NATURAL HAZARDS AND THE BUILDING ACT 2004

Building on land that may be subject to natural hazards can be complex. This information sheet seeks to explain the process and issues.

When an application for a building consent is lodged, the Building Act 2004 requires the building consent authority (BCA) ie, Council to consider whether the land on which the building work is to be carried out is subject or likely to be subject to any natural hazard. As more information on hazards becomes available and development to provide more buildings is happening, sites where these situations apply become more common.

Why does this happen

It is important to have a consistent, fair and reasoned approach to consenting building work on land that may be subject to natural hazards in a way that:

- Appropriately managers Council's legal and financial risks
- Advises future property owners of any natural hazards likely to affect a building or structure on a property
- Ensures development is not unreasonably restrained
- Property owners erecting a structure or building do not incur unreasonable costs
- Any existing or future risk to the health and safety of residents within building subject to a natural hazard is not unduly increased.

Natural hazards as they relate to building consents

The following natural hazards are mentioned in section 71(3) of the Building Act 2004:

- Erosion (including coastal erosion, bank erosion and sheet erosion)
- Falling debris (including soil, rock, snow and ice)
- Subsidence
- Inundation (including flooding, overland flow, storm surge, tidal effects and ponding): and
- Slippage

The definition of a natural hazard is not restrained by the requirements of the Building Code. It is accepted practice to use the 1% probability of the occurrence (ie, 1 in 100 years) of a natural hazard as an appropriate methodology to determine whether it is likely that land is subject to a natural hazard.

What are the hazard provisions of the Building Act 2004

Section 71-74 of the Building Act 2004 covers the natural hazard provisions within this legislation.

When do the hazard provisions of the Building Act 2004 apply?

All new buildings and major alterations to buildings are impacted by these provisions.

Hazard information needs to be considered for all new buildings independent of the size and use of the building.

Whether an alteration is major or not is assessed on a case-by-case basis. The following factors guide staff to determine whether a proposal is a major alteration:

- An increase in floor area that exceeds the lesser of 20m² or 25% to the floor area of the building will be considered a major alteration.
- Generally internal fitouts, suspended decks and minor building consents will not be considered a major alteration
- An addition or alteration which increases the effect of the natural hazard on the existing building will be considered a major alteration
- There can be additional indicators that might lead staff to consider that a proposal involves a major alteration. These may include assessing the value of the work proposed relative to the existing building or determining whether the proposed work will significantly extend the expected life of the building.

How do I know if a property is likely to be subject to a hazard?

Inundation and slippage are the most commonly found hazards in our city.

Inundation - Information on the 1 in 100 flood hazard from Greater Wellington Regional Council is available on Council's website at: https://mapping.gw.govt.nz/GW/Floods/

Slippage - Care needs to be taken with development on sites with slopes greater than 1:4 or on land known to have instability issues. A geotechnical assessment by a suitably qualified person will be a key part of the building consent application to determine the best course of action in relation to sections 71 and 72 of the Building Act 2004.

What happens if there is a hazard on land and building work is proposed?

Consideration needs to be given to ensure the building work does not make the hazard worse or result in a natural hazard on that land or any other property and that the building work, the land where the building work is happening and other property are protected from the hazard.

If the proposed building work is going to make the hazard worse and/or the building work is not protected, then a building consent cannot be issued for this building work.

If the proposed building work is protected from the hazard and it is not going to impact other property, but the hazard is present on the land associated with the building work, then a building consent may be issued with a section 72 condition.

If the proposed building work and the land are protected from the hazard and it not going to impact other property, then a building consent can be issued.

What happens if you don't agree with the section 72 notation as a result of a building consent?

As part of the building consent approval process you can provide the following information to the BCA team.

You can provide technical evidence (from an appropriately qualified expert) to show that your property is not likely to be subject to the hazard that has been identified in association with the land where the building work is proposed.

You can re-design the building work so that the cause of the hazard is mitigated.

If you cannot reach agreement, then a determination with the Ministry of Business Innovation and Employment can be applied for to review the BCA decision to issue a building consent with a section 72 condition.

What are the implications of having a section 72 notation on the Certificate of Title

There can be implications of having a section 72 notation on the Certificate of Title for your insurance company or bank. However, if the hazard information is available, they may already have taken account of the hazard in their assessment of risk for your property.

You are strongly advised to contact your solicitor, insurance company or the Earthquake Commission if you are either purchasing a property in an area where a hazard has been identified and/or you are intending to carry out any building alterations or additions in the future.

How does section 72 of the Building Act 2004 compare with previous building legislation?

The Building Act 1991 also covered natural hazards and a section 36(2) entry under that legislation is similar to a section 72 entry under the Building Act 2004.

Before 1991 all building permits were issued under the Local Government Act 1974 and a section 641(A) entry under that legislation is also similar to a section 72 entry under the Building Act 2004.

How do I know whether there is already a hazard related notation on the property title?

This can be identified by obtaining a copy of the Certificate of Title from Land Information New Zealand from: linz.govt.nz