

# **Dangerous, Affected and Insanitary Buildings Policy 2025**

DRAFT

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|---------------------------------------------------------|----------------------------------------------------------|
| <b>Date of Council passing the policy</b>               | XX March 2025                                            |
| <b>The Policy that was amended, revoked or replaced</b> | Dangerous, Affected and Insanitary Buildings Policy 2006 |
| <b>Review by date</b>                                   | XX March 2030                                            |

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## 1. INTRODUCTION AND BACKGROUND

The Building Act 2004 (the Act) sets out in subpart 6 of part 2 the special provisions for managing dangerous, affected and insanitary buildings.

Sections 131 and 132A of 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 Act; 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.~~

## 2. APPLICATION OF THIS POLICY

This policy applies to all buildings that are not dams or are not appurtenant structures associated with a dam.

The terms building, dam and appurtenant structure have the same meaning as provided in section 7, section 8 and section 9 of the Act.

The terms 'dangerous building', 'affected building' and 'insanitary building' have the same meaning as provided in section 121, section 121A and section 123 of the Act.

The Act can be accessed at [www.legislation.govt.nz](http://www.legislation.govt.nz)

In the event of amendments to the Act, the amended sections of the Act take precedence over this policy.

This policy does not apply to Council's consenting functions for buildings.

Definitions of selected terms only, current at the date of this policy's approval are provided near the end of this document.

### 2.1 Buildings affected by emergency

Under section 123B of the Act, if a dangerous, affected or insanitary building is located in a designated area that has been affected by an emergency (subpart 6B of Part 2 of the Act), this policy continues to apply but only in relation to:

- Actions taken or notices issued under section 124 before the designation came into force;

- Work carried out under section 126 before the designation came into force; or
- Actions taken in relation to the building under a warrant issued under section 129 (measures to avoid immediate danger and fix insanitary conditions).

### **3. COMMENCEMENT AND REVIEW**

This policy commences on XX **March 2025**.

This policy will be reviewed every five years or earlier as required. The policy remains in effect even though it is due for review or being reviewed.

### **4. POLICY PRINCIPLES**

This policy has been developed considering the purpose and principles of the Act which, amongst other things, seek to ensure that:

- a. people who use buildings can do so safely without endangering their health and
- b. people who use a building can escape from the building if it is on fire.

### **5. COUNCILS APPROACH TO PERFORMING ITS FUNCTIONS**

#### **5.1 Identifying dangerous, affected and insanitary buildings**

The Council will:

- a. Respond to and **may** investigate complaints **or notifications** about buildings that **may be** dangerous, affected or insanitary
- b. **Investigate issues identified during routine regulatory activities**
- c. Identify from these any buildings that may be dangerous, affected or insanitary

~~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 **in accordance with section 126 of the Health Act 1956**)
- e. **Seek advice from Heritage New Zealand Pouhere Taonga if the building is a heritage building**

- f. Liaise with the Fire and Emergency New Zealand when appropriate in accordance with [section 121\(2\)](#) of the Building Act 2004.

## 5.2 Assessment criteria

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

- a. The building occupancy
- b. The building use and status of any specified systems
- 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
- g. The relative impact (costs, disruption) of possible regulatory actions and risks due to the danger or insanitary conditions (ensuring a proportionate response).

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

- h. Whether conditions present a hazard to the health of occupants<sup>1</sup>
- i. The adequacy of sanitary facilities for the use (with reference to NZBC G1, Personal Hygiene)  
~~The extent of separation of kitchen from other sanitary facilities~~
- j. The adequacy of potable water (with reference to NZBC G12 Water Supplies)
- k. Evidence or likelihood of moisture penetration (with reference to NZBC E2 External Moisture)
- l. Defects in cladding or roof
- m. Construction materials
- n. Whether 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

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<sup>1</sup> Reference may be made to [section 29](#) of the Health Act 1956 which defines nuisances. The definition of nuisance in many cases describes scenarios that are also insanitary in terms of the Building Act 2004. In these situations, actions will be taken in accordance with this policy in preference to those available under [section 42](#) of the Health Act 1956.

### 5.3 Taking action on **dangerous, affected and insanitary buildings**

Council may take action under [section 124](#) of the Act to:

- a. Notify the Building Owner(s) of the assessment findings,
- b. Attach notice(s) to the building warning people not to approach, requiring work to be carried out to reduce or remove the danger or prevent the building from remaining insanitary, or restricting entry to the building, as applicable. If a notice requires work, the time required to complete the work must not be 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 Pouhere Taonga,
- d. Put up a hoarding or fence to prevent people approaching closer than is safe,
- e. Take action to recover costs from the Building Owner for maintenance of hoarding or fences required more than 10 working days after a Notice is issued,
- f. ~~Contact the Owner at the expiry of the time period set down in the notice so that access to the building can be gained~~  
Carry out ongoing monitoring to assess compliance with the notice, and
- g. May consider under [section 126](#) applying to the District Court to carry out work, and
  - i. take action to recover all costs from the Building Owner(s),
  - ii. 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, and
- h. 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:

- i. Cause action to be taken under [section 129](#) of the Building Act 2004, to fix the insanitary conditions
- j. Take action to recover all costs from the Building Owner(s)
- k. 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.

Where applicable, occupiers and Building Owner(s) impacted by the danger, insanitary conditions or regulatory actions, will be connected to agencies that may be able to provide assistance and support.

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.

#### **5.4 Buildings in designated areas affected by emergencies**

If a building is located in a designated area that has been affected by an emergency (subpart 6B of Part 2 of the Act), and Council has not exercised its powers under sections 124 (put up a fence or issue notice), 126 (carry out work) or 129 (measures to avoid immediate danger or fix insanitary conditions), then;

- a. The building will be considered a building affected by emergency and be subject to subpart 6B of Part 2 of the Act and not subject to this policy for the duration of the designation;
- b. Upon termination of the designation of area, buildings affected by an emergency may be transitioned to a dangerous, affected or insanitary building and this policy will then be applicable to the buildings.

Council will consider reviewing a designated area to exclude a particular building, should using powers available under sections 124 to 130 of the Act be more appropriate than using powers under subpart 6B of Part 2 of the Act.

#### **5.5 Information on building status**

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

~~Once the danger or insanitary conditions have been remedied and removal of any notices authorised, a note to that effect will be placed on Council's property file.~~

~~If it is also a heritage building, Council will notify Heritage New Zealand Pouhere Taonga.~~

In addition, the following information may be ~~referenced~~ on any Land Information Memorandum (LIM) and Project Information Memorandum (PIM):

- a. ~~Information concerning notices that have been 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 and evidence that the work has been completed, if applicable.~~

~~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

Any person can request access to Councils property file or apply for a LIM or PIM. Further information is available on Council's website [www.nelson.govt.nz](http://www.nelson.govt.nz).

## **6. COUNCIL'S PRIORITIES IN PERFORMING THESE FUNCTIONS**

In performing its functions under the 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.

## **7. APPLICATION TO HERITAGE BUILDINGS**

Council 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.

Council will seek prior advice from the Building Owner(s) and Heritage New Zealand Pouhere Taonga.

## **8. ECONOMIC IMPACT OF THE POLICY**

Council deals with few dangerous, affected or insanitary buildings. While no specific assessment has been carried out, the economic impact on our community of the policy is considered to be minor.

## **9. RELATED POLICIES, USEFUL RESOURCES AND DOCUMENTS**

- a. Nelson City Council Dangerous, Affected and Insanitary Buildings [web page](#)
- b. Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams Policy 2024 [[include link once policy approved](#)]

## **10. QUESTIONS ABOUT THIS POLICY**

If you have any questions about this policy or concerns about the way Council has engaged on a matter, please contact us at [enquiry@ncc.govt.nz](mailto:enquiry@ncc.govt.nz).

## **11. DEFINITIONS USED IN THIS POLICY**

Preference has been given in this policy to referencing the meaning of defined terms directly to legislation, by way of embedded links.

This will minimise the need to review and amend the policy should legislated definitions be amended in future.

Definitions of selected terms only, current at the date of this policy's approval are provided below:

| Term              | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affected Building | Defined in <a href="#">section 121A</a> 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    | Defined in <a href="#">section 7</a> 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 |

| Term                         | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dangerous Building           | <p>Defined in <a href="#">section 121</a> of the Act:</p> <p>(1) A building is dangerous for the purposes of this Act if;</p> <p>(a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to 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 | <p>An officer appointed by a local authority under <a href="#">section 28</a> of the Health Act 1956 <b>or a Health Protection Officer designated by the Director-General of Health.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Heritage Building            | <p><b>Where this policy applies (buildings that are not subject to subpart 6B of Part 2 of the Act, buildings affected by emergency) in accordance with <a href="#">section 7</a> of the Act:</b></p> <p>Heritage building means a building that is included on—</p> <p>(a) the New Zealand Heritage List/Rāangi 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> <p><b>In addition, heritage building is taken in this policy to mean a building listed in the Nelson Resource Management Plan <a href="#">Appendix 1 Heritage Buildings, Places and Objects</a></b></p>                                                                                                                                                                   |

| Term                                                    | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Immediate Danger                                        | In accordance with <a href="#">section 129</a> of the Act:<br>If because of the state of a building,—<br>(a) immediate danger to the safety of people is likely in terms of <a href="#">section 121</a> or <a href="#">123</a> ; or<br>(b) immediate action is necessary to fix insanitary conditions.                                                                                                                                                                                                                                                                                                                  |
| Insanitary Building                                     | Defined in <a href="#">section 123</a> of the Act:<br>A building is insanitary for the purposes of this Act if the building—<br>(a) is offensive or likely to be injurious to health because—<br>(i) of how it is situated or constructed; or<br>(ii) it is in a state of disrepair; or<br>(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or<br>(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 as defined in <a href="#">section 44A</a> of the Local Government Official Information and Meetings Act 1987.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Medical Officer of Health,<br>Health Protection Officer | Designated officers of the Ministry of Health appointed under the <a href="#">Health Act 1956</a> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Nuisance                                                | Defined in <a href="#">section 29</a> of the Health Act 1956.<br>The definition of nuisance in many cases describes scenarios that are also insanitary in terms of the Building Act 2004.                                                                                                                                                                                                                                                                                                                                                                                                                               |
| NZBC                                                    | New Zealand Building Code                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PIM                                                     | Project Information Memorandum. The content of a PIM is set out in <a href="#">section 35</a> of Building Act 2004.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Property File and Register                              | A record of legal information the Council is required to maintain in terms of <a href="#">section 216</a> of the Act                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <del>Structural Condition</del>                         | <del>The structural condition of the building at the time the Council carries out an inspection of the building to ascertain its state</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| The Act                                                 | <a href="#">The Building Act 2004</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Designated area                                         | means an area designated under <a href="#">section 133BC</a> of the Act for the emergency management of buildings                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

**Effective Date:** XX

**Legal compliance:** In accordance with section 131 of the Building Act 2004

**Approved by:** Council/Committee on [insert date]

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