



Napier City Council
Policy on
Dangerous, Earthquake-
Prone and Insanitary
Buildings



Napier City Council

Policy

Dangerous, Earthquake Prone and Insanitary Buildings

1 Introduction

This policy is to meet the requirements of sections 131 and 132 of the Building Act 2004 (the Act) for territorial authorities to adopt a policy on dangerous, earthquake-prone and insanitary buildings. This is a review of existing policy under Section 132 of the Act.

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

- Section 121 defines meaning of dangerous building.
- Section 122 defines earthquake-prone buildings; the associated regulations define a moderate earthquake to which section 122 refers.
- Section 123 defines meaning of insanitary building.
- Section 124 describes powers of territorial authorities in respect of dangerous, earthquake-prone and 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, earthquake-prone and insanitary buildings.
- Section 132 describes procedures in relation to the adoption and review of policies on dangerous, earthquake-prone and insanitary 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 Methods to be used in assessing earthquake-prone buildings

In assessing if a building is earthquake-prone, Council will accept the methods in the guideline document “The Assessment and Improvement of Performance of Buildings in Earthquakes”, developed for the Department of Building and Housing by the New Zealand Society of Earthquake Engineering. Other methods and procedures are not, however, excluded². In any event Council may require that a peer review of any assessment be made.

3 Identification of potential earthquake-prone buildings

Council has identified that due to building standards and practices in place prior to 1976, buildings consented prior to 1976 are potentially earthquake prone as defined in Section 122 of the Building Act 2004. As a result, every owner of a building of 2 or more storeys or single storey buildings with an eave height greater than 4 metres and are classified as a Place of Assembly³ as defined by the City of Napier District Plan constructed prior to 1976, with the exception of **private single detached dwellings**, is required to submit a written assessment of the earthquake proneness of their building to the Napier City Council.

The assessment must be undertaken and certified by a Chartered Professional Engineer (Structural). The certification shall be in the form of PS4.

This assessment is to be completed within 36 months of written notification by Council that an assessment is required.

The cost of the assessment of the earthquake proneness of the building will be met in full by the building owner.

If an assessment report is not submitted within this 36 month period the building will be deemed to be earthquake prone and notice will be served under section 124 of the Building Act 2004. The notice will remain in place until such time as remedial work to bring the building up to the standards required by the Building Act 2004 is undertaken or that an assessment report has been received confirming that the building is not earthquake prone. The legal responsibilities of the property owner issued with a notice are set out in section 6 of this policy.

² The definition of earthquake proneness includes reference to collapse. The detailed procedures of the NZSEE guidelines, on the other hand, have been written in terms of Ultimate Limit State (ULS), for reasons explained in the guidelines. There can be a marked difference between the attainment of an ULS and a state of collapse. Analysts may therefore prefer to use procedures that assess collapse directly rather than approximate that condition from an ULS. Depending on the detailed nature of such an assessment, Council may require a peer review to corroborate the assessment.

³ Place of Assembly means Land and/or Buildings which are used in whole or in part for the assembly of persons for such purposes as deliberation, public and private worship, religious ceremonies, services, instruction, entertainment, education, recreation or similar purposes and includes any church, hall, public library, amusement arcade, clubroom, funeral directors chapel, any gymnasium, pavilion, indoor sports facility, community centre and marae buildings.

4 Consultation with owners of potential earthquake-prone buildings

If no report is received or if the assessment report deems a building to be earthquake prone, the Council will confirm the status of the building as being an earthquake prone building for the purposes of section 122 of the Building Act 2004 and discuss with the owners the implications of the findings and provide advice to the owners on organisations that can assist with information on earthquake prone buildings.

5 Recording of earthquake proneness

In the event that Council confirms that the building is earthquake-prone, a record to this effect will be placed on the property file, and any Land Information Memorandum or Project Information Memorandum requested for a project involving the building will note that the building has been assessed as being earthquake-prone⁴.

6 Notices

In the event that the owner does not submit a written assessment as provided by section 3 of this policy or, if the assessment report provided by the building owner under section 3 of this policy confirms that the building is earthquake-prone, Council will issue a notice in accordance with the Act.

The notice will state that the building is to achieve strengthening to such a level as may be required by the Building Act or Building Code.

The time within which the work required by the notice is to be carried out is 10 years from the date of the notice.

Council will in general require that the owner obtain a building consent for work specified in the notice, though concessions on fees may be available for certain buildings.

7 Application of this policy to heritage buildings

Heritage buildings will be assessed in the same way as other buildings. Council is very much aware of the value of heritage buildings to the City. As a result, Council may vary requirements for improving the performance of a heritage building where improvement would otherwise involve an unacceptable intervention in heritage fabric or unacceptable loss of heritage value. Matters to be considered include:

- more detailed assessments
- extent of the loss of heritage values
- acceptability of lower protection, including lower protection of other property

⁴ The New Zealand Society for Earthquake Engineering recommends that a plaque, stating that the building has been assessed for earthquake proneness and graded accordingly, should be fixed to the building. Council does not intend adopting this recommendation.

In determining appropriate action, including any variations, Council will consult with the Historic Places Trust, the Department of Conservation (as appropriate), expert heritage advisors⁵, and owners of immediately adjacent buildings⁶. This consultation will take place immediately following receipt of the assessment report identifying a building as earthquake prone.

8 Interaction of this policy with other provisions of the Act

8.1 Alterations to buildings

Section 112 of the Building Act, which relates to alterations to existing buildings, requires that the structure continues to comply with the provisions of the building code (applying to new buildings) to at least the same extent as before the alteration. This will continue to apply, except when the proposed alterations require a building consent and are deemed to be significant alterations, when additional requirements may apply⁷.

Alterations will be deemed to be significant if the costs of the alterations requiring building consent exceed 10% of the value of the building, taken as the “quotable value” excluding land. Where there are several alterations over a period of time, the percentages will be aggregated for each alteration and the aggregated percentages compared to the 10% threshold⁸.

When an alteration that is deemed to be significant is proposed to a building that has been assessed as earthquake-prone and for which a notice has been given, Council will require that the building be upgraded as required by the notice as a condition of consent for the alteration.

When an alteration that is deemed to be significant is proposed to a building that has not been assessed as earthquake-prone, Council will require that the building be assessed for earthquake proneness as a condition of consent for the alteration. Council may require that the assessment uses a detailed procedure (rather than an initial evaluation procedure) and that a peer review of the assessment be undertaken. If the building is assessed as earthquake-prone, Council will serve notice to this effect and require such work as is required to remove the danger as a condition of building consent.

8.2 Extension of life of building

Where the provisions of section 116 of the Building Act apply, Council will apply the provisions of this policy that relate to alterations as if the extension of life were an alteration.

⁵ Conservation architects, archaeologists, specialist structural engineers, and others

⁶ Who have a reasonable expectation that their property will be protected

⁷ All alterations, not just those relating to the structure, are included, because alterations may extend the use of the building or the number of occupants. However, the intention is not to preclude minor alterations that might well improve the safety of the building in everyday use or aspects of public amenity. Note that repairs and maintenance using the same or similar materials generally do not require a building consent, so are not included in the costs of the alterations as defined here.

⁸ Aggregation of percentages are used to avoid any necessity to calculate “present-day-value” of the costs of past alterations or of previous building valuations.

8.3 Subdivision

Where the provisions of section 116A of the Building Act apply, Council will apply the provisions of this policy that relate to alterations as if the subdivision were an alteration.

Council notes that section 116A requires, among other matters, that the building comply as nearly as is reasonably practicable with every provision of the building code that relates to protection of other property. This may be more onerous in some respects than meeting the provisions of this policy on alterations.

8.4 Change of use of a building

Council notes that section 115 requires, among other matters, that where a change of use is intended for a building, the building must comply with every provision of the building code that relates to structural performance. This will, in general, be more onerous than meeting the requirements of this policy on earthquake-prone buildings.

9 Policy Approach for Insanitary Buildings

9.1 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.

9.2 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.

9.3 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 the New Zealand Historic Places trust, 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 Department of Building and Housing for a determination under Section 177(3) of the Act (See Appendix 1).

10 Policy Approach for Dangerous Buildings

10.1 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, unauthorized 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.

10.2 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 New Zealand Fire Service on making an assessment of a dangerous building where appropriate, for example on a complex building or on a building that has suffered damage after an earthquake.

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

10.3 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 New Zealand Fire Service;

- 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 the New Zealand Historic Places trust, 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 Department of Building and Housing for a determination under Section 177 (3) of the Act (see Appendix A).

Appendix A

Earthquake-Prone Buildings

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 because of fire hazard or the occupancy of the building.
- (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 members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and
 - (b) if the advice is sought, must have due regard to the advice

122 Meaning of an earthquake-prone building

- (1) A building is earthquake prone for the purposes of the Act if, having regard to its condition and the ground on which it is built, and because of its construction, the building—
 - (a) will have its ultimate capacity exceeded in a moderate earthquake (as defined in the regulations); and
 - (b) would be likely to collapse causing—
 - (i) injury or death to persons in the building or to persons on any other property; or
 - (ii) damage to any other property.
- (1) Subsection (1) does not apply to a building that is used wholly or mainly for residential purposes unless the building—
 - (a) comprises 2 or more storeys; and
 - (b) contains 3 or more household units.

The regulations referred to in s122 were promulgated in 2005/32 on 21 February 2005. Part 7 defines a moderate earthquake.

7. Earthquake-prone buildings: moderate earthquake defined

For the purposes of section 122 (meaning of earthquake-prone building) of the Act, moderate earthquake means, in relation to a building, an earthquake that would generate shaking at the site of the building that is the same duration as, but is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used for the design of a new building at that site.

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

- (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or/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.

Powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings

124 Powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings

- (1) If a territorial authority is satisfied that a building is dangerous, earthquake-prone, or insanitary, the territorial authority may—
 - (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) give written notice requiring work to be carried out on the building, within a time stated in the notice (which must not be less than ten days) after the notice is given under section 125), to—
 - (i) reduce or remove the danger; or
 - (ii) prevent the building from remaining insanitary.
- (2) This section does not limit the powers of the territorial authority under this Part.
- (3) A person commits an offence if the person fails to comply with a notice given under subsection (1)(c).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.

125 Requirements for notice given under section 124

- (1) A notice given under section 124(1)(c) must—
 - (a) be fixed to the building concerned; and
 - (b) state whether the owner of the building must contain a building consent in order to carry out the work required by the notice.
- (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) any statutory authority, if the land or building has been classified; and
 - (f) the New Zealand Historic Places Trust, if the building is a heritage building.
- (3) However, the notice, if fixed on the building, is not invalid because a copy 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 given by the territorial authority under section 124(1)(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(1)(c) or section 126 may include the demolition of all or part of a building.

128 Prohibition on using dangerous, earthquake-prone, or insanitary building

- (1) If a territorial authority has put up a hoarding or fence in relation to a building or attached a notice warning people not to approach a building under section 124(1), no person may—
 - (a) use or occupy the building; or
 - (b) permit another person to use or occupy the building.
- (2) A person commits an offence if the person fails to comply with this section.
- (3) A person who commits an offence under this section is liable 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 122 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, earthquake-prone, and insanitary buildings—

- (1) A territorial authority must, within 18 months after the commencement of this Section, adopt a policy on dangerous, earthquake-prone, 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 interval of 5 years.
- (5) A policy does not cease to have effect because it is due for review or being reviewed.