



## DANGEROUS AND INSANITARY BUILDINGS POLICY



Adopted by Council	Thursday 21 September 2006
Amended as a result of the special consultative procedure	Reviewed during 2011
Reviewed and amended as a result of the special consultative procedure and the Building (Earthquake-prone Buildings) Amendment Act 2016	25 October 2018
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## 1. INTRODUCTION AND BACKGROUND

Section 131 of the Building Act 2004 requires territorial authorities to adopt a policy on dangerous and insanitary buildings, and to review this every five years. The requirement for this document to also include a policy on earthquake-prone buildings was removed by the Building (Earthquake-prone Buildings) Amendment Act 2016 and replaced with new national provisions now residing in Subpart 6A of the Building Act 2004.

The policy is required to state:

1. The approach that the Westland District Council will take in performing its functions under the Building Act 2004;
2. Westland District Council's priorities in performing those functions; and
3. How the policy will apply to heritage buildings.

The policy is also now required by the Building Amendment Act 2013 to take into account affected buildings. "Affected buildings" are defined by section 121A of the Building Act 2004 as buildings adjacent to, adjoining, or nearby a dangerous building.

This document sets out the policy adopted by Westland District Council in accordance with the requirements of the Building Act 2004.

In developing, adopting and reviewing this policy, Westland District Council has followed the consultative procedure set out in section 83 of the Local Government Act 2002, as required by section 132 of the Building Act 2004.

In preparing and reviewing this policy, Westland District Council has made extensive use of the guidance documents provided by the Ministry of Business, Innovation and Employment and its predecessor agencies.

## 2. BUILDING ACT PRINCIPLES

Section 4 of the Building Act lays down the following principles to be applied in performing functions or duties or exercising powers under the Act:

- (2) *In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:*
  - (a) *when dealing with any matter relating to 1 or more household units,—*
    - (i) *the role that household units play in the lives of the people who use them, and the importance of—*
      - (A) *the building code as it relates to household units; and*
      - (B) *the need to ensure that household units comply with the building code:*
    - (ii) *the need to ensure that maintenance requirements of household units are reasonable:*
    - (iii) *the desirability of ensuring that owners of household units are aware of the maintenance requirements of their household units:*
  - (b) *the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimized:*
  - (c) *the importance of ensuring that each building is durable for its intended use:*
  - (d) *the importance of recognizing any special traditional and cultural aspects of the intended use of a building:*
  - (e) *the costs of a building (including maintenance) over the whole of its life:*
  - (f) *the importance of standards of building design and construction in achieving compliance with the building code:*
  - (g) *the importance of allowing for continuing innovation in methods of building design and construction:*
  - (h) *the reasonable expectations of a person who is authorized by law to enter a building to undertake rescue operations or firefighting to be protected from injury or illness when doing so:*
  - (i) *the need to provide protection to limit the extent and effects of the spread of fire, particularly with regard to—*
    - (i) *household units (whether on the same land or on other property); and*

- (ii) *other property:*
- (j) *the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building:*
- (k) *the need to provide, both to and within buildings to which section 118 applies, facilities that ensure that reasonable and adequate provision is made for persons with disabilities to enter and carry out normal activities and processes in a building:*
- (l) *the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value:*
- (m) *the need to facilitate the efficient use of energy and energy conservation and the use of renewable sources of energy in buildings:*
- (n) *the need to facilitate the efficient and sustainable use in buildings of—*
  - (i) *materials (including materials that promote or support human health); and*
  - (ii) *material conservation:*
- (o) *the need to facilitate the efficient use of water and water conservation in buildings:*
- (p) *the need to facilitate the reduction in the generation of waste during the construction process.*
- (q) *the need to ensure that owners, designers, builders, and building consent authorities are each accountable for their role in ensuring that—*
  - (i) *the necessary building consents and other approvals are obtained for proposed building work; and*
  - (ii) *plans and specifications are sufficient to result in building work that (if built to those plans and specifications) complies with the building code; and*
  - (iii) *building work for which a building consent is issued complies with that building consent; and*
  - (iv) *building work for which a building consent is not required complies with the building code.*

### 3. DEFINITIONS OF BUILDINGS COVERED BY THIS POLICY

The definitions of dangerous, affected and insanitary buildings are set out in sections 121, 121A and 123 of the Building Act 2004 as follows:

#### **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 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.*

(Note: Dangerous dams are dealt with by Regional Councils, so are not covered by this policy.)

#### **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*

- (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.*

## 4. OVERALL APPROACH

### 4.1 Policy Principles

Westland District Council has noted that provisions of the Building Act 2004 in regard to dangerous and insanitary buildings reflect the government's broader concern with the health and safety of the public in buildings.

- Council is committed to ensuring that the Westland District is a safe and healthy place to live and work while also ensuring that the District continues to develop and thrive.

Westland District Council has also noted that the development of dangerous and insanitary building policies is up to each territorial authority to determine and has responded accordingly.

### 4.2 History of the Policy

This policy was first developed and finalised after due consultation with Westland District Council ratepayers and stakeholders in accordance with Section 83 of the Local Government Act 2002. This process involved a submission period and an opportunity for submitters to be heard before the Council decided on final policy content. As a result of that consultative approach, the Council resolved that no part of this policy will apply to Council and Transit New Zealand (now New Zealand Transport Agency)\_infrastructure covered by an Asset Management Plan.

The first review of the policy commenced in February 2011 with consultation with the public and building owners. The Council also took advice from a structural engineer who had experience with the aftermath and repair of buildings in Christchurch subsequent to the September 2010 and February 2011 earthquakes.

The second review was due by November 2016, but this review was delayed until 2018 due to the 2016 central government work that led to the Building (Earthquake-prone Buildings) Amendment Act 2016, which came into force on 1 July 2017. This legislative amendment removed the requirement for Council to have an Earthquake-prone Buildings Policy and removed the legal effect of any part of this policy applying to earthquake-prone buildings. The remaining parts of the policy relating to Dangerous and Insanitary Buildings have retained legal effect pending the 2018 review. Section 132 (5) of the Building Act 2004 makes it clear that "A policy does not cease to have effect because it is due for review or being reviewed."

#### 4.3 District Characteristics

The built environment of the Westland District has developed over the last 150 years. European settlement has largely been based around the original early settlements. Construction of buildings has been according to the standards and styles of the period.

Local buildings comprise a range of types and ages with construction techniques ranging from wood and unreinforced masonry buildings to a few modern multi-storey steel and concrete buildings. The great majority of buildings are one or two-storey only.

Westland District Council has experienced a period of steady growth that reflected the confidence in greater agricultural productivity, a growth in tourist activity, increased land prices and an influx of new residents. Tourism activity in particular remains on the rise.

In developing this policy, the Westland District Council must balance the need to protect public health and safety against the economic implications of requiring significant remedial building work and the community's desire to protect heritage structures.

### 5. **DANGEROUS AND INSANITARY BUILDINGS POLICY**

#### 5.1 Policy Approach

Conversions of existing buildings, lack of maintenance, lack of appropriate facilities, overcrowding and un-consented alterations can cause serious health and safety problems.

The failure to obtain a building consent or the use of buildings for unauthorised purposes can pose a danger to the occupants as well as users. Dangers may include danger of collapse, inadequate fire protection or means of escape.

The development of the New Zealand Building Code and associated standards has created, over time, an effective "raising of the bar" for the standards which buildings and Building Owners must meet. Existing buildings must be maintained appropriately in order to continue to meet such standards.

The Council is actively involved in educating the public on Building Act matters with a view to encourage owners to obtain building consent where necessary.

Westland District Council recognises that West Coasters have a range of financial circumstances and preferences as to the style and condition of buildings they want to



live and work in. At the same time, the Council treats building safety as a serious matter; buildings must be safe for their intended use and for Occupiers.

Accordingly, in applying the “offensive” trigger for insanitary building classification under Section 123 of the Building Act, the Council will prioritize human health and wellbeing rather than aesthetics. A building simply looking poorly maintained might offend some people, but would not normally trigger an insanitary building classification, unlike a building that released objectionable odours or discharges. The other triggers for an insanitary building classification, (“is...likely to be injurious to health”, “has insufficient or defective provisions against moisture penetration so as to cause dampness in the building...”, “does not have a supply of potable water that is adequate for its intended use”, or “does not have sanitary facilities that are adequate for its intended use”) are less subjective than the “offensive” trigger, and it is clear how the Council will be guided by these.

Similarly, the Section 121 definition of a dangerous building is focused on avoiding injury, death or property damage - more tangible and less subjective outcomes than avoiding offence – so the Council will be clearly guided by this definition.

## 5.2 Identifying Dangerous or Insanitary Buildings, and Affected Buildings

The Council will identify potentially dangerous or insanitary buildings, and affected buildings, on the basis of:

1. Complaints from members of the public.
2. Advice received from Council staff.
3. Complaints or advice from other agencies (e.g. local health providers, NZ Police, trades people).

## 5.3 Assessment/Prioritization Criteria

The Council will assess potentially dangerous or insanitary buildings, and affected buildings, in accordance with sections 121, 121A, or 123 of the Act as appropriate and in terms of the level of risk to public health, safety or property that is presented.

The Council will give priority to buildings that have been determined to present such a high level of risk as to warrant immediate action to remove the risk.

Options for such immediate action include:

- Prohibiting any person from occupying or using the building;
- If necessary, erecting barriers and warning signs, plus securing the building to prevent entry until such time as remedial action can be taken;
- Except in the case of affected buildings, undertaking remedial action under s129 of the Building Act. Note that, in the case of insanitary buildings, the Council

reserves the right to use its powers to abate nuisance available under s34 of the Health Act 1956.

Where the Council undertakes remedial action under either s129 of the Building Act or s34 of the Health Act, all costs will be recoverable from the building owner(s) as provided for in the relevant legislation.

Buildings that are determined to present a serious risk which is not immediate will be subject to the minimum timeframes for reduction or removal of the danger or preventing the building from remaining insanitary (being not less than 10 days) as set out in s125(1) (d) of the Act.

In addition to remedial action, the Building Act 2004 also empowers the Council to prosecute Building Owners. And this power may be considered at times by the Council.

#### 5.4 Investigation and Enforcement Process – Dangerous, Affected or Insanitary Buildings

The Council will:

1. Respond to and investigate all building complaints received.
2. Identify from these investigations any buildings that are dangerous or insanitary.
3. Identify any 'affected buildings' that are (according to the definition in s121A of the Building Act) "adjacent to, adjoining or nearby...a dangerous building." Simply being "nearby" to a dangerous building will not necessarily make a building "affected" if there is deemed to be a low likelihood of any impact on it from the dangerous building. Buildings that are "adjacent to" or "adjoining" the dangerous building are generally more likely to be considered affected. Each determination will be made on a case-by-case basis depending on the nature and extent of the danger, and the location and characteristics of the potentially affected buildings.
4. Assess the level of risk presented by the building (or, in the case of an affected building, *to* the building) and, if required, take immediate action.
5. Except in the case of an affected building, inform the owner and occupier of the building to take action to reduce or remove the danger or insanitary condition, as required by s124 and s125 of the Act.
6. Liaise with Fire and Emergency New Zealand when Council deems it appropriate, in accordance with s121 (2) of the Act which provides that:

*“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.”*

7. Where the building is a heritage building listed in Council’s District Plan or a building listed in the Heritage List / Rārangi Kōrero, Heritage New Zealand shall also be advised and consulted.

If the building is found to be dangerous or insanitary but does not present an immediate risk the Council may:

8. Put up a hoarding or fence to prevent people from approaching the building nearer than is safe.
9. Attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building.

10. Issue a notice that complies with Section 125(1) of the Building Act 2004 requiring work to be carried out on the building, within a time stated in the notice being not less than 10 days, to reduce or remove the danger or prevent the building from remaining insanitary. Such a notice must be in writing, fixed to the building in question, state whether a building consent is required, and be given to the building owner, 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 registered heritage building.

11. Issue a notice that complies with Section 125(1A) of the Building Act, restricting entry to the building for particular persons or groups of persons. Such a notice must be in writing, be fixed to the building in question, and be given to the building owner, 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 registered heritage building.
12. Contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with.
13. Where the danger is the result of non-consented building work, request the owner to provide an explanation as to how the work occurred and who carried it out and under whose instructions.

14. If notices are not complied with, pursue enforcement action under the Building Act 2004 and Health Act 1956 and recover actual and reasonable costs.

If the building is found to be an affected building, but does not present an immediate risk, the Council may:

15. Put up a hoarding or fence to prevent people from approaching the building nearer than is safe.
16. Attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building.
17. Issue a notice that complies with Section 125(1A) of the Building Act, restricting entry to the building for particular persons or groups of persons. Such a notice must be in writing, be fixed to the building in question, and be given to the building owner, 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 registered heritage building.
18. If notices are not complied with, pursue enforcement action under the Building Act 2004 and recover actual and reasonable costs.

#### 5.5 Interaction between this Policy and Related Sections of the Act

Section 41 of the Building Act 2004 provides for situations where, because of the urgency of the work to be done, it is not practical to apply for a building consent before the work is undertaken. In cases where a building is assessed as being immediately dangerous the Council may not require a building consent to be obtained for any building work considered to be immediately necessary to remove the danger. However, prior to any action being taken it is essential that building owners provide a written proposal of any proposed works to the Council for agreement on the matter.

#### 5.6 Record Keeping

Any buildings identified as being dangerous or insanitary will have a requisition placed on the Council's records for the property on which the building is situated until the danger or insanitary condition is remedied.

In addition, the information will be placed on any Land Information Memorandum (LIMs) and will be available for public release in accordance with the provisions of Local Government Official Information and Meetings Act 1987.

## 6. **HERITAGE BUILDINGS**

Heritage buildings are those listed in Council's District Plan Schedule, Marae and buildings listed in the New Zealand Heritage List / Rārangī Kōrero. The Building Act 2004 recognises that special provision shall be made for such buildings. Westland District Council believes it is important that its heritage buildings are maintained so they are not dangerous or insanitary, in order to protect people and retain these important connections to the District's history and unique character. However, Westland District Council does not wish to see the intrinsic heritage values of these buildings adversely affected by building work.

Heritage buildings will be assessed in the same manner as other potentially dangerous or insanitary buildings (as per ss121-123 of the Act), and discussions will be entered into with the owner and Heritage New Zealand (pursuant to s125(2)(f) where the building is contained in their List) to identify a mutually acceptable way forward which meets heritage objectives and Building Act requirements included in this Policy as near as is reasonably practicable in the circumstances.

Council will serve notices requiring upgrading or demolition or part demolition within specified timeframes, and/or restricting entry, in consultation with building owners. A copy of any notice issued under s124 of the Act will be sent to Heritage New Zealand in the case of all heritage buildings. Any upgrading work must take into account the principles of the International Council on Monuments and Sites (ICOMOS) NZ Charter, any advice from Council's heritage staff or other heritage professionals or organizations where applicable, and should be designed to involve minimal loss to heritage fabric.

In addition and in consultation with the building owner, an option exists to close part or parts of a heritage building until such time as an appropriate remedial solution can be found.

Demolition is an option of last resort for heritage buildings.

## 7. **OBJECTIONS**

In the first instance, building owners or other directly affected parties who wish to object to a building being (or not being) declared dangerous, affected or insanitary should record their objections in writing to the Council's Chief Executive Officer, who will undertake an investigation of the circumstances of the building and the reasons behind the Council's decision on the matter and arrange for the Council or an appropriate Committee to review the decision and if necessary to hear evidence from parties involved. The Council's decision will be provided by way of response to an objection.

The Council reserves the right to recover actual and reasonable costs incurred in conducting review and objection processes, in accordance with fees set from time to time.

Priority will be given to objections where the building has been declared to be of such a risk as to require immediate remedial action so that no undue delays are caused.

### 8.1 Determinations

Further legal remedies and application to the Ministry of Business, Innovation and Employment for a Determination are also available to Building Owners. Building owners and a variety of other interested parties can formally object to the Council's decision through the right to apply to the Chief Executive of the Ministry of Business, Innovation and Employment for a determination. Determinations can be applied for concerning the Council's decisions to issue or not issue a consent or code compliance certificate, or to exercise its powers concerning dangerous, affected or insanitary buildings. Sections 176 – 190 of the Building Act lay out the requirements for determinations.

## 8. ECONOMIC IMPACT OF POLICY

The economic impact of this policy is assessed as being minor, since there are relatively few issues arising with respect to dangerous and insanitary buildings each year.

## 9. REVIEW

Pursuant to section 132 of the Building Act 2004 this policy is required to be reviewed by the Council every 5 years. Any amendment or replacement of the policy must be in accordance with the Local Government Act 2002 Special Consultative Procedure.

*This policy was first adopted by the Westland District Council on Thursday 21 September 2006. It was first reviewed and amended in 2011 and was adopted on 25 August 2011 for the purposes of commencing the special consultative procedure pursuant to Section 132 of the Building Act 2004.*

*The revised Policy was adopted after amendments were made as a result of the special consultative procedure on 24 November 2011.*

*A further review was undertaken in 2018 and a proposed revised Policy was adopted on 23 August 2018 for the purposes of commencing the special consultative procedure. The revised Policy was adopted as a result of the special consultative procedure on 25<sup>th</sup> October 2018.*

*The policy is due for review by 25<sup>th</sup> October 2023.*