

### 1. Overview

The purpose of this document is to provide guidance on the requirements of the natural hazard provisions in sections 71 to 74 of the Building Act 2004.

The natural hazard provisions exist to recognise the risks when building on land that is subject to natural hazards, and to consider the effect of the building work and ways to mitigate any risks or adverse effects it might have.

Where the risks and effects cannot be sufficiently mitigated, then the provisions recognise that it may still be acceptable to build on the land. In this case, the provisions require notification of the natural hazard risk on the Record of Title (title) to the land and protect councils from liability on the basis that the owner is knowingly building on land affected by the natural hazard.

Placing a notice on the title ensures that current and future owners of the land, and other interested parties such as financiers and insurers are made aware that the land is subject to a natural hazard. Natural hazard notices may affect the value of your property and your insurance coverage, including disaster insurance provided by the Natural Hazard Commission.

If you think natural hazards apply to your project, the Dunedin City Council (DCC) recommends you seek professional or legal advice so you can make fully informed decisions before starting. The Ministry of Business, Innovation and Employment (MBIE) has a guidance document with more information about this: [Natural Hazard Provisions - October 2023](#).

Before granting a building consent requiring a natural hazard notice on the title, the DCC Building Services Team will ensure that you are aware of the implications of the notice and risks you are undertaking by asking you to sign a Section 72 Acknowledgement Form.

### 2. Legislative Requirements

The legislation applies when the DCC receives a Building Consent application for the construction of a building or major alteration on land **likely to be subject to natural hazard**.

The legislation may require the Building Consent Authority to:

- Grant the building consent as normal,
- Grant the building consent subject to section 72 with a notice placed on the record of title in accordance with section 73 of the Building Act 2004, or
- Refuse to grant building consent.

Such notices can be removed from the title by the DCC if an acceptable specialist report is provided which demonstrates that the natural hazard is no longer present.

The requirements of sections 72 to 74 are separate from, and potentially additional to, the requirement to comply with the New Zealand Building Code.

All building work must comply with the Building Code unless a Waiver or Modification is granted by the Territorial Authority (TA).

### 3. What building work and land is affected by this legislation?

#### What building work is affected by this legislation?

This legislation applies to the construction or major alteration of buildings on land likely to be subject to a natural hazard, regardless of use (i.e. residential, commercial, industrial).

In relation to inundation hazard, the fact that the Building Code only requires water not to enter certain buildings (mainly residential) does not mean that other properties are not subject to the provisions of sections 71 to 74.

These sections only apply if the building consent is for construction of a building or major alteration. Not all alterations are considered major even if they require a building consent. Whether an alteration is considered major is ultimately a judgement call for the Building Consent Authority to make and will depend on the circumstances.

The Building Act does not define major alterations. However, the following matters should generally be considered when deciding if building work amounts to a major alteration:

- How much the work differs from that which would be exempt from requiring building consent.
- The size of the alteration in relation to the total size of the existing building.
- The percentage increase in the building's footprint and site coverage.
- Whether an extension contains important facilities such as kitchen, bathroom, or laundry.
- The complexity of the construction that is to be undertaken.
- The intended use of the building.

#### What land is affected by the legislation?

The provisions do not necessarily affect the entire property, especially in the case of a large rural property. Case law indicates that "the land" is to be interpreted as meaning the land "intimately connected with the building." This would typically include the land supporting the foundations, the land immediately surrounding the building, the driveway and any area used for on-site waste disposal (septic tank systems). If the land intimately connected with the building is not subject to the natural hazard, then these provisions do not apply and that hazard will not be notified on the record of title.

See MBIE guidance document for further information: [Natural Hazard Provisions - October 2023](#).

### 4. What is a natural hazard and when is the land 'likely' to be subject to one?

Section 71(3) of the Building Act 2004 defines a natural hazard as land subject to:

- 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).
- Slippage.

A commonly accepted definition of 'likely' is a 1% or greater probability of the occurrence (i.e. 1 in 100 years).

How far into the future do we need to consider? We must consider if the hazard is likely within the economic lifespan of the building, which is usually 75 to 80 years unless building consent is granted for a specified intended life under section 113 of the Building Act. In cases where building consent is granted for a specified intended life, the building is required to be altered, removed or demolished at the end of the specified life.

## 5. What is not a natural hazard?

Earthquakes – As earthquake shaking can occur anywhere in Aotearoa New Zealand, they are not considered to be a natural hazard risk. Earthquakes and associated effects (such as liquefaction) are not within the provisions of sections 71 to 74 of the Building Act. Earthquake risk is addressed by the Building Code and earthquake-prone provisions of the Building Act. If a hazard (such as rockfall) is caused by an earthquake, it is not itself a natural hazard. Equally, a tsunami is not a natural hazard.

Note that the definition of natural hazard in the Building Act is different to the definition of natural hazard in the Resource Management Act 1991.

Climate hazards – As our climate changes, we can expect damaging environmental events to increase in frequency and severity. Climate hazards and risks are not natural hazards as defined by the Building Act, however the impacts of climate change (such as higher rainfall) will increase the frequency and severity of flooding (which is a natural hazard).

## 6. Are there cases where building consent cannot be granted?

Yes. If the building work will accelerate, worsen, or result in a natural hazard on the land or on any other property, building consent will not be granted unless the Building Consent Authority is satisfied that adequate provision has been or will be made to restore or mitigate any damage.

## 7. How can I avoid having a land hazard notice placed on my record of title?

Building consent may be granted without a notice placed on the title if it can be shown that the land and building work will be adequately protected from the natural hazard. Protection from the hazard could include bundings, stop banks, tide gates, overland flow paths, retention tanks or dams, or mechanical pumping systems. Protection from subsidence or slippage may involve land stabilisation or retaining work. Protection from falling debris may include slope stabilisation or barriers.

Other reasons that the notice may not be required include:

- There is no hazard as defined in section 71(3) of the Building Act 2004.
- The land unlikely to be subject to hazard – less than 1 in 100 probability.
- The building work does not include a new building or major alteration.
- The hazard is sufficiently remote from the building work.
- The effect of the hazard is minimal or trivial (and not likely to cause damage).

## 8. Building code compliance

The responsibility to ensure building work complies with the Building Code is not reduced by a land hazard notice on the record of title.

In the case of inundation, a compliant floor level may be established so that water does not enter the building, however this is not the only Building Code provision that needs to be considered.

If foundations and sub-floor framing are flooded, they may be affected by a reduction in ground bearing if soils are eroded or become waterlogged. Flood water may reduce the durability of steel fixings or reinforced concrete. On-site waste disposal systems (septic tanks) may fail and make the building insanitary.

Building work must comply with the Building Code unless a waiver or modification is approved. The TA can only grant a waiver or modification if it is reasonable to do so.

When determining whether it is reasonable to grant a waiver or modification of the Building Code, it is necessary to consider the risk to the public and/or the building occupants, as well as the potential

need to make the building more robust or resistant to the effects of the natural hazard should it occur.

This may involve using more damage resistant materials, constructing deeper foundations, or providing facilities for foul water storage.

## 9. Conclusion

The Building Act's natural hazard provisions are complex and have serious implications.

In general, decision making should be in accordance with the MBIE guidance document: [Natural Hazard Provisions - October 2023](#).

We also find that the MBIE determination [2024/053](#) provides important perspective in relation to protecting land from natural hazards.

We strongly recommend taking all available advice including legal, design and engineering advice, and reading all associated guidance documents.