

# Dangerous, Insanitary and Earthquake-prone Buildings Policy (#3119)

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## Introduction

The Building Act 2004 (BA 04) requires Territorial Authorities to develop a policy for dangerous, insanitary and earthquake prone buildings.

As part of the Kaipara, Far North District, and Whangarei District Councils' Building Consent Authority (BCA) Accreditation proposal, a joint approach on policies is also being pursued where possible, and the following policy has been prepared on that basis. The policy document incorporates all of the issues related to dangerous, insanitary and earthquake prone buildings. It has been broken into two sections for ease, while comprising one document in terms of consultation under the provisions of the Local Government Act 2002 (LGA 02).

It is acknowledged that the Earthquake-Prone section of this policy, along with the Dangerous and Insanitary section, is required to be reviewed every five years, allowing for any possible changes to be considered and included.

## Section 1 – Dangerous and Insanitary Buildings

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### Background

Section 131 of the Building Act 2004 requires Council's to adopt a policy on dangerous and insanitary buildings by 31 May 2006.

The definitions of "dangerous" and "insanitary" buildings are set out in [sections 121 and 123](#) of the Act respectively. In general terms, dangerous buildings are those which are liable to collapse or to be a fire hazard with the potential to cause loss of life, whereas insanitary buildings have problems with moisture, drinking water, or human waste disposal.

This document sets out the policy by the three Northland District Councils which has been prepared in accordance with the requirements of the Building Act 2004.

The policy is required to state:

1. The approach that the Council will take in performing its functions under Act
2. Council's priorities in performing those functions
3. How the policy will apply to heritage buildings.

In developing and adopting the dangerous and insanitary buildings section of this policy, the District Councils will be following the consultative procedure set out in section 83 of the Local Government Act 2002. Extensive use has been made of the guidance material provided by the Department of Building and Housing in preparing this document/policy.

### Objective

The ultimate objective in implementing this part of the policy is to achieve compliance with the Act with respect to dangerous and insanitary buildings.

### Policies

1. The Act provides several statutory tools such as issuing formal notices to carry out remedial work, the Council doing the remedial work itself, or ordering demolition; however Council will always in the first instance seek the co-operation of the landowner concerned to achieve compliance, without having to resort to the formal notice provisions of the Act.
2. Provisions of the Building Act in regard to dangerous and insanitary buildings reflect the government's broader concern with the safety of people in buildings. Indeed, the purposes of the new Act as set out in s.3 include ensuring that:
  - people who use buildings can do so safely and without endangering their health; and
  - buildings have attributes that contribute to the health, physical independence, and well-being of the people who use them; and
  - people who use a building can escape from the building if it is on fire.
3. A balance must be struck between the need to address the risk posed by dangerous and insanitary buildings and other priorities, taking into account the social and economic implications of implementing any policy.
4. While heritage buildings and dams will be assessed in a manner consistent with assessments for other

potentially dangerous or insanitary buildings or dams, special efforts will be made to meet heritage objectives. It is important that in strengthening, upgrading and/or altering such buildings and dams, heritage values and their protection are not lost sight of. Discussions will be held with owners and the New Zealand Historic Places Trust to identify a mutually acceptable way forward.

## Procedures

### Overall Approach

A flexible approach must be taken to achieve this overall objective because of the diversity of situations which result in buildings being dangerous or insanitary.

Factors to be taken into account in determining the approach to be taken include:

- An assessment of the scale and immediacy of risk to the public and to the occupiers
- An assessment of the likelihood of harm to adjoining properties, including contamination of water bodies
- The availability and viability of alternative accommodation options

The Council recognises that it is not well placed to offer alternative accommodation. Council is nevertheless committed to the 'Whole of Government' approach contemplated in the Community Outcomes process and thus will provide for a good working relationship with Housing New Zealand and other social agencies.

### Identifying Dangerous and Insanitary Buildings

This Council does not have the resources to carry out a systematic survey of the standard of buildings across the district, but will rely on the observations of its staff as well as information provided to Council by members of the public, thus remaining proactive without creating substantial additional cost.

### Assessment

In assessing whether or not a building may be dangerous with respect to fire hazard, Council will seek the advice of the NZ Fire Service as provided for in s.121(2) of the Act.

In assessing whether or not a building may be insanitary with respect to drinking water and waste disposal, Council will seek the advice from all appropriate sources, such as its Environmental Health service providers, or technical building specialists, and refer to appropriate bylaws, etc.

### Interaction between this Policy and related sections of the Building Act 2004

#### Section 112: Alterations to Existing Building

Whenever a building consent application is received for any work on a building which is subject to a notice pursuant to section 124(1)(c) of the Act, then irrespective of the general priorities set by Council for dealing with dangerous and insanitary buildings, Council will require the owner to include in the application any work necessary to make the building safe and sanitary.

Where Council has grounds for believing that a building may be dangerous or insanitary, and a building consent application is received for upgrading or alteration of that building, then Council may require the owner to provide a detailed assessment of the dangerous and insanitary performance of the building in its existing condition prepared by a suitably qualified and experienced person.

The Council will not issue a building consent unless it is satisfied that the building is not dangerous or insanitary and that the building work will not detrimentally affect the building's compliance with the Building Code, or impact on other legislation or bylaw requirements.

If the building is shown to be dangerous or insanitary, then the Council will require that remedial work be carried out to ensure that it will comply as nearly as is reasonably practicable with the provisions of the Building Code.

#### Section 115: Change of Use

Whenever a building consent application is received for change of use of a building that subject to a notice pursuant to s124(1)(c) of the Act, Council will require the owner to include in the application any work necessary to make the building safe and sanitary.

Where Council has grounds for believing that a building may be dangerous or insanitary and a building consent application is received for change of use of that building then, it may be a requirement of the building consent that the owner provide a detailed assessment of the safety or sanitation of the building in its existing condition, prepared by a suitably qualified and experienced person.

If the building is shown to be dangerous or insanitary then the Council will require that remedial work be carried out to ensure that it will comply as nearly as is reasonably practicable with every provision of the Building Code that relates to structural performance as is required by section 115(b)(i)(A).

#### **Recording a building's dangerous or insanitary status**

A register will be kept of all dangerous and insanitary buildings for which it has issued a notice pursuant to section 124(1)(c) of the Act noting the status of requirements for improvement or the results of improvement as applicable.

In addition, the following information will be placed on the relevant property file for each dangerous and insanitary building:

- a description of the building
- a statement that the building is on the Council's register of dangerous and insanitary buildings
- the date by which remedial work or demolition is required (if known)
- In the case of Heritage Buildings, Council will ensure that the New Zealand Historic Places Trust is notified on any such building or dam identified as dangerous or insanitary.

#### **Economic impact of Policy**

Council will take into account the cost of effecting remedial work in assessing the various means of reducing the hazard to human life presented by a building which has been identified as dangerous or insanitary. Also, the availability of alternatives to continued use and occupation of the building, both in the short and long term. It is considered likely that Housing NZ and other social agencies may become involved in such an assessment.

#### **Access to Dangerous and Insanitary Building Information**

Information concerning the safety and sanitation status of a building will be contained on the relevant Land Information Memorandum (LIM) or Project Information Memorandum (PIM).

In granting access to information concerning dangerous and insanitary buildings, the Council will conform to the requirements of the relevant legislation.

## Priorities

Recognising that a building will only be classified as dangerous if it is likely to cause injury or death and insanitary if it is likely to be injurious to health, Council has prioritised the requirement to repair or demolish buildings, in descending order or priority as follows:

1. the building is likely to cause injury or death to the public using a public place or another building
2. the building, being a building to which the public has access, is likely to cause injury or death to people in it
3. the building, not being a public building, is likely to cause injury or death, or be injurious to the health of its occupants
4. the building is likely to be injurious to the health of the public using adjacent land or waterways.

Having stated a priority list, however, it is felt that although a building may fall into a lesser category, each case should be considered on its own merits. It may be possible, therefore, that a category four building might require an immediate response if the nature of the effect is believed significant enough.

## Heritage Buildings and Dams

### Special Considerations and Constraints

Council believes it is important that its heritage buildings continue to have the opportunity to contribute to the social and cultural fabric of the district. Council does not wish to see the intrinsic heritage values of these buildings unnecessarily affected by structural improvement measures.

Therefore, heritage buildings will be assessed in the same way as other dangerous and insanitary buildings and discussion held with owners and the Historic Places Trust to identify a mutually acceptable way forward. Special efforts will be made to meet heritage objectives, without compromising safety or sanitation concerns.

The identification and consultation of matters relating to Heritage Buildings or Dams should be carried out in accordance with Pages 16 to 18 of the New Zealand Historic Places Trust's "*Guide to Heritage Provisions: Dangerous, Earthquake-Prone, Insanitary Buildings and Dangerous Dams Policies: Building Act 2004 (10<sup>th</sup> April 2006)*".

### Definition of Heritage Buildings

For the purposes of this Policy, the definition of a 'heritage building' is that which is described on pages 8 and 9 of the New Zealand Historic Places Trust's "*Guide to Heritage Provisions: Dangerous, Earthquake-Prone, Insanitary Buildings and Dangerous Dams Policies: Building Act 2004 (10<sup>th</sup> April 2006)*".

### Other Structures

Council will work with other agencies (i.e. Transit New Zealand for State Highways or the roading division in Council) to identify an acceptable way forward regarding any bridge that may be considered to be dangerous. Council will also apply Policy # 4103 – Limits of Council Responsibility for Formation/Maintenance of Roads, when necessary.

Council will work with the Northland Regional Council when dealing with dangerous dams as the agency that maintains the register of dams, dam safety regimes, and the audits and certifications of dams.

## Section 2 – Earthquake-prone Buildings

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### Background

Section 131 of the Building Act 2004 requires council's to adopt an earthquake prone buildings policy.

The definition of an earthquake prone building is set out in [section 122](#) of the Building Act 2004. In general terms however, earthquake prone buildings are those that, due to their construction and the type of ground on which they are founded, would be likely to collapse in a moderate earthquake, causing injury or death or damage to other property.

The earthquake-prone section of the policy needs to consider whether the community wishes to see buildings strengthened to the greatest extent possible or whether the local circumstances warrant such an approach.

Council has used the Department of Building and Housing (DBH) template in the development of this policy.

The policy has been developed after consultation with ratepayers of the district in accordance with section 83 of the Local Government Act 2002 (LGA 02).

### Objective

The ultimate objective in implementing this part of the policy is to achieve compliance with the Act with respect to earthquake-prone buildings.

### Policies

The same policies apply to this section as per the dangerous and insanitary buildings section of this policy. Public safety and the protection of life are paramount.

Whilst heritage buildings and dams will be assessed in a manner consistent with assessments for other potentially earthquake-prone buildings, or dams, special efforts will be made to meet heritage objectives.

It is important that in strengthening, upgrading and/or altering such buildings and dams, heritage values and their protection are not lost sight of.

Discussions will be held with owners and the New Zealand Historic Places Trust to identify a mutually acceptable way forward.

### Procedures

#### Overall approach

Councils are required to achieve their statutory obligations under the Building Act with respect to EPB. However, Council's will also consider other issues in establishing a policy for EPBs, which includes:

- the seismicity of the area the council administers
- any other policies it may have established under the previous Building Act 1991, Section 66
- the level of strengthening to be established and the time frames in which those levels must be achieved

Council will also consider whether it wishes to take an active or passive stance in relation to how it addresses its policy regarding EPBs.

An active approach would mean that a programme of an initial evaluation of building stock within the district is carried out and a risk categorisation of those buildings is produced. All the buildings are then put onto an active list which results in Council agreeing a timetable to have the buildings brought up to the appropriate requirements to comply with the legislation.

A passive approach still requires an initial list to be drawn up of the district's building stock, but establishes a triggering system to enact any upgrading work, such as building consent applications or building changes of use, or potentially even no action.

It is believed practical to adopt a passive approach for councils in the Far North, with a triggering mechanism via consent applications, changes of use etc. In addition, each building should then be considered on its own merits to determine how much should be done to the building for it to comply with the code. It is also considered that a building stock list should incorporate existing seismic building register buildings, with any buildings previously identified within that regime placed at the top of the new list and pursued in a more active manner.

Once council has prepared a seismic building list via the Independent Evaluation Process (IEP), the primary trigger for a building owner to prepare a detailed assessment will be an application for building consent or change of use. Any building consent applications will only be processed on the basis that a detailed report will be supplied; a consent will not be issued without the seismicity of the building having been addressed.

The exclusion to this process will be those buildings that are already on a list and have already had the opportunity to work on the building.

The nature of the district does not justify an active approach as the seismicity of the area is not identified as high.

### **Identifying earthquake prone buildings**

An evaluation of building stock within the district will be undertaken by an appropriate engineer. The evaluation will be a "desk top" examination of the building stock to identify potential seismically at-risk buildings. The nature, age, and building fabric will be key factors in the evaluation of each building. The evaluation may be based on the NZSEE assessment for buildings likely to be earthquake prone and on a grading scheme which is based on structural performance scores. The exact nature of the evaluation will be agreed with the engineer. Once the initial evaluation has taken place, building owners will be contacted with the results.

Once an initial evaluation process (IEP) has been carried out on any buildings identified as potentially being high risk, the building can be reassessed with the owner's cooperation and the development of a timetable of upgrading work. This will enable owners to discuss their intended plans for the building and whether an acceptable solution can be achieved without evoking section 124 of the Building Act.

Should this not be possible, action under section 124 of the Building Act 2004 will be pursued as deemed appropriate; this may include erection of hoardings, fencing, or warning signs and does not necessarily mean a written notice, although this could also be used to achieve compliance.

When pursuing a detailed assessment, it is intended that the owner carry the assessment out having first agreed with the Council staff involved that the assessment will be acceptable. Where this is agreed, details will be confirmed in writing. Where an owner is unwilling to assist, a detailed assessment will be carried out by Council staff/consultants and costs sought from the owner as required. Entry to undertake the assessment will be obtained under section 222 of the Act.

## **Assessment criteria for buildings**

The NZSEE (New Zealand Society for Earthquake Engineers) standard form is the preferred basis for criteria and technical requirements of any assessment.

The level to which buildings are defined as earthquake prone is one third (or 33%) as strong as a building of similar type, designed within the requirements of the existing building code of the time. For example, if a building were to be strengthened to 34% of the appropriate standard, it would be considered outside the range of this policy.

Should a high-risk building be upgraded to a level that satisfies the NZSEE requirements, any change to building codes or standards is unlikely to affect those buildings for a considerable time; achieving the NZSEE level should have the effect of delaying the need for further upgrading.

While those buildings remain on a list or register, they will be identified as being upgraded and in no need of further attention unless Building Consent applications are received to alter those buildings, at which time a re-assessment of the building for seismicity may be necessary. This re-assessment may lead to the need for further upgrades; in such cases, each building will be assessed on its own merits.

## **Serving notice**

Where a building is believed to be a high risk following the assessments, and an acceptable timeframe cannot be agreed with the owner, a two year limit to carry out the work from the date of formal notification will be applied.

The same two year limit will apply to all buildings that have already been included under any previous policies or included on previous registers in relation to EPBs, unless specifically agreed otherwise with the owner.

## **Change of use, extension of life and subdivision**

Change of use, extensions of building life, and subdivision are covered under sections 114 through 116 of the Building Act 2004. Primarily, these sections deal with altering a building to provide residential use.

Where such a change is proposed then the policy acknowledges that different principles will apply and that the building must be made to comply as nearly as practical as if the building were a new building. Therefore, any upgrading work will be considered on the basis of a new building and the minimum criteria to remove the EPB status will not apply.

## **Recording of earthquake prone status**

As part of the initial 'desk top' evaluation process, Council will produce a list or register of all buildings within its district that have been identified as potentially earthquake prone.

It is intended that the list be established on the basis of a risk category or classification of the buildings. This is to enable confirmation of times to carry out any strengthening work, with high risk ratings being placed into the two year upgrading programme.

All records for the individual buildings in terms of a register status will be put onto property files and be made available upon request or as part of a LIM or PIM.

Copies of the register will be made available upon request and subject to appropriate fees.

In the case of Heritage Buildings, Council will ensure that the New Zealand Historic Places Trust is notified of any such building or dam identified as earthquake-prone.

## **Economic impact of policy**

The primary function of the legislation and this policy is to improve life safety concerns.



The introduction of this policy will create an economic burden on building owners, and where an owner does experience significant issues in this regard, concessions may be feasible via the provision of additional time. Such provisions will be considered on a case by case basis.

### **Priorities**

The policy has already indicated that the register of buildings identified as earthquake prone will be categorised. It is anticipated that high risk buildings will have already been identified in previous registers and owners will have been given adequate time under previous policy provisions to complete the requirements of legislation and policy. Such buildings should therefore be adequately resolved within a two year period from the serving of a notice under section 124 of the Act.

With respect to the priorities of other requirements under this policy, the following is proposed:

1. IEP's are to be carried out on an area basis:
  - CBD and major adjacent areas - 18 months
  - Built up suburbs – 12 months thereafter
  - Completion of district – six months thereafter
2. Detailed assessments are to follow IEP potential identification of EPB:
  - High risk (other than previous list buildings) - 18 months
  - Low risk - at consent application stage
3. Building owners will be consulted, with identification stages as above in item 2
4. The required level of structural performance is to be determined as specified in item 2
5. Formal notice is to be served to ensure above maximum deadlines are achieved, but with the maximum within three months of defining performance level
6. The required level of structural performance is to be achieved a maximum of 24 months from the deadlines in item 4 (duration a building consent is valid under the Act)

### **Heritage Buildings and Dams**

Council acknowledges the importance of heritage buildings, while being aware that building safety is paramount.

Council does not wish to see heritage buildings within the community adversely affected by major structural alterations that not only effect the building appearance but have the potential to become too costly for owners to achieve acceptable levels of compliance.

To address such issues, Council will consider funding to assist in the structural review of such buildings and also review the time frames in terms of achieving structural performance levels, enabling greater opportunity for owners to raise funds to meet the requirements without impacting appearance.

The identification and consultation of matters relating to Heritage Buildings or Dams should be carried out in accordance with Pages 16 to 18 of the New Zealand Historic Places Trust's "*Guide to Heritage Provisions: Dangerous, Earthquake-Prone, Insanitary Buildings and Dangerous Dams Polices: Building Act 2004 (10<sup>th</sup> April 2006)*".

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