

1 Introduction

This policy is to meet the requirements of sections 131, 132 and 132A of the Building Act 2004 (the Act) for territorial authorities to adopt a policy on dangerous, affected and insanitary buildings. This is a review of existing policy under Schedule 1AA of the Building (Earthquake-prone Buildings) Amendment Act 2016.

These and other provisions relating to dangerous, affected and insanitary buildings are contained in the following sections of the Building Act 2004.

- Section 121 defines meaning of dangerous building.
- Section 121A defines the meaning of affected building.
- Section 123 defines meaning of insanitary building.
- Section 123A defines the application of this subpart to parts of buildings
- Section 124 describes powers of territorial authorities in respect of dangerous, affected or insanitary buildings.
- Sections 125–130 describe procedures to be applied in the exercise of those powers.
- Section 131 provides that a territorial authority must adopt policy on dangerous and insanitary buildings.
- Section 132 describes procedures in relation to the adoption and review of policies on dangerous and insanitary buildings.
- Section 132A states policy must take into account affected buildings.

These sections of the Act are reproduced in Appendix A for convenience of reference, but the full provisions of the Act should be referred to on matters of law.

Throughout this policy “Council” refers to the Napier City Council.

In this policy “Private Residential” means private dwellings classed as category SH under the Building Act 2004 but excludes those buildings classed under category SR¹.

Footnotes are provided to explain Council’s reasons for certain aspects of policy and further expand on the provisions of the policy.

¹ SH means Single Detached Dwelling
SR means Multi-Unit Dwellings, Flats or Apartments



2 Policy Approach for Dangerous Buildings

2.1 Policy Statement

Once buildings that are dangerous come to the attention of Council it will act promptly to ensure they are made safe.

Dangerous Buildings may come about due to a change of use (for example a commercial building used for residential purposes, unauthorised alterations being made, from a fire, from a natural disaster or as a result of its use by an occupant). Once buildings that are dangerous come to the attention of Council, Council has a statutory responsibility to act promptly to ensure the safety of persons or property. Napier City Council will use the process set out in the Building Act 2004 in dealing with dangerous buildings.

2.2 Identification of Dangerous Buildings

In order to identify dangerous buildings Council will respond to and investigate all building complaints or notification from internal sources or third parties. However Council may not respond to anonymous complaints. Where those investigations reveal that the building is in a dangerous state the owner and occupier of the building will be informed and required to reduce or remove the danger. Council will seek advice from the Fire and Emergency New Zealand on making an assessment of a dangerous building where appropriate, for example on a complex building.

Council will assess dangerous buildings against the provisions of section 121(1) of the Building Act 2004 (see Appendix A).

2.3 Taking Action on Dangerous Buildings

Where the danger is assessed as immediate, Council may undertake any of those measures outlined in section 129 of the Act to remove the danger. Due to the urgent nature of the risk that dangerous buildings pose to users, Council will in the first instance act to ensure no person uses or occupies the building until such work is undertaken to reduce or remove the danger. Council will seek cost recovery for work carried out under this section.

Where the danger is assessed as not being immediate, in accordance with sections 124 and 125 of the Act Council may:

- Advise and liaise with the owner(s) of the building(s);
- Request a written report on the building from the Fire and Emergency New Zealand;
- If the building is found to be dangerous attach a written notice to the building requiring remedial work to be carried out within a time stated in the notice being not less than 10 days, to reduce or remove the danger. Copies of the notice will be provided to the building owner, the occupier and every person who has an interest in the land, or is claiming an interest in the land, as well as Heritage New Zealand, if the building is a heritage building;
- Consider enforcement action under the Act if the requirements of the notice are not met with a reasonable period of time as well as any other non-compliance matters.

All owners have a right to object to Council for a review of its decision or the Ministry of Business, Innovation & Employment (MBIE) for a determination under Section 177 (3) of the Act (see Appendix A).



3 Policy Approach for Affected Buildings

3.1 Policy Statement

Once buildings that are dangerous come to the attention of Council it will act promptly to ensure they are made safe.

Any buildings adjacent to, adjoining, or nearby to a dangerous building or dam shall be assessed to determine if they are affected by the dangerous building or dam in question.

Once any buildings are deemed to be affected, Council has a statutory responsibility to act promptly to ensure the safety of persons or property. Napier City Council will use the process set out in the Building Act 2004 in dealing with affected buildings.



4 Policy Approach for Insanitary Buildings

4.1 Policy Statement

Once buildings that are insanitary come to the attention of Council it will act promptly to ensure they are made safe.

Buildings may become insanitary due to a number of reasons, such as following a natural disaster, as a result of poor maintenance, or misuse by an occupant. Once buildings that contain insanitary conditions come to the attention of Council, Council will follow the process laid down in the Building Act 2004 in dealing with insanitary conditions.

4.2 Identification of Insanitary Buildings

In order to identify insanitary buildings, Council will respond to and investigate all building complaints or notification from internal sources or third parties. However Council may not respond to anonymous complaints. In situations where natural disasters have occurred Council will institute an active approach to assessing the sanitary state of affected buildings.

Where any investigations reveal that a building is in an insanitary state the owner and occupier of the building will be informed and the owner required to address those conditions contributing to the insanitary state.

4.3 Taking action on Insanitary Buildings

Where immediate action is required to prevent the building from remaining insanitary, Council will undertake those measures in section 129 of the Act to fix the insanitary conditions. Due to the urgent nature of the risk that insanitary buildings pose to users, Council will in the first instance act to ensure no person uses or occupies the building or permits the another person to use or occupy the building until such work is undertaken to fix the insanitary conditions.

Where immediate action is not required Council may:

- Advise and liaise with the owner(s) of the building(s);
- If the building is found to be insanitary attach a written notice to the building requiring remedial work to be carried out within a time stated in the notice being not less than 10 days, to reduce or remove the conditions contributing to the insanitary state. Copies of the notice will be provided to the building owner, the occupier and every person who has an interest in the land, or is claiming an interest in the land, as well as Heritage New Zealand, if the building is a heritage building;
- Consider enforcement action under the Act if the requirements of the notice are not met with reasonable period of time as well as any other non-compliance matters.

All owners have a right to object to Council for a review of its decision or the Ministry of Business, Innovation & Employment (MBIE) for a determination under Section 177(3) of the Act (see Appendix 1).



Appendix A

Extracts from the Building Act 2004 and related Regulations

121 Meaning of dangerous building

- (1) A building is dangerous for the purposes of this Act if,
- (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause—
 - (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or
 - (ii) damage to other property; or
 - (b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.
- (2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority—
- (a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
 - (b) if the advice is sought, must have due regard to the advice

121A Meaning of affected building

A building is an affected building for the purposes of the 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.

123 Meaning of insanitary building

A building is insanitary for the purposes of this Act if the building—

- (a) is offensive or likely to be injurious to health because —
 - (i) of how it is situated or constructed; or
 - (ii) it is in a state of disrepair; or
- (a) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or
- (b) does not have a supply of potable water that is adequate for its intended use; or
- (c) does not have sanitary facilities that are adequate for its intended use.

123A Application of this subpart to parts of buildings

- (1) If a territorial authority is satisfied that only part of a building is dangerous (within the meaning of section 121) or insanitary (within the meaning of section 123) —
- (a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and
 - (b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.
- (2) To the extent that a power or function of a territorial authority under this subpart relates to affected buildings, -
- (a) the territorial authority may exercise the power or perform the function in respect of all or part of an affected building; and
 - (b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.

Dangerous, Affected and Insanitary Buildings Policy Adopted by Council 8 October 2013

Reviewed and Amended 5 June 2018 in accordance with the Building (Earthquake-prone Buildings) Amendment Act 2016



Powers of territorial authorities in respect of dangerous, affected, or insanitary buildings

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

- (1) This section applies if a territorial authority is satisfied that a building in its district is a dangerous, affected or insanitary building.
- (2) In a case to which this section applies, the territorial may do any or all of the following:
 - (a) put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
 - (b) attach in a prominent place on, or adjacent to the building, a notice that warns people not to approach the building;
 - (c) except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to:
 - (i) reduce or remove the danger; or
 - (ii) prevent the building from remaining insanitary.
 - (d) issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

125 Requirements for notice requiring building work or restricting entry

- (1) A notice given under section 124(2)(c) must—
 - (a) be in writing; and
 - (b) be fixed to the building in question; and
 - (c) be given in the form of a copy to the persons listed in subsection (2); and
 - (d) state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, which period is longer; and
 - (e) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.
- (1A) A notice issued under section 124(2)(d);
 - (a) be in writing; and
 - (b) be fixed to the building in question; and
 - (c) be given in the form of a copy to the persons listed in subsection (2); and
 - (d) may be issued for a maximum period of 30 days; and
 - (e) may be reissued once only for a further period maximum period of 30 days.
- (2) A copy of the notice must be given to—
 - (a) the owner of the building; and
 - (b) an occupier of the building; and
 - (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
 - (f) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
- (3) However, the notice, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).



126 Territorial authority may carry out work

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

127 Building work includes demolition of building

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

128 Prohibition on using dangerous, affected, or insanitary building

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

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

- (1) A person who fails to comply with a notice issued under section 124(2)(c) that is given to that person under section 125(2) -
 - (a) commits an offence; and
 - (b) is liable to a fine not exceeding \$200,000.
- (2) A person who fails to comply with section 128(2) –
 - (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding \$200,000 and in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.



129 Measures to avoid immediate danger or to fix insanitary conditions

- (1) This section applies if, because of the state of a building—
 - (a) immediate danger to the safety of people is likely in terms of section 121 or section 123; or
 - (b) immediate action is necessary to fix insanitary conditions.
- (2) The chief executive of a territorial authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgement to—
 - (a) remove that danger; or
 - (b) fix those insanitary conditions.
- (3) If the territorial authority takes action under subsection (2)—
 - (a) the owner of the building is liable for the costs of the action; and
 - (b) the territorial authority may recover those costs from the owner; and
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the building is situated.
- (4) The chief executive of the territorial authority and the territorial authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2).

130 Territorial authority must apply to District Court for confirmation or warrant

- (1) If the chief executive of a territorial authority issues a warrant under section 129(2), the territorial authority, on completion of the action stated in the warrant, must apply to a District Court for confirmation of the warrant.
- (2) On hearing the application, the District Court may—
 - (a) confirm the warrant without modification; or
 - (b) confirm the warrant subject to modification; or
 - (c) set the warrant aside.
- (3) Subsection (1) does not apply if—
 - (a) the owner of the building concerned notifies the territorial authority that—
 - (i) the owner does not dispute the entry into the owner's land; and
 - (ii) confirmation of the warrant by a District Court is not required; and
 - (b) the owner pays the costs referred to in section 129(3)(a).

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

- (1) A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous and insanitary buildings within its district.
- (2) The policy must state—
 - (a) the approach that the territorial authority will take in performing its functions under this Part; and
 - (b) the territorial authority's priorities in performing those functions; and
 - (c) how the policy will apply to heritage buildings.

132 Adoption and review of policy

- (1) A policy under section 131 must be adopted in accordance with the special consultative procedure of section 83 of the Local Government Act 2002.
- (2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.
- (3) A territorial authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.
- (4) A territorial authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.
- (5) A policy does not cease to have effect because it is due for review or being reviewed.

Dangerous, Affected and Insanitary Buildings Policy Adopted by Council 8 October 2013

Reviewed and Amended 5 June 2018 in accordance with the
Building (Earthquake-prone Buildings) Amendment Act 2016



132A Policy must take into account affected buildings

- (1) A policy under section 131 take into account affected buildings.
- (2) A territorial authority must amend an existing policy to take into account affected buildings at the latest within a reasonable period following the next review of its policy required under section 132(4).
- (3) In subsection (2), existing policy means a policy existing at the date of this section coming into force.

177 Application for determination

- (3) Subsection (1)(b) applies to any power of decision of a territorial authority in respect of, or under, all or any of the following:
 - (a) any waiver or modification of the building code under section 67:
 - (b) a certificate of acceptance under section 96:
 - (c) an exemption from building consent requirements under clause 2 of Schedule 1:
 - (d) an amendment to a compliance schedule under section 106, 107, or 109:
 - (e) a notice to fix:
 - (f) sections 112, 113, 115, and 116 (which relate to alterations to, or changes in the use of, a building) and 124 and 129 which relate to dangerous, affected, and insanitary buildings):
 - (fa) any power of decision of a territorial authority under subpart 6A of Part 2, other than a power of decision under section 133AS (territorial authority may carry out seismic work):
 - (g) a certificate for public use under section 363A:
 - (h) a certificate under section 224(f) of the Resource Management Act 1991.

