



Determination 2015/052

Regarding the compliance of proposed building work at 70B Grand Vue Road, Kawaha Point, Rotorua, in respect of adjacent other property

Summary

This determination discusses the Building Code obligations in Clauses B1.3.6(b) and E1.3.1 for the proposed building work in respect of the likelihood of damage to an adjacent property. The concerns raised were the effect of any additional load in relation to an underground water system, spring, or puna¹ and an adjacent Māori reservation.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004² (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 This determination arises from a decision made by the authority to issue a building consent for proposed building work on the subject property at 70B Grand Vue Road. The applicant is of the view that the proposed extension will affect adjacent land which is a Māori reservation³ known as Kahuroro.
- 1.3 The parties to the determination are:
 - the owner of the adjacent Māori reservation at 64 Grand Vue Road (Lot 5 DPS 26643) Moyra Frances Hubbard Whanau Trust, who is the applicant and is acting through the Trustees (“the applicant”)
 - A van Adrendonk, the owner of the subject property situated at 70B Grand Vue Road, (“the owner”)
 - Rotorua District Council (“the authority”) , carrying out its duties as a territorial authority or building consent authority
- 1.4 I consider the matter to be determined is whether the proposed building work described in consent No. BC72292 for building work on the owner’s property at 70B Grand Vue complies with Clauses B1.3.6(b) and E1.3.1 (First Schedule, Building Regulations 1992)⁴ in respect of other property.

¹ “Puna” (noun) spring (of water), well, pool.

² The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

³ The land was set apart as a Māori reservation under section 338(1) of *Te Ture Whenua Maori Act 1993*, for the purpose of “a puna/spring, a well-place of cultural, historic or scenic interest” for the common use and benefit of the descendants of Jim and Moyra Hubbard and their invitees. *New Zealand Gazette, No.150, 6 October 2011*.

⁴ In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

- 1.5 The applicant sought a determination in respect of compliance with a number of B1 clauses of the Building Code; however, under section 176(e)(i) it is only those provisions of the Building Code that have the purpose of protecting other property that can be applied for by the owner of other property. Accordingly I consider the matter to be determined in respect of Clauses B1.3.6(b) and E1.3.1 only.
- 1.6 The applicant has listed clauses that fall within the objective and functional requirements of Clause B1 of the Building Code. The functional requirements set out the functions the building must perform in order to satisfy the Act's various purposes and principles and the objectives of Clause B1. Although the objective and functional requirements of Clause B1 are relevant in interpreting the performance criteria, they cannot be determined in isolation. The performance criteria, as defined under section 7 of the Act are the 'qualitative or quantitative criteria that the building is required to satisfy in performing its functional requirements'. In addition I note section 18(1)(a) requires compliance against the performance criteria as prescribed in the Building Code.
- 1.7 In making my decision, I have considered:
- the submissions of the parties, including
 - the report from the firm of engineering consultants engaged by the owner ("the geotechnical report") – refer paragraph 3.3
 - the report from the engineering geologist engaged by the authority ("the assessment report") – refer paragraphs 3.7.2
 - the report of the expert commissioned by the Ministry to advise on this dispute ("the expert's report"), and the other evidence in this matter.
- 1.8 The relevant sections of the Act and the Building Code are set out in Appendix A.

2. The building work

2.1 The site

- 2.1.1 The site on which the building work is proposed is part of a larger block of land that was originally described as 68-70 Grand Vue Road. The land was subdivided to create Lot 1 (70A), Lot 2 (70C), and Lot 3 (70B).
- 2.1.2 The site is near rectangular, with medium to gentle grades with a south-easterly aspect. A portion of the lower site was originally a "swampy gully" that has over time been partially filled over to create a level grassed and landscaped area at the rear of the site, and a garage and self-contained unit was constructed sometime between 1998 and 2001.
- 2.1.3 I note here that a resource consent notice dated 12 June 2006 describes the three lots and areas of uncontrolled filling, and states that 'any proposed construction within this area will require certification from a suitably qualified Chartered Professional Engineer'.

2.2 The proposed building work

- 2.2.1 The building work that is the subject of this determination consists of an extension to the existing self-contained unit and garage. The extension has a non-symmetrical hexagonal footprint with "bridges" that connect it to the existing garage and unit.

- 2.2.2 The structure is to consist of a light roof on conventional timber framed walls, with a timber framed suspended subfloor founded on specific engineer designed part bored/part driven timber piles with concrete backfill.
- 2.2.3 Stormwater run-off from the new roofs is to be reticulated to the existing public storm water system.
- 2.2.4 The extension footprint is set back a minimum of 7m from the boundary retaining wall with 64 Grand Vue and 9m from the boundary retaining wall with 146 Kawaha Point Road.

2.3 The site in relation to the applicant's property

2.3.1 The applicant's property lies to the east and southeast of the subject site:



Figure 1: Sites and contours (from Rotorua District Council Geyserview)

2.3.2 The applicant provided excerpts from a publication that describes Kawaha's Māori Landmarks⁵. Figure 2 in that publication (reproduced in part adjacent) indicates the location of the Waitakahi Swamp and a fresh cold water spring known variously as the Kairoro Spring or Kahuroro spring:



Figure 2: from *The founding years in Rotorua: A History of Eve, Stafford, D.M.*

⁵ The founding years in Rotorua: a history of Eve. *Stafford, D.M.* Reed 1986
Ministry of Business, Innovation and Employment

3. Background

3.1 Prior to consent application for the proposed building work

3.1.1 It appears that the applicant laid a complaint with the authority some time in 1999 regarding the construction of the retaining wall and fill on the subject property. An adjacent neighbour (146 Kawaha Point Road) also laid a complaint in a letter to the authority dated 9 November 1999, noting in regards to the fill that it 'is on top of an active spring system and encroaches into the same swamp land'. The adjacent neighbour went on to note:

The surrounding land contains extensive subterranean water and indeed a spring on the [applicant's] property just meters away, pumps out water the rate of 20,000 litres per day. It is understood that this spring system forks under the [owner's] property and is the reason the low lying land at the southern end was full of water.

3.1.2 The adjacent neighbour also stated that the subject site had originally been 0.5m lower than his property and that his property used to drain into the subject site, and that the back-filling had caused his property to become 'exceedingly wet in the winter and indeed at any time after prolonged rain'. The letter went on to note

The land and hillside is literally "full of water". Small springs pop up from time to time, and any artificial tampering with the land will sooner-or-later create a water problem somewhere in the vicinity. There is the case of the spring where a man-hole was dug to connect the [owner's property] to the sewer, but there are other springs around which have surfaced after land has been subject to minor changes.

3.1.3 At some time in 2000, the applicant wrote to the authority regarding development of the subject site, noting that originally the subject site was lower than the applicant's property until a retaining wall was built and filled. The applicant stated that this caused 'a lot of underground water to seep through' to the applicant's property, and that although the applicant's property has a spring 'it is not the origin'.

3.1.4 Correspondence between the applicant, an adjacent neighbour, and the authority continued regarding the fill and the effect on the relevant properties. In a letter dated 24 August 2000 from the authority to the applicant, the authority noted in regards to the retaining wall and fill that

1. [The authority] has received confirmation ... that the remedial work recommended ... has now been completed and that the retaining wall now complies with the Building Code.
2. The fill was tested and it appears from this test that the fill is classed as suitable, but its safe bearing capacity is low and inconsistent.

[It has been] recommended [to the authority] that the Hazard Classification remain on file with a note that this area of fill is unsuitable for building.

This recommendation is acceptable to [the authority].

3.1.5 In an internal email on 11 April 2002, an officer of the authority referred to an extract from an earlier environmental report which noted that the authority was 'unable to provide protection because the site was not disclosed to the owner nor identified by those who place value on its significance'. The extract from the report went on to note that 'the spring, however, has despite the fill, caused seepage and rendered the site unsuitable for building. This is recorded as a hazard on [the authority's] property file'. (I note here that I have not seen a copy of the report

referred to, the extract did not refer to specific evidence of seepage, and the relationship of this comment to the subject site is unclear other than in the context of the author requesting more information on ‘where the filled spring is’.)

- 3.1.6 On 9 June 2002 Rotorua’s official historian wrote to the authority regarding the significance of the Waitakahi Swamp and the Kairoro Spring, stating ‘The whole of the Waitakahi Swamp should, in my opinion, be preserved in its original form if that is possible.’
- 3.1.7 The authority’s records include a ‘property file caution’ dated 19 September 2007 for 70 Grand Vue Road which notes

Explanation: Kairoro Spring situated on property

References: Report by Don Stafford, Historia dated 9 June 2002

3.2 Subsequent to consent application for the proposed building work

- 3.2.1 On 29 March 2011 the owner made an initial application for building consent for the proposed building work. That application was eventually closed by the authority due to delays in responses to requests for further information.
- 3.2.2 On 6 October 2011 the applicant’s land was set aside for a Māori Reservation, to be known as Kahuroro, under section 338(1) of *Te Ture Whenau Maori Act 1993*, for the purpose of “a puna/spring, a well-place of cultural, historic or scenic interest”.
- 3.2.3 On 20 February 2014 the owner lodged a revised building consent application for the proposed building work.

3.3 The geotechnical report

- 3.3.1 On 10 June 2014, at the request of the authority, a firm of engineering consultants engaged by the owner produced a geotechnical report on the existing subsoil conditions. The report recommended driven timber pile foundations of varying depths through the fill material, and also stated that ‘the south end of the site contains a 1.4m timber retaining wall, but this is well beyond the building and there will be no surcharge from the building on the wall’.
- 3.4 On 23 July 2014 the authority issued building consent no. 72292 for the extension.
- 3.5 On 29 August 2014 the applicant met with the authority regarding the applicant’s concerns about the building consent having been issued when the applicant had already raised concerns about the effect that previous development had on the applicant’s property, including the historical significance of the site.
- 3.6 On 2 September 2014 the authority issued a stop work notice and commissioned a peer review of the geotechnical report.

3.7 The peer review report and subsequent reports

- 3.7.1 On 29 September 2014, the engineering geologist engaged by the authority submitted a peer review of the geotechnical report. The peer review report agreed that piled foundations were an appropriate foundation type for the proposed addition, but raised a number of issues:
- Ground conditions beyond the recommended pile depths not being proven.
 - Inconsistencies on the drawings with respect to anchor piles/driven piles.

- The suitability of anchor piles for the site.
- Inadequate information on the proximity of the extension to the existing 1.4m retaining wall.
- Possible liquefaction of the soils beneath the piles.

3.7.2 As a result of the applicant's concerns, the authority commissioned the engineering geologist to carry out a further assessment. On 10 November 2014 the engineering geologist carried out a geotechnical assessment of the development area and an inspection of the retaining wall along the south eastern property boundary and eastern corner. A "Liquefaction and retaining wall assessment" report ("the assessment report"), dated 27 November 2014 was provided to the authority. The assessment report reached the following conclusions (in summary):

- The proposed foundation design, to be founded below the organic layers identified at the site, is expected to adequately address the foundation issues at the site.
- The retaining wall construction is generally considered to be satisfactory for the retained height of the wall. As no significant defects or deformations have manifested over the 20 year period of the wall being in place, it can be assumed that the backfill is providing adequate drainage. However the structural integrity of the timber pole wall and quality of drainage material cannot be guaranteed due to the lack of historical information.
- The proposed building work will not create any surcharge loading onto the existing retaining wall and the existing retaining wall will not affect the proposed building work provided a 5m separation is maintained.
- Previously reported saturated ground conditions have improved following the removal of a blockage at the outlet of the pond to the south of the site and additional drainage measures will not be required.
- The site may experience vertical settlements due to liquefaction in an earthquake event. (The report provided options for mitigating the risk.)

3.7.3 The authority wrote to the applicant on 19 February 2015 advising the result of the peer review that the land was suitable for the proposed building and there was no evidence of an existing spring under the subject property. The authority also noted

A lot of the problems in regard to the high groundwater table is due to the modification overtime of the overland flow path and the storm water ponding area. [The authority] have also cleared the outlet pipe of the wetland area, and we suspect that the pipe needs further investigation and may need repair.

3.8 In some time around March 2015 the authority completed repair works to the wetland outlet structure at 64 Grand Vue Road.

3.9 On 20 March 2015 the applicant met with the authority to reiterate concerns regarding the development of the subject site and the effect on the applicant's property. The applicant described the effects as including water logged soils, and that fruiting trees and vines were no longer able to be grown in that area.

3.10 On 28 April 2015 the Ministry received the application for a determination.

4. The submissions

- 4.1 The covering letter to the application set out the view of the applicant that ‘the current building’ has had adverse effects on the applicants’ property and that the proposed building work will affect the land ‘even further and make the area unusable’. The applicant provided copies of a large number of historical documents regarding development on the subject property, including documents pertaining to various resource consent applications.
- 4.2 I have summarised the documentation provided by the applicant in Appendix B. I have not listed all of the documentation provided, but have limited the list to those items that may be relevant to the proposed building work in terms of the code clauses being considered.
- 4.3 The authority provided a ‘file note’ on 13 May 2015 in response to the application along with copies of: an aerial view of the relevant properties, the assessment report dated 27 November 2014, and a file note dated 24 April 2014. The file note set out some of the background to the issue and summarised the authority’s view that there would be no effect on the adjacent other property as a result of the proposed building work.
- 4.4 The owner provided a submission dated 18 May 2015 in response to the application. In regards to any potential impact on the other property, the owner submitted (in summary):
- The authority was made aware that saturated conditions of the other property was caused by a blocked outlet on an adjacent property which controls the water table on the wetlands; after cleaning out the outlet there was a ‘much improvement’ to the saturation of the land.
 - There is no evidence of a spring on the owner’s property.
 - There is no evidence that the proposed building will have any effect on the other property, and the assessment report has confirmed that.
 - The proposed building work will comply with the Building Code in regards to protection of other property.
- 4.5 A draft determination was issued to the parties for comment on 15 July 2015.
- 4.6 All of the parties accepted the findings of the draft without further comment.

5. The expert’s report

- 5.1 As described in paragraph 1.7 I engaged the services of an expert who is a chartered professional engineer to assist me. The expert carried out a site visit on 17 June 2015 and reviewed the documentation made available to this determination, and produced a report that was completed on 3 July 2015. Copies of this report were forwarded to the parties on 7 July 2015.
- 5.2 The report, which was based on site observations and a review of the relevant documentation, described the site, the proposed building work, the observations made by the expert during the site visit, and summarised the background to the dispute.

5.3 The expert set out his observations as follows (in summary):

- The site, including the area below the existing boundary wall and around the wetland pond area, was surprisingly firm and dry underfoot considering the amount of rainfall in the weeks prior.
- The drainage outfall structures and waterways were all running freely and unobstructed.
- There were no obvious signs of excessive ground water having exited from the base of the retaining wall on the boundaries with the applicant's property and 146 Kawaha Point Road property, either currently or in the past. There was no evidence of ground scour, wash out, or any ground water build up behind the wall.
- The majority of the backfill material and soils visible appear to be well drained with a high pumice content evident.
- There was no visual evidence of a spring. There is water exiting the ferned bank face at the head of the open water course in the applicant's property; the applicants have channelled this water from the face using bamboo and rock to the open channel.
- There is a clear overland flow path/gully through 62, 66, 64 Grand Vue – leading to the pond in 146 Kawaha Point. There is evidence of a secondary overland flow path through 70 Grand Vue Road leading to the same feature.
- Stormwater run-off from the new roof will be captured and reticulated to the public stormwater system and site run off and overland flow from No. 70B will therefore be reduced.
- The retaining wall at the boundary of 90 and/or 94 Grand Vue Road is the only retaining wall that appears to have noticeable ground water escaping near its base; this is likely due to a lack of adequate drainage material/drainage behind the wall.

5.4 The expert reviewed the geotechnical and assessment reports and concurred with the conclusions reached in those reports. The expert noted that:

- the building footprint for the proposed building is a minimum of 7m away from the boundary with No. 64 and 9m away from the boundary with No. 146
- the existing boundary retaining wall is in good condition for its age, but care should be taken not to compromise the tie backs or "dead-men"

5.5 The expert concluded that in his opinion the proposed building work would not have an effect on the existing boundary retaining wall and would have negligible effect on any natural ground water flows, springs or otherwise.

6. Discussion

6.1 General

6.1.1 The Act and the Building Code both require that any building, including site work, must be built in such a manner as to protect ‘other property’, where ‘other property’ is defined by the Building Code (Clause A2 Interpretation) as:

other property means any land or buildings or part thereof which are—

(a) not held under the same allotment; or

(b) not held under the same ownership—

and includes any road

6.1.2 I consider that ‘other property’ is not limited to the protection of buildings⁶ and that the land itself must also be protected from the likelihood of damage. In this case the ‘other property’ in relation to the proposed building work is the applicant’s land.

6.1.3 The relevant performance requirements for Clauses B1 and E1 in this case state:

B1.3.6 *Sitework*, where necessary, shall be carried out to:

(a) provide stability for construction on the site, and

(b) avoid the likelihood of damage to *other property*.

E1.3.1 Except as otherwise required under the Resource Management Act 1991 for the protection of *other property*, *surface water*, resulting from an event having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, shall be disposed of in a way that avoids the likelihood of damage or nuisance to *other property*.

6.1.4 In respect of “the likelihood of damage” I refer to reasoning in *Auckland CC v Selwyn Mews Ltd*⁷, where Judge McElrea stated:

...In cl B1.3.6 “the likelihood of damage to other property” refers to a real and substantial risk of such damage.

6.1.5 The term “nuisance” is not defined in the Act or the Building Code, and it appears only in Clauses E1.3.1 and G4.3.4. The term “nuisance” has a particular common law meaning which is ‘the unreasonable interference with an individual person’s use or enjoyment of land or of some right connected with that land’. The question of whether a nuisance is unreasonable is a question of fact and must be considered in relation to factors such as the nature of the harm and the locality in which it occurs, and the frequency, duration and intensity of the interference.

6.1.6 A previous determination⁸ held that the word nuisance in clause E1.3.1 should not be given a narrow legal meaning and there ‘must be some *significant* nuisance effect before there can be a breach of clause E1.3.1’ (emphasis added). I am of the view that any nuisance has to be an *unreasonable interference*; calling a nuisance a significant nuisance is simply reflecting the fact that it is not a trivial or minor interference with a person’s use and enjoyment, but must be an unreasonable or significant interference with that use or enjoyment.

⁶ See also Determination 2007/141 Requirement for a fire protection barrier to a coolstore

⁷ 18/6/03, Judge McElrea, DC Auckland CRN2004067301-19

⁸ Determination 2010/059 Disposal of surface water collected behind a retaining wall at 336A Beach Road, Mairangi Bay, North Shore City (Department of Building and Housing) 12 July 2010

6.2 Clause B1.3.6(b)

- 6.2.1 In this case the matter at issue is whether the proposed building work will comply with the requirements of Clause B1.3.6(b) to provide stability for construction on the site, and avoid the likelihood of damage to other property.

Stability

- 6.2.2 The applicant's concerns have largely centred on the fill at the rear of the site and a record in the authority's file that notes the site with the uncontrolled/non-compliant fill was unsuitable to build on (refer paragraph 3.1.4).
- 6.2.3 The resource consent notice in 2006 (refer paragraph 2.1.3) states that 'any proposed construction within this area will require certification from a suitably qualified Chartered Professional Engineer'. Subsequent to the owner applying for the subject building consent, a geotechnical assessment was carried out and that assessment was later peer reviewed. The conclusions reached were that driven pile foundations were appropriate for the ground conditions and that the proposed building work would not create any surcharge on the existing retaining wall.
- 6.2.4 I am of the view there is sufficient information by way of testing and assessment of the ground conditions to establish that the foundation design is adequate to address the requirement for specific design, and that the proposed building work complies in respect of clause B1.3.6(b) regarding stability of the site
- 6.2.5 I note here however the expert's comment regarding any building work that may interfere with the retaining wall tie backs and including the likes of drainage work, and the assessment report indicating building should be no closer than 5m to the existing retaining wall. I suggest the authority ensure that a clear record of those issues remains on the property file.

Damage

- 6.2.6 In regards to the subterranean water systems in the area, the applicant's concerns appear to be that with the additional surcharge of the proposed building work the land supporting it will 'act like a sponge' and disperse additional water from the spring onto the applicant's property.
- 6.2.7 While I hold the view that Clause B1.3.6(b) does not contemplate the effect of building work on subterranean water systems, I have nevertheless set out my views on this issue in the following paragraphs.
- 6.2.8 It is clear from the historical information and contours that the land in the large block between Grand Vue Road and Kawaha Point Road consisted of a natural gully running from the northeast down to the area known as the Waitakahi Swamp. Over time development has occurred on all sides of the Waitakahi swamp, with the remaining undeveloped land being the applicant's land, which is now a Māori reservation, along with the land on which the pond lies and land further to the south.
- 6.2.9 Figure 2 of Kawaha Māori Landmarks (refer paragraph 2.3.2) indicates a fresh water spring at the head/northeast of the gully. From the location and the expert's observations I take this to be the source of the water that feeds into the open water course on the applicant's property.

- 6.2.10 There is a scarcity of evidence of the exact location of the subterranean water systems in the area, meaning the system is effectively “unmapped” in any detail. However, in this case there has been some testing carried out on the subject property which found no evidence of a spring under the subject property.
- 6.2.11 Given the existing features of the applicant’s property, in that the gully transects the property and there is an existing water feature that flows through to the pond on the adjacent neighbour’s property, I also accept the expert’s opinion that the proposed building work would have a ‘negligible effect on any natural ground water flows, springs or otherwise’.
- 6.2.12 In conclusion, I do not consider the proposed building work will have an effect on any existing subterranean water system such that it is likely to cause damage to the applicant’s property.

6.3 Clause E1.3.1

- 6.3.1 Clause E1.3.1 states for the protection of other property, surface water, resulting from an event having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property. In this context I take this to mean run-off from the rain falling during a 10 year storm, including water passing either through or under the retaining wall which originated as rainwater on the subject property.
- 6.3.2 I concur with the expert’s view that the overland flow from the subject property to the applicant’s and the adjacent neighbour’s property will be reduced due to the capturing of rainwater in the stormwater system. Accordingly I consider the proposed building work complies with Clause E1.3.1 in respect of avoiding the likelihood of damage or nuisance to other property.

The retaining wall and fill

- 6.3.3 The applicant and the adjacent neighbour have stated that prior to the construction of the retaining wall and placement of fill, the applicant’s and adjacent neighbour’s land were higher than the subject property and water naturally drained to the ‘swampy area’ which included the rear of the subject property, and that their became saturated as a result of the construction of the retaining wall and the backfill.
- 6.3.4 While the construction of the retaining wall and the fill on the site are not matters for this determination, in that they are not related to the proposed building work under consent no. BC72292, I make the following observations:
- There is a natural gully and overland flow path which runs from the northeast of the subject property down to the level of the pond on the adjacent neighbouring property at 146 Kawaha Point Road, and the expert has stated there is a secondary overland flow path through 70 Grand Vue to the same pond.
 - The engineering geologist’s assessment report indicates that the previously reported saturated ground conditions have improved following the removal of a blockage at the outlet of the pond, and that additional drainage measures would not be required.
 - The expert observed firm and dry conditions below the retaining wall and around the pond area, and no obvious signs of excessive ground water having exited from the base of the retaining wall either currently or in the past.

- The expert also observed that the only retaining wall that appears to have noticeable ground water escaping near its base was at the boundary of 90 and/or 94 Grand Vue Road.

6.4 Conclusion

6.4.1 I consider that the requirement of Building Code Clause B1.3.6(b) and E1.3.1 to avoid the likelihood of damage to other property will not be breached in the construction of the proposed building work.

7. The Decision

7.1 In accordance with section 188 of the Building Act 2004, I determine that the proposed building work complies with the requirements of Clauses B1.3.6(b) and E1.3.1 in respect of avoiding the likelihood of damage to other property.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 12 August 2015.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Building Act 2004

18 Building work not required to achieve performance criteria additional to or more restrictive than building code

- (1) A person who carries out any building work is not required by this Act to—
- (a) achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the building code in relation to that building work; or

176 Meaning of party

In sections 177 to 190, party, in relation to a determination, means any or all of the following persons affected by the determination:

...

- (e) if the matter for determination relates to—
- (i) a provision in the building code that has the purpose of protecting other property, the owner of the other property: ...

A.2 The relevant clauses of the Building Code discussed in this determination:

Clause A1 – Interpretation

other property means any land or buildings or part thereof which are—

- (a) not held under the same allotment; or
- (b) not held under the same ownership—
- and includes any road

Clause B1 – Structure

Objective

B1.1 The objective of this provision is to:

- (c) protect *other property* from physical damage caused by structural failure.

Performance

B1.3.6 *Sitework*, where necessary, shall be carried out to:

- (a) provide stability for construction on the site, and
- (b) avoid the likelihood of damage to *other property*.

Clause E1 – Surface water

Objective

E1.1 The objective of this provision is to:

- (a) safeguard people from injury or illness, and other property from damage, caused by surface water, and
- (b) protect the outfalls of drainage systems.

Functional requirement

E1.2 *Buildings* and *sitework* shall be constructed in a way that protects people and *other property* from the adverse effects of surface water.

Performance

E1.3.1 Except as otherwise required under the Resource Management Act 1991 for the protection of *other property*, *surface water*, resulting from an event having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, shall be disposed of in a way that avoids the likelihood of damage or nuisance to *other property*.

Appendix B

B.1 A summary of documentation received in the application:

- A “timeline” listing correspondence from 1994 to 2015 regarding development on the subject property.
- Letter from the authority to the owner dated 18 April 1994 advising that a stormwater pipe runs across the subject property from Grand Vue Road ‘to ponds behind your property’.
- A “property file caution” dated 19 September 2007 stating that a spring (known variously as the Kairoro Spring or Kahuroro spring) is situated on 70 Grand Vue Road (Lot 1 DP 366569)
- A letter dated 9 June 2002 from Rotorua’s official historian, regarding the significance of the Waitakahi Swamp and the Kairoro Spring and stating ‘The whole of the Waitakahi Swamp should, in my opinion, be preserved in its original form if that is possible.’
- Subdivision records dated 12 June 2006 of the various lots on 70 Grand Vue Road and areas of uncontrolled fill.
- Correspondence between M Hubbard and the authority regarding the development of 68 Grand Vue Road (I note that 68 Grand Vue is the same site that is now referred to as 70/70B/70C Grand Vue Road). Issues discussed were:
 - relative heights of the properties to the applicant’s land
 - the applicant’s view that the development had filled a spring and caused ‘a lot of underground water to seep through to’ the applicant’s property
 - the authority’s view that it was a civil matter if the subject property was originally downstream and water was later diverted from it to the applicant’s property
- A property file not for 70 Grand Vue Rod (Lot 1), dated as initiated on 17 November 1998 and authorised 19 September 2007 recording ‘approximate location of non-complying fill’.
- Correspondence in 1999 between the owner of 148 Kawaha Point Road and the authority regarding the construction of the retaining wall and the back-fill, and a stone retaining wall. The author considered the back-fill was ‘placed on top of an active spring system’ and was displacing water to adjacent properties and affecting the natural drainage of the applicant’s property and also impacting on the applicant’s property. The author also held the view that the stone retaining wall diverted storm water that exacerbated the issues on his property.
- Correspondence in 2000 between the applicant and the authority regarding the construction of the retaining wall and fill.
- Regarding the proposed building work that is the subject of this determination:
 - Various items of correspondence in 2014
 - Transcript of a meeting between the applicant and authority 29 August 2014

- Correspondence in 2014/2015 regarding the geotechnical peer review commissioned by the authority and stating the authority's view of the cause of the increase in ground water on the applicant's property
- Correspondence in March 2015 from the applicant regarding no assessment having been done on the applicant's property for the effects of 'the raised wall and increased water flow'.
- Minutes of a meeting held on 20 March 2015 between the applicants and the authority.