



Westland District Council

DANGEROUS, AFFECTED AND INSANITARY BUILDING POLICY

2026

Commencement

This policy comes into force on DAY MONTH YEAR.

Pursuant to section 131 of the Building Act 2004 this policy is required to be reviewed by the Council every 5 years.

Adopted by Council:	Thursday 21st September 2006	V1.0
Amended as a result of special consultative procedure	Adopted 24 th November 2011	V1.1
Reviewed & amended as a result of special consultative procedure and the Building (Earthquake-prone Buildings) Amendment Act 2016	25 th October 2018	V1.2
Reviewed and amended as a result of special consultative procedure		V1.3
Next review due		

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1. Purpose

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

Section 131 and 132A of the Building Act 2004 requires territorial authorities to adopt a policy on dangerous, affected and insanitary buildings within their district, and to review this every five years. If amended, a copy of the new version is to be provided to MBIE as specified in Section 132(3). 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.
3. How the policy will apply to heritage buildings.

While addressing insanitary buildings under the Building Act, the council is also required to consider obligations under the Health Act, as each statute serves distinct but complementary public health purposes, and these considerations are undertaken separately to ensure all relevant risks and enforcement powers are appropriately addressed.

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, and has made extensive use of the guidance documents provided by the Ministry of Business, Innovation and Employment and its predecessor agencies.

2. THE POLICY

2.1 Policy principles

Early detection and rectification of dangerous, affected, and insanitary buildings is strongly connected with the Council's aim of having a safe District. The Council acknowledges that the provisions of the Building Act 2004 (the Act) in regard to dangerous, affected, and insanitary buildings reflect the Government's broader concern with the health and safety of people who use buildings.

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*

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- (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*

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(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.

2.2 Overall Approach

Subpart six, Sections 121 to 130 of the Act provide the authority necessary for Council to take action on dangerous, affected, or insanitary buildings, and sets out how these actions are to be taken.

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.

The public are encouraged to discuss their development plans with Council and to obtain building consent for work Council deems to be necessary before any work commences. This aims to minimise the creation of dangerous or insanitary conditions that could be injurious to the health of occupants, or where safety risks are likely to arise from a change in the use of a building.

Council follows up on complaints from various sources and observations from council officers to identify potentially dangerous and/or insanitary buildings and will continue this approach.

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.

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2.3 Definitions of buildings covered by the 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.

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2.4 Identifying Dangerous, Affected or Insanitary Buildings

The Council takes a passive approach to the issue but will actively respond to and investigate all complaints received or issues identified by staff and identify from these investigations any buildings that are dangerous, affected, or insanitary. The MBIE flowchart is attached to show the steps Council will take to assess and manage these buildings. (Appendix A).

An authorised Council officer will assess the building to determine:

- if there has been any unauthorised building work and / or unauthorised change of use;
- the standard of maintenance of any specified systems for fire safety, water supply or other building elements that provide amenity;
- the state of repair of the building structure and services;
- the safety level of the building compared to the relevant performance criteria of the New Zealand Building Code.
- whether any other buildings should be regarded as an affected building.

The MBIE guidance document “Steps for identifying and managing dangerous, affected and insanitary buildings” will be used for this determination process. (Appendix B).

Council or owners may obtain expert advice where appropriate and explore options to reduce or remove the danger, or to fix the dangerous or insanitary conditions.

2.5 Interactions with building owners and Building Act sections

Before exercising its powers, Council will seek to discuss options for action with owners on a mutually acceptable approach, before issuing a Notice or erecting hoardings or signs. This will lead to a formal proposal from the owners for dealing with dangerous, affected or insanitary situations, or action being taken under the Health Act 1956.

Where discussions do not yield a mutually acceptable or co-operative approach and proposal, Council will commence proceedings in accordance with Section 124 of the Act.

Where parties other than the building owner, have access to the building, Council will exercise its powers without delay in the interests of protecting the public. The owner will be kept fully informed of the process.

2.6 Assessment & Action 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. In forming its views as to the work or action that is required to prevent the building from remaining dangerous, affected, or insanitary, Council will consider some or all of the following:

- the type, size and complexity of the building and location of the building in relation to other buildings, public places and hazards.
- age of the building.
- how many people spend time in or near the building.
- current and likely future use of the building.
- the expected useful life of the building and any prolongation of that life.

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- reasonable practicality of any work required.
- any special historical or culture value of the building.
- The economic impact of the Policy.
- any other matters that Council considers may be relevant considering the particular set of circumstances.

Council uses a risk matrix to determine the timeframe within which the assessment will be completed. (Appendix B).

2.7 Investigation and Enforcement Process - Dangerous, Affected and Insanitary buildings

In accordance with Section 124 and Section 125 of the Building Act 2004 (the Act) Council:

- (a) Respond to and investigate all building complaints received.
- (b) Assess the building/s using the determination process in Appendix B.
- (c) may request a written report on the building from Fire and Emergency New Zealand (Whakarātonga Iwi).
- (d) may request reports from other parties with relevant expertise to be supplied at the owners expense.

If the building is found to be dangerous, or insanitary, Council may do any or all of the following:

- (a) will advise and liaise with the owner(s) of buildings once a building has been identified as dangerous, affected or insanitary as per clause 2.5 above,
- (b) 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.
- (c) put up a hoarding or fence to prevent people approaching the building.
- (d) attach in a prominent place, on or adjacent to, the building a notice that warns people not to approach the building.
- (e) attach a written notice to the building 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 in an insanitary condition.
- (f) issue a notice restricting entry to the building.
- (g) endeavour to give copies of that notice 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.
- (h) contact the owner at the expiry of the time in the notice to gain access to the building to ascertain whether the notice has been complied with.
- (i) where the danger or insanitary condition is the result of unauthorised building work, the owner will be formally requested to provide a written explanation as to how the work occurred, who carried it out, and under whose instructions.
- (j) pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time.

If the building is considered to be of immediate danger (as defined in Section 129 of the Act), Council may:

- (a) by warrant, undertake any action to remove that danger, which may include prohibiting persons from using or occupying the building or demolition of all or part of the building; or fix the insanitary conditions; and
- (b) undertake action to recover costs from the owner(s) when Council carries out works to remove the danger; and

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- (c) inform the owner that the amount recoverable by Council will become a charge on the land on which the building is situated.

All owners have a right of appeal as defined in the Act, which can include applying to the Ministry of Business, Innovation and Employment for a determination under Section 177(3) of the Act.

2.8 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.

2.9 Acting on affected buildings

When a building is determined to be dangerous, Council will assess if any adjacent, adjoining, or nearby building is affected (an affected building) as defined in Section 121A of the Act.

The owner of the affected building will be provided with a copy of any notice issued for the dangerous building under Section 124(2)(b),(c) or (d) of the Act, and information relating to Council's monitoring and enforcement actions in relation to the dangerous building.

Council may at its discretion, exercise any of its powers under Section 124(2)(a), (b), or (d) in relation to the affected building.

2.10 Recording dangerous, affected and insanitary status

Council will keep a register of buildings in their district deemed dangerous, affected or insanitary.

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.

Where the status of the building could affect any proposed building work, councils should consider whether the information should be disclosed in a project information memorandum.

3. HERITAGE BUILDINGS (POHERE TAONGA)

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.

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Heritage buildings are those listed in Council's District Plan Schedule, Marae and buildings listed in the New Zealand Heritage List / Rārangi Kōrero. The Building Act 2004 recognises that special provision shall be made for such buildings. In the implementation of procedures under the Act with regards to dangerous, affected, or insanitary buildings, Council will consider any special traditional or 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.

This will be achieved by:

- (a) recognising the range of heritage buildings that exist in the District, including the New Zealand Historic Places list and statutory protection through listing in the District Plan.
- (b) consultation with owners and Heritage New Zealand in relation to any proposed written notice requiring work.
- (c) informing and involving relevant statutory organisations, including Heritage New Zealand, with regard to any heritage building identified as at risk.
- (d) considering heritage values when developing and managing upgrading proposals.
- (e) consideration of alternative methods to avoid unnecessary demotion of heritage buildings including:
 - partial demotion.
 - temporary propping/support of the structure.
 - hoardings to restrict access.
 - partial deconstruction to make safe and salvage materials.

After undertaking the actions outlined above, Council will serve notices requiring upgrading or removal within specific timeframes, in consultation with building owners.

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.

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 consider 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.

4. 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.

5. 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

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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.

5.1 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.

6. POLICY 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 adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.

A territorial authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.

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.

A policy does not cease to have effect because it is due for review or being reviewed.

A review of this policy will take place in MONTH 2027.

6.1 Policy Review and Version History

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 25th October 2018.

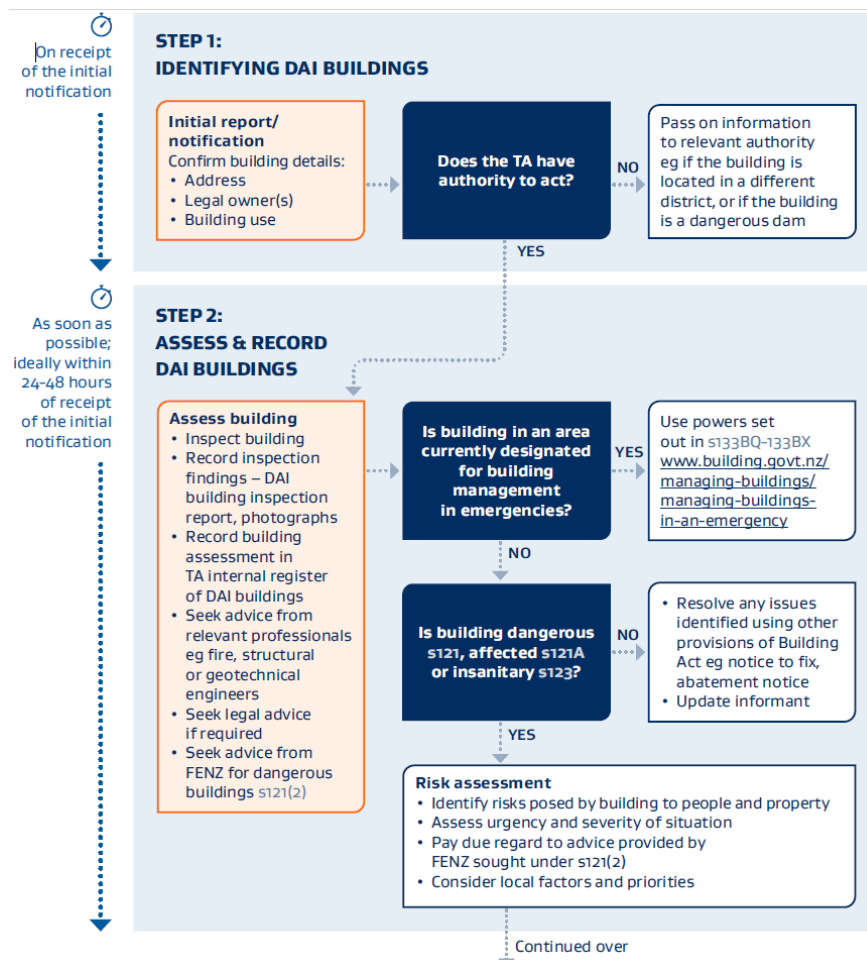
The policy is due for review by 25th October 2023.

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Appendix A – Building Performance Flowchart - Steps for identifying and managing DAI Buildings

This flowchart outlines the steps that councils will take when performing functions for managing a dangerous, affected or insanitary building from initial identification through to resolution.



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Appropriate timeframe decided based on risk posed by building and action required

STEP 3: TAKE ACTION

Is immediate danger likely/immediate action required?

YES

NO

Immediate danger

- CE of TA issues warrant under s129 causing action to:
 - avoid immediate danger s121
 - fix insanitary conditions s123
- Inform building owner(s) and occupants of assessment
- Notify Heritage NZ Pouhere Taonga for heritage buildings
- On completion of the warranted action TA applies to District Court for confirmation of warrant s130
- Determine what follow up action is required

Notify

- At this point the TA may:
- Inform building owner(s) and occupants of assessment
 - Discuss building status with the owner where appropriate

Take action

The TA can take several actions depending on whether the building is dangerous, affected or insanitary

Dangerous (s121)

- Put up a hoarding or a fence to prevent people approaching the building nearer than is safe s124(2)(a)
- Attach in a prominent place, either on or adjacent to the building, a notice that warns people not to approach the building s124(2)(b)
- Issue a written notice restricting entry to the building, either for particular purposes or to a specific person or groups of people s124(2)(d)

Give written notice requiring work to be carried out on the building to reduce or remove the danger s124(2)(c)(i)

Insanitary (s123)

Give written notice requiring work to be carried out on the building to prevent the building from remaining insanitary s124(2)(c)(ii)

Affected (s121A)

Using dangerous, affected or insanitary buildings

Once a TA has done any of the following:

- Put up a hoarding or fence in relation to a building s124(2)(a)
- Attached a notice warning people not to approach a building s124(2)(b)
- Issued a notice restricting entry to a building s124(2)(d)

It is prohibited for anyone to use or occupy a building, or permit another person to use or occupy it s128

Form of s124(2)(c)(i) & (ii) notices specified by s125(1)

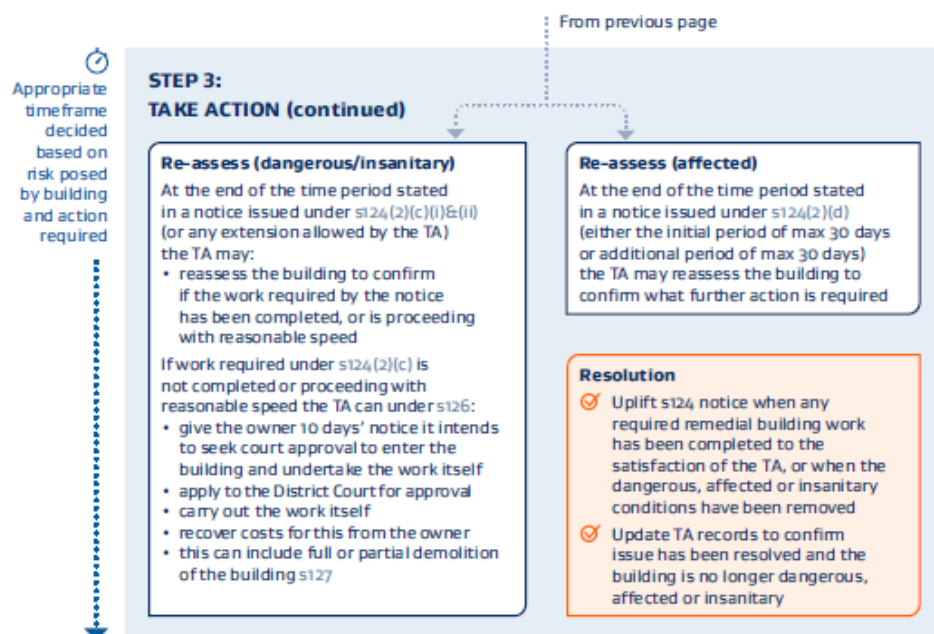
- The notice must be in writing and fixed to the building in question
- Copies of notices must be sent to both the owner of the building and those who occupy it, and also to a range of other people as listed in s125(2)
- The notice must state if the owner of the building must obtain a building consent for the work required by the notice
- The notice must state the time that the building work must be carried out in
- This timeframe must not be less than ten days from the date the notice is given, or a reasonable time for a building consent to be obtained, whichever is longer

Form of s124(2)(d) notices specified by s125(1A)

- The notice must be in writing and fixed to the building in question
- Copies of notices must be sent to both the owner of the building and those who occupy it, and also to a range of other people as listed in s125(2)
- The notice must be issued for a maximum period of thirty days, and may be re-issued once for a further maximum period of thirty days

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Glossary of abbreviations

Term	Explanation
DAI	Dangerous, affected and insanitary
TA	Territorial Authority
FENZ	Fire & Emergency New Zealand
CE	Chief Executive

Appendix B: Risk Matrix for Assessment & Action

Table 1. Definitions

Level of risk/likelihood	
Very high	Accessed daily by large groups of people (e.g. hospital, education facility, police station, prison, community centre, supermarket).
High	Accessed regularly by small groups of people (e.g. office, shops, apartment building).
Medium	Accessed daily (e.g. dwelling).
Low	Infrequent access, or exposure to hazard (e.g. detached domestic garage, workshop, sleepout).
Very low	Unlikely to be occupied, space typically used for storage only (e.g. farm shed, hay barn).
Consequence of failure	
Negligible	No injuries, no inconvenience to building users, no impact on adjacent buildings/property.
Minor	No injuries, some inconvenience to building users, likely impact on adjacent buildings/property.
Moderate	No injuries, inconvenience to building users, likely to impact on adjacent building/property.
Major	Serious injury or death (including injurious to health), evacuation or short-term sheltering may be required.
Extreme	Multiple deaths/serious injuries, failure of building likely to impact on adjacent building/property, evacuation or short/long term sheltering is required.

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Table 2. Assessment priority matrix

Risk calculator (level of risk/likelihood x consequences of failure).

*Determine the level of risk/likelihood and the consequence of failure using the definitions provided in Table 1 above. Input these into the table below. **Consequence of failure***

Level of risk	Negligible (1)	Minor (2)	Moderate (3)	Major (4)	Extreme (5)
Very high (5)	5	10	15	20	25
High (4)	4	8	12	16	20
Medium (3)	3	6	9	12	15
Low (2)	2	4	6	8	10
Very low (1)	1	2	3	4	5

Table 3. Assessment timeframe

The score from Table 2 informs the timeframe in which initial action shall be taken.

Priority	Score	Working days
Immediate	≥15	1
High	10-14	3
Medium	6-9	10
Low	≤5	20