

## Building on Natural Hazardous Land

**Building consent applications** can now be lodged online at <https://consents-westcoast.abcs.co.nz>. You still need to pay a deposit and this can be done by internet banking referencing the applicant name and site address to which the building work relates.

**Hard copy applications** will still be accepted and these must be made on the prescribed form.

**Applications and other required forms including a schedule of fees are available from Council offices or on our website [www.bullerdc.govt.nz](http://www.bullerdc.govt.nz).**

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, bank, and sheet erosion);
- falling debris (including soil, rock, snow, ice);
- subsidence;
- inundation (including flooding, overland flow, storm surge, tidal effects, ponding); and
- slippage.

A Land Information Memorandum (LIM) or Project Information Memorandum (PIM) 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.

### **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.

### **Will a building consent be issued in these areas?**

Section 72 of the Building Act 2004 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, falling debris, subsidence, inundation or slippage, then the building consent can be issued subject to Section 72.

When a building consent is issued subject to Section 72 for Crown land the Surveyor-General is notified or for Maori land the Registrar of the Maori Land Court is advised, and they will enter the particulars of the notification into their records together with any relevant PIM.

For all other land the Registrar-General of Land is notified who must record as an entry on the Computer Freehold Register (CFR) (formerly known as a Certificate of Title) that a building consent has been granted under section 72 and particulars that identify the natural hazard concerned.

### **What are the implications of having a Section 72 on the CFR?**

If there is a Section 72 endorsement on the CFR 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 an entry under Section 74 of 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 and the

**Fines for building without consent can be up to \$200,000**

Earthquake Commission if you are purchasing a property in these areas or you are planning on doing any alterations or additions in the future.

**Contact: Earthquake Commission**

P O Box 790, WELLINGTON

Phone: 04-978-6400 Fax: 04-978-6431

E-mail: [info@eqc.govt.nz](mailto:info@eqc.govt.nz)

*You should notify your insurer immediately of a section 73 notification. Your insurer will more than likely request that you obtain an independent engineer's report commenting on the stability of the property. Should the report be favourable, then the insurer may continue to provide top up cover and difference in conditions cover.*

**Contact: Insurance Council of NZ**

P O Box 474, WELLINGTON

Phone: 04-472-5230 Fax: 04-473-3011

E-mail: [icnz@icnz.org.nz](mailto:icnz@icnz.org.nz)

**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 CFR for any relevant endorsement.

**Is there already a hazard-related endorsement on the CFR ?**

You need to obtain a copy of the CFR from Land Information New Zealand.

**Contact: Land Information New Zealand**

For LINZ and Landonline queries, phone 0800 665 463 (New Zealand call free only) or email [info@linz.govt.nz](mailto:info@linz.govt.nz)

**Will all building consents in hazard areas be issued subject to Section 72 ?**

Not necessarily. Section 72 allows the Council to issue a building consent if it is satisfied that adequate provision has been made either to protect the land or building work or other property from the hazard or to restore any damage to the land or other property arising out of the building work.

Section 72 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 fires and minor interior alterations would not attract action under Section 72.

The Council strongly recommends that you or your advisors discuss your proposals with our Consents staff prior to lodging your building consent application.

**Appointments Only by Arrangement**

**Westport office: 788-9111**

**Reefton office: 732-8821**

**Can a Section 72 endorsement be entered on my CFR if I don't apply for a building consent ?**

No.

**Ministry of Building Industry and Employment**

**What are Sections 72 and 73 of the Building Act 2004 and how do they affect me?**

The Building Act provides necessary controls on building work, in the public interest and with due regard to national costs and benefits. City and district councils (territorial authorities) are charged with the day to day application of those controls and wishes to ensure that they are properly understood and applied.

**Section 72** is concerned with land which is subject to a range of hazards – flooding, slippage and erosion for example. There are obvious difficulties in building on such hazardous land. Those difficulties affect not only owners, but also territorial authorities, because they can be sued if they do not use reasonable skill and care in applying the Building Act.

This creates a conflict of interest between an owner who wishes to build on hazardous land and the territorial authority which could be liable for future damage to the building if it issues a building consent.

**Section 73** offers a solution by allowing, in certain situations, an owner to take the risk of building on hazardous land without exposing the territorial authority to future liability. This involves the territorial authority issuing a building consent subject to what is generally called "a section 73 condition" to the effect that:

- a) The territorial authority is protected against legal liability, and
- b) An entry is made on the certificate of title to the land to put on record that the land is hazardous and that the territorial authority is protected from liability.

**Contact MBIE**

P O Box 10-729, WELLINGTON

Freephone: 0800 242 243

E-mail: [info@dbh.govt.nz](mailto:info@dbh.govt.nz)

If a CFR endorsement is required for the issue of a Building Consent you will be asked to sign a Section 72 Request acknowledging that you are aware of the implications of a Section 72 notice on the CFR for your property.