

**Policy for
Earthquake-Prone, Dangerous and
Insanitary Buildings 2006-2011**

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EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS POLICY 2006 - 2011

Policy Purpose

Rodney District Council is required under s131 of the Building Act 2004 (Act) to adopt a policy on earthquake prone, dangerous and insanitary buildings. The Act also specifically recognises that heritage buildings may require a variation to such an approach if their particular values are not to be compromised. It therefore makes provision for the council policy to deal with earthquake strengthening of such places in a systematically different manner and on a case-by-case dispensation and waiver approach for issues of safety and sanitary conditions for heritage buildings. Therefore, the policy is required to state:

- the approach that the Rodney District Council will take in performing its functions under the Building Act 2004,
- Rodney District Council's priorities in performing those functions and
- how the policy will apply to heritage buildings.

In developing and adopting its earthquake-prone buildings policy, Rodney District Council has followed the consultative procedure set out in section 83 of the Local Government Act 2002.

The policy document is divided into three Parts;

- Part One – Earthquake-prone buildings
- Part Two – Dangerous buildings, and
- Part Three – Insanitary buildings

PART 1 - Earthquake-Prone Buildings

1.1 Background

By 31 May 2006, Rodney District Council needs to have adopted a policy on earthquake-prone buildings. The definition of an earthquake-prone building is set out in s122 of the Building Act 2004 and the definition of a moderate earthquake is defined by other relevant regulation. It is as follows:

“In relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity and displacement) that would be used to design a new building at the site.”

The significant change from the 1991 Building Act is that more buildings are covered by the definition and a higher level of structural performance of buildings is required. This document sets out the policy proposed for adoption by Rodney District Council in accordance with the requirements of the Building Act 2004.

The Rodney District is in a zone of low seismic activity (Appendix 'A'). Its buildings comprise a range of types and ages reflecting the steady development over the last 100 years. Construction materials include wood, un-reinforced masonry, framed masonry, brick veneer as well as modern steel and concrete buildings.

In the past Rodney District Council has not actively pursued a policy of identifying and strengthening every earthquake-prone building. The majority of earthquake risk buildings are likely to be located in the older township in the Rodney District.

Strengthening work undertaken to date has either been as a result of:

- property owners acting on their own accord or
- where property owners have applied for a building consent for a change of use of their buildings or part of their building and strengthening has been required (s46, Building Act 1991).

1.2 Policy development approach

Council has adopted a passive/active and pragmatic approach in developing the policy. This reflects Council's goal to reduce earthquake risk over time in a way that is acceptable to ratepayers and in social and economic terms.

The approach addresses the following considerations:

- Intent and provisions of the Building Act concerning earthquake-prone buildings,
- Government's broader concern with the life safety of the public in buildings and,
- The need to address life safety in the event of an earthquake.

Rodney District Council is committed to ensuring that the Rodney District is a safe place to live and work in. The earthquake-prone building policy is consistent with Council's strategic priority for a safe District as identified in Vision Rodney and its Long Term Plan (LTP).

1.3 Identifying earth-quake prone buildings

Process overview

Council actions will include:

- Identifying potential earthquake-prone buildings by reviewing the current building stock, based on its priorities, and
- Assessing the performance of those buildings in relation to the new building standard, in particular, to the standard defined for earthquake-prone buildings.
- Compiling a list of buildings that are earthquake prone in terms of the Building Act 2004.
- Assessing appropriate strengthening (or waivers from strengthening or hazard mitigation) as appropriate in heritage buildings.
- Advising owners of these buildings that their building has been identified as being at risk of being earthquake-prone
- Generic education programme
- Issuing written notices to all relevant building owners advising them of any upgrade requirements.
- Issuing dangerous building notices where the building is deemed to be severely under strength and potentially dangerous and working with the owner to resolve the issues. A deadline will be imposed in these instances

Owners have the right of appeal as defined in the Building Act 2004. This can include applying to the Department of Building and Housing for a determination under s177.

1.4 Process detail – a staged approach

Rodney District Council will adopt a staged approach as outlined

Stage 1

The outcome of this stage will be the development of an accurate register of potentially earthquake-prone buildings within the Rodney District. This will be accomplished by:

- Undertaking an initial desktop review of Council's files and information to identify potential earthquake-prone buildings.
- Completing a brief visual inspection of each building to compare Council held documentation with the actual, and
- Compiling a register of these buildings.

Stage 2

As a result of this stage an initial evaluation of building performance in the event of an earthquake will be completed on the relevant buildings by council . This will be based on information obtained by using the New Zealand Society of Earthquake Engineering (NZSEE) assessment and improvement of the structural performance of buildings in Earthquakes.”

In addition Council will continuously evaluate and assess the structural performance of buildings in all categories that were not identified in the initial review in a reactive manner. Such evaluations being triggered by a building consent application for building alteration, change of use, extension of life, or subdivision or requests by concerned citizens.

Stage 3

Having completed stages one and two Council will assemble a list of suspected Earthquake Prone Buildings according to the results of the assessments. They will then place the suspected earthquake prone buildings into the following categories:

- Buildings with special post-disaster functions as defined in AS/NZS 1170.0: 2002, Importance Level 4. (Appendix 'B')
- Buildings that contain people in crowds or contents of high value to the community as defined in AS/NZS 1170.0: 2002, Importance Level 3. (Appendix 'B')
- Heritage buildings or structures identified on District Plan schedules and other significant buildings or structures forming part of a Conservation Area
- Buildings with an Importance Level less than 3 as defined in AS/NZS 1170.0:2002 (Appendix 'B').

1.5 Assessment criteria

Earthquake-prone buildings will be defined as those that do not meet or exceed the criteria for ultimate limit state as defined in the loadings and materials standards for new buildings when subjected to a moderate earthquake. The New Zealand Society for Earthquake Engineering (NZSEE) recommendations will be used as the basis for defining technical requirements and criteria in conjunction with the following standards:

- AS/NZS 1170 Loadings Standard,
- NZS 3101 Concrete Structures Standard,
- NZS 3404 Steel Structures Standard and

- other materials Standards.

1.6 Taking action on earthquake-prone buildings

Council will discuss options for action with owners before exercising its powers under s124 and s125 of the Act. The purpose of these discussions will be to develop an agreed approach for dealing with the potential danger. The owners will then need to provide a formal proposal with respect to the work they will undertake. This proposal can then be formally accepted by Council.

Where an agreed approach and proposal cannot be reached, Council will serve a formal notice on the owner requiring strengthening or demolition of the building. In accordance with s124 and s125 of the Act, the Council will:

- Advise and liaise with the owner(s) of earthquake-prone buildings;
- Attach a written notice to the building stating what work is required within a time stated in the notice being not less than 10 days, to reduce or remove the danger;
- Provide copies of the notice to the building owner, occupier, and every person who has an interest in the land, or is claiming an interest in the land, including the New Zealand Historic Places Trust, if the building is a scheduled or registered heritage building;
- Contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with;
- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period as well as any other non-compliance matters.

Again, owners have the right of appeal as defined in the Building Act 2004. This can include applying to the Department of Building and Housing for a determination under s177.

1.7 Required level of structural improvement

NZSEE recommends that buildings identified as earthquake-prone should be strengthened to at least 67% of the new building standard. Rodney District Council would generally follow this recommendation but will assess buildings on a case by case basis.

1.8 The earthquake-prone buildings policy and the Building Act 2004

1.81 Section 112 Alterations to existing buildings

This section of the Building Act applies where an application is made to alter an existing building. In deciding whether or not to issue a consent Council must be satisfied that the altered building will comply as is nearly as reasonably practicable with the building code.

Where a building is considered to be potentially earthquake-prone, Council will use an application for “significant upgrading” or alteration of a building as an opportunity to require its assessment and subsequent strengthening to the level referred to in section 1.4. This requirement will be irrespective of the general priorities set by Council for dealing with earthquake-prone buildings.

1.82 Section 115 Change of use

A building consent application or formal change of use notification that is received in respect of buildings considered potentially earthquake-prone will trigger a requirement for owners of the buildings to complete an assessment of the buildings earthquake performance.

Where the building is shown to be earthquake-prone, Council will require that the building be strengthened to comply as nearly as is reasonably practicable with every provision of the Building Code that relates to structural performance refer s115(b) (l) (A), Building Act 2004. Progressive upgrades will be considered where a building consent is lodged for a minor amount of work within the building. (As an example a retail shop outlet into a restaurant)

1.9 Recording a building's earthquake-prone status

Rodney District Council will keep a record of all potential earthquake-prone buildings noting the status of requirements for improvement or the results of improvement as applicable.

In addition, the following information will be placed on the LIM for each earthquake-prone building:

- Address and legal description of land and building
- Statement that the building is identified as an earthquake-prone building.
- Date by which strengthening or demolition is required, (if known).
- Statement that further details are available from the Council.

NB. The Council cost recovery policy will apply.

1.10 Economic impact of policy

Indications are that economic loss due to the an earthquake occurring are relatively low due to the low risk of a moderate earthquake and the large number of buildings that are less that 25 years old and are hence designed to resist earthquakes. Confirmation of this economic assessment can only be achieved following completion of the initial building evaluation phase and identification of the scale and extent of the required strengthening work.

1.11 Access to earthquake-prone building information

Council will keep a record of the NZSEE grade of all buildings assessed. All relevant information concerning the earthquake status of a building will also be reflected on the relevant LIM.

Rodney District Council will not require earthquake-prone buildings to have an identifying plaque affixed to the building as it considers that ensuring the availability of information (at the Council offices) and the LIM notation is sufficient notice. In granting access to information concerning earthquake-prone buildings, Council will conform to the requirements of the Building Act 2004.

1.12 Priorities

Rodney District Council has prioritised the identification and the requirement to strengthen or demolish buildings as follows:

- a. Buildings with special post-disaster functions as defined in AS/NZS 1170.0:2002, Importance Level 4 (identify December 2008, strengthen or demolish 10 years).
- b. Buildings that contain people in crowds or contents of high value to the community as defined in AS/NZS 1170.0: 2002, Importance Level 3 (identify December 2009, strengthen or demolish 10 years).

A passive approach to strengthening will be undertaken for the following two categories of buildings

- a. Heritage buildings scheduled in Council's District Plan and or registered by the NZ Historic Places Trust (identify December 2010, strengthen or demolish 15 years).
- b. Buildings with an Importance Level of less than three as defined in AS/NZS 1170.0: 2002 and identified as being earthquake-prone (identify December 2011, strengthen or demolish 20 years).

Note:

- Figures in brackets indicate the latest date for identification and notification and the maximum time for strengthening or demolition respectively.
- Times required for strengthening or demolition commence on the date of issue of formal notice.
- Specific times will be assigned for action according to the assessment of structural performance and the nature of the concerns.

Once each category has been reviewed and the potential earthquake-prone buildings identified, the work associated with liaising with owners and serving notices on them will begin.

Within each category, identification of buildings (refer s4) will proceed according to the priorities identified above.

1.13 Heritage buildings

Council believes that heritage buildings¹ need to have a good chance of surviving a major earthquake. To achieve this, these buildings may require strengthening to levels exceeding that imposed by Clause 1.7 of this policy. However, Council does not want to see the strengthening work adversely affect the intrinsic value of these buildings. Where the detailed structural assessment confirms that the building is earthquake-prone, Council will work with the owners to develop a mutually acceptable way forward.

Again, consistent within this policy, where agreement cannot be reached, Council will issue a notice under s124 of the Building Act 2004. Special effort will be made to meet heritage objectives and to avoid the need for demolition and may include the use of dispensations and waivers to avoid forcing work which has a significantly negative impact on heritage places, especially where the level of non-compliance is technical

¹ For the purposes of this policy, "heritage buildings" are those buildings scheduled in the District Plans and any buildings registered under the Historic Places Act 1993 and other significant buildings forming part of a Conservation Area.

rather than significant, or where the level of risk can be adequately mitigated by a more flexible approach to levels of strengthening and to strengthening techniques under the Building Act. Strengthening work and techniques that respect and protect the heritage will be advocated.

PART 2 – Dangerous Buildings

2.1 Background

By 31 May 2006, Rodney District Council is required to have adopted a policy on dangerous buildings². The definition of a dangerous building is set out in s121 (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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”*

2.2 Policy Development Approach

Council has adopted an active and pragmatic approach in developing the policy.

The approach addresses the following considerations:

- Intent and provisions of the Building Act concerning earthquake-prone buildings,
- Government’s broader concern with the life safety of the public in buildings

Rodney District Council is committed to ensuring that the Rodney District is a safe place to live and work in. The dangerous building policy is consistent with Council’s strategic priority for a safe District as outlined in Vision Rodney and the LTP.

The Rodney District is experiencing strong growth, which is placing considerable pressure on existing building stock. Conversions of existing aged buildings, lack of maintenance, overcrowding and illegal building alterations can cause serious building problems for occupants. The failure to obtain a building consent or the negligent use of a building for a purpose for which it is not suitable can result in a building no longer complying with the building code and pose a danger to the occupants. Similarly, inappropriate use, illegal alteration or conversion of a building may expose people living or congregating in these spaces to danger. Dangers could include inadequate fire protection, means of escape or danger of collapse.

The Council is actively involved in educating the public on the need to discuss development plans with Council and to obtain building consent where necessary. Council will initiate enforcement action under the Building Act 2004.

2.3 Identifying dangerous buildings

² s131 Building Act 2004

The Council will:

1. Respond to and investigate all building complaints received;
2. Identify from these investigations any buildings that are dangerous;
3. Inform the owner and occupier of the building to take action to reduce or remove the danger, as is required by s124 and s125 of the Building Act 2004;
4. Liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with s121 (2) of the Building Act 2004³:

2.4 Assessment Criteria

The Council will assess dangerous buildings in accordance with s121 (1) of the Building Act 2004:

“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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”*

2.5 Taking Action on dangerous buildings

In accordance with s124 and s125 of the Building Act 2004 the Council will:

- Advise and liaise with the owner(s) of buildings and
- May request a written report on the building from the New Zealand Fire Service;

If it is found that the building is dangerous, Council will:

- Attach a written notice to the building requiring work to be carried out on the building, within the time stated in the notice and not being less than 10 days, to reduce or remove the danger;
- Give copies of the 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 the New Zealand Historic Places Trust, if the building is a heritage building;
- Contact the owner at the expiry of the time period set down in the notice in order to gain access to the building to ascertain whether the notice has been complied with;
- Where the danger is the result of non-consented building work a Notice to Fix will be issued under s124 of the Building Act 2004;
- If the Dangerous Building notice requirements are not met within a reasonable period of time as well as any other non-compliance matters Council will pursue enforcement action under the Building Act 2004

³ s121 of the Building Act 2004 says

“For the purpose of determining whether a building is dangerous in terms of s121 subsection

(1) (b), a territorial authority-

(a) May seek advice from members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and

(b) If the advice is sought, must have due regard to the advice.”

If the building is considered to be immediately dangerous the Council will:

- Take any action necessary to remove the danger (this may include prohibiting persons using or occupying the building and demolition of all or part of the building); and
- Take action to recover costs from the owner(s) if the Council must undertake works to remove the danger.
- The owner(s) will also be informed that the amount recoverable by Rodney District Council will become a charge on the land on which the building is situated.

Owners have the right of appeal as defined in the Building Act 2004. This can include applying to the Department of Building and Housing for a determination under s177.

2.6 The dangerous buildings policy and the Building Act 2004

2.61 Section 41: Building Consent not Required in Certain Cases

Where a building is assessed as being immediately dangerous the Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any action being taken Council will require from owners and discuss with them, a written scope of the work.

2.7 Record buildings defined as dangerous

2.71 Buildings Identified as Dangerous

Where a building is identified as dangerous, Rodney District Council will have a requisition placed on the property file where the building is situated. This requisition will remain until the danger is remedied.

In addition, the following information will be placed on the LIM:

- The notice issued informing the owner that the building is dangerous and where necessary notice of the requirement to evacuate.

2.8 Economic impact of policy

In any one year, Council could expect to receive 10 complaints relating to potentially dangerous buildings. Consequently, Council has concluded that the economic impact of this is negligible.

2.9 Access to dangerous building information

Information concerning dangerous buildings will be contained on the relevant LIM.

In granting access to information concerning dangerous buildings, the Council will conform to the requirements of the Local Government Official Information and Meeting Act 1987 and the Local Government Act 2002.

2.10 Priorities

Council will act on buildings deemed to be immediately dangerous as a matter of urgency. In these circumstances immediate action will be required to remove the danger and could include prohibiting any person occupying or using the building and where needed boarding the building up to prevent entry.

Buildings that are determined to be dangerous, but not immediately dangerous, will be subject to the minimum timeframes for reduction or removal of the danger (i.e. not less than 10 days) as set out in s124(1) (c) of the Building Act 2004.

2.11 Heritage Buildings

Heritage buildings will not be given systematic dispensation under this policy but in circumstances where an asserted risk is minor, where no accidents are known to have occurred in the past as a result, and where mitigation or full compliance would result in significantly negative impacts to the heritage value, innovative non-damaging approaches will be accepted where these reasonably mitigate the risk without negative impacts.

In cases where compliance with any aspect of the Act would so damage the attributes of a place to the extent that its very role is compromised then case-by-case consideration of a dispensation or waiver may be negotiated by the appropriate council officer acting under delegated authority.

Where a dangerous building notice is issued for a heritage building a copy of the notice will be sent to the Manager Environmental Policy and Planning of the Rodney District Council and the New Zealand Historic Places Trust as required by s125 (2) (f) of the Building Act 2004.

PART 3 - Insanitary Buildings

3.1 Background

By s131 of the Building Act 2004 Council to adopt a policy on insanitary buildings by 31 May 2006. The definition of an insanitary building is set out in s123 of the Act and it says:

“A building is insanitary for the purposes of this Act if the building-

- (a) is offensive or likely to be injurious to health because-*
 - (i) of how it is situated or constructed; or*
 - (ii) it is in a state of disrepair; or*
- (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or*
- (c) does not have a supply of potable water that is adequate for its intended use; or*
- (d) does not have sanitary facilities that are adequate for its intended use.”*

The provisions of the Act with respect to insanitary buildings reflect the Government's broader concern with the health and safety of people occupying buildings that may be considered to be insanitary. This is particularly so in the older building stock in the Rodney District and potentially buildings that have been identified as having weathertightness issues.

3.2 Policy Development Approach

Growth and increasing development demand in Rodney District has resulted in some building work being undertaken without building consents. Such work may include the conversion of sheds to dwellings or the addition of minor household units. Often the associated building work, may not comply with the Building Code.

Non compliances with the Building Code could include, poorly designed wastewater treatment and disposal systems, a lack of weather tightness, no barriers against moisture entry or lack of heat insulation. Non-compliance in these areas can lead to insanitary conditions causing significant health issues.

Council is actively involved in encouraging people to discuss their development plans with Council and to obtain building consent prior to the work beginning, where necessary. This is particularly important to avoid creating insanitary conditions. Council will initiate enforcement action under the Building Act, 2004 when appropriate.

3.3 Identifying Insanitary buildings

The Council will:

- Investigate all building complaints received;
- Identify from these investigations any buildings considered to be insanitary;
- Inform the owner(s) of the action that is necessary to prevent the building from remaining insanitary;
- Liaise with the appropriate support agencies where occupants may be neglected or infirm.

3.4 Assessment criteria

The Council will assess insanitary buildings in accordance with s123 of the Building Act 2004, established case law and the building code:

The Council will determine:

- if the building is occupied;
- what the building is being used for, and
- whether the insanitary conditions pose a reasonable probability or are potentially dangerous to the health of any occupants.
- whether to building contravenes any other legal requirement such as non compliance with the District planning documents.

Where a building is occupied, considerations may include:

- adequacy of available sanitary facilities;
- adequacy and availability of drinking water;
- the separation of kitchen and other sanitary facilities;
- potential for moisture penetration and/or excessive heat loss taking into account construction materials and any defects in roof and walls; and
- the extent to which the building is offensive to adjacent and nearby properties.

In accordance with the Building Code the following clauses are particularly relevant:

- E2 (External Moisture)
- F1 (Hazardous Agents on Site)
- F2 (hazardous Building Materials)

- G1 (Water Supplies)
- G1 (Personal Hygiene)
- H1 (Energy Efficiency).

3.5 Taking action on insanitary buildings

The Council will:

- Advise and work with the owner(s) of the buildings identified as being potentially insanitary.

Where the building is found to be insanitary, Council will:

- Attach written notice to the building requiring work to be carried out on the building, with a time stated on the notice that is not less than 10 working days, to prevent the building from remaining insanitary;
- Give copies of the notice to the building owner(s), occupier, and every person who has an interest in the land, or is claiming an interest in the land, as well as the Manager Environmental Policy and Planning of the Rodney District Council and the New Zealand Historic Places Trust, if the building is a scheduled and/or registered heritage building;
- Where the insanitary conditions are the result of non-consented work a Notice to Fix will be issued;
- Contact the owner(s) at the end of the time period set down in the notice to gain access to the building and determine whether the notice has been complied with;
- Determine if enforcement action should be pursued under the Act if the requirements of the notice have not been met.

Where Council considers that immediate action is required to fix insanitary conditions the Council will:

- Take action necessary to fix those insanitary conditions; and
- Take action to recover costs from the owner(s) if the Council has had to undertake works to address the insanitary conditions;
- The owner(s) will also be informed that the amount recoverable by the 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. This can include applying to the Department of Building and Housing for a determination under s 177 of the Building Act 2004.

3.6 The insanitary building policy and the Building Act 2004.

3.6.1 Section 41: Building consent not required in certain cases

Where a building is assessed as requiring immediate work to address the insanitary conditions, Council may not require that a building consent be obtained for any of the immediately necessary building work. However, prior to any action being taken Council will require from owners and discuss with them, a written scope of the work.

3.7 Recording of insanitary buildings

Where a building is identified as insanitary, Rodney District Council will have a requisition placed on the property file where the building is situated. This requisition will remain until the danger is remedied.

In addition, the following information will be placed on the LIM:

- The notice issued informing the owner that the building is dangerous and where necessary notice of the requirement to evacuate.

3.8 Heritage Buildings

Heritage buildings will not be given systematic dispensation under this policy except that, as with earthquake risk and other dangerous aspects, where the non-compliance is minor, and where to correct the situation would involve destruction or visual compromise of high value items, then in such cases consideration of a dispensation or waiver may be negotiated by the appropriate council officer acting under delegated authority.

Examples are textured wall surfaces in areas behind food and beverage service areas, and non-impermeable restored mosaic floor tiling in food preparation areas for example.

Where an insanitary building notice is issued for a heritage building a copy of the notice will be sent to the Manager Environmental Policy and Planning and to the New Zealand Historic Places Trust as required by s125 (2) (f) of the Building Act 2004.