



Statement of Proposal

Gisborne District Council Dangerous, Affected, and Insanitary Buildings Policy 2024

As required under the Building Act 2004 (the Act), the Gisborne District Council (Council) has reviewed its Dangerous, Affected, and Insanitary Buildings Policy 2006 (the current Policy). Council proposes to amend the current Policy, which describes how Council implements the Building Act legislation when identifying, assessing, and remedying buildings that pose risk to the community.

This document is the Statement of Proposal for the purposes of Section 83(1)(a) of the Local Government Act 2002. This document contains:

- a summary of relevant information
- a description of the proposed changes
- information on how to have your say
- the relevant legislative requirements
- a draft of the proposed policy.

Summary

The purpose of the draft Dangerous, Affected, and Insanitary Buildings Policy 2024 (the draft Policy) is to reduce the risk of injury, death, ill health, or damage within Tairāwhiti communities by identifying and managing dangerous, affected and insanitary buildings in the region.

The draft Policy covers all buildings in the region. It is separate from Council's Earthquake Prone Buildings Policy, the Civil Defence Emergency Management Act 2002 (CDEM Act) red and yellow stickers and building permits.

As Council does not routinely conduct building checks under the draft Policy, it is only relevant where danger has been identified by Fire and Emergency New Zealand (FENZ), complaints, or through daily Council operations. Notices issued under this Policy are infrequent, 8 notices have been issued in the last five years.

Proposed updates to the Policy align with Council priorities of celebrating our heritage, creating a vibrant city and townships, and connected and safe communities.

Proposals

The following tables describe what Council is proposing, the reasoning for the proposal, the options considered, and Council's preferred option.

Proposal 1: Policy Purpose

Proposal (1)	Policy Purpose (section 1).
Reasoning	A new Purpose section has been introduced making it clear that the draft Policy is focused on reducing the risk of injury or damage to people or property within the community.



<i>Options Considered</i>	<p>Option One - Status quo: do not include a Policy purpose. The current Policy begins with legislative requirements (Introduction and Background), followed by a statement on Policy Principles. However, it does not clearly articulate the policy purpose.</p> <p>Option Two - Include Policy Purpose as drafted. This inclusion clearly articulates the community-minded purpose guiding the draft Policy.</p>
<i>Preferred Option</i>	Option Two – Include Policy Purpose as drafted.

Proposal 2: Add an Interpretation Section

Proposal (2)	Add an Interpretation Section and include the Act's updated description of Heritage Building and the Act's addition of Affected Building (section 2).
<i>Reasoning</i>	<p>The current Policy includes quoted definitions from the Act. When the Act is periodically updated, those quoted definitions become outdated. Adding an Interpretation section that defers to the Act for relevant definitions mitigates this problem.</p> <p>The Act's definition of Heritage Building was recently updated to include buildings identified under the Natural and Built Environment Act 2023. Also, section 121A of the Act was added in 2013 to include the class of "Affected Buildings", which are those that are structurally sound but affected by a risk from an adjacent building.</p> <p>As these Act changes are significant, the new Interpretations section reflects them.</p>
<i>Options Considered</i>	<p>Option One - Status quo: retain current policy wording without inclusion of an Interpretation section or an updated description of Heritage and Affected Buildings. This option is not appropriate as the current Policy does not reflect current definitions within the Act. Not introducing an Interpretation section may lead to further instances of out-of-date policy wording.</p> <p>Option Two – Update the Policy to add an Interpretation Section and include the Act's updated description of Heritage Building and the Act's addition of Affected Building. This will bring the draft Policy up-to-date with the Act and mitigate out-of-date policy wordings should the Act change going forward.</p>
<i>Preferred Option</i>	Option Two – Update the Policy to add an Interpretation Section and include the Act's updated description of Heritage Building and the Act's addition of Affected Building.



Proposal 3: Improve readability of the draft Policy

<p>Proposal (3)</p>	<p>Improve Readability: Scope of Application and Review (sections 3-4) have been added to the draft Policy. Identification, Assessment and Taking Action (sections 6 – 8) have been updated for ease of readability and include relevant information from deleted sections.</p>
<p><i>Reasoning</i></p>	<p>The Policy document has been streamlined to make it easier for everyday readers to understand how we put the Policy into action. Content has been shifted and merged¹ to improve readability and clarity of information. These changes enhance understanding of the Policy procedure and the steps Council may take to compel the remediation of buildings that have become unsafe.</p> <ul style="list-style-type: none"> • Scope of Application section has been added making it clear that the Policy applies to all buildings in the Gisborne region. • Review section has been added describing how often the Policy will be reviewed and how the Policy continues to apply when due for review. <p>Relevant information from current Policy sections 1.8 Economic Impact, 1.9 Access to Information, and 4.0 Adoption and Review sections has been merged with appropriate sections of the draft Policy.</p> <ul style="list-style-type: none"> • Content has been merged into clearly articulated Identification, Assessment and Taking Action sections. These sections include up-to-date information and greater procedural detail. • Definitions that quote the Act have been removed, improving readability. These definitions are now covered by Proposal 2 - Interpretation section. <p>Institutional naming conventions have been updated:</p> <ul style="list-style-type: none"> • Department of Building and Housing is updated to the Ministry of Business Innovation and Employment (MBIE). • Tairāwhiti District Health is updated to Te Whatu Ora Tairāwhiti (Medical Officer of Health). • New Zealand Fire Service is updated to Fire and Emergency New Zealand (FENZ).
<p><i>Options Considered</i></p>	<p>Option One - Status quo: retain current policy wording. The current Policy wording is no longer appropriate as it contains out-of-date information, and its structure presents several challenges to ease of readability that are not aligned to Council writing guidelines.</p> <p>Option Two – Update the Policy as drafted to improve readability and ensure up-to-date references are included. Proposed updates reorder procedural information in a way that is easier to digest and simpler to understand and update naming conventions to reflect current institutions (MBIE, Te Whatu Ora, FENZ).</p>

¹ Sections 1.2; “Insanitary Buildings”, 1.8, 1.9, 2.0, 4.0 of the current Policy



<i>Preferred Option</i>	Option Two – Update the Policy as drafted to improve readability and ensure up-to-date references included.
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Proposal 4: Add an Enforcement Section

Proposal (4)	Add Enforcement to provide the public with clarity around compliance measures available to Council (section 10).
<i>Reasoning</i>	A new Enforcement section combines previous references to enforcement with updated procedural language into a single section that clearly outlines compliance measures Council may undertake to ensure compliance.
<i>Options Considered</i>	<p>Option One - Status quo: retain current policy wording. The current Policy does not have a singular section that clearly outlines for the public the measures that Council make take to ensure compliance.</p> <p>Option Two - Update the Policy as drafted to include references to enforcement in a sing section. Having a single section for all potential compliance and enforcement actions that may be taken by Council ensures that building owners have clear information regarding the implications of non-compliance.</p>
<i>Preferred Option</i>	Option Two - Update the Policy as drafted to include references to enforcement in a singular section.

Proposal 5: Explain how the draft Policy functions in relation to an Emergency Designation

Proposal (5)	Explain how the draft Policy functions in relation to an Emergency Designation (sections 11.2 and 11.3).
<i>Reasoning</i>	<p>Section 123B was inserted into the Act in 2019. It stipulates that if a building is situated in an emergency-designated area, then any Dangerous, Affected, or Insanitary notices issued while the designation is in effect do not apply. However, any actions or notices issued before the emergency designation remain valid.</p> <p>Section 133BM was inserted into the Act in 2019. It stipulates that notices issued under a designated emergency can be extended when the Responsible Person (as defined by the Act) decides the notice should continue in force after an emergency or transition period ends. This allows Council to extend a CDEM Act notice instead of issuing a new notice under the draft Policy. This Act inclusion reduces the compliance burden on Building Services at times when their resources may become stretched, for example during significant weather events.</p> <p>The inclusion of these Act updates in the draft Policy provides procedural clarity for the public.</p>



<i>Options Considered</i>	<p>Option One - Status quo: retain current policy wording. This option is not appropriate as the current policy does not reflect updates to the Act.</p> <p>Option Two - Update the Policy to explain how it functions in relation to an emergency designation. These inclusions improve public understanding of how the draft Policy functions in relation to an Emergency Designation. Given recent public frustration around procedural responses to significant events, any opportunity to clarify procedural information is advantageous.</p>
<i>Preferred Option</i>	<p>Option Two - Update the Policy to explain how the policy functions in relation to an emergency designation.</p>

Proposal 6: Expanded Heritage Section

Proposal (6)	Expanded Heritage section offering additional guidance on how to best protect essential heritage character (Section 13).
<i>Reasoning</i>	Expanded Heritage section considers how to preserve the essential heritage character of identified buildings throughout the planning and implementation of any necessary remediation works. Updated language provides procedural clarity for both building owners and Council staff during remediation works.
<i>Options Considered</i>	<p>Option One - Status quo: retain current policy wording. The current Policy wording offers very little guidance on protecting the essential character of heritage buildings in our region.</p> <p>Option Two - Update the Policy to include expanded guidance for best approaching the remediation of heritage buildings. This guidance aligns with Council's priority of celebrating our heritage and helps ensure it is protected for future generations.</p>
<i>Preferred Option</i>	<p>Option Two – Update the Policy to include expanded guidance for best approaching the remediation of heritage buildings.</p>

Council will replace the current Dangerous, Affected, and Insanitary Buildings Policy 2006 **with the new Dangerous, Affected, and Insanitary Buildings Policy 2024, which will commence in February 2024.**



Have your say

Before making any final decisions, we'd like to have your input. A summary of the proposed changes and information about how to make a submission will be made available from October 30 – December 5 on the GDC website:

<https://www.gdc.govt.nz/council/have-your-say>

If you would like to speak to your submission, please indicate this and provide your contact details when submitting. If required, we will be in touch to let you know the date and time for verbal submissions.

Timeline

The consultation period begins: Monday 30 October 2023

Closing date for submissions: 5pm Tuesday 5 December 2023

Public Hearing to hear oral submissions (if required): January 2024

Decision of Council: February 2024

Note: If hearings are not required, the final adoption may be brought forward to January.

Legislative Framework

Under The Building Act 2004 a territorial authority must adopt a policy on dangerous, affected and insanitary buildings, stating:

- Their approach in performing its functions under this Part of the Act
- Their priorities in performing those functions
- How the policy will apply to heritage buildings.

The Act stipulates that, once adopted, the Policy must be reviewed every five years and follow the special consultative procedure set out by the LGA 2002.

Section 83 of the LGA 2002 outlines that when using the special consultative procedure, a local authority must-

- a) Prepare and adopt-
 - I. A statement of proposal; and
 - II. If the local authority considers on reasonable grounds that it is necessary to enable public understanding of the proposal, a summary of the information contained in the statement of proposal; and
- b) Ensure that the following is publicly available:
 - I. The statement of proposal; and
 - II. A description of how the local authority will provide persons interested in the proposal with an opportunity to present their views to the local authority in accordance with section 82(1)(d); and
 - III. A statement of the period within which views on the proposal may be provided to the local authority (the period being not less than 1 month from the date the statement is issued); and
- c) Make the summary of information contained in the statement of proposal prepared in accordance with paragraph (a)(ii) (or the statement of proposal, if a summary is not prepared) as widely available as is reasonably practicable as a basis for consultation; and



- d) Provide an opportunity for persons to present their views to the local authority in a manner that enables spoken (or New Zealand sign language) interaction between the person and the local authority, or any representatives to whom an appropriate delegation has been made in accordance with Schedule 7; and
- e) Ensure that any person who wishes to present his or her views to the local authority or its representatives as described in paragraph (d) –
 - I. Is given a reasonable opportunity to do so; and
 - II. Is informed about how and when he or she may take up that opportunity.
- f) For the purpose of, but without limiting, subsection (1)(d), a local authority may allow any person to present his or her views to the local authority by way of audio link or audiovisual link.
- g) This section does not prevent a local authority from requesting or considering, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any views on the proposal, or both.

Attachment

Draft Dangerous, Affected, and Insanitary Buildings Policy 2024



Kaupapa Whakamātau Whare Whakamōrearea, Pātahi,
Whakapoke o Tūranga 2024

Gisborne Dangerous, Affected, and Insanitary Buildings
Policy 2024





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1. Purpose

The purpose of this Policy is to reduce the risk of injury, death, ill health or damage within Tairāwhiti communities by identifying and managing dangerous, affected and insanitary buildings in the region.

2. Interpretation

The Act means the Building Act 2004.

Building has the same meaning as the Act. Requirements for Earthquake-prone Buildings are covered separately by sections of the Act.

Dangerous Building has the same meaning as the Act.

Affected Building has the same meaning as the Act.

Insanitary Building has the same meaning as the Act.

Heritage Building has the same meaning as the Act and includes buildings identified under the Natural and Built Environment Act 2023 and the Heritage New Zealand Pouhere Taonga Act 2014.

3. Scope of application

This document sets out the policy for such buildings as adopted by the Gisborne District Council (Council) and applies to all buildings within the region.

4. Review

Council will undertake a review of this policy at least once every five years. It does not cease to have effect because it is due for or under review.

5. Policy Principles

Council is committed to ensuring that our region is a safe place to live and work as well as fairly and reasonably fulfilling its statutory obligations under the Act. Council recognises varying social, economic and cultural factors impact implementation of the dangerous, affected, and insanitary building provisions in the Act and will at all times take a sensitive approach to compliance.

6. Identifying Dangerous, Affected, or Insanitary Buildings

- 6.1 When responding to complaints, advice received from Fire and Emergency New Zealand (FENZ), or when dangerous, affected, or insanitary buildings come to its attention Council will:
- investigate and resolve all complaints and identified issues related to buildings
 - identify any buildings considered dangerous, affected, or insanitary and the risk there is to human life, health, or other property
 - require the owner(s) and or occupier(s) of the building to take action to prevent the building from remaining dangerous, affected, or insanitary.



7. Assessment Criteria

7.1 The Council will assess dangerous, affected and insanitary buildings in accordance with sections 121, 121A, 123 or 123A of the Act. Affected building assessment will be subject to the same criteria as dangerous or insanitary buildings. Assessment will consider the following:

- a. Occupation and use to which the building is put.
- b. Likelihood of the building causing harm.
- c. Whether the building conditions present a danger to the health of occupants or adjacent occupants.
- d. Potential for damage to other property.
- e. Whether a fire hazard exists.
- f. Whether the building is affected by another dangerous building.
- g. The extent of separation of the kitchen from other sanitary facilities.
- h. The adequacy of potable water.
- i. Defects in cladding.
- j. Construction materials and their current condition.
- k. If the building is offensive or likely to be injurious to health because of how it is situated or constructed.
- l. Whether or not the building is in a state of disrepair.
- m. The degree to which a building is offensive to adjacent and nearby property occupiers.
- n. Relevant Building Codes as appropriate which may include any of the following:
 - E1 Surface Water
 - E2 External Moisture
 - E3 Internal Moisture
 - G3 Food Preparation
 - G4 Ventilation
 - G1 Personal Hygiene
 - G2 Laundering
 - G12 Water Supplies
 - G13 Foul Water - Sanitary Plumbing.

7.2 The above list does not limit Council to only considering these factors in an assessment. There may be other factors that are assessed. Additionally, where it deems necessary, Council may seek external advice from (but not limited to):

- a. Fire and Emergency New Zealand in accordance with section 121(2) of the Act
- b. an Independently Qualified Person (IQP) with the relevant approvals under the Fire Safety Provisions of the New Zealand Building code
- c. a contracted CPEng Structural Engineer
- d. Te Whatu Ora Tairāwhiti (Medical Officer of Health) when appropriate to assess whether the occupants may be neglected or infirm, or likely to be harmed by the building in question.



8. Taking Action on Dangerous, Affected, and Insanitary Buildings

- 8.1 The costs to reduce or remove identified danger or insanitary conditions from any buildings will be the responsibility of the implicated property owners. If a building is assessed as being Dangerous, Affected, or Insanitary Council will:
- advise and liaise with the owner(s) of buildings
 - advise and inform the property occupier(s)
 - consult and negotiate with the property owner(s) in good faith before determining appropriate time periods for work that must be completed
 - determine time periods for interim work and permanent works according to the danger or risk to health and safety posed by the identified condition(s)
 - in accordance with section 124 and section 125 of the Act, attach written notice to the building and give written notice stating any required work to be carried out on the building within a stated timeframe of not less than 10 days
 - contact the owner in writing at least five working days prior to the expiry of the time period set down in the notice requiring an inspection appointment to assess compliance with the notice
 - consider an additional time period for an owner to comply with requirements of a notice, provided an application is received from the property owner(s) prior to the expiry date of the originating notice
 - in accordance with section 124 of the Act consider, based on the danger posed, whether to erect a hoarding, fence or warning sign.
- 8.2 Vacating the building may be necessary for agreement to a prolonged compliance period.
- Where the danger is the result of non-consented building work, a Notice to Fix will be issued.
- 8.3 In accordance with section 129 of the Act, if a building presents immediate danger or risk, Council may take any necessary action to remedy that situation. This may include prohibiting persons from using or occupying the building and repair or demolition of all or part of the building.
- 8.4 Time periods for both interim work and full compliance work to reduce or remove the danger, or prevent the building from remaining insanitary, may be negotiated at the sole discretion of Council.

9. Priorities for Performing Functions under Part 2 of the Act

- 9.1 The Council will allocate priority to buildings where it has been determined that immediate action is necessary to remediate immediate danger or insanitary conditions. In these situations, Immediate action will be required such as prohibiting occupation or use of a building, erecting a hoarding or fence, or demolition of part or all of a building likely of collapse.
- 9.2 Buildings that are determined to be dangerous, affected, or insanitary, but not requiring immediate action will be subject to timeframes, being not less than 10 days, to remove the danger or prevent the building from remaining insanitary.



10. Enforcement

- 10.1 Failure to comply with the requirements of a notice within the stated time period, or any additional time period determined appropriate by the Council, can lead to prosecution or an infringement notice being served.
- 10.2 The Council may initiate prosecution if buildings are used after notices or hoardings are in place. Where owners fail to comply with the notice, or where work is not completed, or not proceeding with reasonable speed, the Council will, after giving no less than 10 days written notice of its intention to do so, apply to the District Court to carry out the work to remove the danger or insanitary conditions.
- 10.3 In such cases where the Council must undertake work itself, including immediate action taken under Section 129 of the Act, the owners of the building are liable for costs, and the Council will recover the costs from the property owners.
- 10.4 The Council recognises that in some circumstances the economic impact of this policy may cause individual hardship. The Council will convey its duty under the Act through implementation of this policy in a fair and reasonable manner with the intent of improving health and safety of people who use or are affected by buildings.
- 10.5 Due process will be followed to recover costs incurred by the Council in meeting its statutory obligations from implicated property owners. Where owners are liable for costs, the Council will inform the owners that the amount recoverable by the Council will become a charge on the land on which the building is situated.
- 10.6 Building owners have the right of appeal by applying a determination with the Ministry of Business, Innovation and Employment in accordance with Section 177(3)(f) of the Act.

11. Interaction between this policy and other provisions of the Building Act 2004

- 11.1 Per Section 41: In cases where a building is assessed as being immediately dangerous or affected, the Council may not require building consent to be obtained for any building work required to remove the danger immediately. In every case, the owners must discuss with Council and obtain a decision as to whether this provision applies prior to commencing any work.
- 11.2 Per Section 123B: Where a building is located in an area that has been designated as affected by an emergency under subpart 6B of the Act, then Dangerous, Affected, or Insanitary notices shall not apply if issued while the designation is in force. However, any action taken or notices issued prior to any emergency designation shall continue to apply.
- 11.3 Per Section 133BM: notices issued under the designated emergency may continue to apply when the Responsible Person (as defined by Section 133BK) decides, before the state of emergency or transition period ends, that any notice should continue in force.



12. Recording of Dangerous, Affected, and Insanitary Buildings

- 12.1 Any buildings identified as being dangerous, affected, or insanitary will have a copy of the notice served and a schedule of work required placed on the corresponding property file held by the Council until the condition is remedied.
- 12.2 In addition, during the period that the building is deemed dangerous, affected, or insanitary, the following information will be placed on any Land Information Memorandum (LIM) or a Project Information Memorandum (PIM), where the status affects proposed building work.
- A statement that the building is dangerous, affected, or insanitary
 - A copy of the notice given under 124(1) identifying the work to be carried out on the building and the time period given to achieve compliance with the notice
 - A copy of the letter to owner, occupier and any other affected parties that the building is dangerous, affected, or insanitary, and if issued, a notice of the requirement to evacuate.
- 12.3 Information concerning dangerous, affected, and insanitary buildings will be contained on the relevant LIM or PIM. In granting access to information concerning dangerous, affected, and insanitary buildings, the Council will conform to the requirements of the Local Government Official Information Act 1987 and the Local Government Act 2002.

13. Heritage Buildings

- 13.1 The provisions of the Act apply to Heritage Buildings. Dangerous and insanitary assessment of Heritage Buildings will be completed in the same manner as other buildings under this policy. The Act recognises the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value. Council recognises that heritage buildings may require a variation to our usual approach if their unique heritage values are to be maintained and not compromised.
- 13.2 Where a heritage building is deemed dangerous or insanitary the Council will consult with the building owner(s) and consider seeking advice from Heritage New Zealand Pouhere Taonga or an Independently Qualified Person(s) with heritage expertise where necessary to advise and recommend on possible actions.
- 13.3 Buildings that meet the heritage definition may not be demolished without first consulting with Council. Any matters concerning demolition of a heritage building requires sufficient information be supplied to Council to enable peer review. Demolition of buildings constructed prior to 1900 is likely to trigger the archaeological provisions of the Heritage New Zealand Pouhere Taonga Act 2014² therefore early consultation with Heritage New Zealand Pouhere Taonga is advised.

² Sections 6(a)(i), section 42, and section 43(1)(a) of the Heritage New Zealand Pouhere Taonga Act 2014



- 13.4 Council may consider dispensation for issues of safety and sanitary conditions for heritage buildings in achieving the desired level of compliance. Examples of possible situations where a dispensation may be granted include:
- the building meets the definition of a dangerous building but the risk is minor
 - no accidents are known to have occurred in the past
 - full compliance would result in significantly negative impacts upon heritage value.
- 13.5 Any proposed alternative approaches would still need to demonstrate mitigation of the identified risks. In cases where compliance with any aspect of the Act would so damage the attributes of a place to the extent that its very role as a valued heritage building is compromised then case-by-case consideration of a dispensation or waiver may be negotiated. Any such waiver will be at the sole discretion of Council.
- 13.6 In accordance with section 125 (2) (f) of the Act, a copy of any notice issued under section 124 of the Act will be sent to Heritage New Zealand Pouhere Taonga when that notice identifies a heritage building as being dangerous, affected, or insanitary.

14. Links to Other Legislation

14.1 Health Act 1956

The Council may decide to use powers under the Health Act 1956 instead of or in addition to, the Building Act. Provisions exist in the Health Act to deal with nuisance conditions associated with housing, including overcrowding and insanitary conditions likely to cause injury to the health of persons, or a dwelling that is otherwise unfit for human habitation. When conditions exist that cause a building to be injurious to health or to be insanitary the Council can require of the property owner abatement of the condition, cleansing, repairs or subsequent closure of the building to occupation.

14.2 Resource Management Act 1991 (RMA)

The Council administers provisions of the RMA in the Gisborne District. One purpose of the Act is avoiding, remedying, or mitigating any adverse effects from activities on the environment. While provisions of the RMA are not directly related to dangerous or insanitary buildings, amenity issues arising from the offensive nature of a building can be considered under RMA provisions and related regulatory policies contained within Regional and District Plans.



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