



WAIROA DISTRICT COUNCIL

☎ +64 6 838 7309
☎ +64 6 838 8874
✉ consents@wairoadc.govt.nz

🌐 www.wairoadc.govt.nz
📦 PO Box 54, Wairoa 4160, Hawke's Bay
🏠 Coronation Square, Queen Street, Wairoa

INFORMATION SHEET 10

BUILDING OR CONSTRUCTION ON LAND SUBJECT TO NATURAL HAZARDS

Your guide to submitting a hassle-free application under s72 of the Building Act

BUILDING CONSENTS ISSUED UNDER S72 (HAZARD AREAS): THE BASIC INFORMATION

Natural Hazards

If you are thinking about carrying out building works it is important to consider any natural hazards that may affect how the project complies with the Building Act 2004 and the New Zealand Building Code.

Natural hazards include:

- 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.

A Land Information Memorandum or Project Information Memorandum will provide information about hazards that the Council knows about.

New building works or alterations should be designed with any natural hazard in mind. The Building Act 2004 requires the Council to look closely at building consents for new buildings or major alterations to a building on land subject to a natural hazard. The Council can refuse to grant a building consent in some circumstances or it can grant consent subject to conditions under Section 72 of the Building Act 2004.

What is section 71 of the building act 2004?

Section 71 of the Building Act 2004 deals with building on land subject to erosion, falling debris, subsidence, inundation or slippage. This section requires Council to refuse to grant building consent if the land on which the building work is to be carried out is subject, or likely to be subject, to a natural hazard, or the building work is likely to accelerate, worsen or result in a natural hazard on the land or any other property.

Section 71 does not apply however under specified circumstances and consent may be able to be granted as it normally would under section 49 of the Act or under Section 72 of the Act (see below).

If you are contemplating building on land subject to a natural hazard you should first discuss your application with Council staff and preferably apply for a Project Information Memorandum (PIM) which will require you to detail your intended building project. Through the PIM, Council will advise you formally whether a building consent may be able to be granted. These sections of the building act are complex and are best interpreted by your solicitor.

What is section 72 of the building act 2004?

Section 72 of the Building Act 2004 deals with building on land subject to natural hazards.

Even though Section 71 of the Act requires Council to refuse or grant consent in the circumstances outlined above, a building consent may nonetheless be granted if Council considers that the building work would not accelerate, worsen or result in a natural hazard.

When a building consent is issued subject to Section 72, Council must notify the District Land Registrar to arrange an endorsement on the Certificate of Title advising that the consent has been issued pursuant to Section 72 of the Building Act 2004.

How do I know if my property is in a hazard area and could be subject to Section 72 of the Building Act 2004?

There are a number of sites in the Wairoa district that have been identified as hazard areas. Inundation areas known to the Council are also identified in the district plan.

Will a building consent be issued in these areas?

Section 71 of the Building Act states that Council shall refuse to grant a building consent for the construction of a building or major alterations unless it is satisfied that adequate provision has been or will be made to protect the land or building work, or other property concerned from those hazards, or restore any damage to the land or property concerned that may result from the building work.

Where a building consent is applied for on land that is subject to one or more of the above hazards and the territorial authority considers that the building work itself will not accelerate, worsen or result in erosion, subsidence, inundation etc then the building consent can be issued subject to Section 72.

When a building consent is issued subject to s72, the Council must notify the District Land Registrar, The Crown, Registrar of Maori Land Court to arrange an endorsement on the Certificate of Title advising that the consent has been issued pursuant to s72 of the Building Act 2004.

If I apply for a building consent in a known hazard area will I need to have a report from a Geotechnical Engineer or Hydrologist?

Unless the work is of a minor nature you may need a report from one of these professionals. You should check with the Council prior to lodging a building consent.

What are the implications of having a s72 on the Certificate of Title?

If there is a s72 endorsement on the Certificate of Title and the building is subsequently damaged by a hazard event then the owner and subsequent owners, cannot claim against the Council for issuing the consent.

“The existence of notification under S73 of the Building Act 2004 may limit statutory natural disaster insurance. Refer Clause 3(d) of Third Schedule to the Earthquake Commission Act 1993”

You are strongly advised to contact your solicitor, insurance company or the Earthquake Commission www.eqc.govt.nz or 0800 652 333 if you are purchasing a property in these areas or you are planning on doing any alterations or additions in the future.

Please note: Section 36 of the Building Act 1991 covered natural hazards. Prior to the Building act 1991 all building permits were issued under the Local government Act 1974. Section 641(A) of the Local government Act is similar to section 72 of the Building Act so check your Certificate of Title for any relevant endorsement.

How do I know whether there is already a hazard-related endorsement on the Certificate of Title?

You will need to obtain a copy of the Certificate of Title from Land Information New Zealand.

When does this S72 apply?

Section 72 only applies to the construction of a building or major alterations to a building. While there is no definition of major alterations, The Council considers that the installation of domestic solid fuel heaters and minor interior alterations would not attract action under Section 71.

Can a Section 73 notice be entered on my Certificate of Title if I don't apply for building consent?

No

There are two copies of the Certificate of Title. Do both copies get endorsed?

The original is held by the District Land Registrar. Only the copy held by the District Land Registrar is required to be endorsed.