaken in accordance with the building code. This may cause problems in terms of the danger posed for people living in these spaces by inappropriate construction methods or materials. Such dangers may include inadequate fire protection or danger of collapse.
5. To help deter people from undertaking inappropriate building works, Taupō District Council provides information to the public to educate them on the need to discuss their development plans with Council and to obtain building consent where necessary.

##### Identifying Dangerous or Affected Buildings

6. The Council may:
- Respond to and investigate all building complaints received from building users, members of the public or a government agency with a right to inspect a building.
  - Identify from these investigations any buildings that are dangerous or affected;
  - Inform the owner and occupier of the building to take action to reduce or remove the danger, as is required by Sections s124 and s125 of the Act;
  - Liaise with Fire and Emergency New Zealand the New Zealand Fire Service when Council deems it is appropriate, in accordance with Section s121 (2) of the Act:

##### Assessment Criteria

- The Council will assess dangerous and affected buildings in accordance with Sections s121 and 121A of the Act. (1) 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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”
-

— ~~Council will a~~Assessing ~~any~~the failed building elements in accordance with the performance requirements of the relevant building code clauses.

7.

~~In accordance with the Building Code the following will be assessed:~~

- ~~• B1 – Structure~~
- ~~• F1 – Hazardous Agents on Site~~
- ~~• F2 – Hazardous Building Materials~~
- ~~• F7 – Warning Systems~~

## Taking Action

— Should action be considered necessary, in accordance with Sections s124 and s125 of the Act ~~the~~

8. Council may:

- Advise and liaise with the owner(s) of buildings;
- ~~May~~ request a written report on the building from; Fire and Emergency New Zealand
- If found to be ~~a dangerous~~Dangerous Building:
  - Attach written notice to the building requiring work to be carried out on the building, within a time stated in the notice being not less than 10 days, to reduce or remove the danger;
  - Give copies of the notice to the building owner, occupier, and every person who has an interest in the land, or is claiming an interest in the land, ~~as well as the New Zealand Historic Places Trust, if the building is a heritage building;~~
- If found to be an Affected Building:
  - Issue a notice under 124(2)(d) restricting entry to the building if the safety risk posed by a nearby dangerous building is significant.
- ~~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;~~
- ~~\_\_\_\_\_~~
- Require property owners to apply for a certificate of acceptance ~~if~~ urgent building work is required to make the building safe and a building consent was not able to be ~~cannot be practicably be~~practicably obtained in advance because the building work had ~~s~~ to be carried out urgently for the purpose of saving or protecting life or health or preventing serious damage to property. ~~then the owner must apply for a certificate of acceptance if building work has been carried out urgently (see clauses 23-25 below).~~
- Require property owners to provide an explanation of how dangerous unconsented works occurred, who carried out the work, and under whose instructions. ~~Council Where the danger is the result of non-consented building work the owner will formally be requested to provide an explanation as to how the work occurred and who carried it out and under whose instructions, and may require the owner need to apply for a Certificate of Acceptance in accordance with Section s97 of the Act, 2004~~

- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable ~~period of time~~period as well as any other non-compliance matters.

9. If the building is considered ~~to be~~ immediately dangerous in accordance with section 129 of the Act the Council may:

- ~~Cause any action to be taken~~ take actions to reduce or remove that danger ~~(this may include~~ prohibiting persons using or occupying the building or by making an application to the District Court for an order authorising the territorial authority to carry out building work if any building work required under a notice is issued by the territorial authority under s124(2)(c) ~~of the Act including to reduce or remove the danger. NOTE:~~ Before the territorial authority applies to the District Court the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so in accordance with Section 126(2); and
- Take action to recover costs from the owner(s) if the Council must undertake works to remove the danger.
- ~~The owner(s) will also be informed~~ the owner(s)ed that the amount recoverable by ~~Taupo District~~the Council will become a charge on the land on which the building is situated.

— All owners have a right of appeal as defined in the Act, which can include applying to the Ministry of Business, Innovation and Employment for a determination under Section s-177(e) of the Act.

10.

#### **Interaction between dangerous building policy and related sections of the Act**

##### **Section 41: Building consent not required in certain cases**

— ~~In cases where a building is assessed as being immediately dangerous the Council may not require building consent to be obtained for any building work required so as to remove the danger immediately. However, prior to any action being taken it is imperative that building owners discuss any works with the Council.~~

#### **Record keeping**

— ~~Any buildings identified as being dangerous will have a requisition placed on the property file for the property on which the building is situated until the danger is remedied. In addition, the following information will be placed on the Land Information Memorandum (LIM):~~

- ~~Notice issued that building is dangerous~~
- ~~Copy of letter to owner, occupier and any other person that the that the building is dangerous;~~
- ~~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.~~

#### **Economic impact of policy**

~~Due to the low number of dangerous buildings encountered annually by the Council (<5), and the similarity between the obligations of territorial authorities as to with dangerous buildings under the Building Act 2004 and the Building Act 1991, the economic impact of this policy is considered to be negligible.~~

### **Access to information**

Information concerning dangerous buildings will be contained on the relevant LIM. In granting access to information concerning dangerous buildings, the Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

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## Priorities

11. The Council will allocate priority to buildings that have been determined to be immediately dangerous in accordance with section 129. Immediate action will be required in these situations to remove the danger, such as prohibiting any person occupying or using the building.

— Buildings that are determined-deemed to be dangerous, but not immediately dangerous, will be subject to the minimum timeframes for reduction or removal of the danger (not less than 10 days) as set out in s124(21)(c) of the Act.

— Heritage Buildings

~~No special dispensation will be afforded to heritage buildings under this policy. As per s125 (2) (f) of the Act a copy of any notice issued under s124 of the Act will be sent to the New Zealand Historic Places Trust where a heritage building has been identified as a dangerous building.~~

12.

## INSANITARY BUILDINGS

### Introduction and Background

~~Section 131 of the Building Act 2004 (“the Act”) requires territorial local authorities (“TA’s”) to adopt a policy on insanitary buildings. The definition of an insanitary building is set out in s123 of the Act:~~

~~“~~

~~This document sets out the policy adopted by Taupo District Council (“Council”) in accordance with the requirements of the Act.~~

~~The policy is required to state:~~

- ~~• The approach that the Taupo District Council will take in performing its functions under the Act;~~
- ~~• The Council's priorities in performing those functions;~~
- ~~• How the policy will apply to heritage buildings.~~

~~In developing and adopting its insanitary buildings policy, the Council has followed the Consultative procedure set out in section 83 of the Local Government Act 2002.~~

## Policy

### Policy principles

~~That the community can expect to not have to occupy buildings that are insanitary.~~

### Overall approach

13. The un-consented conversion of garages, basements and sleep outs into minor household units and inappropriate building methods and materials may result in ~~insanitary~~ insanitary conditions where there is a reasonable likelihood of a person becoming ill as a result of the condition of the building.

14. The Council is actively involved in educating the public on the need to discuss their development plans with Council and to obtain building consent where Council deems that is necessary prior to any works commencing. This is particularly important ~~in order to~~ avoid creating insanitary conditions that could be injurious to the health of occupants, particularly children and the elderly. ~~For instance, this is exemplified by conversions of buildings into minor household units or other such smaller dwellings where safety risks are likely to arise from a change in use.~~

— Council has a policy of initiating enforcement action under ~~the relevant statutes, in this case the Act~~ when dealing with insanitary buildings. This is as a strong message to the public that Council places paramount importance on safety of residents ~~in the community~~. This stance also creates a strong message of deterrence for those property owners who do not seek Council's advice prior to undertaking building works.

15.

### Identifying insanitary buildings

16. The Council will:

- Respond to and investigate all building complaints received from building users, members of the public or ~~a~~ government agencies with a right to inspect a building.
- Identify from these investigations any buildings that may be considered to be insanitary and, ~~where were where considered~~ necessary, inspect the building;
- Inform the owner(s) of the building to take action to prevent the building from remaining insanitary;
- Liaise with the Medical Officer of Health as defined in the Health Act 1956 when required to assess whether the occupants may be neglected or infirm.

### Assessment criteria

— The Council will assess insanitary buildings in accordance with Section -s123 of the Act and established caselaw as well as the building code.

17. The Council will:

- Investigate as to whether the building is occupied;
- The use to which the building is put;
- Whether the insanitary conditions pose a reasonable probability of danger to the health of any occupants;

18. Considerations as to insanitary assessment where a building is occupied may include:

- Adequate sanitary facilities for the use;
- Disposal of ~~foulwater~~ foul water and wastewater;
- Adequate drinking water;
- Separation of use for kitchen and other sanitary facilities;
- Likelihood of moisture penetration;

- Construction materials;
- Defects in roof and walls;
- Records of any notifiable or infectious diseases occurring.
- Room sizes, overcrowding and laundering facilities.

Council will assess the failed building elements in accordance with the performance requirements of the building code clauses.

In accordance with the Building Code the following will be assessed:

- ~~E2 External Moisture~~
- ~~G1 Personal Hygiene~~
- ~~G12 Water Supplies; or~~
- ~~AS/NZS:3500~~
- ~~G13 Foulwater; or~~
- ~~AS/NZS:3500~~

## Taking Action

19. The Council will:

- Advise and liaise with the owner(s) of the buildings identified as being insanitary;
- Where the building is found to be insanitary:
  - Attach written notice to the building requiring work to be carried out on the building, with a time stated on the notice that is not less than 10 working days, to prevent the building from remaining ~~insanitary;insanitary.~~
  - ~~Give copies of the notice to the building owner(s), occupier, and every person who has an interest in the land, or is claiming an interest in the land, as well as the New Zealand Historic Places Trust, if the building is a heritage building.~~
  - 
  - Where the insanitary conditions are the result of non-consented work the owner(s), ~~will be~~ formally request ~~the owner(s)ed~~ to provide an explanation as to how the work occurred and who carried it ~~out, andout and inform the owner they~~ may need to apply for a Certificate of Acceptance in accordance with ~~Section s97 of the Act, 2004.~~
- Contact the owner(s) at the end of the expiry of the ~~time periodperiod set downstated~~ in the notice in order to gain access to the building to ascertain whether the notice has been complied with.
- Require property owners to apply for a certificate of acceptance if urgent building work is required to make the building safe and a building consent was not able to be practicably obtained in advance because the building work had to be carried out urgently for the purpose of saving or protecting life or health or preventing serious damage to property. (see clauses 23-25 below).
- ~~If urgent building work is required to make the building safe and a building consent cannot be practicably be obtained in advance because the building work has to be carried out urgently.~~

- ~~For the purpose of saving or protecting life or health or preventing serious damage to property then the owner must apply for a certificate of acceptance if building work has been carried out urgently.~~
- Determine if enforcement action should be pursued under the Act if the requirements of the notice are not met within a reasonable period of time~~period~~.
- If it is considered that immediate action is required to fix insanitary conditions the Council will:
  - ~~Cause any action to be take~~ action necessary~~n~~ to fix those insanitary conditions; or ~~by making~~make an application to the District Court for an order authorising the territorial authority to carry out building work if any building work required under a notice issued by the territorial authority under Section s124(2)(c) of the Act ~~including includes to reducing~~ or ~~remov~~ing the danger. Before the territorial authority applies to the District Court the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so in accordance with Section 126(2). ~~NOTE: Before the territorial authority applies to the District Court the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so.~~
  - Take action to recover costs from the owner(s) if the Council must undertake works to remove the insanitary ~~conditions; conditions~~.
  - ~~The owner(s) will also be informed~~ Inform the owners that the amount recoverable by the Council will become a charge on the land on which the building is situated.
- ~~All~~ owners have a right of appeal as defined in the Act, which can include applying to the Ministry of Business, Innovation and Employment for a determination under Ss 177(e) of the Act. ~~ection s177 (4)(a) of the Act.~~

20.

## **~~Interaction between insanitary building policy and related sections of the Building Act 2004~~**

### **~~Section 41: Building consent not required in certain cases.~~**

- ~~In cases where a building is assessed as being immediately insanitary the Council may not require building consent to be obtained for any building work required to fix the insanitary conditions immediately. However, prior to any action being undertaken it is imperative that building owners discuss any works with the Council.~~

### **~~Recording of insanitary buildings~~**

- ~~Any buildings identified as being insanitary will have its details recorded on the property file for the property on which the building is situated until the insanitary condition has been confirmed as being removed. In addition, the following information will be placed in the property file:~~
  - ~~Notice that the building is insanitary;~~
  - ~~Copy of letter to owner, occupier, and any other person that the building is insanitary;~~
  - ~~Copy of the notice given under s124(1) of the Act that identifies the work to be carried out on the building and the timeframe given to fix those insanitary conditions; Any report as to the completed works and how the situation was rectified.~~

### **Economic impact of the policy**

Due to the low number (< 5) of insanitary buildings encountered annually by the Council, and the similarity between the obligations of TAs as to insanitary buildings under the Building Act 2004 and the Building Act 1991, the economic impact of this policy is considered to be negligible.

### **Access to information**

- Information concerning insanitary buildings will be contained on the relevant property file.
- In granting access to information concerning insanitary buildings Taupo District Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.

### **Priorities**

21. The Council will allocate priority to buildings where it has been determined that immediate action is necessary to fix insanitary conditions. Immediate action ~~will be required in those situations to fix those insanitary conditions such as may include~~ prohibiting occupation of the property, putting up a hoarding or fence and taking prosecution action where necessary.
- Buildings that are ~~determined deemed~~ to be insanitary, but not requiring immediate action ~~to fix those insanitary conditions~~, will be subject to the minimum timeframes to prevent the building from remaining insanitary (not less than 10 days) as set out in Section s124(24)(c) of the Act.

22.

### **HERITAGE BUILDINGS**~~Heritage Buildings~~

- 4.— No special dispensation will be afforded to heritage buildings under this policy. As per Section s125(2) (f) of the Act a copy of any notice issued under Section s124 of the Act will be sent to Heritage New Zealand the New Zealand Historic Places Trust where a heritage building has been identified as a dangerous or insanitary building.

23.

### **SECTION 40: WHERE WORKS ARE NOT URGENT OR IMMEDIATELY NEEDED THEN A BUILDING CONSENT IS REQUIRED**

24. In accordance with Section 125(1)(e) Council will provide a notice to the individuals identified by section 125(2) which states that a building consent is required for non-urgent works to a dangerous or insanitary building.

### **SECTION 41: BUILDING CONSENT NOT REQUIRED IN CERTAIN CASES.**

25. Where a building is assessed as being immediately insanitary or dangerous the Council may not require building consent to be obtained for any building work required to fix the conditions immediately in accordance with Section 41(1)(c) and (cb).
26. Prior to any action being undertaken building owners must discuss any works with the Council.
27. In cases where no consent has been required for urgent works building owners will still be required to get a certificate of acceptance for the completed works in accordance with Sections 42 and 96.

## **ECONOMIC IMPACT**

28. The works required to be undertaken to resolve any buildings dangerous or insanitary status will have an economic impact on those responsible for the building. Additionally, a building that is unable to be occupied will also have an impact on the local economy particularly if it is of a commercial or industrial nature.

## **RECORD KEEPING**

29. Any buildings identified as being dangerous will have a requisition placed on the property file for the property on which the building is situated until the danger is remedied

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

- Notice issued that building is dangerous
- Copy of letter to owner, occupier and any other person that the that the building is dangerous.

31. Copy of the notice given under section 124(2)(C) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger

32. Any buildings identified as being insanitary will have its details recorded on the property file for the property on which the building is situated until the insanitary condition has been confirmed as being removed.

33. In addition, the following information will be placed in the property file:

- Notice that the building is insanitary.
- Copy of letter to owner, occupier, and any other person that the building is insanitary;
- Copy of the notice given under s124(1) of the Act that identifies the work to be carried out on the building and the timeframe given to fix those insanitary conditions; Any report as to the completed works and how the situation was rectified.

## **Access to information**

— Information concerning dangerous or insanitary buildings will be contained on the relevant property or LIM file. In granting access to information concerning insanitary buildings Taupo District Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.

34.