



## **Dangerous, Affected and Insanitary Buildings Policy 2006**

- reviewed 2019**
- approved by Environment Committee  
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## CONTENTS

|           |                                                              |          |
|-----------|--------------------------------------------------------------|----------|
| <b>1.</b> | <b>Introduction and Background.....</b>                      | <b>1</b> |
| <b>2.</b> | <b>Dangerous, Affected and Insanitary Buildings.....</b>     | <b>4</b> |
| 2.1       | Identifying Dangerous Affected and Insanitary Buildings..... | 4        |
| 2.2       | Assessment Criteria .....                                    | 4        |
| 2.3       | Taking action on Insanitary Buildings .....                  | 5        |
| 2.4       | Taking action on Dangerous and Affected Buildings.....       | 5        |
| 2.5       | Record-keeping .....                                         | 6        |
| 2.6       | Access to Information .....                                  | 7        |
| 2.7       | Economic impact of the policy .....                          | 7        |
| 2.8       | Heritage Buildings .....                                     | 7        |
| 2.9       | Priorities.....                                              | 7        |

## 1. INTRODUCTION AND BACKGROUND

Sections 131 and 132A of the Building Act 2004 (the Act) require territorial authorities to have a policy on dangerous, affected and insanitary Buildings. The policy is required to state:

- The approach that the territorial authority will take in performing its functions under the Building Act 2004; and
- The territorial authority's priorities in performing those functions; and
- How the policy will apply to heritage buildings.

This Policy amends and updates the Nelson City Council's (the Council) Earthquake-prone, Dangerous and Insanitary Buildings Policy previously adopted in 2006. It was amended on 9 November 2017 to remove reference to earthquake prone buildings.

### Definitions:

| Term               | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affected Building  | Defined in s121A of the Act:<br>A building is an affected building for the purposes of this Act if it is adjacent to, adjoining, or nearby;<br>(a) a dangerous building as defined in <a href="#">section 121</a> ; or<br>(b) a dangerous dam within the meaning of <a href="#">section 153</a> .                                                                                                                                                                                                                                                                                                                                                                                                                |
| Building Owner     | Owner is defined in s7 of the Act:<br>Owner, in relation to land and any buildings on the land;<br>(a) means the person who;<br>(i) is entitled to the rack rent from the land; or<br>(ii) would be so entitled if the land were let to a tenant at a rack rent; and<br>(b) includes;<br>(i) the owner of the fee simple of the land; and<br>(ii) for the purposes of <a href="#">sections 32, 44, 92, 96, 97</a> , and <a href="#">176(c)</a> , any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force |
| Dangerous Building | Defined in s121 of the Act:<br>(1) A building is dangerous for the purposes of this Act if;<br>(a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| Term                         | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                              | <p>cause;</p> <p>(i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or</p> <p>(ii) damage to other property; or</p> <p>(b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.</p> <p>(2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority;</p> <p>(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</p> <p>(b) if the advice is sought, must have due regard to the advice.</p> |
| Environmental Health Officer | An officer appointed by a local authority under s 28 of the Health Act 1956.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Heritage Building            | <p>In line with s 7 of the Act, heritage building relevantly means a building that is included on—</p> <p>(a) the New Zealand Heritage List/Rārangī Kōrero maintained under <a href="#">section 65</a> of the Heritage New Zealand Pouhere Taonga Act 2014; <i>or</i></p> <p>(b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under <a href="#">section 81</a> of the Heritage New Zealand Pouhere Taonga Act 2014</p>                                                                                                                                                                                                                                                                                              |
| Immediate Danger             | <p>In accordance with s129 of the Act:</p> <p>If because of the state of a building,—</p> <p>(a) immediate danger to the safety of people is likely in terms of <a href="#">section 121</a> or <a href="#">123</a>; or</p> <p>(b) immediate action is necessary to fix insanitary conditions.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Insanitary Building          | <p>Defined in s123 of the Act:</p> <p>A building is insanitary for the purposes of this Act if the building—</p> <p>(a) is offensive or likely to be injurious to health because—</p> <p>(i) of how it is situated or constructed; or</p> <p>(ii) it is in a state of disrepair; or</p> <p>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or</p>                                                                                                                                                                                                                                                                                                                     |

| Term                                                    | Meaning                                                                                                                                                                |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                         | (c) does not have a supply of potable water that is adequate for its intended use; or<br>(d) does not have sanitary facilities that are adequate for its intended use. |
| LIM                                                     | Land Information Memorandum                                                                                                                                            |
| Medical Officer of Health,<br>Health Protection Officer | Designated officers of the Ministry of Health appointed under the Health Act 1956.                                                                                     |
| NZBC                                                    | New Zealand Building Code                                                                                                                                              |
| PIM                                                     | Project Information Memorandum                                                                                                                                         |
| Property File and Register                              | A record of legal information the Council is required to maintain in terms of s216 of the Act                                                                          |
| Structural Condition                                    | The structural condition of the building at the time the Council carries out an inspection of the building to ascertain its state                                      |
| The Act                                                 | The Building Act 2004                                                                                                                                                  |

## **2. DANGEROUS, AFFECTED AND INSANITARY BUILDINGS**

### **2.1 Identifying Dangerous Affected and Insanitary Buildings**

The Council will:

- a. Respond and investigate all building complaints about dangerous, affected or insanitary buildings.
- b. Identify from these any buildings that may be dangerous, affected or insanitary.
- c. Notify the Building Owner(s) to take appropriate action.
- d. Consult with an Environmental Health Officer, Medical Officer of Health or Health Protection Officer as appropriate. (This is especially the case if occupants are considered neglected or infirm).
- e. Liaise with the Fire and Emergency New Zealand when appropriate in accordance with section 121(2) of the Building Act 2004.

### **2.2 Assessment Criteria**

Assessment will be made in accordance with sections 121,121A or 123 of the Building Act 2004 and the New Zealand Building Code (NZBC). Assessment will include consideration of:

- a. Whether the building is occupied
- b. The building use
- c. Whether the building is likely to cause injury or death to people
- d. Whether conditions present a danger to the health of occupants
- e. Potential for damage to other property
- f. Whether a fire hazard exists
- g. Whether the building is affected by a dangerous building or dangerous dam

Where a building is occupied an assessment of insanitary conditions will include a review of:

- a. The adequacy of sanitary facilities for the use (with reference to NZBC G1, Personal Hygiene)
- b. The adequacy of potable water (with reference to NZBC G12 Water Supplies)
- c. The extent of separation of kitchen from other sanitary facilities
- d. Evidence or likelihood of moisture penetration (with reference to NZBC E2 External Moisture)

- e. Defects in cladding to roof
- f. Construction materials
- g. If the building is offensive or likely to be injurious to health because of how it is situated or constructed or whether or not it is in a state of disrepair

### **2.3 Taking action on Insanitary Buildings**

If action is to be taken under the Building Act 2004, the Council will:

- a. Notify the Building Owner(s) of the assessment findings,
- b. Attach a notice to the building requiring rectifying work to be carried out within a time stated to be not less than 10 working days,
- c. Give copies of the notice to the Building Owner(s), occupiers and every person who has an interest in the land, and if the building is a heritage building, to Heritage New Zealand,
- d. Contact the owner at the expiry of the time period set down in the notice so that access to the building can be gained to assess compliance with the notice,
- e. Determine if enforcement action should be pursued under the Building Act if the requirements of the notice are not met.

If immediate action is required, the Council may:

- a. Cause action to be taken under section 129 of the Building Act 2004, to fix the insanitary conditions
- b. Take action to recover all costs from the Building Owner(s)
- c. Inform the Building Owner(s) that the amount recoverable by the Council will become a charge on the land on which the building is situated.

All Building Owner(s) have a right of appeal as defined in the Building Act, which can include applying for a Determination from the Ministry of Business Innovation and Employment. That decision can be subject to appeal to the District Court.

### **2.4 Taking action on Dangerous and Affected Buildings**

The assessment of whether or not a building is considered to be a dangerous building will include a review of:

- a. Whether the building is occupied
- b. The building use and occupancy
- c. Whether the building is likely to cause injury or death to people

- d. Whether the building is likely to cause damage to other property
- e. Whether a fire hazard exists
- f. Whether the building is affected by a dangerous building or dangerous dam

The Council will:

- a. Notify the Building Owner(s) of the assessment findings
- b. Attach a notice to the building requiring rectifying work to be carried out within a time stated to be not less than 10 working days
- c. Give copies of the notice to the Building Owner(s), occupiers and every person who has an interest in the land, and if the building is a heritage building, to Heritage New Zealand
- d. Contact the Building Owner(s) at the expiry of the time period set down in the notice so that access to the building can be gained to assess compliance with the notice
- e. Determine if enforcement action should be pursued under the Building Act if the requirements of the notice are not met.

If immediate action is required, the Council may:

- a. Cause action to be taken under section 129 of the Building Act 2004, to fix the dangerous conditions
- b. Take action to recover all costs from the Building Owner(s)
- c. Inform the Building Owner(s) that the amount recoverable by the Council will become a charge on the land on which the building is situated.

All Building Owner(s) have a right of appeal as defined in the Building Act, which can include applying for a Determination from the Ministry of Business Innovation and Employment. That decision can be subject to appeal to the District Court.

## **2.5 Record-keeping**

Any building identified as dangerous, affected or insanitary will have a note placed on Council's property file until the danger or the insanitary condition(s) have been remedied.

In addition, the following information may be placed on any Land Information Memorandum (LIM) and Property Information Memorandum (PIM):

- a. A copy of any notices issued,
- b. Copies of any letters sent to the owner, occupier and/or any other person where a building is deemed dangerous or insanitary, and

- c. Any report on how the matter is to be rectified.

## **2.6 Access to Information**

Information held by Council concerning the dangerous, affected or insanitary status of a building will be set out in the relevant LIM. The requirement of the Local Government Official Information and Meetings Act 1987, and Local Government Act 2002 will be met.

## **2.7 Economic impact of the policy**

The Council receives very few complaints about dangerous, affected or insanitary buildings. While no specific assessment has been carried out, the economic impact of the policy is considered to be minor.

## **2.8 Heritage Buildings**

The Council, in the implementation of procedures under the Building Act regarding dangerous, affected or insanitary buildings will take into account any special traditional and cultural aspects of the intended use of a building and the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value.

## **2.9 Priorities**

In performing its functions under the Building Act in relation to dangerous, affected or insanitary buildings, the Council will assign priorities by risk. Generally, because of the life safety issues involved, a high priority is assigned to the matter.

Priority will be given where immediate action is required to remove and fix dangerous conditions.

Where immediate action is not required, Council action will be subject to the timeframe set in any notice.