

# Memo



**DATE:** 8 February 2011  
**TO:** Strategy Committee Members  
**FROM:** Manager Planning and Regulatory

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## **DANGEROUS, EARTHQUAKE-PRONE AND INSANITARY BUILDINGS POLICY**

1. Council's existing policy was adopted on 21 September 2006. A copy is attached. The policy is required to be reviewed by September 2011.
2. The policy mirrors the Building Act as far as dangerous and insanitary buildings are concerned and staff have had little in the way of experience on these aspects.
3. The policy has been a useful document with regard to the earthquake-prone buildings approach. The policy provides that where building owners apply for building consents the consent must be accompanied by an assessment of the structural strength of the building. So long as the proposed building work does not adversely impact on the structural integrity of the building the building owner can have a 15 year period to upgrade the building to the required 33% of code.
4. The reality is that no building owner has adopted the delay provision and where alterations have occurred and upgrading is necessary, it has proceeded immediately.
5. I do not recall any feedback from the public or any building owner relating to the existing policy.
6. Immediately prior to his retirement, Rob Daniel did report to Council on his experiences with the aftermath of the Greendale Fault Earthquake and recommended that Council undertakes a "desktop" assessment of the District's building stock to determine which buildings may be earthquake prone.
7. At its October 2010 meeting, Council adopted the recommendation and resolved *"That Council does carry out a "desktop" assessment of the*



## **DANGEROUS, EARTHQUAKE-PRONE AND INSANITARY BUILDINGS POLICY**



**Adopted by Council on Thursday 21 September 2006**

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## 1. INTRODUCTION AND BACKGROUND

Section 131 of the Building Act, 2004 requires territorial authorities to adopt a policy on dangerous, earthquake-prone and insanitary buildings by 31 May 2006.

This document sets out the policy adopted by Westland District Council in accordance with the requirements 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; and
3. How the policy will apply to heritage buildings.

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

In preparing this policy, Westland District Council has made extensive use of the Department of Building and Housing's guidance documents.

## 2. BUILDING ACT PRINCIPLES

Section 4 of the Building Act lays down the principles to be applied in performing functions or duties or exercising powers under the Act. The subclauses appropriate to this policy are as follows:

- (2) *In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:*
  - (a) *when dealing with any matter relating to 1 or more household units, —*
    - (i) *the role that household units play in the lives of the people who use them, and the importance of—*
      - (A) *the building code as it relates to household units; and*
      - (B) *the need to ensure that household units comply with the building code:*
    - (ii) *the need to ensure that maintenance requirements of household units are*

*reasonable:*

- (iii) the desirability of ensuring that owners of household units are aware of the maintenance requirements of their household units:*
- (b) the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimised:*
- (c) the importance of ensuring that each building is durable for its intended use:*
- (d) the importance of recognising any special traditional and cultural aspects of the intended use of a building:*
- (e) the costs of a building (including maintenance) over the whole of its life:*
- (f) the importance of standards of building design and construction in achieving compliance with the building code:*
- (g) the importance of allowing for continuing innovation in methods of building design and construction:*
- (h) the reasonable expectations of a person who is authorised by law to enter a building to undertake rescue operations or firefighting to be protected from injury or illness when doing so:*
- (i) the need to provide protection to limit the extent and effects of the spread of fire, particularly with regard to—*
  - (i) household units (whether on the same land or on other property); and*
  - (ii) other property:*
- (j) the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building:*
- (k) the need to provide, both to and within buildings to which section 118 applies, facilities that ensure that reasonable and adequate provision is made for people 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.*

### **3. DEFINITIONS OF BUILDINGS COVERED BY THIS POLICY**

The definitions of dangerous, earthquake-prone and insanitary buildings are set out in sections 121 - 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 because of fire hazard or the occupancy of the building.*
- (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 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.*

#### **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; and
- (b) contains 3 or more household units.

The definition of moderate earthquake is laid down in the Building Regulations, 2005 as:

*“... 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.”*

### 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.*

## 4. OVERALL APPROACH

### 4.1 Policy Principles

Westland District Council has noted that provisions of the Building Act 2004 in regard to dangerous, earthquake-prone and insanitary buildings reflect the government’s broader concern with the health and safety of the public in buildings and, more particularly, the need to address human safety in the event of an earthquake.

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. This policy supports the following outcomes from the Westland District Long Term Community Plan:

Outcome 1. <u>Health</u> : <i>Healthy communities with access to quality facilities and services.</i>
Outcome 3. <u>Safety</u> : <i>A region that is a safe place to live.</i>
Outcome 5. <u>Environment</u> : <i>The distinctive character of the environment is appreciated and retained.</i>

Westland District Council has also noted that the development of dangerous, earthquake-prone and insanitary building policies is up to each territorial authority to determine and has responded accordingly.

This policy has been developed and finalized after due consultation with Westland District Council ratepayers and stakeholders in accordance with Section 83 of the Local Government Act 2002. This process involved a submission period and an opportunity for submitters to be heard before the Council decided on final policy content. As a result of that consultative approach, the Council resolved that no part of this policy will apply to Council and Transit New Zealand infrastructure covered by an Asset Management Plan.

#### 4.2 District Characteristics

The built environment of the Westland District has developed over the last 150 years. European settlement has largely been based around the original early settlements. Construction of buildings has been according to the standards and styles of the period.

Local buildings comprise a range of types and ages with construction techniques ranging from wood and unreinforced masonry buildings to a few modern multi-storey steel and concrete buildings. The great majority of buildings are one or two-storey only.

Westland District is presently experiencing a period of steady economic growth that reflects the confidence in greater agricultural productivity, a growth in tourist activity, increased land prices and an influx of new residents.

Westland District is in a zone of high to moderate seismic activity, with the alpine fault bordering the district, but due to the mountainous terrain – a very low density of building stock exists close to the Main Divide. Farm Buildings and Recreational Huts make up the greater percentage of buildings in this higher risk location of the District. However, the townships of Franz Josef/Waiau and Fox Glacier are in very close proximity to the alpine fault.

It is estimated that a movement in the alpine fault could produce shaking intensities in the region of 8 on the Modified Mercalli Scale over much of the District with intensities of 9 on the Mercalli Scale being experienced in the immediate vicinity of the fault line. (Reference:- “Probability and Consequences of the Next alpine fault Earthquake – Geotech Consulting Ltd”).

In developing this policy the Westland District Council must balance the need to protect public health and safety against the economic implications of requiring

significant remedial building work and the community's desire to protect heritage structures.

Dangerous and Insanitary Buildings are addressed in this first part of the Policy, while Earthquake Risk Buildings are addressed in the second part.

## 5. DANGEROUS AND INSANITARY BUILDINGS POLICY

### 5.1 Policy Approach

Conversions of existing buildings, lack of maintenance, lack of appropriate facilities, overcrowding and un-consented alterations can cause serious health and safety problems.

The failure to obtain a building consent or the use of buildings for unauthorised purposes can pose a danger to the occupants as well as users. Dangers may include danger of collapse, inadequate fire protection or means of escape.

The development of the New Zealand Building Code and associated standards creates, 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. The Council treats building safety as a serious matter; buildings must be safe for their intended use and for Occupiers.

### 5.2 Identifying Dangerous or Insanitary Buildings

The Council will identify potentially dangerous or insanitary building on the basis of:

1. Complaints from members of the public.
2. Advice received from Council staff.
3. Complaints or advice from other agencies (e.g. local health providers, NZ Police, trades people).

### 5.3 Assessment/Prioritisation Criteria

The Council will assess potentially dangerous or insanitary buildings in accordance with sections 121(1) or 123 of the Act as appropriate and in terms of the level of risk to public health or safety 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.

Options for such immediate action include:

- Prohibiting any person from occupying or using the building;
- If necessary, erecting barriers and warning signs, plus securing the building to prevent entry until such time as remedial action can be taken;
- Undertaking remedial action under s129 of the Building Act. Note that, in the case of insanitary buildings, the Council reserves the right to use its powers available under s34 of the Health Act, 1956.

Where the Council undertakes remedial action under either s129 of the Building Act or s34 of the Health Act, all costs will be recoverable from the building owner(s) as provided for in the relevant legislation.

Buildings that are determined to present a serious risk which is not immediate will be subject to the minimum timeframes for reduction or removal of the danger (being not less than 10 days) as set out in s124(1) (c) of the Act.

In addition to remedial action, the Building Act 2004 also empowers the Council to prosecute Building Owners and this power may be considered at times by the Council.

#### 5.4 Investigation and Enforcement Process - Dangerous or Insanitary Buildings

The Council will:

1. Respond to and investigate all building complaints received.
2. Identify from these investigations any buildings that are dangerous or insanitary.
3. Assess the level of risk presented by the building and, if required, take immediate action.
4. Inform the owner and occupier of the building to take action to reduce or remove the danger or insanitary condition, as required by s124 and s125 of the Act.
5. Liaise with the New Zealand Fire Service when Council deems it appropriate, in accordance with s121 (2) of the Act which provides that:

*“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."*

6. Where the building is a heritage building listed in Council's District Plan or a building listed in the New Zealand Historic Places Register, the New Zealand Historic Places Trust shall also be advised and consulted.

If the building is found to be dangerous or insanitary but does not present an immediate risk the Council may:

7. 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.
8. 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 the New Zealand Historic Places Trust, if the building is a registered heritage building.
9. 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.
10. 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.
11. Pursue enforcement action under the Building Act 2004 and Health Act 1956 and recover actual and reasonable costs.

All owners have a right of objection 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. However a formal objection process will be available whereby written objections may be lodged with the Council for a hearing and review by Council's Planning and Development Committee. Council will reserve the right to recover costs of this process from Objectors and / or Building Owners.

#### 5.5 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 for agreement on the matter.

#### 5.6 Record Keeping

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.

### 6. EARTHQUAKE-PRONE BUILDINGS POLICY

#### 6.1 Policy Approach

Because of the high to moderate seismic risk, with the alpine fault extending through the length of the District, Westland District Council has pursued a policy of encouraging the strengthening of earthquake-prone buildings through the building consent process and at times when alterations are being considered.

In developing this policy the Westland District Council must balance the need to protect public health and safety against the economic implications of requiring significant remedial building work and the community's desire to protect heritage structures. In some instances, property owners have acted on their own accord and have carried out strengthening work.

Some buildings have also been strengthened in accordance with the requirements of Section 46 of the Building Act 1991.

In developing its approach to this policy, Westland District Council has to consider key issues of:

- Economic impacts of progressively strengthening building stock in anticipation of an earthquake that could damage the building stock.
- Economic impacts of NOT strengthening building stock and incurring the cost of repair / replacement all at the same time and at the same time that infrastructure may be damaged and require repair as the result of an earthquake.
- The level of risk to human life and safety which can be tolerated over both the short and long term if building strengthening is delayed.

In considering the key issues, the Council needs to achieve a balance between a number of conflicting issues and concerns:

- The safety of the public when an earthquake event occurs.
- The likelihood, severity and potential timing of a major earthquake and effects on different locations within the District.
- The economic impact on the District of a major earthquake.
- The relative age and condition of non-residential buildings within the District.
- The costs of undertaking a comprehensive review of potentially earthquake-prone buildings and the availability of funding for this work.
- The costs of planned and progressive strengthening of buildings versus the economic impact of catastrophic failures caused by an earthquake.
- The costs to building owners of undertaking various levels of strengthening work and the potential economic impact (including loss of businesses) to the District.
- The risk that buildings which are uneconomic to strengthen will be demolished and that the character of the built environment in Westland District will alter as a result.
- The potential loss of heritage buildings as the result of this process.
- The need for statutory compliance by Building Owners and the Council.

Westland District Council's Earthquake-Prone Building Policy needs to reflect Council's approach to reduce earthquake risk over time, but in a way that is acceptable to its ratepayers in terms of the key well-beings; - economic, social, environmental and cultural.

## 6.2 Identifying Earthquake-Prone Buildings

The Council does not intend to conduct a preliminary "desk top" assessment of the districts' building stock. Alternately the following criteria will drive when the Council becomes involved;-

1. When a Building Consent Application is received, or;

2. When a “Change the Use” occurs; or
3. When complaints are made or concern is received about the state of a building and the Council considers there are grounds for further investigation and assessment.

#### 6.2.1 Building Consent Applications

On receipt of an application for a Building Consent relating to alterations to a building, the Council may:

- i. Require an assessment of structural strength of the entire building or parts of the building. Such an assessment will address whether or not the building could be earthquake-prone;
- ii. Assess whether or not the work to be consented will be so minor that it will not impact on the structural integrity of any part of the building.

Where a Building Consent is applied for and a satisfactory assessment of structural strength of the building, or relevant parts of the building, has NOT been accepted by the Council, then a Building Consent will not be issued or progressed further, until the Council has been satisfied that the building, or parts of the building subject to the Building Consent Application, currently meets the minimum requirements of this policy for structural strength, or will do so upon completion of the proposed works.

#### 6.2.2 “Change the Use” Applications

All owners wishing to change the use of a building must advise the Council of their intentions in writing.

Section 115 of the Act requires that, where the use of a building changes, and prior to issuing a code compliance certificate, the Council must be:

*“satisfied, on reasonable grounds, that the building, in its new use, will –  
(i) comply, as nearly as is reasonably practicable and to the same extent as if it were a new building, with the provisions of the building code that relate to –  
(A) means of escape from fire, protection of other property, sanitary facilities, structural performance...”*

In the case of a “Change the Use” (section 115 of the Building Act 2004), Building Owners are required to ensure that their building has the same strength as a NEW building. As such this aspect cannot be subject to this policy with regard to providing for a lesser level of strength, or for objections to statutory requirements.

### 6.2.3 Complaints

Potentially earthquake-prone buildings may also be identified as the result of complaints about a specific building or following investigations into complaints about dangerous or insanitary buildings.

## 6.3 Assessment and Strengthening Criteria

For practical purposes relating to this policy, Westland District Council will define earthquake-prone buildings as those that, when subject to moderate earthquake shaking, do not achieve 33% of ultimate limit state as defined in the loadings and materials Standards for new buildings, with the exception of those buildings that have special strategic “Life Lines” importance to the Westland District as set out in section 6.3.2 of this policy.

The Council will require prior assessment and reporting by an appropriately qualified person or persons of the structural strength of a building, at the Building Owners expense. Such assessment will be provided to the Council before a Building Consent is issued for any structural work on the building or parts of the building.

Where the building is assessed as being potentially earthquake-prone and the work to be consented will not impact on the structural integrity of the building, the Council will require the building owner to undertake, within fifteen years of the date of the Building Consent Application, the strengthening work detailed in the Structural Strength Assessment Report that has been accepted by the Council.

If upon expiry of the period of fifteen years and the strengthening work subject to the Structural Strength Assessment Report, has not been satisfactorily completed, then the Council will determine the safety of the building and if necessary declare the Building to be Dangerous.

Notwithstanding the above situations, if at any time a building poses a risk to persons or property due to the risk of partial or total collapse in an earthquake, then the Council may declare the building dangerous and proceed in accordance with adopted policy in that regard.

### 6.3.1 Assessment Process, Criteria and Cost

Assessment of whether or not a building is earthquake-prone will be undertaken by an appropriately qualified person – i.e. a Chartered Professional Engineer with expertise in Earthquake Engineering and preferably recognised by the New Zealand Society of Earthquake Engineers. The Council anticipates that in the majority of occasions that the Building Owner will commission Structural Strength Assessment Reports on affected buildings. However the Council recognizes, that at times to fulfill its statutory

obligations, some investigation and assessment may have to be commissioned by the Council and recovered from the Building Owner.

In addition to the more generic risks of the likely probability and magnitude of an earthquake affecting the building, assessments will take into account the following factors specific to the building and its site:

- Hazard – geographic proximity to an earthquake hazard/fault line.
- Vulnerability of site – building site conditions, especially with regard to liquefaction risk and soil types.
- Vulnerability of building – construction methods, materials, maintenance, current condition, height, design and loadings.
- Importance – of building and/or contents, e.g. strategic value of the building.
- Damage – risk of the building damaging neighbouring property.
- Exposure – the numbers of people using the building and frequency of use.

In all situations Building Owners will be required to fund 100% of costs incurred in assessment and strengthening of a building, including Objection Hearings Panel, Council staff, consultancy and legal costs, unless the Councils Funding Policy specifically contains provision for remission due to public benefit.

### 6.3.2 Strengthening Requirements

Westland District Council will use the New Zealand Society for Earthquake Engineering 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.

Where a building is formally identified as being earthquake-prone, the Westland District Council will apply the following strengthening criteria:

“A Buildings” with special post-disaster functions as defined in AS/NZS 1170.0: 2002, Importance Level 4, to be strengthened to a minimum of 67%.

“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, to be strengthened to a minimum of 33%, with strengthening to 67% to be strongly encouraged.

“C Heritage” buildings listed in Council’s District Plan Schedule, Marae and buildings listed in the New Zealand Historic Places Trust Register to be strengthened to a minimum of 33%.

“D Buildings” with an Importance Level of less than 3 as defined in AS/NZS 1170.0: 2002 and identified as being earthquake-prone to be strengthened to a minimum of 33%.

#### 6.3.3 Partial Strengthening

On occasion, the detailed assessment may find that only part of a building is earthquake-prone and requires strengthening – e.g. an addition or façade. In these situations, Council will decide on the level of strengthening and the timetable for remedial action on a case-by-case basis.

#### 6.4 Liaison with Building Owners and Taking Action on Buildings Likely to be Earthquake-Prone

Before exercising its powers under section 124, Westland District Council will seek to discuss options for remedial action with affected building owners to reach agreement on the best approach to deal with the danger. The building owner will then be required to submit a formal proposal to Council which confirms the works to be undertaken to strengthen the building, remove the danger or remove the building.

In the event that discussions do not result in a mutually acceptable proposal, Westland District Council will serve a formal notice on the building owner to strengthen or demolish the building. A Building Consent will not be issued that could extend the building life or maintain / increase the level of danger to building occupants or neighbouring persons / buildings, unless the Building Consent also includes strengthening of the building / parts of the building, to the Councils’ satisfaction.

Westland District Council will:

- i. Advise and liaise with the owners of buildings identified as earthquake-prone.
- ii. Encourage building owners to carry out an independent assessment of the structural performance of those buildings identified as earthquake-prone.

- iii. Serve formal notices on owners of earthquake-prone buildings in accordance with the building act 2004, requiring them to remove the danger.
- iv. Allow building owners to object to the classification of the building within 12 months of receipt of the notice.

## 6.5 Interaction Between Earthquake-Prone Building Policy and Related Sections of the Act

### 6.5.1 Section 112: Alterations to Existing Building

Whenever a building consent application is received for significant upgrading or alteration of a building that is or could be earthquake-prone, then, irrespective of the general priorities set by Westland District Council for dealing with earthquake-prone buildings, the Council will not issue a building consent unless it is satisfied that the building is not earthquake-prone and that the building work will not detrimentally affect the building's compliance with the Building Code. The obligation rests upon the Building Owner to show that the building is not of lesser levels of earthquake resistant strength than shown in this policy.

### 6.6 Recording a Building's Earthquake-Prone Status

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

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. The information will be available at the Council offices and via the LIM process.

## 7. HERITAGE BUILDINGS

Heritage buildings are those listed in Councils District Plan Schedule, Marae and buildings listed in the New Zealand Historic Places Trust Register. The Building Act 2004 recognises that special provision shall be made for such buildings. Westland District Council believes it is important that its heritage buildings have a good chance of surviving a major earthquake in order to 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 structural improvement measures.

Heritage buildings will be assessed in the same manner as other potentially dangerous, earthquake-prone or insanitary buildings and as per ss121-123 of the Act and discussions will be entered into with the owner and the New Zealand Historic Places Trust (pursuant to s125(2)(f) where the building is contained in their Register) 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.

Council will serve notices requiring upgrading or demolition within specified timeframes, in consultation with building owners. A copy of any notice issued under s124 of the Act will be sent to the Historic Places Trust in the case of all heritage buildings. Any upgrading work must take into account 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 organisations, where applicable and should be designed to involve minimal loss to heritage fabric.

Waivers of modifications of the building code will be considered on a case by case basis and seismic strengthening methods that respect heritage values will be supported.

It is not expected that Council Funding of Structural Strength Assessments and Strengthening Works will occur. The Councils' Funding Policy will also be relevant to this matter.

Demolition is an option of last resort for heritage buildings.

## 8. **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, earthquake-prone or insanitary should record their objections in writing to the Council General Manager who will undertake an investigation of the circumstances of the building and the reasons behind the Councils' decision on the matter and arrange for the Planning and Development Committee of Council to review the decision and if necessary to hear evidence from parties involved. The Committee decision will be provided by way of response to an objection.

Further legal remedies and application to the Department of Building and Housing for a Determination are also available to Building Owners.

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 as risk as to require immediate remedial action so that no undue delays are caused.

### 8.1 **Determinations**

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 Department of Building and Housing 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, earthquake-prone or insanitary buildings. Sections 176 – 190 of the Building Act lay out the requirements for determinations.

9. **ECONOMIC IMPACT OF POLICY**

The economic impact of the dangerous and insanitary buildings section of this policy is assessed as being minor, since there are relatively few such issues each year.

The economic impact on the District of an earthquake involving the alpine fault is likely to be very substantial given the probability of a significant earthquake that is predicted to adversely affect building structures in the District. Such an earthquake is predicted as having a probability of 65% (+/- 15%) of occurring within the next 50 years. Given the high level of risk (in terms of both severity and likelihood), it would seem reasonable for Westland District Council to pursue a much more proactive stance on earthquake-prone buildings. However, the Council is sensitive to issues such as the limited rating base and potential costs to Building Owners.

10. **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 in accordance with the Local Government Act 2004 Special Consultative Procedure.

*Policy adopted by the Westland District Council on Thursday 21 September 2006.*



# MEMORANDUM

**DATE:** 8 February, 2011  
**TO:** Members of the Strategy Committee  
**FROM:** District Planner



## Progress Report on District Plan Review:

Previously, the Planning and Development Committee were advised of and adopted a proposed timeframe for the review of the District Plan. It was stated that the first stage of the review would address the following matters:

- Review of Heritage provisions, including additional rule restricting demolition
- Review of existing noise rules
- Review of natural hazard information
- Review of Utility rules, including power generation and the new National Policy Statement and National Environment Standards.
- Review of general rules relating to amenity and reference to the Pounamu Management Plan.
- Review of hazardous substance rules including use of 1080.

The initial stages of the review were to be reported to the Planning and Development Committee meeting in December. It was expected that this work would be presented as a “marked up” version of the District Plan rules and would be supported by technical reports.

The work on the District Plan review has been delayed for a number of reasons and subsequently the first stage has not been fully completed. The split focus of the District Planner’s role on consent processing, compliance and policy has meant that fluctuating consent work, which has strict timeframes, has taken priority. The Council has also been asked to provide input on a number of West Coast Regional Council plans and strategies and this has taken policy resources. Providing input on Regional documents is important, as it shapes the policy framework that the District Plan is part of and must be consistent with. Availability of external agencies has changed and similarly, new information has become available that identify that deferral is of advantage. Most topics have been initially researched and scoped.

Draft changes to sections of the Plan will be circulated prior to the meeting, although further work is required on the reports behind these changes. Further

proposed changes are also required in order to complete this first stage of the review. Specific progress on the topics for this stage of the review is reported below.

#### Noise rules:

The noise provisions of the plan have been reviewed and changes are proposed to reflect the changes in the relevant New Zealand noise standards that have been updated during the life of the District Plan. Specific reference has now been made to the applicable New Zealand standards for construction works and helicopter landing areas, and the new provisions of the National Environmental Standard for telecommunications facilities.

#### Coastal amenity and general amenity provisions

Fiona Aston of Fiona Aston Consulting Ltd has been engaged to assist with the plan review and has prepared a Plan Change removing the rules in the plan that relate to "Coastal Modification". The rules state that any permitted or controlled activity must not modify the coastal environment. Over the life of the plan, these rules have been identified to be ambiguous, creating conflicting expectations of plan users and therefore it is considered they should be removed. The existing Objectives, Policies and rules retain protection and control over activities that may adversely affect the coastal environment.

Further investigation is necessary into whether it is appropriate to impose plan rules or utilise non regulatory methods in order to control amenity within the built environment such as untidy sections and storage. This work will continue.

#### Natural Hazards

It was expected that this project would strengthen wording within the plan relating to natural hazards, especially in regards to earthquakes. It was expected to introduce the Ministry for the Environment Guidelines in relation to buildings and fault rupture risk. However the release of a study by GNS mapping these recommended setbacks has been released and a key recommendation of this report was that further work was undertaken to identify the fault trace within Franz Josef. Funding for this further study has been obtained and the scope for the study will also suggest methods for the adoption of the recommendations into the Regional and District Plans, so this work has been deferred.

Proposed changes have been drafted in relation to formalising the existing floor levels heights in Okarito. Work is required to confirm how this will be expressed as a height and a surveyor may be engaged to complete this project.

#### Heritage and Utility Rules

Work has not progressed on the Heritage and Utility Rules. Initially scoping and information gathering has been undertaken, however discussion with the New Zealand Historic Places Trust in terms of the possibility of assistance with the project stalled after the Canterbury Earthquake and internal staffing changes within the Trust. Work on the Utility Rules will continue and it is expected that this work will be completed prior to the next Strategy Meeting.

### Review of hazardous substances rules and 1080

Research and scoping has been undertaken into how 1080 can be restricted as a District Council function. It is considered that one of the best forums for advocating for the prohibition of aerial use of 1080 is through our current submission on the West Coast Regional Council Land and Water Plan. Staff have consequently made a submission on behalf of Council to this plan and further submissions have been made to Forest and Bird and the Animal Health Board specifically in relation to their submissions in support of the existing rules relating to the discharge of 1080 and vertebrate pest control agrichemicals. Work on any further restrictions within the District Plan have been deferred until the outcome of the Regional Plans have been finalised.

### General amendments

A plan change has been prepared to provide a number of general amendments to the plan to provide updates of information or to provide further clarity. These changes have been bundled as they have little effect on the overall District Plan or the way it is interpreted. When notified, a number of minor changes will also be corrected such as duplicated wording or spelling corrections. This does not specifically require a section 32 assessment.

### **Recommendations:**

- That this report be received and deferred progress on the first stage of the review accepted.
- That the circulated draft changes to the District Plan are discussed.
- That the committee gives consideration to whether further resources need to be allocated to the District Plan review through the Annual Plan process.

**Rebecca Strang**  
**District Planner**

# Memo



**DATE:** 8 February 2011  
**TO:** Strategy Committee Members  
**FROM:** Manager Planning and Regulatory

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## **ALCOHOL REFORM BILL**

The Alcohol Reform Bill is currently before the Justice and Electoral Committee and submissions close on 18 February 2011.

### **Recommendation:**

1. That this report be received.
2. That the following be forwarded to the Justice and Electoral Committee as a submission not supporting the Alcohol Reform Bill.

**Richard Simpson**  
**Manager: Planning and Regulatory**

"The Secretary  
Justice and Electoral Committee  
Parliament Buildings  
WELLINGTON

Dear Sir

## **ALCOHOL REFORM BILL**

Council has been actively talking to the industry and to health agencies since the reform of the liquor laws became a public issue. Council has also submitted to the Law Commission and the report of the Commission was released with a raft of reforms that did not in any manner, shape or form reflect the views of Council. On the contrary, the report of the Law Commission could readily be regarded as a quantum leap backwards in terms of liquor control legislation with an undermining of the reforms that were introduced in the 1989 Act.

Council's approach has been that the 1991 Act was significant reform legislation, it was welcome and the concept of the industry taking responsibility for its own behaviour was encouraged. The need for further reform has not been identified and there is no need for the Bill to proceed.

The major change that has occurred is the social phenomenon of a lack of consequence. The current Sale of Liquor Act is robust, it empowers communities that want to be empowered and it is unambiguous in terms of interpretation for the Courts.

The Council suggests that the Bill proceed no further for the following reasons:

1. At the outset it is worth noting that the Laking report heralded probably one of the most significant social legislation reforms that this country has dealt with in the last 50 years. The Sale of Liquor Act 1989 brought about procedures and reforms that were liberal in the extreme. The Westland District Council is supportive of the reform legislation and the new environment created. The rest of the country caught up with Westland.

As to whether the country (or at the very least, sectors of the country) have sufficient education and understanding to deal with a reform process is a different argument. Alcohol has been a source of abuse and the reason for all sorts of abuse, since records were first kept. In terms of abuse, not much has changed with the exception that it is more socially acceptable to be drunk and this, it would seem, is the pendulum that has swung too far.

2. Council accepts that any premises that has an on-licence provides a controlled drinking place that carries obligations both on the part of a licensee and on the part of day to day operators. In Westland the on-licence provisions of the Act are working and working well. Where issues have arisen sanctions within the Act have also worked well.
3. The Council has the view that the provisions of the Sale of Liquor Act 1991 continue to have currency. When the late Sir George Laking suggested the reform measures he also noted that "licences should be easy to obtain and easy to lose". This aspect of the sanctions available for premises that operate outside acceptable standards has yet to become a force to be reckoned with. The Westland District Council is of the view that in so far as on-licences are concerned, the staff behind the bar (and the licensee) have a statutory and moral obligation to ensure standards of behaviour meet the statutory requirements of the Act. The Westland District Council holds the view that the Liquor Licensing Authority needs to be more definitive in using the sanctions available to it in regard to licensees and staff associated with on-licences.
4. The District Council has no concerns with special licences or the administrative procedures under the Act.

5. Off-licences present an entirely different approach. Westland is small enough for a number of our Councillors to know what is going on in-so-far as off-licence sales are concerned. What people are doing in the privacy of their own homes is somewhat tragic. That tragedy has no respect of age groups and is across the board. The Crown can titillate with the problem and raise the age for off-sales to 20 years, but that is not going to solve anything in so far as older drinkers are concerned and the abuse that is currently occurring.
6. There is a phenomenon in this country (and to a significantly lesser extent in Westland) called "front loading" whereby ordinarily sufficient quantities of alcohol are consumed before going out for the evening. Such behaviour is obviously associated with off-sales. However, the people concerned are going to premises with on-licences and if the staff responsible knew that sanctions would be applied where intoxication occurs then there is, at least potentially, an opportunity for a social reform over a period of time by not allowing such people to enter licensed premises and stay there. Licensees proudly display signs advising that intoxication will not be tolerated. It is tolerated and it shouldn't be.
7. Council is of the view that a legislative fix is unwarranted and going to achieve nothing. The effect of the 1991 reform has taken some years to become a problem. It will be reasonably expected that for the problem to diminish there will be an equally longer period of time.

### **CONCLUSION:**

In a nut shell, the Council sees the existing Act as continuing to be suitable, there are sufficient provisions within the Act to deal with the issues that have been identified and it will take an effort on behalf of the Police and District Licensing Agencies to ensure that recalcitrant licensees are introduced to the Liquor Licensing Authority. But, more particularly the time is right for the LLA to utilise the sanctions available to it in a more profoundly determined way.

The Council hopes that this commentary will assist.

**Richard Simpson**  
**Manager: Planning and Regulatory**