



Determination 2019/059

Regarding the issue of a building consent with a section 73 condition at 2 Ripa Street, Tangimoana

Summary

This determination considers whether the building consent should have been issued subject to a section 73 condition, which requires notification of a natural hazard to be placed on the land title. The determination considers whether the land is subject to a natural hazard, and whether the building work was a 'major alteration'.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry¹.
- 1.2 The parties to the determination are:
 - the building owner J Payne (“the applicant”)
 - Manawatu District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the decision of the authority to issue a building consent that included the condition the consent was to be subject to notification under section 73². The authority is of the view the land is subject to a natural hazard (inundation).
- 1.4 The matter to be determined³ is the authority’s exercise of its powers of decision in issuing a building consent under section 72 of the Act subject to notification under section 73. In making this decision, I have considered whether the land is subject to a natural hazard, and if the land is subject to a natural hazard whether the building consent application has satisfied section 71(2).
- 1.5 In making my decision, I have also considered the submissions of the parties and the other evidence in this matter.
- 1.6 I have not considered the compliance of the building work with the Building Code as this is not in dispute and the authority has issued the building consent.
- 1.7 I have included the relevant sections of the Act in Appendix A.

¹ The Building Act and Building Code are available at www.legislation.govt.nz. The Building Code is contained in Schedule 1 of the Building Regulations 1992. Information about the Building Act and Building Code is available at www.building.govt.nz, as well as past determinations, compliance documents and guidance issued by the Ministry.

² In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

³ Under sections 177(1)(b) and 177(2)(a) of the current Act.

2. The building work

- 2.1 The building is located in Tangimoana, a small town that is circled by the Rangitikei River (refer Figure 1). The building itself is located on a flat section, and is approximately 450m from the river. A stop bank is located along the western side of the town.
- 2.2 The building work consists of a proposed addition and alterations to a single storey timber-framed property. The existing building has an area of 39m², as part of the building has already been demolished by the applicant. The building area before demolition was approximately 66m². There is an existing veranda to the northwest side of the building. A lean-to sits on the southeast side of the property.

The first building consent application

- 2.3 The first building consent application described the building work to “construct a two bedroom addition to the existing dwelling”.
- 2.4 The two bedroom addition is 27m² and located to replace the part of the building that had been demolished. The addition was proposed to be constructed with timber framed walls, floor, and roof and foundations that consist of anchor and ordinary piles.
- 2.5 A 500mm minimum distance is noted on the building consent drawings between the floor level and the ground level. The roof cladding is proposed to be corrugated roofing, and the wall cladding is proposed to be horizontal corrugate over a cavity.
- 2.6 The internal alterations included removing a wall from the kitchen and replacing it with a beam, and various changes to the bathroom/laundry room.

The second building consent application

- 2.7 The scope of the second building consent application included raising the proposed addition and the existing building 1.5m on timber piles, to be above the known flood level. The scope of this building consent also included the proposal to construct the addition and the internal alterations.



Figure 1: Aerial photograph of site (not to scale)

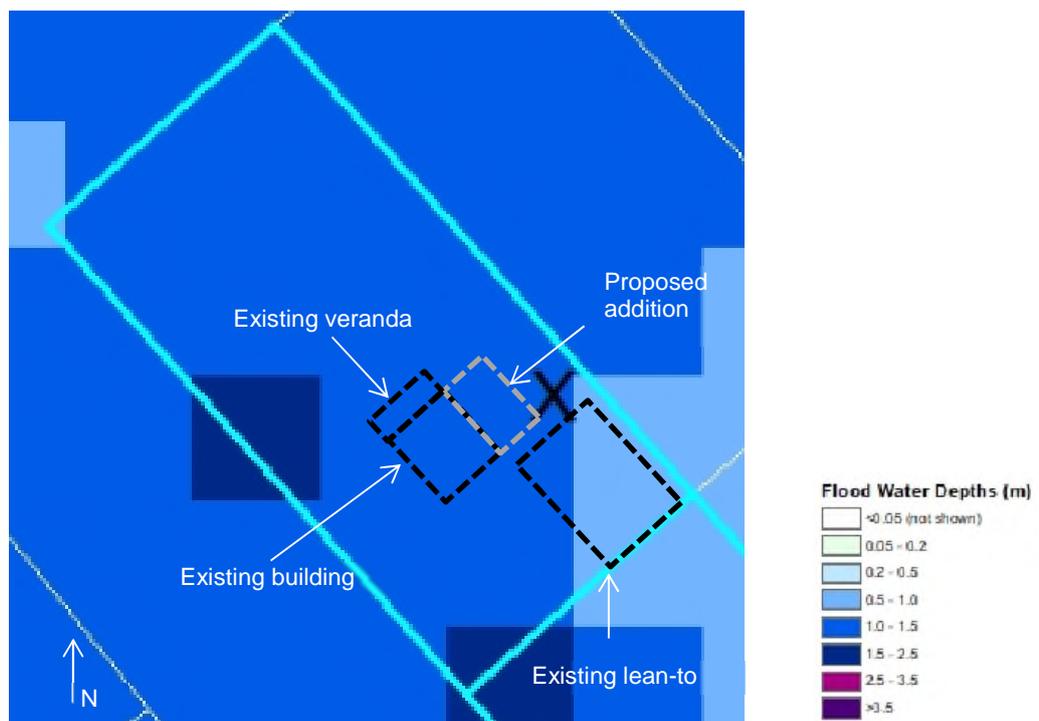


Figure 2: Flood modelling with sketch of house taken from the building consent plans

3. Background

- 3.1 On 12 December 2017 the designer engaged by the applicant submitted a building consent application to construct an addition to replace the demolished rooms.
- 3.2 The authority contacted Horizons Regional Council (“Horizons”) as it held information regarding the inundation levels for Tangimoana. On 25 January 2018 Horizons provided the authority with the 2% Annual Exceedance Probability (AEP)⁴ flood modelling map for Tangimoana. The map showed the flood waters at the approximate location of the proposed addition in a 2% AEP event (1 in 50 year event) would have a depth of 1.17m (see Figure 2). Horizons also stated “Tangimoana has a well known risk of repeated flooding”.
- 3.3 The authority stated at an unspecified date that it passed this information onto the applicant, who subsequently proposed to increase the floor level of the addition to 500mm above the existing ground level.
- 3.4 The authority sought internal advice whether the proposed new floor level was sufficient in a 2% AEP event. On 27 February 2018 the authority received following the internal advice:

...shows potential inundation depths of 1.2m (without freeboard) on this property for the 2% AEP event

...

MDC managed village stormwater catchments

These are essentially the catchments ‘behind’ the stopbanks that service the village and adjacent upstream rural land. These are the catchments that caused the widespread flooding in the village in June 2015.

⁴ A 2% AEP means an event having a 2% probability of occurring annually – also referred to as a 50-year event.

2 Ripa St is located at the downstream end of a catchment that services a known flood prone area on Punga St and the Tangimoana School sports fields...

What floor levels would mitigate the hazard to people and property?

The ultimate hazard to the property is governed by the Rangitikei River, therefore a minimum floor level consistent with Horizons recommendations [of 1.2m +0.5m freeboards] would mitigate the hazard to the 2% AEP storm event.

...

Could the hazard to land be mitigated?

The hazard to the land cannot be mitigated. The flood hazard is a village wide issue.

Would the addition accelerate or worsen the hazard to other property?

... a proposed addition in the nominated location at the rear of the existing building is likely to [be] outside of the extent of any overland flowpath that would form through this property.

In this respect the addition is unlikely to worsen the hazard on adjacent properties.

- 3.5 On 1 March 2018 the authority informed the applicant that the property is subject to inundation up to a depth of 1.17m.
- 3.6 On 15 March 2018 the designer and the authority met to discuss the flood hazard. The authority has stated the designer did not propose an increase in the floor height, and instead suggested to arrange a meeting between the authority and the applicant. However, the applicant has stated the designer said the authority would issue the building consent provided the “floor level is 1.617m which is the level of the 2004 flood plus 0.5m freeboard.”
- 3.7 On 26 March 2018 the applicant accepted that a section 73 condition must be placed on the building consent and that a notice was to be placed on the title.
- 3.8 On 16 April 2018 the authority initiated the process of registering the natural hazard on the title.
- 3.9 There are contradictory views regarding the timeline of events from April to August 2018, with the applicant of the view the application was put on hold until revised plans could be submitted. However, it appears the authority continued to process the original application without waiting for the revised plans.
- 3.10 On 21 June 2018 the building consent was refused because the application did not satisfy section 71(1), as the land for the proposed addition was likely to be subject to a natural hazard (inundation), with the following reasons noted in an assessment dated 29 May 2018:
- [The authority] assess flood risk against a 0.5% AEP scale per Horizons Regional Council policy framework...The proposed addition, being 500mm above finished floor level will not provide adequate provision to protect against a 2% AEP event, let alone a 0.5% AEP event...
- ...the proposed dwelling addition [does] not satisfy the criteria to grant under section 72 of the Building Act and thus [the authority] must refuse to grant the building consent under section 71(1)...
- 3.11 The authority stated the applicant did not initially receive notification of the building consent refusal. The authority at a later unspecified date sent the applicant a letter advising of the cancellation, which the applicant has stated he did not receive.
- 3.12 On 23 August 2018 the designer submitted the revised plans to the authority.
- 3.13 On 27 August 2018 the applicant contacted the authority regarding an administrative matter and was informed the original building consent application had been closed.

- 3.14 On 3 September 2018 the applicant contacted the authority regarding the refusal and closing of the original building consent application. The applicant noted that a meeting was held with an officer of the authority on 23 March 2018 where it was agreed the existing building and the addition floor levels would be raised, and a section 73 certificate would be placed on the title. The applicant stated the authority had advised that the building consent application would be placed on hold until the revised plans were submitted.
- 3.15 On 4 September 2018 the applicant lodged a new building consent application, which now included a proposal to raise the floor level of the addition, as well as the existing building level, by 1500mm.
- 3.16 There was further correspondence between the parties from October 2018 to March 2019 regarding information required by the authority.
- 3.17 In a memorandum dated 5 March 2019 the authority outlined its reasons for issuing the building consent. The memorandum also noted Horizons Regional Council provided comment regarding the difference between a 2% AEP and 0.5% AEP event:
- ...it is unlikely that Tangimoana will have flood depths that would be significantly higher than the 2% AEP flood model...Therefore we can use these depths to represent a 0.5% AEP flood event.
- 3.18 The memorandum contained the authority's "Natural Hazard Guidance Policy Assessment", which recommended issuing the building consent under section 72 provided it also placed a section 73 condition on the consent.

Table 1: The authority's assessment of the natural hazard

Section 71	Authority comments
71(1)(a)	<ul style="list-style-type: none"> proposed dwelling is located on land that is subject to inundation in a 2% AEP event
71(1)(b)	<ul style="list-style-type: none"> proposed building work is subject to 1.170m of inundation in a 2% AEP event
Building Work may take place if:	
The natural hazard is sufficiently remote from the building work	<ul style="list-style-type: none"> building work is not sufficiently remote from the natural hazard with the entire property affected in a 2% AEP event
The overland flow or other natural hazard the land is subject to, is deemed not to be a natural hazard, such as in the case of a constructed or designed flow path.	<ul style="list-style-type: none"> hazard is a natural hazard, as the property is subject to flooding from the Rangitikei River
Section 71(1) does not apply if the authority is satisfied that 'adequate provision' has been made or will be made to:	
Protect the land, building work, or other property from the natural hazard	<ul style="list-style-type: none"> land cannot be protected from the natural hazard as the property is affected by 1.170m of flooding in a 2% AEP event building work can be protected through a raised floor level, which is proposed to be 1.5m above existing ground level other property would not be further affected as a result of the proposed building work, as flooding is a Tangimoana wide issue and all properties are affected adequate provision cannot be provided to protect the land

Restore any damage to that land or other property as a result of the building work	<ul style="list-style-type: none"> cannot be confirmed
Section 72 assessment	
72(a)	<ul style="list-style-type: none"> Horizons and the authority's asset engineer provided comment on the potential effects of the building work the building work would not accelerate, worsen or result in a natural hazard on the subject property, as a dwelling is already located on the property the building work would not accelerate, worsen or result in a natural hazard on other property as the flooding hazard is a Tangimoana wide issue, and all properties are affected by flooding
72(b)	<ul style="list-style-type: none"> the land is subject to a natural hazard in a 2% AEP event
72(c)	<ul style="list-style-type: none"> considered to be consistent with the Building Code, and a waiver is not required.

3.19 On 6 March 2019 the authority issued the building consent (BC 127975) under section 72, which required a condition under section 73.

3.20 The Ministry accepted an application for a determination on 29 May 2019.

4. The submissions

4.1 The applicant included a submission that set out the background. The applicant also stated a stop bank had been completed in 2012 to protect the settlement from a 2% AEP event, and that should mitigate the inundation.

4.2 On 13 June 2019 the authority provided a timeline of events and the following comments:

- the building work included a major alteration and was situated in a flood zone, with depth of 1.17m at the location of the proposed addition
- the authority prematurely registered the natural hazard with LINZ⁵ prior to determining whether the building consent for the proposed building work could be issued
- the applicants were advised the original proposed floor levels could not mitigate the hazard
- the authority did not receive any plans that demonstrated adequate mitigation of the flood hazard.

4.3 On 17 July 2019 the authority, in response to questions from the Ministry, clarified that the Horizons flood modelling was the most up to date information available at the time the application was lodged.

4.4 A draft determination was issued to the parties for comment on 30 October 2019.

4.5 On 7 November 2019 the authority accepted the draft determination and made no further comment.

⁵ Land Information New Zealand.

4.6 On 10 November 2019 the applicant accepted the draft determination and made no further comment.

5. Discussion

5.1 The legislation

5.1.1 The provisions relating to the construction of a building on land that is subject to natural hazards are found in sections 71 to 74 of the Act (see Appendix A.1).

5.1.2 Under section 71(1):

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if –
 - a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
 - b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.

5.1.3 The circumstances in which building consent authorities will be required to consider the application of the natural hazard provisions will vary, and authorities should turn their minds to both subsections 71(1)(a) and (b), while in some cases only one of these will be relevant. The authority may also need to consider more than one natural hazard.

5.1.4 Section 71(2) provides that if certain conditions are satisfied, section 71(1) does not apply:

- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
 - (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
 - (b) restore any damage to that land or other property as a result of the building work.

5.1.5 Section 71(3) details the types of natural hazards that section 71 to 74 apply to, and these include inundation.

5.1.6 Section 72 sets out the circumstances in which a building consent authority must still grant a building consent for building work, even though the land on which the work is to occur is subject to one or more natural hazards.

5.1.7 Section 73 sets out the conditions that building consent authorities must include in a building consent when it is issued under section 72, including notification of the consent to the Registrar General of Land.

5.1.8 Section 74 describes the steps that must be taken after notification, including in circumstances where the building consent authority determines that a notification is no longer required.

5.1.9 An important purpose of the natural hazard provisions within sections 71 to 74 is to ensure consideration is given to how building work affects natural hazards and impacts on the land or other property. The provisions do not prevent building work even where land is subject to natural hazards, unless the building work will accelerate, worsen or result in a natural hazard on the land which the building work is to be carried out or to any other property.

- 5.1.10 Where building work is undertaken on land that is subject to a natural hazard and the building work will not accelerate or worsen the natural hazard, the purposes of the provisions are to:
- notify of the existence of natural hazards by placing a notice on the title
 - ensure the building work is protected from the natural hazard
 - confirm that the building consent authority has considered the natural hazard when granting the building consent
 - give an authority certain protections from liability, under section 392(3) of the Act, relating to its decision to grant a building consent notwithstanding the natural hazard.
- 5.1.11 To put it another way, the natural hazard provisions exist so that the risk to land and other property can be recognised, the effect of the building work considered, and steps taken to mitigate those risks and effects. Where the risks and effects cannot be sufficiently mitigated but the land is still subject to a natural hazard then the provisions recognise that it may nevertheless be acceptable to build on the land and require notification of the risk on the title to the land and provide regulatory authorities with protection 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 future purchasers and other interested parties are aware that the land is subject to a natural hazard.

5.2 Is the land subject to a natural hazard?

- 5.2.1 In order to consider whether the authority correctly exercised its powers when it granted a building consent subject to notification under section 73, I have to first to consider whether section 71(1) applies in this case.
- 5.2.2 There are a number of steps to consider in section 71(1):
- whether construction is a new building or major alterations (in this case it is the alteration of an existing building)
 - whether a natural hazard is likely to occur, and
 - whether the natural hazard occurs on the land on which the building work is to be carried out, or
 - whether the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- 5.2.3 The building work concerns the alteration of a building, and the authority has accepted that section 71(1)(b) does not apply i.e. the building work will not accelerate, worsen, or result in a natural hazard on the land on which it is situated or any other property. Therefore, I will consider only whether there is a natural hazard and whether that natural hazard occurs on the land on which the building work is to be carried out; that is the two criteria in section 71(1)(a).

Is there a natural hazard?

- 5.2.4 Turning first to the likelihood of a natural hazard occurring, the authority has identified that the entire property is subject to inundation (see Figure 2).
- 5.2.5 In *Logan v Auckland City Council*⁶, the Court of Appeal noted that some judgment is required in determining when land will be subject to a natural hazard, as the provisions do not require the elimination of all hazards, and such judgements involve ‘a sensible assessment involving considerations of fact and degree’.
- 5.2.6 The approach in previous determinations⁷ has been that section 71 requires an assessment of whether the effect of a natural hazard will be more than minimal or trivial, and with respect to the likelihood of a given natural hazard occurring.
- 5.2.7 Section 71(3)(a) to (e) defines a natural hazard by the event occurring (in this case inundation) but does not give an indication of the extent of that event. The authority used a 2% AEP event, which is the test in Clause E1 Surface water – Clause E1.3.2, and later referred to a 0.5% AEP event. Previous determinations⁸ have taken the approach that a 1% AEP event (100-year flood) is appropriate in relation to inundation and the “likelihood” test in section 71(1) and I maintain that view.
- 5.2.8 In regard to whether inundation is more than minimal or trivial, this was considered in Determination 2013/047⁹, which concerned a site likely to be subject to inundation in a 1% AEP event and where inundation would occur over a large area of the site on which a garage was being constructed. Determination 2013/047 concluded the inundation was not a natural hazard for the purpose of section 71 because:
- it would be of temporary and minimal effect, and
 - it had no potential for affecting the land, the proposed building work or other property in such a way as to require protection, and
 - it did not have the potential for causing damage that will need to be restored.
- 5.2.9 In this case, the question is whether the hazard in a 1% AEP flood event on the site will be of minimal or trivial effect so that it would not constitute a natural hazard.
- 5.2.10 Based on the information provided by the authority, the relative level of flood water where the building work is proposed would have a depth of up to 1.17m in a 2% AEP event. The entire property is shown as subject to flooding in a 2% AEP event, with flood depths ranging from 0.2 – 2.0m (see Figure 2).
- 5.2.11 Based on the information before me, I am of the view that the level and extent of the inundation on the property in a 1% AEP event is likely to be more than minimal or trivial. As the natural hazard is more than minimal or trivial, the provisions under sections 71 to 74 apply.

⁶ *Logan v Auckland City Council* (2000) 4 NZ ConvC 193, 184 (CA).

⁷ For example, Determination 2013/081 Regarding the issue of a building consent subject to a section 73 notice for a house on land subject to inundation (23 December 2013), and Determination 2017/048 Regarding the decision to grant a building consent subject to notification under section 73 for building work on land subject to a natural hazard (30 June 2017).

⁸ See for example Determination 2008/082 Building consent for a storage shed on land subject to inundation (5 September 2008)

⁹ Determination 2013/047 Regarding the refusal to grant building consent without a section 73 notice for a garage on land subject to inundation (20 August 2013).

5.3 Is the building work a major alteration?

5.3.1 I must consider whether the building work constitutes a major alteration and therefore the provisions in the Act relating to natural hazards apply.

5.3.2 There is no definition of “major alteration” in the relevant sections of the Act, and accordingly it is given its ordinary meaning. In a previous determination (2011/034¹⁰) my predecessor considered the term in light of the purpose of the natural hazard provisions. In that determination, my predecessor came to the view that in order to decide whether building work is to be defined as major in the context of section 71(1), it is useful to consider the following:

- To what degree the building work differs from building work that would be exempt from requiring a building consent in terms of Schedule 1 of the Act. Major alterations are likely to be significantly different in nature and extent from the type of building work exempt under Schedule 1.
- The intended use and degree of design and construction complexity.
- The size of the alteration compared with that of the existing building.
- The increased footprint of the building, and the percentage increase in site coverage.
- Allowance for the replacement of existing structure with new work.
- The extent to which the performance of the building work in question is likely to be affected by the hazard conditions. For example, can the likely effects of the hazard be mitigated by, say a specific design?

5.3.3 I will now consider those factors in relation to the scope of the first building consent application:

- The proposed addition exceeds the 5m² area criteria set by Schedule 1(15) for the closing in of existing verandas or patios and the 10m² for single storey detached buildings that do not contain sanitary facilities, storage for potable water, or sleeping accommodation set by Schedule 1(3). The size and nature of the work for the addition
- The use of the addition is for human habitation, and the building work would not be adversely affected by the hazard conditions as the building work was proposed to be raised 1.5m above the flood levels. However, the need to raise the addition to that height to avoid the natural hazard also suggests the building work is a major alteration.
- The addition will replace the part of the building that had been demolished.
- If the original footprint of the building is taken into consideration, based on aerial photographs the addition would not extend the footprint of the building. The addition is 27m² compared to the approximate original footprint of the building at 66m².

5.3.4 While the addition was originally intended to replace the demolished section of the house, taking into account that size of alteration, intended use, and the purpose of the natural hazard provisions, I conclude that the addition is a major alteration and section 71(1) does apply.

¹⁰ Determination 2011/034: Does work to an existing building constitute ‘major alterations’, and therefore should a section 73 notice be issued in respect of land subject to natural hazards? (13 April 2011)

5.3.5 The building work proposed in the second building consent (including raising the existing house) is significant in nature and extent and I consider this constitutes a major alteration to the existing building.

5.4 Application of section 71(2)

5.4.1 Section 71(2) provides that if certain conditions are satisfied, section 71(1) does not apply:

Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to –

(a) protect the land, building work, or other property referred to in that subsection from the natural hazards or hazards; or

(b) restore any damage to that land or other property as a result of the building work

5.4.2 I must now consider whether adequate provision has been made to protect the land and building work from the natural hazard under section 71(2)(a). The applicant is of the view that building work is protected from the natural hazard because the building is proposed to be raised above the flood level. However, the criterion in section 71(2)(a) is for the protection of both the land and the building work, not only the building work.

5.4.3 The term “protect the land” in section 71(2)(a) and the extent to which the land must be “protected” from inundation has been considered by the High Court¹¹ and previous determinations.

5.4.4 “Adequate provision for protection of the land” from inundation does not mean section 71(2) requires the total elimination of the possibility (as the land would then no longer be subject to a natural hazard). The level of protection from inundation required to satisfy section 71(2) will be a question of degree and will need to take into account factors such as maximum depth, velocity, and frequency of occurrence, and the likely effects of the natural hazard on the land. That degree of protection is likely to be less than that required to protect buildings, although this will not be the case where there is a significant risk of erosion causing loss of support for the building.

5.4.5 There appears to be no dispute that adequate provision has been made in this case to protect the building work from the natural hazard. However, the requirement to protect the land from inundation must also be met for section 71(2) to apply.

5.4.6 The authority provided photographs from the 2015 flood, which show adjacent properties requiring pumps to remove the floodwaters. The authority identified that the property is in a catchment area behind the stopbank that was responsible for the 2015 flooding. The authority also provided comment that the land cannot be protected from inundation, as it is a town-wide issue.

5.4.7 As noted in paragraph 5.2.11, I consider the level of inundation in this case to be greater than minor or trivial; the depth of water at 1.17m at the addition in a 2% AEP event is significant, and will likely be of similar depths in a 1% AEP event.

¹¹ *Auckland City Council v Logan*, 1/10/99

5.4.8 The building work proposed in this case will have no effect on the fact that the site will continue to be subject to inundation to this extent. However, the applicant has not pointed to any positive steps that could constitute “adequate provision to protect the land” from inundation as required by section 71(2)(a). I am therefore of the view that the condition under section 71(2)(a) to protect the land has not been met in this case.

5.5 Conclusion

5.5.1 I conclude that as the building work is proposed to be carried out on land subject or likely to be subject to inundation, and adequate provision has not been made to protect the land from the natural hazard, the authority correctly exercised its powers in issuing the building consent subject to section 73 of the Act.

5.6 Comments on other issues

5.6.1 The authority initiated the process of registering the natural hazard on the title before the building consent had been issued.

5.6.2 Section 73 provides:

(1) A building consent authority that is a territorial authority that grants a building consent under section 72 must include, as a condition of the consent, that the building consent authority will, on issuing the consent [my emphasis], notify the consent to,—

...

(c) in any other case, the Registrar-General of Land.

5.6.3 In my opinion, notification should occur as soon as is practicable at the time the building consent is issued. The authority’s action was contrary to section 73(1) and it was incorrect to initiate the process at that time.

6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine the authority correctly granted the building consent subject to notification under section 73, and I confirm the authority’s decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 November 2019.

Katie Gordon
Manager Determinations

Appendix A

A.1 The relevant sections of the Building Act 2004 include:

71 Building on land subject to natural hazards

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if—
 - (a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
 - (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
 - (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
 - (b) restore any damage to that land or other property as a result of the building work.
- (3) In this section and sections 72 to 74, natural hazard means any of the following:
 - (a)...
 - (d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):...

72 Building consent for building on land subject to natural hazards must be granted in certain cases

Despite section 71, a building consent authority that is a territorial authority must grant a building consent if the building consent authority considers that—

- (a) the building work to which an application for a building consent relates will not accelerate, worsen, or result in a natural hazard on the land on which the building work is to be carried out or any other property; and
- (b) the land is subject or is likely to be subject to 1 or more natural hazards; and
- (c) it is reasonable to grant a waiver or modification of the building code in respect of the natural hazard concerned.

73 Conditions on building consents granted under section 72

- (1) A building consent authority that is a territorial authority that grants a building consent under section 72 must include, as a condition of the consent, that the building consent authority will, on issuing the consent, notify the consent to,—

...

 - (c) in any other case, the Registrar-General of Land.

74 Steps after notification

- (1) On receiving a notification under section 73,—
 - (a) the Surveyor-General or the Registrar of the Maori Land Court, as the case may be, must enter in his or her records the particulars of the notification together with a copy of any project information memorandum that accompanied the notification;
 - (b) the Registrar-General of Land must record, as an entry on the certificate of title to the land on which the building work is carried out,—
 - (i) that a building consent has been granted under section 72; and

- (ii) particulars that identify the natural hazard concerned.
- (2) If an entry has been recorded on a duplicate of the certificate of title referred to in subsection (1)(b) under section 641A of the Local Government Act 1974 or section 36 of the former Act, the Registrar-General of Land does not need to record another entry on the duplicate.
 - (3) Subsection (4) applies if a building consent authority determines that any of the following entries is no longer required:
 - (a) an entry referred to in subsection (1)(b):
 - (b) an entry under section 641A of the Local Government Act 1974:
 - (c) an entry under section 36 of the former Act.
 - (4) The building consent authority must notify the Surveyor-General, the Registrar of the Maori Land Court, or the Registrar-General of Land, as the case may be, who must amend his or her records or remove the entry from the certificate of title.