

DRAFT Dangerous and Insanitary Buildings Policy

Team/Directorate	Building Services/Planning and Development
Approved/Adopted by	Council Resolution TBC
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Next review	Month and year Max 5 yrs TBC

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1 PURPOSE

This Dangerous and Insanitary Buildings Policy (“the policy”) has been prepared to comply with Section 131 of the Building Act 2004 (“the Act”), which requires the Council to adopt a policy on Dangerous and Insanitary Buildings.

This policy plays an important role in ensuring buildings in Queenstown Lakes District are structurally sound and perform their function without putting the health of building users, residents and visitors at risk. When implementing this policy Council takes a balanced risk-based approach to ensure the policy fulfils its objectives whilst balancing the needs of different users and their social and economic context.

The policy replaces the Council’s Dangerous and Insanitary Buildings Policy 2021. Earthquake-prone Buildings are excluded from this policy as per Section 121 (1) (a) of the Building Act.

Since 2013, the Act also requires the policy to state the Council’s approach regarding affected buildings, which are buildings adjacent to, adjoining or nearby to a dangerous building or dam.

2 STRATEGIC CONTEXT

The Policy has been prepared with the Council’s strategic objectives in mind and to support achievement of relevant objectives. The Policy supports the following:

- [Community outcomes as defined in QLDC’s Strategic Framework](#)
- [Enforcement Strategy and Prosecution Policy](#)
- [Heritage Strategy](#)

3 DEFINITIONS

Affected building (s.121A Building Act 2004) means a building that is at risk of damage or other impact from a dangerous building or dam that it is adjacent to, adjoining, or nearby.

Authorised officer (s.222 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 the Act; or
 - ii. by an order of the District Court made under Section 227.

Building (s.8&9 of the Building Act 2004) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels)

Council means the Queenstown Lakes District Council acting in its capacity as the territorial authority

Dangerous building (s.121 Building Act 2004) means a building that:

- 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.

Heritage building (s.7 Building Act 2004) means a heritage building that is included on —

- a. the District Plan [Heritage Features List](#) or [within Heritage Precincts](#)
- b. the New Zealand Heritage List/ Rārangī Kōrero maintained under Section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
- c. the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under Section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.

Insanitary building (s.123 Building Act 2004) means a building that:

- 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 (s.222 Building Act 2004 (4) (c)) means the taking of all reasonable steps —

- a. to enable a territorial authority to —
 - i. identify dangerous, earthquake-prone, or insanitary buildings within its district.
and
 - ii. carry out its functions or duties in relation to those buildings:

Owner (s.7 Building Act 2004) means, in relation to land and any buildings on the land —

- a. means the person who —
 - i. is entitled to the rack rent from the land; or
 - ii. would be so entitled if the land were let to a tenant at a rack rent; and
- b. includes —
 - iii. the owner of the fee simple of the land

4 SCOPE

The policy applies to all buildings within the Queenstown Lakes District.

The policy sets out:

- the approach that the Council will take in performing its functions under Part 2, Subpart 6 – *Special provisions for dangerous, affected and insanitary buildings* of the Act.
- the Council's priorities in performing those functions.
- the Council's approach to dangerous, affected and insanitary heritage buildings.

5 PRINCIPLES

The relevant principles of Section 4 of the Act have been considered in preparing the policy.

In considering these principles the policy seeks to ensure that people who use buildings can do so safely without endangering their health.

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In preparing the policy, the Council has endeavoured to strike a balance between the risks posed by dangerous, affected and insanitary buildings and broader social and economic issues involved.

The Council will take a pragmatic approach to administering the Act and the policy in a fair and reasonable way.

6 OBJECTIVES

- a) To discharge the Council's responsibilities under the Act that relate to dangerous, affected and insanitary buildings.
- b) To clearly state the 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.
- c) To explain its approach where the building concerned is a District Plan Scheduled or Heritage New Zealand Pouhere Taonga listed heritage building or landmark.
- d) 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.

7 POLICY

The following section outlines Council's approach to identifying, prioritising and assessing dangerous and insanitary buildings, as well as its responses triggered upon inspection or other circumstances (such as a natural hazard, immediate danger or disputes).

Identification

Approach to identifying dangerous, affected or insanitary buildings.

- 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.
- Information about potentially dangerous, affected or insanitary buildings can come from external agencies, the public or internally from council staff, for example an Environmental Health Officer whilst undertaking duties under the Health Act.
- 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.
- The procedures taken by the Council to resolve any issues found are detailed below.

Priority

When multiple buildings are identified, either as part of the same or separate investigations, order of priority for initial assessment will be allocated to buildings taking into account the following risk factors:

- Use of the building
- Number of tenants/occupants affected
- Proximity to areas used by the public
- Potentially affected buildings
- Type of dangerous or insanitary condition
- Potential consequence of inaction to address the risk

Following initial assessments risk and order of priority will be reassessed with buildings requiring immediate work to address dangerous, or insanitary conditions (and any affected buildings) prioritised for appropriate risk reduction actions allowed for in the act.

Heritage buildings

Application of the policy to heritage buildings

- The policy applies to heritage buildings in the same way it applies to all other buildings.
- Where the Council is assessing a building that is listed on the New Zealand Heritage List/ Rārangi Kōrero the Council will seek advice from Heritage New Zealand Pouhere Taonga.
- **Where the Council is assessing a heritage building Council will seek advice internally from the Parks & Reserves officer for Cemeteries and Heritage.**
- When considering heritage buildings under the policy, account will be taken of:
 - The importance of recognising any special traditional or cultural aspects of the intended use of the building.
 - The need to facilitate the preservation and ongoing use of buildings and areas of significant cultural, historical, or heritage value.
 - The circumstances of each owner and each building, including whether the building has undergone any recent building work.
- When considering what action to take with a listed or scheduled 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 on and recommend possible actions.
- Council will inform Heritage New Zealand Pouhere Taonga any action taken and provide copies of any notices issued.

Assessment

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

1. Check the details on the property held in Council records.
2. Contact the building owner(s) to further determine the circumstances.
3. 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 deemed appropriate by Council; and
4. Assess whether there are any affected buildings.

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.

As per Sections 222 and 226 of the Act, 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.

Note: When there are concerns about insanitary conditions which are not addressed under the building act definitions, such as squalor, hoarding, pest attracting conditions in the surrounding environment or other nuisance conditions defined under section 29 of the Health Act 1956, the case will be referred to QLDC's Environmental Health Officers who will assess the situation under the provisions contained in the Health Act 1956. The Council may then decide to use powers of entry and issue of notices under the Health Act 1956 instead of, or in addition to, the Building Act 2004.

Building established as dangerous, affected or insanitary

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

1. Consult with the building owner(s) and any experts engaged as part of the assessment
2. Consult with the owner(s) of any affected buildings
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.
4. If the building is a scheduled heritage building, the Council will consider its heritage values in determining a course of action. Where practicable this will follow the heritage buildings provisions above.
5. If vulnerable persons are inhabiting the building council will refer the persons to and consult with the relevant health or social services such as [Aged Care or Health New Zealand – Te Whatu Ora](#) to ensure the needs of the persons are prioritised
6. Decide on an appropriate course of action, which may include those outlined below or not taking any action, particularly where the owner is aware of and is actively dealing with the issues.
7. Inform the building owners of the course of action decided
8. Inform the complainant(s) of the assessment results and the Council's intended course of action to deal with the situation.

If the Council is satisfied that a building is a dangerous, affected, or insanitary building it may use its powers under Sections 124 (2) of the Act. This may include any or all 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.

When the Council issues 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 insanitary condition, the required work will be clearly described. When deciding on the extent of the work required the council will consider all relevant Sections of the building act such as Section 112 *Alterations to existing buildings* and state if the works need a building consent or if they can be exempted.

If the work required under such a notice is not completed in the allowed time or is not 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 for the council to carry out the building work required in the notice.

If the Council carries out building work, under Section 126 of the Act, it is entitled to recover costs associated with that work from the building owner.

Immediate danger

If a building presents an immediate danger or health hazard to people within and/or around it, or to surrounding buildings, the Chief Executive of the Council may decide to issue a warrant, under Sections 129 of the Act, allowing council specific actions to remove the danger or fix insanitary conditions. This may include demolition of the building.

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If the building is a scheduled heritage building, the Council will take into account its heritage values in determining a course of action. Where practicable this will follow the heritage buildings provisions above.

If the Council carries out actions, under Section 129 of the Act, it is entitled to recover costs associated with that work from the building owner.

As per Section 130 of the Act, the warrant issued by the Chief Executive must be confirmed by the District Court on completion of the actions unless the owner confirms they do not dispute entry to their land, confirms that confirmation from the court is not required and has paid the costs associated.

Monitoring and Enforcement

Council will actively undertake monitoring and enforcement functions under the Act, ~~the Council will utilise a Voluntary, Assisted, Directed and Enforced (VADE) strategy to target compliance with any notices issued.~~ in accordance with QLDC's Enforcement Strategy and Prosecution Policy (ESPP).

The ESPP focusses on increasing the level of voluntary compliance with the law through effective and appropriate education or enforcement activity. This approach recognises that the nature of monitoring and enforcement responses are escalated depending on a number of important principles such as interagency collaboration, fairness, and proportionate enforcement.

~~This approach recognises graduated categories of behaviour that determine the nature of monitoring responses which are escalated depending on the owner's conduct, the extent of potential harm and any public interest factors.~~

In operational terms, this approach recognises that most people and businesses are willing to voluntarily comply with their regulatory obligations or can be encouraged to do so before enforcement actions are taken such as issuing infringements or initiating prosecution proceedings under Sections 370 - 389 of the Act.

Emergency Management

If an area has been designated for emergency management of buildings under Section 133BC of the Act, then Section 123B of the Act will apply. Subpart 6 – *Special provisions for dangerous, affected and insanitary buildings*, which this policy covers, will not be in effect, except for buildings already classified as dangerous, affected or insanitary, until the designation ends.

During the period that the designation is in force powers of entry and risk reduction actions under Subpart 6B - *Special provisions for buildings affected by emergency* will be used.

Once the designation has ended buildings that remain yellow or red stickered in the designated area will be reassessed, prioritised and appropriate actions taken under Subpart 6.

Disputes

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 Business, Innovation and Employment, as set out in Section 178 of the Act. Such a determination is binding on the parties concerned.

8 RELEVANT LEGISLATION

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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 addition to the Building Act 2004 the Council may need to consider the following:

- Local Government Act 2002
- Local Government Official Information and meetings Act 1987
- 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

~~Note: provisions also exist in the Health Act 1956, to dealing 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 then decide to use powers under the Health Act 1956 instead of, or in addition to, the Building Act 2004.~~

9 RELATED DOCUMENTS

BS-09 BUILDING ASSESSMENTS – NTF, Infringements, dangerous and Insanitary Buildings

Building Services' technical procedure for QLDC staff assessing potentially dangerous, insanitary and affected buildings and the actions to be undertaken if such a building is identified.

DANGEROUS, AFFECTED AND INSANITARY BUILDINGS

Guidance For Developing Policies on Dangerous, Affected and Insanitary Buildings

Ministry of Business, Innovation & Employment 2024 guidance document for territorial authorities, building owners and other interested parties available on the Ministry's [Building Performance website](#).

10 ROLES AND RESPONSIBILITIES

POSITION	RESPONSIBILITIES
The Council	<ul style="list-style-type: none">- Approves the draft QLDC Dangerous and Insanitary Buildings Policy for public consultation- Holds hearing on public submissions- Adopts final policy
Planning & Development General Manager	<ul style="list-style-type: none">- Approves draft QLDC Dangerous and Insanitary Buildings Policy to move to Council for special consultative procedure

POSITION	RESPONSIBILITIES
P&D Principal Building Advisor	<ul style="list-style-type: none"> - Reviews and drafts updates QLDC Dangerous and Insanitary Buildings Policy at maximum five year intervals or as required due to legislative changes or audit outcomes - Provides advice, interpretations clarifications - Provides resolution of problems and special situations - Liases with external agencies and internal
P&D Inspections team	<ul style="list-style-type: none"> - Undertakes Dangerous, Insanitary and Affected Building assessments - Undertakes site inspections to resolve notices - Provides technical assistance to Enforcement and Monitoring team - Creates and authorises Dangerous, Insanitary and Affected building notices
P&D AFD Monitoring and Enforcement team	<ul style="list-style-type: none"> - Issues Dangerous, Insanitary and Affected notices - Monitors progress on actions required by the notices - Issues infringements and undertakes prosecutions with QLDC legal team - Receives and responds to public complaints and concerns about potentially Dangerous, Insanitary and Affected buildings

11 POLICY HISTORY

2006 version 1 adopted March 2007 - superseded

2020 version 2 updated and amended with addition of affected buildings adopted July 2021 - superseded

2026 version 3 updated and amended with addition of method of prioritisation - current

12 REVIEW

This Policy must be reviewed at least every five years as per Section 132(4) of the Act. The Council may decide to review the Policy at any time within the five year review requirement.

If, following the review, or at any other time, the Council decides to amend or replace the policy it must do so by using the special consultative procedure in Section 83 of the Local Government Act 2002. Once the policy is adopted by Council a copy is provided to the Ministry of Business, Innovation and Employment as specified in Section 132(3) of the Building Act 2004.

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