



POLICY ON DANGEROUS AND INSANITARY BUILDINGS		ACTIVITY GROUP:	Regulatory Services
Policy Type:	Council		
Approved by:	Council		
Department:	Building Control		
Date Approved/ Date Policy Comes into Force:	4 August 2022 1 October 2022	Next Review Date:	1 October 2027
Relevant Legislation:	Building Act 2004 Local Government Act 2002 Resource Management Act 1991 Civil Defence Emergency Management Act 2002 Heritage New Zealand Pouhere Taonga Act 2014 Protection of Personal and Property Rights Act 1988 Health Act 1956 Mental Health Act 1992 Christchurch Regeneration Act		
Clutha District Council Documents referenced:	Regulatory Bylaw		

PURPOSE

This policy has been prepared to comply with section 131 of the Building Act 2004 (the Act), which requires the Council to have a policy on Dangerous and Insanitary Buildings. The purpose of this policy is:

- To ensure that people who use buildings can do so safely without endangering their health.
- To strike a balance between the risks posed by dangerous, affected and insanitary buildings and broader social and economic issues.
- To clearly state Council's approach to identifying dangerous, affected or insanitary buildings, what powers it can exercise when such buildings are found, and how it will work with building owners to prevent buildings from remaining dangerous or insanitary, particularly where a dangerous building is affecting or potentially affecting another building.
- To explain Council's approach where the building concerned is a heritage building or landmark.
- To ensure building owners understand that the Council may exercise its powers to take steps on the owner's behalf and may recover any resulting costs from the owner.

SCOPE

The Policy applies to all buildings within the Clutha District.

DEFINITIONS

Affected Building s121A Building Act 2004	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.
Authorised Officer S222(4) Building Act 2004	means 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	has the same meaning as defined under section 8 of the Building Act 2004.
Council	means the Clutha District Council.
Dangerous Building s121(1) Building Act 2004	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.
Heritage Building	has the same meaning as defined under section 7 of the Building Act 2004
Insanitary Building s123 Building Act 2004	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.
Inspection	has the same meaning as defined under section 222(4) of the Building Act 2004
Owner	has the same meaning as defined under section 7 of the Building Act 2004.

POLICY

1. Council's Role

- 1.1. A building may become dangerous, affected or insanitary due to a number of reasons, such as unauthorized alterations being made, fire, natural disaster or other external factors, or as a result of its use by an occupant.
- 1.2. When the Council becomes aware that a building may be dangerous, affected or insanitary, it will investigate and determine whether the building is dangerous, affected or insanitary.
- 1.3. If a building is found to be dangerous, affected or insanitary, the Council will work with the building owner(s), and if necessary, use powers it has available, to ensure appropriate action is taken to make the building, its occupants and the public safe.
- 1.4. The Council will work with Heritage New Zealand Pouhere Taonga, Fire and Emergency New Zealand, the New Zealand Police and other relevant agencies to achieve the purpose of the Act.

2. Approach to identifying dangerous, affected or insanitary buildings

- 2.1. The Council will not actively inspect all buildings within the district but may from time to time undertake proactive information collection on possible dangerous, affected or insanitary buildings.
- 2.2. On receiving information or a complaint regarding a possible dangerous, affected or insanitary building, the Council will quickly and efficiently respond to information received to ascertain the extent of any issues.
- 2.3. The procedures undertaken by the Council to resolve any issues found are detailed in the notes following the Policy.

3. Application of the policy to heritage buildings

- 3.1. This policy applies to heritage buildings in the same way it applies to all other buildings. Where the Council is assessing a building that is a heritage building the Council will seek advice from Heritage New Zealand Pouhere Taonga where practicable.
- 3.2. When considering heritage buildings under this policy, account will be taken of:
 - (a) The importance of recognising any special traditional or cultural aspects of the intended use of the building.
 - (b) The need to facilitate the preservation and ongoing use of buildings and areas of significant cultural, historical, or heritage value.
 - (c) The circumstances of each owner and each building, including whether the building has undergone any recent building work
- 3.3. When considering what action to take with a heritage building that is deemed dangerous or insanitary, the Council will take into account the heritage values of the building in determining possible courses of action and seek to avoid demolition wherever possible. Suitably qualified professionals with heritage expertise will be engaged where necessary to advise and recommend on possible actions.

4. Costs

- 4.1. The Council may issue a notice under section 124(2)(c) of the Act requiring work to be carried out on a dangerous or insanitary building to reduce or remove the danger, or to prevent the

building from remaining insanitary. If work required under such a notice issued is not completed or proceeding with reasonable speed, the Council may use its powers under section 126 of the Act and apply to the District Court to gain authorisation to carry out the building work required in the notice.

- 4.2. If the Council carries out building work, under section 126 of the Act or under a warrant issued under section 129, it is entitled to recover costs associated with that work from the building owner.

5. Immediate Danger

- 5.1. If a building presents an immediate danger or health hazard to people within and/or around it, or to surrounding buildings, the Chief Executive Officer of the Council may decide it is necessary to use the powers under section 129 of the Act to remove the danger or fix insanitary conditions. This may include demolition of the building.
- 5.2. Immediate danger may apply to a building that is likely to be used in a dangerous manner. A particular example is an assessment of immediate danger from fire and, in the event of a fire, injury or death to persons in or around the building is likely.
- 5.3. If notification is received from Fire and Emergency New Zealand that a building is dangerous, (whether by request of the Council under section 121(2), or at the initiation of Fire and Emergency New Zealand) the Council will liaise with Fire and Emergency New Zealand to discuss any proposed action.
- 5.4. If the building is a heritage building, the Council will take into account its heritage values in determining a course of action. Where practicable this will follow the provisions in section 3 of this policy.

6. Version Control

Version History			
Date:	Action:	Name:	Version:
9 August 2007	Policy on Dangerous and Insanitary Buildings issued	Planning and Environmental Manager	1
2021	Policy revoked (in error)		
12 May 2022	Draft Policy on Dangerous and Insanitary Buildings created	Melissa Needham	2a
4 August 2022	Policy on Dangerous and Insanitary Buildings 2022 approved	Council	2
1 October 2022	Policy comes into force		

NOTES NOT FORMING PART OF THE POLICY

1. Procedures

1.1. When the Council receives information regarding a potentially dangerous, affected or insanitary building, it will:

- (a) Check the details on the property held in Council record;
- (b) Have an authorised officer undertake an inspection of the building. In doing this, the Council may seek advice from Fire and Emergency New Zealand, New Zealand Police or any other professional organisation deemed appropriate by Council; and

(c) Prepare an inspection record.

1.2. All inspections of potentially dangerous, affected or insanitary buildings will involve assessment of the condition of the building in terms of the definitions in sections 121, 121A and 123 of the Act. Inspection records will be prepared in all cases.

1.3. Authorised officers are entitled at all times during normal working hours to inspect any building to identify any dangerous or insanitary buildings, and may enter any premises for that 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.

1.4. Once the Council is satisfied that a building is dangerous, affected or insanitary it will:

(a) Consult with the building owner(s) to further determine the circumstances and decide on an appropriate course of action, which may include not taking any action, particularly where the owner is aware of and dealing with the issues.

(b) Inform the complainant(s) of the inspection results and the Council's

intended course of action to deal with the situation.

(c) Assess whether there are any potentially affected buildings and consult with the owner(s) of any affected building regarding appropriate risk management approaches before taking enforcement action under section 124 of the Act.

(d) If notification is received from Fire and Emergency New Zealand that a building is dangerous, (whether by request of the Council under section 121(2), or at the initiation of Fire and Emergency New Zealand) the Council will also liaise with Fire and Emergency New Zealand to discuss any proposed action.

(e) If the building is a heritage building, the Council will take into account its heritage values in determining a course of action. Where practicable this will follow the provisions in section 3 of the Policy on Dangerous and Insanitary Buildings.

1.5. If the Council is satisfied that a building is a dangerous, affected, or insanitary building it may use its powers under sections 124, or 126 of the Act. This may include:

(a) Erecting a hoarding or fence to prevent people from approaching the building nearer than is safe.

(b) Placing a notice that warns people not to approach the building.

(c) Except in the case of an affected building, issuing 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) Issuing 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.

Where a state of emergency has been declared (or following a state of emergency, when a transition period has been declared) the Council may choose to exercise powers under the Civil Defence Emergency Management Act 2002 instead of or in addition to powers under the Building Act 2004.

2. Related Legislation

- 2.1. In considering how to address non-compliance it is likely the Council must be mindful of any matters that require consideration under other legislation or compliance mechanisms. In particular, in addition to the Building Act 2004 the Council needs to consider the following:

- Local Government Act 2002
- Resource Management Act 1991
- Civil Defence Emergency Management Act 2002
- Heritage New Zealand Pouhere Taonga Act 2014
- Protection of Personal and Property Rights Act 1988
- Health Act 1956
- Mental Health Act 1992
- Christchurch Regeneration Act

Note: Provisions also exist in the Health Act 1956 to deal with nuisance conditions related to certain matters associated with housing (under section 29(f), overcrowding likely to be injurious to health, and under section 42, insanitary

conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation). The Council may decide to use powers under the Health Act instead of or in addition to the Building Act.

3. Disputes

- 3.1. If a building owner disputes a Council decision, or proposed action, relating to the exercise of the Council's powers under sections 124 or 129 of the Act, the owner may apply for a determination from the Chief Executive of the Ministry of Building, Innovation and Employment, as set out in the Act. Such a determination is binding on the Council.

4. Information Disclosure

- 4.1. The Local Government Official Information and Meetings Act 1987 (section 44A) requires the Council to include information concerning any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority on the Land Information Memorandum (LIM) for a property.
- 4.2. In particular, the Council will include information relating to notices that have been issued by Council regarding dangerous and insanitary conditions, or affected building status that are not resolved.
- 4.3. The Council is required (under section 216 of the Act) to hold a summary of any written complaint concerning alleged breaches of the Act, and the Council's response. This information will be provided upon request, subject to the requirements of section 217 of the Act.