

August 13, 2020

COUNCIL SECTION 124 BUILDING ACT NOTICES—AND HOW EQC IS INVOLVED

Section 124 (s124) Building Act notice

A City or District Council in New Zealand may issue a ‘Section 124’ Building Act notice if a building is deemed to be dangerous and poses a risk to people’s safety or is insanitary. The notice may warn people not to approach the building or may restrict entry and require certain work to be carried out to make the building safe. The notice is issued under Section 124 of the Building Act 2004.

[Find out more at: legislation.govt.nz](https://legislation.govt.nz)

Councils make the decision to place an s124 notice on a building after gathering information and investigation on the property to determine if it safe to be occupied.

When councils put a notice on a building, they specify why the notice was issued and what repair work the property owner needs to do to have the notice lifted. Once the property owner has taken the required action, the Council will reassess the building in accordance with its dangerous building policy.

What types of situations could lead to a Section 124 notice?

Councils generally apply Section 124 notices when a physical change to the property has caused a building to become dangerous or insanitary. This change may occur gradually, for example from the effects of age (wear and tear) of the building or from erosion of land. It could also be a sudden change, for example, damage caused by a natural disaster such as landslip or earthquake.

Councils may also apply a Section 124 notice when the danger is from a risk that is likely to occur but has not yet happened, such as the risk of rock fall or cliff collapse.

Who can lift the Section 124 notice?

The Council can lift the notice as the authority which placed it.

How is EQC involved?

If you have a house insurance policy which includes fire insurance, you automatically have EQCover.

[Find out more in our guide: www.eqc.govt.nz/householders-guide](https://www.eqc.govt.nz/householders-guide)

Following a claim for damage from a natural disaster such as an earthquake, flood or landslip, EQC carries out an investigation to understand the extent of damage and assess the claimant’s entitlement under the Earthquake Commission Act 1993 (EQC Act).

EQC GUIDE

In some cases, EQC will commission a range of specialists which may include an engineer to assess the damage and provide a 'conceptual' repair solution, which EQC can then use to work out the cost to repair the damage.

Engineers will also assess for 'imminent risk' which means that further damage to the property is very likely to occur within the next 12 months (4 seasons) as a direct result of the original event. Imminent risk only relates to land and property that is covered by the EQC Act. All other considerations, such as occupant safety, lies with the Council.

EQC generally settles the claim with a cash payment and property owners manage any required repairs themselves.

EQC will notify the Council if we are concerned that a building or land may be dangerous or insanitary and the health and safety of people are potentially at risk. The Council will then carry out its own investigation to decide what action it will take, if any. EQC cannot make any decisions about building safety for occupants.

As the property owner, do I get a copy of the EQC report?

Yes, you will be given the engineering report. However, the engineering report is only for the purpose of settling an insurance claim. It does not report on safety or the risk of injury to people.

You may need to engage your own experts to obtain information and/or take the necessary steps to make your home safe again so that your local council will lift the section 124 notice from your property.

Why does it sometimes take a while for EQC to do its insurance assessment report?

We want to make sure homeowners receive their full entitlement under the EQC Act for all the damage caused by a natural disaster.

In a few cases, this can mean engineers will recommend additional inspection and investigation works be carried out to be confident they have captured the full extent of the land movement and property damage. This is so that they can provide the appropriate repair solution which EQC uses to determine the customer's entitlement under the EQC Act and settle their claim.

Also, depending on any particular risks that have been identified for your property, our assessment may take longer to complete because we need to ensure it can be done safely.

Does the Council's Section 124 notice affect my EQC insurance cover?

You continue to have EQCover under your existing house policy until renewal. If a Section 124 notice is still in force for your property when you renew your house insurance, you will need to discuss this with your insurance company.

If a future claim was made to EQC, coverage would be reviewed on a case by case basis.

Does the Section 124 notice affect my EQC claim?

No. EQC will continue to assess your property for natural disaster damage in the same way regardless of whether there is a 124 notice or not.

What EQC covers is set out by the EQC Act. EQCover is for 'physical loss or damage' to property as the direct result of a natural disaster. This also includes 'imminent risk' of damage which is property damage assessed as expected to occur in the next 12 months as a result of the original event.

Your Council can issue a Section 124 notice when they consider your home is not safe to occupy. The loss of right to occupy your home due to safety concerns is not 'physical loss or damage', and therefore is not covered by EQC. In some cases, due to different factors being considered by EQC and the relevant council, a building may not meet EQC's imminent risk threshold for the likelihood future damage in the next 12 months but could still be deemed by a council to be a dangerous building in terms of the Building Act.

However subject to you having a valid EQC claim, you will still be covered by the EQC Act for damage to your property caused by a natural disaster, regardless of whether or not this damage contributed to the Council's decision to issue the Section 124 notice.

If any new natural disaster damage were to happen from a new event such as an earthquake or storm, you should lodge a new claim with EQC. We will assess this and calculate any entitlement you may have under the EQC Act as a separate claim.

What should I do if the Council has issued a 124 notice for my property?

If your local council has issued a Section 124 notice under the Building Act, you will need to contact them to discuss:

- what the notice means
- what you need to do to get it removed.

If the cause of the council's safety concerns relates to:

- Land – you may need to engage a geotechnical engineer or suitably qualified/experienced contractor for advice.
- Building – you may need to engage a structural engineer or suitably qualified/experienced builder for advice.

Your council may be able to advise you on how to engage these kinds of professionals.

What help can I get when a Section 124 notice has been placed on my property?

If you have had a Section 124 notice placed on your property you can contact:

- Your local council's building and regulatory staff for more information about your notice and the steps you need to take.
- Your house insurance provider to see if your insurance policy includes cover for temporary accommodation costs. Insurers often require some physical loss or damage to the building before these claims are accepted. You should check your policy and speak with your insurer to find out what you are covered for.

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- MBIE for temporary accommodation needs and support – phone 0508 754 163 or email temp.accom@mbie.govt.nz