

# **Dangerous and Insanitary Buildings Policy 2021**

## Commencement and Review

Councils policy first took effect from 30<sup>th</sup> May 2006 with the amended policy effective from 15 September 2021.

This policy may be further amended by Council from time to time at its discretion in accordance with the Special Consultative Procedure in section 83 of the Local Government Act 2002.

## Policy Amendments

<b>Amendment (s)</b>	<b>Date</b>	<b>Updated by &amp; Authority</b>
Adopted	30 May 2006	Council
Policy 2016 adopted	15 September 2016	Council
Policy reviewed and amended to incorporate latest legislative references (Building Act 2004 – Reprint as at 8 June 2021)	15 September 2021	P&R staff

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# Dangerous, and Insanitary Buildings

## 1.0 Introduction

Building consent authorities and territorial authorities are required to perform functions relating to dangerous, or insanitary buildings as defined under Section 12(2)(j) of the Building Act 2004.

Sections 131 and 132 of the Building Act 2004 (the “Act”) requires all Territorial Authorities to adopt a policy on Dangerous, and Insanitary Buildings. An amendment to the Act that came into force November 2013 requires the policy to apply to *affected* buildings (s132A) (refer Appendix 1 for relevant sections/excerpts from the Act).

The policy is required to be reviewed every 5-years.

The Policy has been adopted in accordance with the Special Consultative Procedure set out in Sections 83 and 89 of the Local Government Act 2002.

Definitions of “dangerous buildings”, “affected buildings”, and “insanitary buildings” are included in Section 2 of this policy.

This document sets out the policy adopted by Hastings District Council (herein after referred to as the “Council”) in accordance with the requirements of the Building Act 2004. The Dangerous and Insanitary Buildings Policy was created to contribute to Council’s commitment to the following community outcomes:

“A lifetime of good health and well-being by providing a safe environment for public use.”

The Policy is required to state:

1. The approach that Council will take in performing its functions under this part of the Building Act 2004.
2. The priorities established by Council in performing those functions.
3. How the policy will apply to heritage buildings.

## **1.1 Policy Principles**

The following principles underpin the creation of this policy:

### **1.1.1 Principle 1**

The Council is committed to taking responsible courses of action that will ensure its obligations under the Building Act 2004 are met. The Policy shall contribute to establishing a safe and secure community by protecting people and property from dangerous or insanitary buildings by requiring these buildings to be made safe.

Explanation:

Council's responsibility under the Building Act 2004 is set out in Section 12(2)(j), and the overall purpose and principles of the Building Act 2004 are set out in Section 3 & 4 of the Act (refer Appendix 1).

It is important that buildings within the District are durable for their intended use and that surrounding properties are protected from the potential of physical damage. The statutory requirement to establish a Policy to cover dangerous, affected, or insanitary buildings is consistent with the higher level community outcomes of the Long Term Plan (LTP) to provide safe, healthy and liveable communities.

At the heart of the requirement to establish a Dangerous and Insanitary Buildings Policy, is the need to ensure people who use buildings can do so safely, without endangering their health, and prevent injury or death to persons or damage to surrounding properties.

### **1.1.2 Principle 2**

Fundamental to Council's responsibilities is the importance of maintaining standards of building design and construction in achieving compliance with the New Zealand Building Code.

## 2.0 Definitions

### 2.1 Affected Building

The definition of an affected building is set out in Section 121A 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.*

Note: Waikato Regional Council perform the role of Building Consent Authority for Hawke's Bay in respect of dams. They also perform additional roles in respect of on-going safety of dams.

### 2.2 Dangerous Building

The definition of a dangerous building is set out in Section 121(1) of the Act:

*“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 ....”*

### 2.3 Insanitary Building

The definition of an insanitary building is set out in Section 123 of the Act:

*“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.”*

## **3.0 Policy Approach for Dangerous Buildings**

### **3.1 Policy Statement**

When buildings that may be dangerous come to the attention of Council, Council will act promptly to investigate and if determined to be dangerous ensure they are made safe.

Buildings may become dangerous due to a number of reasons, such as unauthorised alterations being made, from a fire, from a natural disaster, or as a result of its use by an occupant. Council has a statutory responsibility to act promptly to ensure the safety of persons or property when buildings that that may be dangerous come to the Council's attention.

Council is also required to consider whether any other buildings may be affected by a dangerous building and if so, what action, if any, is appropriate. The concept of an affected building arises in the context of a dangerous building (or dam) that is physically close enough to potentially pose a danger to people within the affected building.

Note: *affected* buildings are defined as buildings which are adjacent to, adjoining, or nearby a dangerous building.

**Council will use the legislative powers available under the Building Act 2004 when carrying out its duties for any dangerous or affected buildings.**

### **3.2 Identification of Dangerous Buildings**

In order to identify dangerous buildings Council may respond to and investigate building complaints or notifications from internal sources or third parties. The Council will determine on a case by case basis whether it will respond to anonymous complaints. The Council may elect not to respond to these complaints when no action is required or considered necessary or appropriate.

Where investigations reveal that a building is dangerous, the owner and occupier of the building will be informed and the owner required to reduce or remove the danger. Council may seek advice from Fire and Emergency New Zealand, structural or fire engineers, and advice from other appropriate expert personnel or organisations when making dangerous building assessments where it is

appropriate to do so. For example an assessment of a complex building, or a building that may have suffered damage after an earthquake may be necessary.

Buildings adjacent to, adjoining, or nearby a building that has been deemed dangerous may be defined as “affected buildings” under the Act. Council may restrict access to affected buildings for a limited period of time (up to a maximum of 60 days).

Council will assess dangerous and affected buildings against the provisions of Section 121(1) and 121A of the Building Act 2004 (refer Appendix 1).

### **3.3 Taking Action on Dangerous and Affected Buildings**

Where the danger is assessed as immediate, Council may undertake any of those measures outlined in Section 129 of the Act to mitigate or remove the danger. Due to the urgent nature of the risk that dangerous buildings pose to users, Council will in the first instance act to ensure no person uses or occupies the building until such work is undertaken to reduce or remove the danger. Council may seek to recover costs for work carried out under this Section.

Where the danger is assessed as not being immediate, in accordance with Sections 121, 124 and 125 of the Act, Council may:

- Advise and liaise with the owner(s) of the building(s) on steps to make a building safe;
- Request a written report on a building from the *Fire and Emergency New Zealand*, a structural engineer or other suitably qualified and experience person(s) (for example, a report from a structural engineer to determine if a building is safe to occupy following unconsented structural alterations to a building; or a report from a fire engineer to determine if a building has suitable fire safety systems for how a building is being used);
- If the building is found to be dangerous the Council may:
  - put up a hoarding or fence to prevent people from approaching the building nearer than is safe
  - attach a written notice to the building that warns people not to approach the building



- attach a written notice to the building requiring remedial work to be carried out to reduce or remove the danger within a time stated in the notice (being not less than 10 days)
- issue a notice restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons
- provide copies of the notice to the building owner, the occupier and every person who has an interest in the land, or is claiming an interest in the land, as well as the Heritage New Zealand Historic Pouhere Taonga, if the building is a heritage building;
- Consider enforcement action under the Act if the requirements of the notice are not met (for example; not completing specified actions within the time stated on any notice, or other non-compliance matters such as continuing to use or occupy a building, or permitting another person to do so in contravention of a notice).

## **4.0 Policy Approach for Insanitary Buildings**

### **4.1 Policy Statement**

When buildings that may be insanitary come to the attention of Council, Council will act promptly to investigate, and if determined to be insanitary ensure they are made sanitary.

Buildings may become insanitary due to a number of reasons, such as unauthorised plumbing/drainage alterations being made, following a natural disaster (for example flooding), as a result of poor maintenance, or misuse by an occupant. Council has a statutory responsibility to act promptly to ensure the safety of persons or property when buildings that may be insanitary come to the Council's attention.

**Council will use the legislative powers available under the Building Act 2004 when carrying out its duties for any insanitary buildings.**

In some circumstances additional statutory measures may need to be considered to address issues that fall outside the scope of the Building Act 2004. For instance remedies may be appropriate and

necessary under the Health Act 1956 or the Resource Management Act 1991. Each situation will be assessed on merit and referred to appropriate authorities and agencies.

## **4.2 Identification of Insanitary Buildings**

In order to identify insanitary buildings Council may respond to and investigate all building complaints or notifications from internal sources or third parties. The Council will determine on a case by case basis whether it will respond to anonymous complaints. The Council may elect not respond to these complaints when no action is required or considered necessary or appropriate.

In situations where natural disasters have occurred, Council will institute an active approach to assessing the sanitary state of affected buildings.

Where any investigations reveal that a building is in an insanitary state, the owner and occupier of the building will be informed and the owner required to address those conditions contributing to the insanitary state. Council may seek advice from other appropriate expert personnel or organisations when making insanitary building assessments where it is appropriate to do so. For example an assessment of a buildings potable water supply that may have become contaminated with faecal coliforms.

Council will assess insanitary buildings against the provisions of Section 123 of the Building Act 2004 (refer Appendix 1).

## **4.3 Taking action on Insanitary Buildings**

Where immediate action is required to prevent the building from remaining insanitary, Council may undertake measures under Section 129 of the Act to fix the insanitary conditions. Due to the urgent nature of the risk that insanitary buildings pose to users, Council will in the first instance act to ensure no person uses or occupies the building, or permits another person to use or occupy the building until such work is undertaken to fix the insanitary conditions.

Where immediate action is not required, in accordance with Sections 124 and 125 of the Act, Council may:

- Advise and liaise with the owner(s) of the building(s) on steps to fix the insanitary conditions;
- Request a report from a suitably qualified and appropriate expert personnel or organisations (for example, a report from a Building Surveyor and Weathertight Expert to determine if a leaky building with internal mould is still safe to occupy);
- If the building is found to be insanitary the Council may:
  - put up a hoarding or fence to prevent people from approaching the building nearer than is safe
  - attach a written notice to the building that warns people not to approach the building
  - attach a written notice to the building requiring remedial work to be carried out to prevent the building from remaining insanitary within a time stated in the notice (being not less than 10 days)
  - provide copies of the notice to the building owner, the occupier and every person who has an interest in the land, or is claiming an interest in the land, as well as the Heritage New Zealand Historic Pouhere Taonga, if the building is a heritage building;
- Consider enforcement action under the Act if the requirements of the notice are not met within the time stated on any notice or other non-compliance matters such as continuing to use or occupy a building, or permitting another person to do so in contravention of a notice

## **5.0 Recording Status of Dangerous, or Insanitary Buildings**

If a building has been assessed as being dangerous or insanitary, Hastings District Council will record its status in the following manner:

- On Council's property files;
- In Land Information Memoranda (LIM's)

Following the building being made safe and/or sanitary, the records are updated.

## **6.0 Heritage Buildings**

Council believes it is important that heritage buildings within the District do not pose a risk to the safety of people or other buildings.

Heritage buildings will be assessed in the same way as other dangerous or insanitary buildings.

Any requirement for works to occur on heritage buildings will take into account a desire to seek preservation of the heritage fabric where possible.

## **7.0 Objections**

Building owners may lodge an objection with Council about any action taken under this policy at any stage.

Where building owners disagree with a formal notice served by Council pursuant to Sections 124 or 129 of the Act, they have a right to apply to the Ministry of Business, Innovation and Employment (MBIE) for a determination under Section 177(3)(f) of the Act (refer Appendix 1).

## Appendix 1: Relevant Sections (or excerpts of Sections) of the Building Act 2004

### 3 Purposes

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
  - (i) people who use buildings can do so safely and without endangering their health; and
  - (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
  - (iii) people who use a building can escape from the building if it is on fire; and
  - (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:
- (b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

Section 3: replaced, on 13 March 2012, by section 4 of the Building Amendment Act 2012 (2012 No 23).

### 4 Principles to be applied in performing functions or duties, or exercising powers, under this Act

- (1) This section applies to—
  - (a) the Minister; and
  - (b) the chief executive; and
  - (c) a territorial authority or regional authority (but only to the extent that the territorial authority or regional authority is performing functions or duties, or exercising powers, under subpart 6A of Part 2 (which relates to earthquake-prone buildings) or in relation to the grant of waivers or modifications of the building code or the adoption and review of policy on dangerous and insanitary buildings or dangerous dams); and
  - (d) in subpart 6B of Part 2,—
    - (i) a person who may designate an area for the purposes of that subpart:
    - (ii) a responsible person as defined in section 133BB(1).
- (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 minimised:
- (c) the importance of ensuring that each building is durable for its intended use:
- (d) the importance of recognising 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 authorised 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.

Compare: 1991 No 150 s 6(2)

Section 4(1)(c): amended, on 1 July 2017, by section 4 of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 4(1)(d): inserted, on 17 December 2019, by section 4 of the Building Amendment Act 2019 (2019 No 27).

Section 4(2)(k): amended, on 15 March 2008, by section 5 of the Building Amendment Act 2008 (2008 No 4).

Section 4(2)(q): inserted, on 13 March 2012, by section 5 of the Building Amendment Act 2012 (2012 No 23).

## **12 Role of building consent authority and territorial authority—**

(2) Under this Act, a territorial authority—

- (j) performs functions relating to dangerous, insanitary, or earthquake-prone buildings or buildings located in areas designated under subpart 6B of Part 2; and ....

Section 12(2)(c): amended, on 30 May 2017, by section 4 of the Regulatory Systems (Building and Housing) Amendment Act 2017 (2017 No 11).

Section 12(2)(j): replaced, on 17 December 2019, by section 7 of the Building Amendment Act 2019 (2019 No 27).

Section 12(2)(ja): inserted, on 1 January 2017, by section 8 of the Building (Pools) Amendment Act 2016 (2016 No 71).

## **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.

Compare: 1991 No 150 s 64(1), (2), (3)

Section 121(1)(b): amended, on 13 March 2012, by section 51 of the Building Amendment Act 2012 (2012 No 23).

Section 121(2)(a): amended, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

## **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.

Section 121A: inserted, on 28 November 2013, by section 28 of the Building Amendment Act 2013 (2013 No 100).

## **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.

**123A Application of this subpart to parts of buildings**

- (1) If a territorial authority is satisfied that only part of a building is dangerous (within the meaning of section 121) or insanitary (within the meaning of section 123),—
  - (a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and
  - (b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.
- (2) To the extent that a power or function of a territorial authority under this subpart relates to affected buildings,—
  - (a) the territorial authority may exercise the power or perform the function in respect of all or part of an affected building; and
  - (b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.

Section 123A: inserted, on 1 July 2017, by section 15 of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

**123B Buildings in areas designated under subpart 6B**

- (1) If a dangerous or insanitary building or a building adjacent to, or adjoining, a dangerous building is located in an area that has been designated under subpart 6B, this subpart does not apply to that building while the designation is in force.
- (2) Despite subsection (1), this subpart continues to apply to the building for the purposes of—
  - (a) an action taken in relation to the building under section 124(2)(a) or (b) before the designation:
  - (b) a notice issued in relation to the building under section 124(2)(c), or work carried out in accordance with the notice or under section 126, before the designation:
  - (c) a notice issued in relation to the building under section 124(2)(d) before the designation:
  - (d) an action in relation to the building for which a warrant has been issued under section 129(2) before the designation.

Section 123B: inserted, on 17 December 2019, by section 11 of the Building Amendment Act 2019 (2019 No 27).

**124 Dangerous, affected, or insanitary buildings: powers of territorial authority**

- (1) This section applies if a territorial authority is satisfied that a building in its district is a dangerous, affected, or insanitary building.
- (2) In a case to which this section applies, the territorial authority may do any or all of the following:
  - (a) put up a hoarding or fence to prevent people from approaching the building nearer than is safe:
  - (b) attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building:
  - (c) except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to—
    - (i) reduce or remove the danger; or
    - (ii) prevent the building from remaining insanitary:
  - (d) issue a notice that complies with section 125(1A) restricting entry to the



building for particular purposes or restricting entry to particular persons or groups of persons.

(3) *[Repealed]*

Section 124: replaced, on 28 November 2013, by section 30 of the Building Amendment Act 2013 (2013 No 100).

Section 124 heading: amended, on 1 July 2017, by section 17(1) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 124(1): amended, on 1 July 2017, by section 17(2) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 124(3): repealed, on 1 July 2017, by section 17(3) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

## 125 Requirements for notice requiring building work or restricting entry

- (1) A notice issued under section 124(2)(c) must—
- (a) be in writing; and
  - (b) be fixed to the building in question; and
  - (c) be given in the form of a copy to the persons listed in subsection (2); and
  - (d) state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer; and
  - (e) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.
- (1A) A notice issued under section 124(2)(d)—
- (a) must be in writing; and
  - (b) must be fixed to the building in question; and
  - (c) must be given in the form of a copy to the persons listed in subsection (2); and
  - (d) may be issued for a maximum period of 30 days; and
  - (e) may be reissued once only for a further maximum period of 30 days.
- (2) A copy of the notice must be given to—
- (a) the owner of the building; and
  - (b) an occupier of the building; and
  - (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 2017; and
  - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 138 of the Land Transfer Act 2017; and
  - (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
  - (f) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
- (3) However, the notice, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).

Compare: 1991 No 150 s 71

Section 125 heading: replaced, on 28 November 2013, by section 31 of the Building Amendment Act 2013 (2013 No 100).

Section 125(1): replaced, on 28 November 2013, by section 31 of the Building Amendment Act 2013 (2013 No 100).

Section 125(1A): inserted, on 28 November 2013, by section 31 of the Building Amendment Act 2013 (2013 No 100).

Section 125(2)(c): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 125(2)(d): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 125(2)(e): replaced, on 1 July 2017, by section 18 of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 125(2)(f): amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

## **126 Territorial authority may carry out work**

- (1) A territorial authority may apply to the District Court for an order authorising the territorial authority to carry out building work if any work required under a notice issued by the territorial authority under section 124(2)(c) is not completed, or not proceeding with reasonable speed, within—
  - (a) the time stated in the notice; or
  - (b) any further time that the territorial authority may allow.
- (2) Before the territorial authority applies to the District Court under subsection (1), the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so.
- (3) If a territorial authority carries out building work under the authority of an order made under subsection (1),—
  - (a) the owner of the building is liable for the costs of the work; and
  - (b) the territorial authority may recover those costs from the owner; and
  - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.

Compare: 1991 No 150 s 65(4), (5)

Section 126(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 126(1): amended, on 28 November 2013, by section 32 of the Building Amendment Act 2013 (2013 No 100).

Section 126(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **127 Building work includes demolition of building**

Any work required or authorised to be done under section 124(2)(c) or section 126 may include the demolition of all or part of a building.

Compare: 1991 No 150 s 65(6)

Section 127: amended, on 28 November 2013, by section 33 of the Building Amendment Act 2013 (2013 No 100).

## **128 Prohibition on using dangerous, affected, or insanitary building**

- (1) This section applies if a territorial authority has done any of the following:
  - (a) put up a hoarding or fence in relation to a building under section 124(2)(a):
  - (b) attached a notice warning people not to approach a building under section 124(2)(b):
  - (c) issued a notice restricting entry to a building under section 124(2)(d).
- (2) In any case to which this section applies, and except as permitted by section 124(2)(d), no person may—
  - (a) use or occupy the building; or
  - (b) permit another person to use or occupy the building.

Section 128: replaced, on 28 November 2013, by section 34 of the Building Amendment Act 2013 (2013 No 100).

Section 128 heading: amended, on 1 July 2017, by section 19 of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

## **128A Offences in relation to dangerous, affected, or insanitary buildings**

- (1) A person who fails to comply with a notice issued under section 124(2)(c) that is given to that person under section 125(2)—
  - (a) commits an offence; and
  - (b) is liable on conviction,—
    - (i) in the case of an individual, to a fine not exceeding \$300,000:
    - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.
- (2) A person who fails to comply with section 128(2)—

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

Section 128A: inserted, on 28 November 2013, by section 35 of the Building Amendment Act 2013 (2013 No 100).  
 Section 128A heading: amended, on 1 July 2017, by section 20 of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).  
 Section 128A(1)(b): replaced, on 8 June 2021, by section 36 of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 (2021 No 21).

**129 Measures to avoid immediate danger or to fix insanitary conditions**

- (1) This Section applies if, because of the state of a building,—
  - (a) immediate danger to the safety of people is likely in terms of section 121 or section 123; or
  - (b) immediate action is necessary to fix insanitary conditions.
- (2) The chief executive of a territorial authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgment to—
  - (a) remove that danger; or
  - (b) fix those insanitary conditions.
- (3) If the territorial authority takes action under subsection (2),—
  - (a) the owner of the building is liable for the costs of the action; and
  - (b) the territorial authority may recover those costs from the owner; and
  - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the building is situated.
- (4) The chief executive of the territorial authority and the territorial authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2).

Compare: 1991 No 150 s 70(1), (4)  
 Section 129(1)(a): amended, on 1 July 2017, by section 21 of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

**130 Territorial authority must apply to District Court for confirmation of warrant**

- (1) If the chief executive of a territorial authority issues a warrant under section 129(2), the territorial authority, on completion of the action stated in the warrant, must apply to the District Court for confirmation of the warrant.
- (2) On hearing the application, the District Court may—
  - (a) confirm the warrant without modification; or
  - (b) confirm the warrant subject to modification; or
  - (c) set the warrant aside.
- (3) Subsection (1) does not apply if—
  - (a) the owner of the building concerned notifies the territorial authority that—
    - (i) the owner does not dispute the entry into the owner’s land; and
    - (ii) confirmation of the warrant by the District Court is not required; and
  - (b) the owner pays the costs referred to in section 129(3)(a).

Compare: 1991 No 150 s 70(2), (3)  
 Section 130(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).  
 Section 130(3)(a)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**131 Territorial authority must adopt policy on dangerous and insanitary buildings**

- (1) A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous and insanitary buildings within its district.
- (2) The policy must state—
  - (a) the approach that the territorial authority will take in performing its functions under this Part; and
  - (b) the territorial authority's priorities in performing those functions; and
  - (c) how the policy will apply to heritage buildings.

Section 131 heading: amended, on 1 July 2017, by section 23(1) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 131(1): amended, on 1 July 2017, by section 23(2) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

### **132 Adoption and review of policy**

- (1) A policy under section 131 must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.
- (3) A territorial authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.
- (4) A territorial authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.
- (5) A policy does not cease to have effect because it is due for review or being reviewed.

### **132A Policy must take into account affected buildings**

- (1) A policy under section 131 must take into account affected buildings.
- (2) A territorial authority must amend an existing policy to take into account affected buildings at the latest within a reasonable period following the next review of its policy required under section 132(4).
- (3) In subsection (2), **existing policy** means a policy existing at the date of this section coming into force.

Section 132A: inserted, on 28 November 2013, by section 36 of the Building Amendment Act 2013 (2013 No 100).

### **177 Application for determination**

- (1) A party may apply to the chief executive for a determination in relation to either or both of the following:
  - (a) whether particular matters comply with the building code:
  - (b) the exercise, failure or refusal to exercise, or proposed or purported exercise by an authority in subsection (2), (3), (4), or (4A) of a power of decision to which this paragraph applies by virtue of that subsection.
- (2) Subsection (1)(b) applies to any power of decision of a building consent authority in respect of all or any of the following:
  - (a) a building consent:
  - (b) an extension under section 52(b) of the period during which building work must be commenced before a building consent lapses:
  - (c) an extension under section 93(2)(b)(ii) of the period during which the authority must decide whether to issue a code compliance certificate:
  - (d) a code compliance certificate:
  - (e) a compliance schedule:

- (f) a notice to fix.
- (3) Subsection (1)(b) applies to any power of decision of a territorial authority in respect of, or under, all or any of the following:
  - (a) any waiver or modification of the building code under section 67:
  - (b) a certificate of acceptance under section 96:
  - (c) an exemption from building consent requirements under clause 2 of Schedule 1:
  - (d) an amendment to a compliance schedule under section 106, 107, or 109:
  - (e) a notice to fix:
  - (f) sections 112, 113, 115, and 116 (which relate to alterations to, or changes in the use of, a building) and 124 and 129 (which relate to dangerous, affected, and insanitary buildings):
  - (fa) any power of decision of a territorial authority under subpart 6A of Part 2, other than a power of decision under section 133AS (territorial authority may carry out seismic work):
  - (g) a certificate for public use under section 363A:
  - (h) a certificate under section 224(f) of the Resource Management Act 1991.
- (4) Subsection (1)(b) applies to any power of decision under this Act of a regional authority in respect of a dam.
- (4A) Subsection (1)(b) applies to any power of decision of a responsible person under—
  - (a) section 133BS (measures to keep people at safe distance and protect building); or
  - (b) section 133BT (notices and signs on buildings); or
  - (c) section 133BW (works to remove or reduce other risks); or
  - (d) section 133BX (works for long-term use or occupation of building).
  - (5) Nothing in this section limits or affects section 70(4) or 446(1)(c).
  - (6) In subsection (4A), responsible person does not include—
    - (a) the Minister acting as responsible person under section 133BJ(2)(c)(i); or
    - (b) a territorial authority acting on direction by the Minister under section 133BJ(2)(c)(ii); or
    - (c) a territorial authority complying with a direction given by the Minister under section 133BJ(4).

Section 177: replaced, on 7 July 2010, by section 4 of the Building Amendment Act 2010 (2010 No 50).

Section 177(1)(b): amended, on 17 December 2019, by section 17(1) of the Building Amendment Act 2019 (2019 No 27).

Section 177(3)(c): amended, on 30 May 2017, by section 6 of the Regulatory Systems (Building and Housing) Amendment Act 2017 (2017 No 11).

Section 177(3)(f): amended, on 1 July 2017, by section 29(1) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 177(3)(fa): inserted, on 1 July 2017, by section 29(2) of the Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22).

Section 177(4A): inserted, on 17 December 2019, by section 17(2) of the Building Amendment Act 2019 (2019 No 27).

Section 177(6): inserted, on 17 December 2019, by section 17(3) of the Building Amendment Act 2019 (2019 No 27).