



Statement of Proposal

Proposed Dangerous, Insanitary and Affected Buildings Policy

Nelson City Council's Policy for Dangerous, Insanitary and Affected Buildings

The Nelson City Council (the Council) has reviewed its original Earthquake-prone, Dangerous and Insanitary Buildings Policy 2006 and is proposing to amend it. The Council would like to know what you think of the proposed amendments. The purpose of the Policy is to set out the Council's approach to dangerous, insanitary and affected buildings as required under the Building Act 2004.

1. Introduction

The Building Act 2004 provides Nelson City Council (the Council) with specific powers to act when a building is identified as dangerous, insanitary or affected. The Act requires the Council to have a policy which sets out Nelson's approach to dangerous, earthquake-prone and insanitary buildings and how these powers apply to heritage buildings. Council's first Policy on Earthquake-prone, Dangerous and Insanitary Buildings was adopted in 2006.

Since then, there have been two amendments to the Building Act (2013 and 2016) which require the Policy to;

- take affected buildings into account; *and*
- remove any references to earthquake-prone buildings.

On 9 November 2017, the Council approved that all references to earthquake-prone buildings be removed from the Policy. Under schedule 1AA of the 2016 Building Act Amendment, this change did not require a special consultative procedure as it *did not materially affect the Policy as it applies to dangerous or insanitary buildings (Schedule 1AA 3 (3) and 3 (4))*.

Since then, the Council has reviewed its Dangerous and Insanitary Buildings Policy and is proposing some amendments relating to affected buildings as well as some minor editorial improvements.

Under the Building Act 2004 the Council's Policy must state:

- the approach that the territorial authority will take in performing its functions under this Part; and
- the territorial authority's priorities in performing those functions; and
- how the policy will apply to heritage buildings.

Dangerous, Affected and Insanitary are defined as:

Dangerous (s121)	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.
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Affected (s121A)	A building is an affected building for the purposes of this 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 .
Insanitary (s123)	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 (c) Does not have a supply of potable water that is adequate for its intended use; or (d) Does not have sanitary facilities that are adequate for its intended use.

The public is invited to submit on the proposal. You can make a submission online at nelson.govt.nz or in writing by using the submission form at the end of this document. Submissions must be received by 4 November 2019.

2. The Proposal

The Council is proposing to:

- Introduce an updated policy aligned with s121A of the Building Act 2004 on how it proposes to identify, assess and take action on affected buildings. The amendments are being proposed in response to requirements of the Building Act 2004.

In addition the Council proposes a number of minor editorial improvements to be made to the Policy.

3. Alternatives considered by Council

In reviewing the Policy the Council also considered the following option.

Option 1. Retain the current Policy	
Advantages	<ul style="list-style-type: none"> • Does not require the resources from the community and Council of a Special Consultative procedure
Disadvantages	<ul style="list-style-type: none"> • Council would not meet its obligations under the Building Act 2004

4. Submission

Anyone may make a submission about any aspect of Council's proposal and the other options that have been considered. Council, in making its decision, will take account of all submissions made.

A submission form is included at the end of this document.

All submissions, including the name and contact details of the submitter, will be made available to the public and media on Council's website, unless you specifically request that your contact details be kept private and explain why it is necessary to protect your privacy. Council will not accept any anonymous submissions.

Submissions can be made:

- Online at nelson.govt.nz
- By post to Dangerous, Insanitary and Affected Buildings Policy, PO Box 645, Nelson 7010
- By dropping off to Civic House, 110 Trafalgar Street, Nelson

Submissions must be received no later than 4:00 pm on 4 November 2019.

Any person who wishes to speak to the Council in support of their submission will be given the opportunity to address the Council at the hearings during February 2020.



DRAFT FOR CONSULTATION

Policy on Dangerous, Insanitary and Affected Buildings

The proposed revised policy wording is detailed below for reference.

Introduction and Background

Section 131 of the Building Act 2004 (the Act) requires territorial authorities to have a policy on Dangerous, Insanitary and Affected 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.

Definitions:

Term	Meaning
Affected Building	Defined in s121A of the Act: A building is an affected building for the purposes of this 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 .
Building Owner	Defined in s7 of the Act: Owner, in relation to land and any buildings on the land; (a) means the person who; (i) is entitled to the rack rent from the land; or (ii) would be so entitled if the land were let to a tenant at a rack rent; and (b) includes; (i) the owner of the fee simple of the land; and (ii) for the purposes of sections 32, 44, 92, 96, 97 , and 176(c) , 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: (1) A building is dangerous for the purposes of this Act if;

	<p>(a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause;</p> <p style="padding-left: 40px;">(i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or</p> <p style="padding-left: 40px;">(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>
Heritage Building	<p>Defined in s7 of the Act:</p> <p>heritage building means a building that is included on—</p> <p>(a) the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014;</p> <p>or</p> <p>(b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014</p>
Immediate Danger	<p>Defined in s129 of the Act:</p> <p>(1) This section applies if, because of the state of a building,—</p> <p>(a) immediate danger to the safety of people is likely in terms of section 121 or 123; 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 style="padding-left: 40px;">(i) of how it is situated or constructed; or</p> <p style="padding-left: 40px;">(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> <p>(c) does not have a supply of potable water that is adequate for its intended use; or</p> <p>(d) does not have sanitary facilities that are adequate for its intended use.</p>
LIM	Land Information Memorandum
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

Dangerous, Insanitary and Affected Buildings

1.0 Identifying Dangerous Insanitary and Affected Buildings

The Council will:

- a. Respond and investigate all building complaints about dangerous, insanitary or affected buildings.
- b. Identify from these any buildings that may be dangerous, insanitary or affected.
- c. Notify the Building Owner(s) to take appropriate action.
- d. Consult with the Medical Officer of Health as required. (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.

1.1 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

1.2 Taking action on Insanitary Buildings

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.

1.3 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.

1.4 Record-keeping

Any building identified as dangerous, insanitary or affected 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.

1.5 Access to Information

Information held by Council concerning the dangerous, insanitary or affected 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.

1.6 Economic impact of the policy

The Council receives very few complaints about Dangerous, Insanitary or Affected Buildings. While no specific assessment has been carried out, the economic impact of the policy is considered to be minor.

1.7 Heritage Buildings

The Council, in the implementation of procedures under the Building Act regarding dangerous, insanitary or affected 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.

1.8 Priorities

In performing its functions under the Building Act in relation to dangerous, insanitary or affected 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.

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