



## STAFF REPORT

**TO:** Environment & Planning Subcommittee

**FROM:** Dennis Bush-King, Environment & Planning Manager

**REFERENCE:** T202

**SUBJECT:** **DRAFT EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS POLICY 2006-2011 - EP06/02/10**– Report Prepared for 15 February 2006 Meeting

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### 1. INTRODUCTION

Section 131 of the Building Act 2002 requires the Council to have in place policies concerning Earthquake-Prone, Dangerous, and Insanitary Buildings and Dangerous Dams by 31 May 2006. This paper covers the first three areas – Dangerous Dams await further guidance from the Department of Building and Housing (DBH) and the passing of related Regulations.

This report seeks Council approval to release the draft policies using the required Special Consultative Procedure.

### 2. BACKGROUND

Attached to this report are the required statutory notices for Council approval along with the draft policies. The policies have been drafted to explain the statutory basis of each policy so the approach will not be repeated here.

I acknowledge the assistance of Neil Jackson and Phil Hilleard in preparing this package. It is however based on the DBH guidelines and the draft policy template. Local Government New Zealand has also provided legal advice to Council covering liability issues that could be associated with this policy package, Our approach is non inconsistent with that advice.

In relation to earthquake-prone buildings we have identified what we believe to be a balanced approach to managing the risk and the priorities section sets out our recommended timetable. There will be budget implications but these will be covered in the respective annual budget – our first milestone is not until 2008. Given the uncertainty about how many building may be identified no cost estimate has been made.

The approach taken in relation to dangerous and insanitary buildings essentially codifies our present approach and is not expected to incur any more costs than are currently absorbed into the current budget levels.

### **3. RECOMMENDATION**

**It is recommended that**

- 1. this report be received.**
- 2. the Committee adopt the Draft Earthquake-Prone, Dangerous, and Insanitary Buildings Policy and the Summary of Information and Statement of proposal attached to this report.**
- 3. the Committee agree to release the Draft Earthquake-Prone, Dangerous, and Insanitary Buildings Policy using the Special Consultative Procedure as set out in Section 83 of the Local Government Act 2002.**
- 4. the Committee note the hearing of any submissions will set down at the meeting on 10 May 2006.**

**D C Bush-King  
Environment and Planning Manager**

## **SUMMARY OF INFORMATION - DRAFT EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS POLICY**

### **INTRODUCTION**

1. Section 131 of the Building Act 2004 (“the Act”) requires all territorial authorities (“TAs”) to adopt a policy on earthquake-prone, dangerous, and insanitary buildings by 31 May 2006. This policy must be adopted in accordance with section 83 and 89 of the Local Government Act 2002. Section 83 sets out the special consultative procedure, particularly the requirement as to the preparation of a Statement of Proposal, and section 89 sets out the requirements for a Summary of Information, both of which are prepared for the purposes of public consultation.
2. For a Statement of Proposal, which includes a copy of the draft policy, together with a submission form, please visit Tasman District Council’s Counter Services at any of the Council’s Service Centre, phone the Council on 543 8400, visit the website: <http://www.tasman.govt.nz> or e-mail [info@tdc.govt.nz](mailto:info@tdc.govt.nz) . This information will be available on the website after 23 February 2006.
3. Submissions on the draft policy should be made by sending a completed submission form (attached to the Statement of Proposal) before the deadline of 4.00pm on 7 April 2006 to Tasman District Council, Private Bag 4, Richmond (or fax: 543 8249) or email [info@tdc.govt.nz](mailto:info@tdc.govt.nz). If requested in writing, oral submissions can be made at hearings scheduled for Council’s Environment and Planning Committee from 1.30pm on 10 May 2006. Changes will be made as required to the Policy which will be duly adopted and a public notice placed in the newspaper.

### **DRAFT POLICY**

4. There is no existing Earthquake-prone, Dangerous and Insanitary Buildings Policy (“the policy”). It is a requirement of section 131 of the Act. In accordance with section 132 of the act, this policy must be adopted and the reviewed within five years so as to ensure that it remains relevant and appropriate for Tasman District.
5. The policy states the Council’s approach in performing its functions in relation to those buildings; the priorities to be observed in performing those functions; and how the policy applies to heritage buildings.
6. Tasman District is committed to ensuring that the city is a safe place to live and work. Managing earthquake-prone, dangerous and insanitary building issues have a strong relationship with the council’s strategic priorities of a safe city and first call for children.
7. Pursuant to section 124(4) of the Act, every person who is given a written notice under section 124(1)(c) of the Act and fails to comply with it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.

**TASMAN DISTRICT COUNCIL  
STATEMENT OF PROPOSAL  
DRAFT EARTHQUAKE-PRONE, DANGEROUS AND INSANITARY BUILDINGS  
POLICY 2006-2011**

## **INTRODUCTION**

1. Section 131 of the Building Act 2004 (“the Act”) requires all territorial authorities (“TAs”) to adopt a policy on earthquake-prone, dangerous, and insanitary buildings by 31 May 2006. This policy must be adopted in accordance with section 83 and 89 of the Local Government Act 2002. Section 83 sets out the special consultative procedure, particularly the requirement as to the preparation of a Statement of Proposal, and section 89 sets out the requirements for a Summary of Information, both of which are prepared for the purposes of public consultation.
2. For a Statement of Proposal, which includes a copy of the draft policy, together with a submission form, please visit Tasman District Council’s Counter Services at any of the Council’s Service Centre, phone the Council on 543 8400, visit the website: <http://www.tasman.govt.nz> or e-mail [info@tdc.govt.nz](mailto:info@tdc.govt.nz) . This information will be available on the website after 23 February 2006.
3. Submissions on the draft policy should be made by sending a completed submission form (attached to the Statement of Proposal) before the deadline of 4.00pm on 7 April 2006 to Tasman District Council, Private Bag 4, Richmond (or fax: 543 8249) or email [info@tdc.govt.nz](mailto:info@tdc.govt.nz). If requested in writing, oral submissions can be made at hearings scheduled for Council’s Environment and Planning Committee from 1.30pm on 10 May 2006. Changes will be made as required to the Policy which will be duly adopted and a public notice placed in the newspaper.

## **BACKGROUND INFORMATION**

4. There is no existing Earthquake-prone, Dangerous and Insanitary Buildings Policy (“the policy”). It is a requirement of section 131 of the Act. In accordance with section 132 of the act, this policy must be adopted and reviewed within five years so as to ensure that it remains relevant and appropriate for Tasman District.
5. The policy states the Council’s approach in performing its functions in relation to those buildings; the priorities to be observed in performing those functions; and how the policy applies to heritage buildings.
6. To ensure that the District is a safe place to live and work, three separate policies have been formulated to incorporate the requirements above.

## **THE ISSUES**

7. While Council may adopt a policy on earthquake-prone buildings that is either active or passive it is considered that a mixture of both active and passive will provide a responsible approach to dealing with earthquake-prone buildings in Tasman District.

8. In relation to dangerous and insanitary building policy the similarities between the Building Act 1991 and the Building Act 2004 enable Council to adopt a policy that formalises the current approach taken in dealing with dangerous and insanitary buildings in the District.
9. This policy will ensure the District's strong growth, which is placing considerable pressure on the availability of both privately owned and rental accommodation, can be managed in a manner that protects the health and safety of the District's residents. This is an important issue as the growing demand for housing has resulted in an identifiable trend of garages, basements, sleep outs and other buildings used for accommodation. Lacking any consent, these conversions are often not undertaken in accordance with the building code. This may cause problems in terms of the danger posed for people living in these spaces by inappropriate construction methods or materials.
10. The Council's is actively involved in educating the public on the need to discuss their development plans with Council and to obtain building consent where Council deems that is necessary prior to any works commencing. This is particularly important in order to avoid creating insanitary conditions that could be injurious to the health of occupants, particularly children and the elderly. The Council must send a strong message to the public that Council places paramount importance on the safety of residents in the community. This policy aims to communicate this message.
11. The measures in the legislation recognise the need for a consistent, transparent and accountable approach to the implementation of the provisions in order to protect both building owners and users. Accordingly Council is required to follow the consultative procedure set out in section 83 of the Local Government Act 2002.

## **THE DRAFT POLICY**

12. The draft policy sets out Tasman District Council's approach to performing its functions in relation to earthquake-prone, dangerous and insanitary buildings in accordance with section 131 of the Act. A summary of the policy in respect of each of these types of buildings is set out as follows:

- (a) **Earthquake-prone Buildings**

A building is considered to be *earthquake-prone* where having regard to its condition and to the ground on which it is built, and because of its construction, the building:

- (a) Will have its ultimate capacity exceeded in a *moderate earthquake*; and
- (b) Would be likely to collapse causing:
  - i. Injury or death to persons in the building or to persons in adjacent buildings; or
  - ii. Damage to property

A *moderate earthquake* is considered to be 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. Generally this policy will not extend to one storey buildings that are mainly used for residential purposes that are comprised of one floor.

In accordance with the Act, Council will:

- Determine and compile a list of buildings that are earthquake-prone in terms of the Act;
- Advise owners of these buildings of the results of Council's broad assessment and invite them, within a limited time-frame, to contact Council to obtain further details on future requirements;
- Give written notices to all owners of buildings assessed as earthquake-prone once the deadline for contacting Council has passed and, subject to the results of discussions, to carry out work to reduce or remove the danger or demolish the building within a specified time-frame;
- Allow owners a right of appeal as defined in the Act, which can include applying for a determination under s177

When taking action on earthquake-prone buildings Council will:

- Advise and liaise with owners of buildings identified as earthquake-prone;
- Encourage owners to carry out independent assessment of the structural performance of those buildings identified as earthquake-prone;
- Serve formal notices on owners of earthquake-prone buildings in accordance with the Act, requiring them to remove the danger;
- Give copies of the notice to the 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
- Allow owners to appeal against the classification within 12 months of receipt of notice.

All owners have a right of appeal against a decision of Council in relation to earthquake-prone buildings, which can include applying to the Department of Building and Housing for a determination under s 177(e) of the Act.

## (b) **Dangerous Buildings**

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

In identifying dangerous buildings the Council will:

1. Respond to and investigate all building complaints received;
2. While undertaking site inspections and responding to complaints, check out for buildings that may be considered 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 Act;
4. Liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with s121 (2) of the Act:

When taking action on dangerous buildings Council will:

- Advise and liaise with the owner(s) of buildings;
- May request a written report on the building from the New Zealand Fire Service;
- If found to be dangerous:
  - Attach 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;
  - 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;
  - Require the owner to take such actions as are necessary to prevent the building from remaining insanitary.
- 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 the owner will formally be requested to provide an explanation as to how the work occurred and who carried it out and under whose instructions;
- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as any other non-compliance matters.

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

- Cause any action to be taken to remove that 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 if the Council must undertake works to remove the danger.
- Inform the owner(s) that the amount recoverable by Tasman District Council will become a charge on the land on which the building is situated.

All owners have a right of appeal against a Council decision in relation to dangerous buildings, which can include applying to the Department of Building and Housing for a determination under s 177(e) of the Act.

### (c) **Insanitary Buildings**

Council will assess insanitary buildings in accordance with s 123 of the Act and established case-law as well as the building code. Considerations as to insanitary assessment where a building is occupied may include:

- Adequate sanitary facilities for the use;
- Adequate drinking water;
- Separation of use for kitchen and other sanitary facilities;
- Likelihood of moisture penetration;
- Construction materials;
- Defects in roof and walls;
- The degree to which the building is offensive to adjacent and nearby properties.

When taking action on insanitary buildings the Council will:

- Advise and liaise with the owner(s) of the buildings identified as being insanitary;
- Where the building is found to be insanitary:
  - 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 New Zealand Historic Places Trust, if the building is a heritage building.
  - Require the owner to take such actions as are necessary to prevent the building from remaining insanitary.
- Where the insanitary conditions are the result of non-consented work the owner(s) will be formally requested to provide an explanation as to how the work occurred and who carried it out.



- Contact the owner(s) at the end of 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.
- Determine if enforcement action should be pursued under the Act if the requirements of the notice are not met within a reasonable period of time

If it is considered that immediate action is required to fix insanitary conditions the Council will:

- Cause any action to be taken to fix those insanitary conditions; and
- Take action to recover costs from the owner if the Council must undertake works to remove the insanitary conditions;
- Inform the owner(s) 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 against a Council decision relation to insanitary buildings, which can include applying to the Department of Building and Housing for a determination under s 177(e) of the Act.

13. Pursuant to section 124(4) of the Act, every person who is given a written notice under section 124(1)(c) of the Act and fails to comply with it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.

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

**TASMAN DISTRICT COUNCIL – EARTHQUAKE-PRONE BUILDINGS**

**1. Policy approach**

- 1.1 Policy principles
- 1.2 Overall approach
- 1.3 Identifying EPBs
- 1.4 Assessment criteria
- 1.5 Taking action on earthquake-prone buildings
- 1.6 Interaction between EPB policy and related sections of the Building Act 2004
- 1.7 Recording the EPB status of a building
- 1.8 Economic impact of policy
- 1.9 Access to EPB information

**2. Priorities**

**3. Heritage buildings**

- 3.1 Special considerations and constraints

## **EARTHQUAKE- PRONE BUILDINGS 2006**

### **Introduction and background**

Section 131 of the Building Act 2004 requires territorial authorities to adopt a policy on earthquake-prone buildings by 31 May 2006. The definition of an earthquake-prone building is set out in section 122 of the Building Act 2004:

#### ***“122 Meaning of earthquake-prone building –***

*(1) A building is earthquake-prone for the purposes of this Act if, having regard to its condition and to the ground on which it is built, and because of its construction, the building –*

*(a) will have its ultimate capacity exceeded in a moderate earthquake (as defined in the regulations); and*

*(b) would be likely to collapse causing –*

*(i) injury or death to persons in the building or to persons on any other property; or*

*(ii) damage to any other property.*

*(2) Subsection (1) does not apply to a building that is used wholly or mainly for residential purposes unless the building –*

*(a) comprises 2 or more storeys;*

*(b) contains 3 or more household units.”*

The definition of moderate earthquake is:

#### ***“7 Earthquake-prone buildings: moderate earthquake defined***

*For the purposes of section 122 (meaning of earthquake-prone building) of the Act, moderate earthquake means, 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 that site.”*

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

The policy states:

- The approach that the Tasman District Council will take in performing its functions under the Building Act 2004.
- The Council's priorities in performing those functions.

- How the policy will apply to heritage buildings.

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

## **POLICY IN REGARDS TO EARTHQUAKE- PRONE BUILDINGS 2006**

### **1. Policy approach**

#### **1.1 Policy principles**

The Council has noted that provisions of the Building Act in regard to earthquake-prone buildings reflect the government's concern with the safety of people in buildings in the event of an earthquake.

#### **1.2 Overall approach**

Tasman District is in a zone of high risk from earthquake shaking and its associated consequences such as liquefaction, subsidence and landsliding. The Council's Resource Management Plan already identifies those areas requiring particular geotechnical investigations prior to building. The information base from which these provisions have been established, which includes identification of active fault traces, is available to Council in meeting its obligations under the Building Act.

Buildings comprise a range of types, ages, materials, and construction techniques. The nature of the building stock and the general density of development is such that there are unlikely to be a large number of buildings relative to the total number of buildings in the District, which would require further scrutiny under this Policy.

The Council has not actively pursued a policy of identifying and requiring strengthening of earthquake-prone buildings in the past. This new policy is intended to reduce the risk to people in or near to an earthquake-prone building.

The policy does not apply to all buildings. It is limited to buildings that are likely to be damaged in an earthquake that is one-third of the intensity for which modern buildings are designed. There is potentially a large proportion of buildings that would withstand this trigger-level earthquake without risk to people, but which would not meet current structural standards for earthquake risk.

This creates an issue about what level of earthquake risk reduction is reasonable for those buildings that fall below the trigger level requiring something to be done, compared with the level of earthquake risk that will remain for buildings that do not trigger a requirement for remedial work but which also do not meet the current standard.

The question of reasonableness applies to the standard of earthquake proofing required, the timeframe in which remedial work must be done, and the safety of occupiers and users of the building, both in the interim until that work is done, and longer term if the standard of remedial work required is significantly below that current standard for new buildings.

The Council will make a preliminary review its building stock, based on priorities, to identify buildings that are likely to be earthquake-prone under the Building Act 2004. This review will be done at the Council's cost. From this review, Council will:

- Compile a list of buildings that are likely to be earthquake-prone in terms of the Building Act 2004.
- Advise owners of listed buildings of the reasons why their building is listed.
- Request/require an owner to provide an assessment of the building in terms of section 122 of the Act, by a competent person.
- If an owner refuses to provide an assessment within the time required by Council, Council may advise the owner that it will carry out the assessment, with costs to be recovered from the owner or to remain a charge against the property.
- Where that assessment confirms the building to be earthquake-prone, require the owner to submit a plan and timetable for remedial work to be done to the required standard.
- When that plan and timetable are accepted as appropriate and sufficient by the Council, this may be acknowledged by a notice that formally records the agreed work and timetable.
- Where no plan or timetable for remedial work is submitted, or the plan and timetable are not accepted by the Council, the Council may serve written notice specifying work to be done and the timetable for it.

A requirement for remedial work may include demolition.

The Act gives owners a right of appeal against requirements of the Council.

### **1.3 Identifying earthquake-prone buildings**

The Council will:

- Undertake an initial desktop review of Council's files and information (including staff expertise) to identify buildings which could be earthquake-prone.
- Verify the findings of the review for individual buildings either by evaluating the building's earthquake performance using the New Zealand Society of Earthquake Engineering (NZSEE) Initial Evaluation Method; or by requiring the building owner to provide an earthquake performance assessment by a competent person.
- Categorise the earthquake-prone buildings according to the following:
  - A. Buildings with special post-disaster functions as defined in AS/NZS 1170.0: 2002, Importance Level 4. (Appendix A3);

- 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 A3);
  - C. Heritage buildings identified on Council's register;
  - D. Buildings with an Importance Level less than 3 as defined in AS/NZS 1170.0:2002. (Appendix A3).
- Continuously evaluate and assess the structural performance of buildings in all categories when triggered by an application under the Building Act or Resource Management Act for building alterations, change of use, extension of life, or subdivision.
  - Respond to enquiries from an occupier, user, or "concerned person"

#### **1.4 Assessment criteria**

For practical purposes, the Council will define earthquake-prone buildings as those which, when subject to moderate earthquake shaking, do not meet or exceed the criteria for ultimate limit state as defined in the loadings and materials standards for new buildings. The Council will use the New Zealand Society for Earthquake Engineering (NZSEE) recommendations as its preferred basis for defining technical requirements and criteria. These recommendations are designed to be used in conjunction with AS/NZS 1170 Loadings Standard, NZS 3101 Concrete Structures Standard, NZS 3404 Steel Structures Standard and other materials Standards.

#### **1.5 Taking action on earthquake-prone buildings**

Before exercising its powers under section 124 and 125, the Council will seek, within a defined time-frame, to discuss options for action with owners with a view to obtaining from the owner a mutually acceptable approach for dealing with the danger, leading to receipt of a formal proposal from owners for strengthening or removal. This proposal may then be confirmed in a section 124 notice to give legal force to the commitment.

If discussions do not yield a mutually acceptable approach and proposal, the Council will issue a formal notice under sections 124 and 125 of the Act, requiring the building to be strengthened or demolished.

Remedial work will be inspected at completion or at the end of the period allowed for the work, and may be inspected while in progress if necessary under any building consent required for the work.

The Council will exercise enforcement options under the Act if the requirements of a notice are not met and no alternative is agreed.

The Council acknowledges that the Act contains rights of appeal against Council decisions.

### **1.5.1 Required level of structural improvement**

Tasman District Council will require buildings identified as earthquake prone to be strengthened to at least 67 percent of the new building standard. In accordance with the recommendations of the New Zealand Society for Earthquake Engineers the Council considers this to be an appropriate level for the requirement to reduce or remove the danger.

## **1.6 Interaction between earthquake-prone building policy and related sections of the Building Act 2004**

### **1.6.1 Section 112: Alterations to existing building.**

Whenever a building consent application is received for upgrading or alteration of a building that is or could be earthquake-prone, then, irrespective of the general priorities set by the Council for dealing with earthquake-prone buildings, the Council will need to be satisfied that the building work is unlikely to increase the degree to which the whole building could be earthquake-prone. Provided the building work will not detrimentally affect the building's compliance with the Building Code, consent should be forthcoming..

If the building work is shown to increase the prone-ness of the whole building to damage from an earthquake, then the Council will require that the building be strengthened to comply as nearly as is reasonably practicable with the provisions of the Building Code.

### **1.6.2 Section 115: Change of use**

Whenever a building consent application or formal notification is received for change of use of a building that is or could be earthquake-prone, then, irrespective of the general priorities set by the Council for dealing with earthquake-prone buildings, the owner will be required to make a detailed assessment of the earthquake performance of the building to determine whether or not it is an earthquake-prone building in its existing condition. If the building is shown to be earthquake-prone, then the Council will require the building to be strengthened to comply as nearly as is reasonably practicable with every provision of the Building Code that relates to structural performance as is required by section 115(b) (i) (A).

## **1.7 Recording a building's earthquake-prone status**

The Council will keep a record of all earthquake-prone buildings on property files, with a copy of any notice requiring work to be done and a record of completion when the work has been completed to the required standard.

This information will be included in any LIM report for the property.

## **1.8 Economic impact of policy**

The policy has the economic impacts of:

- A cost met by the community, from Council's initial assessment of earthquake-prone buildings.

- A cost met by the building owner for verifying or contesting Council's assessment. (There may be a case for reimbursing an owner if a building is shown to be not earthquake-prone.)
- Costs met by the building owner for strengthening work required by Council. (It can be expected that for rental buildings, part or all of these costs will be passed on to tenants.)
- Costs met by the building owner if a building is required to be demolished.
- Benefits to occupiers and users of buildings where risks from earthquake are reduced.

These costs and benefits are difficult to quantify, and the exercise is of limited value because in adopting this legislation Parliament has implicitly decided that the imposition of these costs is justified by the benefits. A very robust analysis would be required to justify not requiring strengthening of earthquake-prone buildings.

## **1.9 Access to earthquake-prone building information**

Section 125 of the Act requires that any notice requiring work to be done is fixed to the building concerned.

A copy of any such notice will be placed on the relevant property file kept by Council, and the information included in any requested LIM report.

## **2. Priorities**

The Council has prioritised both the identification and the requirement to strengthen or demolish buildings. Four categories of building are prioritised. For each category of buildings, a date is given by which notices are to be issued, and a time-frame is given for the completion of work required by a notice.

- A. Buildings with special post-disaster functions as defined in AS/NZS 1170.0: 2002, Importance Level 4 (December 2008, 15 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 (December 2009, 20 years).
- C. Heritage buildings, other than single-storied residential dwellings, recorded in Council's District Plan (December 2010, 25 years).
- D. Buildings with an Importance Level of less than 3 as defined in AS/NZS 1170.0: 2002 and identified as being earthquake-prone (December 2011, 30 years).

Once each category has been reviewed and the earthquake-prone buildings within it identified, the process of liaising with owners and serving notice on them will commence. Identification of buildings in each category will proceed according to the priorities identified above.



### **3. Heritage buildings**

#### **3.1 Special considerations and constraints**

The Council believes it is important that heritage buildings have a good chance of surviving a major earthquake. However, it does not wish to see the intrinsic heritage values of these buildings adversely affected by structural improvement measures.

Heritage buildings will be assessed in the same way as other potentially earthquake-prone buildings, and discussions held with owners and the Historic Places Trust to identify a mutually acceptable way to address both heritage and earthquake-strengthening issues.

An assessment of earthquake risk will be required for any non-residential building proposed to be added to Schedule 18.1A in the Tasman Resource Management Plan, if the building has not already been assessed. The issue of any notice requiring strengthening or demolition will need to include consideration of any additional procedures required by TRMP rules or by the Historic Places Act.

## **TASMAN DISTRICT COUNCIL – DANGEROUS BUILDINGS**

### **1. Policy Approach**

- 1.1 Policy principles
- 1.2 Overall approach
- 1.3 Identifying dangerous buildings
- 1.4 Assessment criteria
- 1.5 Taking action on dangerous buildings
- 1.6 Interaction between dangerous buildings policy and related sections of the Building Act 2004
- 1.7 Recording of dangerous buildings
- 1.8 Access to dangerous building policy

### **2. Priorities**

### **3. Heritage Buildings**

## **DANGEROUS BUILDINGS**

### **Introduction and Background**

Section 131 of the Building Act 2004 (“the Act”) requires territorial authorities (“TAs”) to adopt a policy on dangerous buildings by 31 May 2006. 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 person in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.”*

This document sets out the policy adopted by Tasman District Council (“Council”) in accordance with the requirements of the Building Act 2004.

The policy is required to state:

- The approach that the Council will take in performing its functions under the Act;
- Council’s priorities in performing those functions;
- How the policy will apply to heritage buildings;

In developing and adopting its dangerous buildings policy Council has followed the special consultative procedure set out in section 83 of the Local Government 2002.

## **1. Policy approach**

### **1.1 Policy Principles**

Council has noted that provisions of the Act in regard to dangerous buildings reflect the government’s broader concern with the life safety of the public in buildings. Tasman District Council is committed to ensuring that Tasman District is a safe place to live and work in. The dangerous building issues have a strong relationship with Council’s strategic priority for a safe District. Tasman District Council has also noted that the development of a dangerous building policy is up to each Territorial Authority and has responded accordingly. This policy has been developed after due consultation with Tasman District Council ratepayers and stakeholders in accordance with section 83 of the Local Government Act 2002.

### **1.2 Overall Approach**

This policy will ensure the District’s strong growth, which is placing considerable pressure on the availability of both privately owned and rental accommodation, can be managed in a manner that protects the health and safety of the District’s residents. This is an important issue as the growing demand for housing has resulted in an identifiable trend of garages, basements, sleep outs and other buildings used for accommodation. Lacking any consent, these conversions are often not undertaken in accordance with the building code. This may cause problems in terms of the danger posed for people living in these spaces by inappropriate construction

methods or materials. Such dangers may include inadequate fire protection, or danger of collapse. Similar risks may occur in work-places and other buildings from time to time

The Council's is actively involved in educating the public on the need to discuss their development plans with Council and to obtain building consent where Council deems that is necessary. For instance this is exemplified by conversions of buildings into minor household units or other such dwellings where safety risks are likely to arise from a change in use.

Council has a policy of initiating enforcement action under the relevant statutes, in this case the Building Act when dealing with dangerous buildings. This provides a message to the public that Council places paramount importance on the safety of residents in the community. This stance also creates a strong message of deterrence for those property owners who do not seek Council's consent prior to undertaking building works.

### 1.3 Identifying Dangerous Buildings

The Council will:

1. Respond to and investigate all building complaints received;
2. While undertaking site inspections and responding to complaints, check out for buildings that may be considered 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 Act;
4. Liaise with the New Zealand Fire Service when Council deems it is appropriate, in accordance with s121 (2) of the Act:

*“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.”*

### 1.4 Assessment Criteria

The Council will assess dangerous buildings in accordance with 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.”*

A Check Sheet (as shown in Annex 1) will be used by Council staff in the assessment of buildings considered likely to be dangerous. The council will also assess the risk of harm to persons outside a dangerous building but on the same property.

## 1.5 Taking Action

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

- Advise and liaise with the owner(s) of buildings;
- May request a written report on the building from the New Zealand Fire Service;
- If found to be dangerous:
  - Attach 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;
  - 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;
  - Require the owner to take such actions as are necessary to prevent the building from remaining dangerous.
- 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 the owner will formally be requested to provide an explanation as to how the work occurred and who carried it out and under whose instructions;
- Pursue enforcement action under the Act if the requirements of the notice are not met within a reasonable period of time as well as any other non-compliance matters.

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

- Cause any action to be taken to remove that 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 Tasman District 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 Department of Building and Housing for a determination under s 177(e) of the Act.

Council will also take those opportunities that arise to encourage owners and occupiers of buildings, in particular building with systems or equipment that might increase the likelihood of danger, to ensure buildings are maintained and managed in such ways as to minimise such likelihood.

## **1.6 Interaction between dangerous building policy and related sections of the Act**

### **1.6.1 Section 41: Building consent not required in certain cases**

In cases where a building is assessed as being immediately dangerous, the Council may not require building consent to be obtained for any building work required so as to remove the danger immediately. However, prior to any action being taken it is imperative that building owners discuss any works with the Council.

### **1.6.2 Record keeping**

Any buildings identified as being dangerous will have a requisition placed on the property file for the property on which the building is situated until the danger is remedied. In addition, the following information will be placed on any LIM:

- Notice issued that building is dangerous
- Copy of letter to owner, occupier and any other person that the that the building is dangerous;
- Copy of the notice given under section 124(1) that identifies the work to be carried out on the building and the timeframe given to reduce or remove the danger.

## **1.6 Access to 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. Priorities**

The Council will allocate priority to buildings that have been determined to be immediately dangerous. Immediate action will be required in these situations to remove the danger, such as prohibiting any person occupying or using the building.

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 (not less than 10 days) as set out in s124(1) (c) of the Act.

### **3. Heritage Buildings**

No special dispensation will be afforded to heritage buildings under this policy. As per s125 (2) (f) of the Act a copy of any notice issued under s124 of the Act will be sent to the New Zealand Historic Places Trust where a heritage building has been identified as a dangerous building.

## **TASMAN DISTRICT COUNCIL – INSANITARY BUILDINGS**

### **1. Policy Approach**

- 1.1 Policy principles
- 1.2 Overall approach
- 1.3 Identifying insanitary buildings
- 1.4 Assessment criteria
- 1.5 Taking action on insanitary buildings
- 1.6 Interaction between insanitary buildings policy and related sections of the Building Act 2004
- 1.7 Recording of insanitary buildings
- 1.8 Access to insanitary building policy

### **2. Priorities**

### **3. Heritage Buildings**



## **INSANITARY BUILDINGS**

### **Introduction and Background**

Section 131 of the Building Act 2004 (“the Act”) requires territorial local authorities (“TA’s”) 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:

*“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.”*

This document sets out the policy adopted by Tasman District Council (“Council”) in accordance with the requirements of the Act.

The policy is required to state:

- The approach that the Tasman District Council will take in performing its functions under the Act;
- The Council’s priorities in performing those functions;
- How the policy will apply to heritage buildings.

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

### **Insanitary Buildings**

#### **1. Policy Approach**

##### **1.1 Policy principles**

The Council has noted that provisions of the Act in regard 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 stock of buildings in the Tasman District that do not meet minimum acceptable standards. The Council is committed to ensuring that Tasman District is a safe place to live and work.

The Council has noted that the development of an insanitary building policy is to be undertaken by TAs independently and has responded accordingly. This policy has been developed after due consultation with Tasman District Council ratepayers and stakeholders in accordance with section 83 of the Local Government Act 2002.

## **1.2 Overall approach**

This policy will ensure the District's strong growth, which is placing considerable pressure on the availability of both privately owned and rental accommodation, can be managed in a manner that protects the health and safety of the District's residents. This is an important issue as the growing demand for housing has resulted in an identifiable trend of garages, basements, sleep outs and other buildings being used for accommodation. Lacking any consent, these conversions are often not undertaken in accordance with the building code. This may cause problems in terms of the risk posed for people living in these spaces by inappropriate construction methods, materials, or sanitary services. Similar risks may occur in work-places and other buildings from time to time.

The Council's is actively involved in educating the public on the need to discuss their development plans with Council and to obtain building consent where Council deems that is necessary. For instance this is exemplified by conversions of buildings into minor household units or other such smaller dwellings where safety risks are likely to arise from a change in use.

Council has policy of initiating enforcement action under the relevant statutes when dealing with insanitary buildings. This provides a strong message to the public that Council places paramount importance on safety of residents in the community. This stance also creates a strong message of deterrence for those property owners who do not seek Council's consent prior to undertaking building works.

## **1.3 Identifying insanitary buildings**

The Council will:

- Respond to and investigate all building complaints received;
- While undertaking site inspections, check out for buildings that may be considered • Inform the owner(s) of the building to take action to prevent the building from remaining insanitary;
- Liaise with the Nelson Marlborough Public Health Service (Medical Officer of Health) when required to assess whether the occupants may be neglected or infirm.

## **1.4 Assessment criteria**

The Council will assess insanitary buildings in accordance with s123 of the Act and established caselaw as well as the building code:

The Council will investigate:

- Whether the building is occupied and how often people visit the building;
- The use to which the building is put;
- Whether the insanitary conditions pose a reasonable probability of danger to the health of any occupants;

Considerations as to insanitary assessment where a building is occupied may include:

- Adequate sanitary facilities for the use;
- Adequate supply of potable drinking water;
- Separation of use for kitchen and other sanitary facilities;
- Likelihood of moisture penetration and vulnerability to dampness;
- Lack of light and good ventilation;
- Construction materials;
- Defects in roof and walls;
- The degree to which the building is in a state of disrepair or is offensive to adjacent and nearby properties.

In accordance with the Building Code the following will be assessed:

- E2 External Moisture
- G1 Water Supplies
- G1 Personal Hygiene

A Check Sheet (as shown in Annex 1) will be used by Council staff in the assessment of buildings considered likely to be insanitary.

## **1.5 Taking action**

In determining any response the Council will consider all statutory options available to it including action under the health Act or Resource Management Act. In relation to action taken under the Building Act, the Council will:

- Advise and liaise with the owner(s) of the buildings identified as being insanitary;
- Where the building is found to be insanitary:
  - 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 New Zealand Historic Places Trust, if the building is a heritage building.
  - Require the owner to take such actions as are necessary to prevent the building from remaining insanitary.
- Where the insanitary conditions are the result of non-consented work the owner(s) will be formally requested to provide an explanation as to how the work occurred and who carried it out.

- Contact the owner(s) at the end of 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.
- Determine if enforcement action should be pursued under the Act if the requirements of the notice are not met within a reasonable period of time

If it is considered that immediate action is required to fix insanitary conditions the Council will:

- Cause any action to be taken to fix those insanitary conditions; and
- Take action to recover costs from the owner(s) if the Council must undertake works to remove 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, which can include applying to the Department of Building and Housing for a determination under s 177(e) of the Act.

Council will also take those opportunities that arise to encourage owners and occupiers of buildings, in particular building with systems or equipment that might increase the risk of becoming insanitary, to ensure buildings are maintained and managed in such ways as to minimise such likelihood.

## **1.6 Interaction between insanitary building policy and related sections of the Building Act 2004**

### **1.6.1 Section 41: Building consent not required in certain cases.**

In cases where a building is assessed as being insanitary the Council may not require building consent to be obtained for any building work required so as to remove the danger immediately. However, prior to any action being taken it is imperative that building owners discuss any works with the Council.

## **1.7 Recording of insanitary buildings**

Any buildings identified as being insanitary will have a requisition placed on the property file for the property on which the building is situated until the insanitary condition has been removed.

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

- Notice that the building is insanitary;
- Copy of letter to owner, occupier, and any other person that the building is insanitary;
- Copy of the notice given under s124(1) of the Act that identifies the work to be carried out on the building and the timeframe given to fix those insanitary conditions;

- Any report as to the completed works and how the situation was rectified.

## **1.8 Access to information**

Information concerning insanitary buildings will be given in any LIM requested. In granting access to information concerning insanitary buildings Tasman District Council will conform to the requirements of the Local Government Official Information and Meetings Act 1987 and the Local Government Act 2002.

The section 124 notice fixed to the building also makes the information public.

## **2. Priorities**

The Council will allocate priority to buildings where it has been determined that immediate action is necessary to fix insanitary conditions. Immediate action will be required in those situations to fix those insanitary conditions such as prohibiting occupation of the property, put up a hoarding or fence and taking prosecution action where necessary.

Buildings that are determined to be insanitary, but not requiring immediate action to fix those insanitary conditions, will be subject to the minimum timeframes to prevent the building from remaining insanitary (not less than 10 days) as set out in s124(1)(c) of the Act.

## **3. Heritage Buildings**

No special dispensation will be afforded to heritage buildings under this policy.

As per s125 (2) (f) of the Act a copy of any notice issued under s124 of the Act will be sent to the New Zealand Historic Places Trust where a heritage building has been identified as an insanitary building.

## Dangerous and / or Insanitary Building Inspection Record

<b>Address of building</b>	
<b>Building name</b>	
<b>Name of person allowing access</b>	
<b>Relationship to building</b>	
<b>Time and date of inspection</b>	

Contact Details of at Least Two tenants **(Continue on reverse if necessary)**

<b>Name</b>		
<b>Relationship</b>		
<b>Address (Other)</b>		
<b>Phone (Home)</b>		
<b>Phone (Work)</b>		
<b>Phone (Mobile)</b>	<b>02</b>	<b>02</b>

<b>Warrant of Fitness – Current</b>	<b>Yes / No</b>
<b>Current use described as:</b>	
<b>Displayed:</b>	<b>Yes / No</b>
<b>Number:</b>	

List Fire Protection / detection systems(s) Present	Operation ?
	<b>Yes / No</b>
	<b>Yes / No</b>
	<b>Yes / No</b>

**Note on rear of page if system has obvious defects in relation to relevant New Zealand Standards.**

## Building Features

<b>1. Number of floors</b>	
<b>2. How many flats</b>	
<b>3. How many beds (total)</b>	
<b>4. How many people use or visit the building</b>	
<b>5. How many means of escape</b>	
<b>6. Can you identify safe paths</b>	<b>Yes / No</b>
<b>7. Have you walked the escape routes</b>	<b>Yes / No</b>
<b>8. Any uncontrolled sources of ignition</b>	<b>Yes / No</b>
<b>9. Adequate potable water supply</b>	<b>Yes / No</b>
<b>10. Adequate sanitary facilities for intended use</b>	<b>Yes / No</b>
<b>11. Has the cladding failed</b>	<b>Yes / No</b>
<b>12. Is the nature of the building likely to be offensive or injurious to health</b>	<b>Yes / No</b>
<b>13. Do safe paths lead to exterior grounds</b>	<b>Yes / No</b>
<b>14. Are any escape doors fitted with locks</b>	<b>Yes / No</b>
<b>15. Is any other building affected or likely to be affected by these building defects</b>	<b>Yes / No</b>

Describe the Building's Construction and those Features: Likely Cause Danger



Describe Any Fire Hazards or Natural Hazards Likely to Cause Danger:


Describe Means of Escape:


Describe Water Supply and Sanitary Facilities:


Describe Why Building is "Offensive" and / or "Likely to be Injurious to Health":


High Hazard Backflow Prevention:

<b>Required</b>	<b>Yes / No</b>
<b>Installed</b>	<b>Yes / No</b>

Dangerous / Hazardous Goods:

<b>Stored / Used in Building</b>		<b>Yes / No</b>	
<b>What</b>	<b>Where</b>	<b>Class</b>	<b>Quantity</b>

<b>ACTION</b>	<b>Complete</b>
<b>On attached blank pages sketch floor plans and record locations of items 5 -14 in Building Features above:</b>	
Obtain <b>copy of the current Certificate of Title</b>	
Obtain <b>copies of lease agreements</b>	
Obtain <b>tenants' contact details</b>	
Obtain <b>name of person tenants deal with</b>	
Obtain <b>expert reports</b>	
Research <b>building warrant of fitness</b>	
Research <b>authorised use/s</b>	

