



Determination 2017/055

Regarding the grant of a building consent for alterations to an existing building on land subject to a natural hazard without notification under section 73

Summary

This determination concerns the natural hazards provisions of the Act. The matter turned on whether the building work constituted a major alteration and whether section 72 would apply even if the building work was not a major alteration. The determination also considered whether it was reasonable to grant a waiver of Clause E1.3.2.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“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 The parties to the determination are:
 - the owners of the property, M Jagmohan, AD Jagmohan, and YK Solanki (“the owners”)
 - Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the authority’s granting of a building consent for the construction of a house without the consent including the condition that it was to be subject to a section 73² notice. The land on which the house is to be built is subject to a natural hazard (inundation). The authority considers the building consent was granted in error without the notification under section 73 and has applied for the determination in order to have its decision reversed.
- 1.4 The matter to be determined³ is therefore the authority’s exercise of its powers in granting the building consent under section 72 of the Act without it being subject to notification under section 73. In making this decision I must consider the application of the natural hazard provisions of the Act as they apply in this case.
- 1.5 In making my decision, I have considered the submissions of the parties, and the other evidence in this matter.

¹ The Building Act, Building Code, Acceptable Solutions and Verification Methods, 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.

² Unless otherwise stated all references to sections are to sections of the Act and all references to clauses are to clauses of the Building Code. The relevant sections of the Act are set out in Appendix A.

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

2. The building work and background

2.1 The building work consists of alterations and additions to a two-storey, timber framed house built in 1994, located at 15A Peary Road, Mount Eden, Auckland, on a site that is subject to inundation⁴. The building work includes recladding of the upper level and some areas on the ground level, extending the house where there was a timber deck and pergola, and removing a small balcony to the upper level.

2.2 The original claddings are brick and plaster to the ground floor, and plaster to the upper floor: the plaster to the upper floor is to be replaced with timber weatherboard, the plaster to the ground floor is to be replaced with a mix of brick and weatherboard.

The ground floor area of the existing building is about 145m² in area⁵, the proposed extension is 11m². The extension is to be used as a study and is adjacent to dining and living areas.

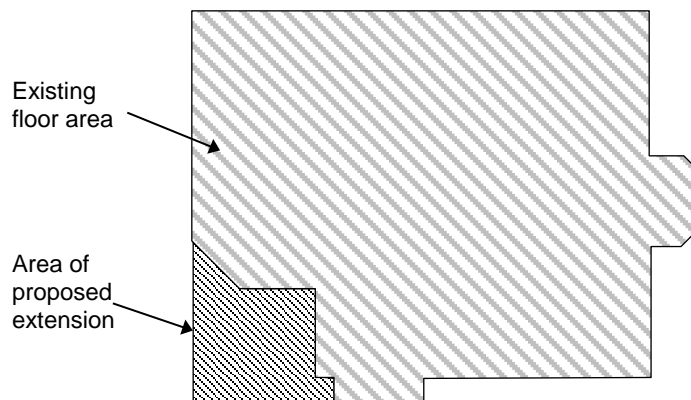


Figure 1: Floor plan showing area of proposed extension

2.3 The building consent application was made in January 2017.

2.4 During the processing of the building consent application the authority identified that the site was within an identified “1 per cent annual exceedance probability (AEP) floodplain”, and attached a certificate under section 37 of the Act to the PIM requiring resource consent. The authority advised the owners’ architect of this in a letter dated 3 February 2017.

2.5 The plans are stamped as approved on 12 April 2017, and in a letter the same day the authority advised the architect that the building consent no. B/2017/600 was ready to uplift.

2.6 It appears that at some time after the letter was sent, the issue regarding the application of the natural hazard provisions of the Act was raised with the owners or the owner’s architect, and the authority suggested that the extension be redesigned with a 200mm step up.

2.7 On 27 April 2017 the owners’ architect advised the authority that the scope of works would be reduced by removing the proposed extension from the plans, noting:

The 200mm step up [of the new floor slab] is not an option we would consider in this instance. ... We understand that there may be remedial works to the frame as is always the situation in a re-clad, and that there would be a Section 73 on the Title.

⁴ While I have not received any specific information regarding the natural hazard (inundation), the authority’s records indicate that the site is located in a flood plain and overland flow path.

⁵ A range of figures are provided in the application information

- 2.8 On 28 April 2017 the authority emailed the owners' architect, noting that
- ...after further consultation with our policy team on the process for the section 73 [notification], I have found that the owners need to complete and return the attached form in order for us to approve the consent.
- 2.9 In correspondence with the authority the architect queried possible design solutions, including the use of a 200mm nib wall to the ground level in areas being reclad, and whether it would be possible to grant the building consent without notification under section 73.
- 2.10 On 4 May 2017 the owners' architect contacted the Ministry for advice on the matter, noting that the extension was not going to go ahead and querying whether the section 73 notification was still required given that the works were limited to recladding. The architect noted:
- There is no record of actual flooding [and] this zoning is from Stormwater data. The owner has been there since 2004 and the neighbour since the 1970's are [sceptical] about the predictive data here.
- 2.11 An officer of the Ministry responded on 5 May 2017, stating that 'the initial test for relevance of [the natural hazard provisions of the Act] is if the building work is a new building or a major alteration'. Based on the limited scope described by the architect, the officer did not think the work would trigger the natural hazard provisions.
- 2.12 In an internal memo dated 12 May 2017, the authority recorded the background to the events, noting (in summary):
- the proposal was amended to restrict the building work to the recladding only and not the extension, but the building consent would still be subject to notification under section 73
 - the parties then fell into dispute as to whether a section 73 notification was required if the building work was limited to the recladding
 - there had been a series of errors in the processing of the building consent which had resulted in the consent being granted without the section 73 notification.
- 2.12.1 The building consent, No. B/2017/600, was issued on 17 May 2017. It describes the building work authorised by the consent as follows:
- RBW – RECLAD upper storey (lower to remain) with new brick cladding and weatherboard, new lower floor eyebrow roof to concrete tiles to match existing, lower floor extension, replace pergola and deck, enclose balcony at first floor level
- I note here that the building consent did not include that it had been granted under section 72 and as a condition of the consent that the authority would notify the consent to the Registrar-General of Land in accordance with section 73 of the Act.
- 2.13 In an email to the authority on 17 May 2017, the owners confirmed that the extension had been removed from the proposal and that in the owners' view the works were no longer a major alteration and the building consent should not be subject to notification under section 73. I have seen no evidence that the building consent was amended to reflect the owners' intention to reduce the scope of work.
- 2.14 In an email to the owners on 18 May 2017, the authority advised that it had issued the building consent without the section 73 notification in error, and that the only course of action available to the authority to reverse that decision was to apply for a determination.

3. The submissions

3.1 The Ministry received an application for determination on 17 May 2017 from the authority along with a copy of the property file on CD ROM. The Ministry sought further clarification of the matters from the authority, and the application was accepted as a determinable matter on 6 June 2017.

3.2 In correspondence with the Ministry the authority set out its views on the matter, in summary:

- The building is on land subject to a natural hazard and the authority considers the building work contemplated (including the extension) to be major alterations for the following reasons:
 - It is not comparable to exempt building work under Schedule 1.
 - The extension is a habitable space.
 - The increase in the size of the building footprint at 9.2% is significant.
 - The cost of the building work is significant.
 - The building work is likely to be affected by the natural hazard.
- The authority does not consider that the criteria in section 71(2) are met, so section 71(1) applies.
- Irrespective of whether the building work constitutes a “major alteration”, section 72 falls to be considered.
- In the authority’s view, the expression “Despite section 71...” in section 72 should be construed as meaning “Whether or not section 71 applies...” – meaning that section 72 applies to all consented building work occurring on land subject to a natural hazard even where the building work is not a new building or is not a major alteration.
- Based on the authority’s calculation of a 2% AEP flood level, the floor of the extension is below this level. The authority is of the view that the building work does not comply. The authority has not, and will not, issue a waiver for the extension.

3.3 The authority requested the determination address the following questions:

- (i) Whether it is reasonable to grant a waiver for the cladding being below the 100yr flood event level (or if the consent would need to be amended to show nib walls installed to allow the cladding to continue to perform in a flood event).
- (ii) Whether it is reasonable to grant a waiver for the floor level to the extension to match the existing floor level, which is below the 100yr flood event.

(I note here that the requirement under Clause E1.3.2 is ‘surface water, resulting from an event having a 2% probability of occurring annually, shall not enter buildings’. This flood event is referred to in this determination as “2% AEP”.)

3.4 The owner emailed the Ministry on 21 May 2017, setting out their views on the matter (in summary):

- The majority of the building work is recladding, and more than 60% of the costs/work will relate to the recladding.
- Almost two thirds of the lower level walls are already brick.

- There is no major alteration to the building; almost all the original walls remain apart from the small deck area, and the recladding is not going to increase the risks relating to flooding.
- 3.5 A draft of this determination was provided to the parties for comment on 21 June 2017.
- 3.6 The authority responded on 5 and 6 July 2017, stating that it did not accept the decision and submitting the following (in summary):
- It remains the authority's view that a significant increase in a habitable space that will be directly affected by inundation constitutes a major alteration.
 - The draft failed to provide further analysis of the consequences of different possible interpretations of section 72. In particular, the interpretation presented allows the footprint of an existing building on land subject to natural hazards to be incrementally enlarged without limit or without triggering section 73. It is the authority's view this could not have been Parliament's intention (with reference in the submission to the purpose of the natural hazard provisions as set out in paragraph 4.2 below).
 - As the determination accepts that a waiver would be required for the building work, there should be a 'compulsory mechanism by which this issue is to be resolved'. If the consented building work required a waiver to be consented, then the building consent should not have been issued without one as it does not meet the statutory criteria for issue.
- 3.7 The owners responded by email on 6 July 2017, reiterating that the majority of the building work was recladding and their view that the works do not constitute a major alteration. The owners noted that 'while it is accepted that the minor addition may be subject to the 1 in 100 year storm, the damage and risk will be no more than would occur to the remainder of the dwelling in the current situation'.

4. Discussion

4.1 Compliance with Clause E1.3.2

- 4.1.1 Before sections 71, 72, and 73 can be considered, it must first be established whether the building work would comply with the Building Code assuming that it was constructed on land not subject to inundation.
- 4.1.2 Clause E1.3.2 requires 'surface water, resulting from an event having a 2% probability of occurring annually, shall not enter buildings'.
- 4.1.3 The authority has stated that based on its calculation of a 2% AEP flood level, the floor of the extension is below the 2% AEP level and does not comply. I have not reviewed the authority's calculations, and while the owners' architect has disputed the basis on which this has been calculated I have not received any contradictory evidence that would indicate the authority's calculation cannot be relied on.
- 4.1.4 It appears that the matter of non-compliance with Clause E1.3.2 of the Building Code was not addressed prior to the building consent being granted in April 2017.
- 4.1.5 Section 67 provides the authority may grant the building consent subject to a waiver or modification of the Building Code, and that the waiver or modification may be subject to any conditions that the authority considers appropriate.

4.1.6 In regards to the natural hazard provisions, section 72 states that the authority must issue a building consent if all the requirements set out in subsections (a) to (c) are met – subsection (c) being that it must be “reasonable” to grant a waiver or modification of the Building Code in respect of the natural hazard concerned. I discuss whether it is reasonable to grant a waiver of Clause E1.3.2 in paragraph 4.5 below.

4.2 The purpose of the natural hazard provisions

4.2.1 A section 73 notice not only provides information on the natural hazard, but has the effect of confirming that the building consent authority has considered the natural hazard when granting the building consent, and therefore should provide some assurance to future owners in regards to the building work carried out under that consent.

4.2.2 The primary purpose of the natural hazard provisions 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.

4.2.3 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

4.2.4 I note that these provisions also give a building consent 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.

4.2.5 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 authorities with immunity (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.

4.3 Is the building work a major alteration?

4.3.1 Under section 71(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.

4.3.2 I have accepted the authority’s statement that the land is subject to the natural hazard inundation. The question before me is whether the building work constitutes a major alteration and therefore the provisions in the Act relating to natural hazards apply.

I have considered this question in two parts; whether the recladding alone is a major alteration, and whether the recladding together with the extension is a major alteration.

4.3.3 There is no definition of “major alteration” in the relevant sections of the Act, and accordingly it is given its fair and ordinary meaning. In a previous determination (2011/034) I have considered the term in light of the purpose of the natural hazard provisions. In that determination I 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 structures 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?

The recladding

4.3.4 The recladding is specified as 70mm brick veneer on a 50mm cavity to the lower level, with timber weatherboards on 20mm cavity above windows and doors, timber weatherboards to the upper level, and new aluminium joinery throughout. The area of recladding on the lower level is limited to only the areas not already clad in brick.

4.3.5 In this instance I am of the view that the recladding works alone do not constitute a major alteration. The recladding of the lower level, being the area likely to be affected by the hazard conditions, is limited. The recladding does not involve alterations to the building’s construction complexity or an increase in footprint, and the increase in load will be minimal.

4.3.6 I note also that the change in cladding materials is to one that is more durable in terms of potential effects from inundation. Also the cladding system will incorporate a cavity to both the brick and weatherboard cladding, allowing drainage and ventilation, meaning the underlying timber framing, building wrap, and insulation are less likely to be damaged by periodic wetting caused by inundation.

The extension

4.3.7 The proposal was to remove an existing deck to the upper level, remove the pergola over the lower level deck, lay a concrete slab in place of the deck at the same level as the existing slab, and extend the external walls and roofing to enclose this area to form a new room. The room is proposed to be used as a habitable space, and to be fully lined and carpeted.

4.3.8 A comparison of the proposed extension with the reasoning set out in paragraph 4.3.3 is as follows:

- The area of the proposed extension (approx. 11m²) exceeds the 5m² area criteria set by Schedule 1(15) for the closing in of existing verandas or patios and the 10m² set in Schedule 1(3) for single storey detached buildings that do not contain sanitary facilities, storage for potable water, or sleeping accommodation. While the extension is different to the works described in these clauses, I am of the opinion that the relative size and the nature of the extension is similar enough to the work that is exempt under Schedule 1, and within the scheme of the type of possible alterations to a building that is closer to a minor alteration than a major alteration.
- The use of the extension is intended for human habitation, and the building work could be adversely affected by the hazard conditions. Though I note that if some reconsideration is given to the design it is possible to mitigate the adverse effects of the natural hazard on the extension to some extent.
- The increase in size of the footprint of less than 8% naturally favours the interpretation that it is a minor, rather than major, alteration.
- I have received no information that would indicate the building work would adversely impact in any way on the natural hazard on the land or any other property.

4.3.9 Taking into account the above, I conclude that that the extension is not a major alteration and section 71(1) does not apply.

4.3.10 The authority has expressed concern if this determination concludes that the subject building work is not a major alteration and the natural hazard provisions do not apply, it raises the potential of building owners carrying out a series of incremental additions without triggering the natural hazard provisions. I am of the view that while this may be possible it is highly unlikely given that the potential benefits of such an incremental approach would likely be offset by significant costs to the building owner.

4.4 The application of section 72

4.4.1 As I have come to the conclusion that the building work cannot be considered a major alteration, it follows therefore that sections 72 to 74 do not apply. The authority disagrees with this view, and accordingly I offer the following discussion on the application of section 72.

4.4.2 Section 71 provides a building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, under certain circumstances (refer paragraph 4.3.1).

4.4.3 Section 72 provides

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.
- 4.4.4 Section 73 provides, a building consent granted under section 72 must include, as a condition of the consent, that the authority will notify the consent to the Registrar-General of Land.
- 4.4.5 The authority has submitted that the expression in section 72 “Despite section 71...” means that section 72 applies to all consented building work occurring on land subject to a natural hazard.
- 4.4.6 I disagree with the authority’s interpretation of section 72. The natural hazard provisions in sections 71 to 74 are to be read in sequence and section 72 does not stand alone from section 71. Section 71 requires the authority must refuse to issue a building consent under particular circumstances, while section 72 provides a subset of those circumstances under which the authority can grant building consent, subject to the criteria set out in subsections (a), (b) and (c), notwithstanding that the circumstances identified in section 71 are present.
- 4.4.7 These provisions are drafted in a similar way to sections 40 and 41 of the Act. In my view this provides a guide to interpretation: Section 40 (1) requires as the default position that ‘a person must not carry out any building work except in accordance with a building consent’, while section 41 immediately following provides the subset of circumstances in which, *despite* section 40, a building consent is *not* required.
- 4.4.8 I have previously considered the ‘sequential’ interpretation of the natural hazards provisions in Determination 2007/110⁶, and I maintain the view, as stated in paragraph 6.4.9 of that determination:

It is only when a building consent must be refused under section 71 that a building consent authority can consider granting a consent under section 72, with any such consent building subject to the condition specified in section 73.

4.5 Waiver

- 4.5.1 Section 67 of the Act provides a building consent authority that is a territorial authority may grant an application for a building consent subject to a waiver or modification of the Building Code, except where the waiver or modification relates to access and facilities for people with disabilities.
- 4.5.2 The Act does not establish what the authority must consider when issuing a waiver or modification. However, in previous determinations I have established that compelling reasons must exist that support the view that a waiver is appropriate⁷, and when ‘explicitly or implied necessary for the granting of a building consent in respect of the building work concerned’⁸.
- 4.5.3 There has been little precedent regarding what is ‘reasonable’ in relation to granting a waiver. It is established that a waiver or modification must not be granted without careful consideration of all the circumstances of the particular case concerned, taking into account the purposes and principles of the Act.⁹

⁶ Determination 2007/110 Building consent for a house on land subject to coastal hazards (17 September 2007)

⁷ Determination 2012/049 Regarding the refusal to issue a code compliance certificate for a 16-year-old house with monolithic cladding (12 July 2012)

⁸ Determination 2007/110 Building consent for a house on land subject to coastal hazards (17 September 2007)

⁹ Determination 2012/049 Regarding the refusal to issue a code compliance certificate for a 16-year-old house with monolithic cladding (12 July 2012)

- 4.5.4 In Determination 2015/010¹⁰ a framework was developed of factors that should be taken into account when an authority considers whether it is reasonable to grant a modification or waiver under section 67 of the Act. The factors in that framework include:
- The extent and possible consequence of the non-compliance with the specific performance clause.
 - The availability of other reasonably practicable solutions that would result in the building work fully complying with the Building Code and the costs associated with those solutions.
 - Any special and unique circumstances of the building work subject to the waiver of modification.
 - The extent to which the modification will still be consistent with the purposes and principles of the Act.
 - The modification complying with the relevant objective and functional requirement of the specific clause of the Building Code.
- 4.5.5 In that determination I also noted that in granting a waiver or modification, factors such as location, use of a building and design features make the waiver or modification specific to the building and not necessarily appropriate to be applied to other buildings with a different set of features.
- 4.5.6 Based on the authority's submission, the extension and the areas of recladding on the lower level are likely to be subject to surface water in a 2% AEP event. The authority has not identified the clauses of the Building Code for which it considers a waiver may be relevant; however based on the circumstances I consider the relevant clauses is E1.3.2.
- 4.5.7 In regards to the reclad, as I have noted previously, the durability of the cladding material and the incorporation in the cladding system of a cavity to allow for drainage and ventilation means that the cladding itself is unlikely to be adversely affected by periodic wetting caused by inundation.
- 4.5.8 However, the building as a whole, including the extension and the areas of the building on the lower level that are reclad, will continue to be subject to the effects of flooding in 2% AEP flood events (or greater events) – meaning that internal linings and floor coverings in various areas within the building may be subject to wetting.
- 4.5.9 While it is possible to incorporate design features into the extension and the areas of recladding to mitigate effect of inundation, as these are adjacent to other areas of the building that would remain and still be subject to flooding, the benefits of doing so would be limited.
- 4.5.10 In terms of the health and safety of the occupants, the effects of a failure to comply with Clauses E1.3.2 are the immediate impact of the flooding event with surface water entering the house, and long term effects if damage is not remediated. I note that the immediate impact of flooding events is unlikely to be significantly altered given the scope of the building work and the remaining existing areas left unaltered. In regards to long term effects, any damage caused to the extension would require the same level of remediation as other areas of the house subject to the same flooding – the net effect being that the scope of the remedial works is greater but not significantly so.

¹⁰ *Determination 2015/010 Regarding the authority's refusal to grant a modification of Clause C3.4(a) of the Building Code in respect of materials used for internal surface linings at a new school hall* (31 March 2015).

- 4.5.11 Taking into account the above factors, I conclude that it is reasonable for the authority to grant a waiver in this case.
- 4.5.12 The authority has raised the fact that the building consent has already been granted without a waiver, and it 'should not have been issued without one'. I note that the matter of whether a waiver can be granted 'retrospectively' has been considered by the District Court in *Palmerston North City Council v Morresey*¹¹. While that case considered building work carried out under the Building Act 1991 and references section 34(4) of that Act, I am of the view the same principle applies to section 67 of the Building Act 2004; the owners can apply for an amendment to the consent for a waiver of Clause E1.3.2.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority correctly exercised its powers of decision in granting the building consent without the building consent being subject to a section 73 notice, and accordingly I confirm the authority's decision to grant the building consent.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 17 July 2017.

John Gardiner
Manager Determinations and Assurance

¹¹ *Palmerston North CC v Morresey*, Judge Callaghan, DC Palmerston North CIV-2007-454-000463 [11 August 2008] at paragraphs 63-64 and 78-79

Appendix A

A.1 The relevant sections of the Building Act 2004 discussed in this determination:

40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) A person must not carry out any building work except in accordance with a building consent.

...

41 Building consent not required in certain cases

- (1) Despite section 40, a building consent is not required in relation to—
 - (a) ...

67 Territorial authority may grant building consent subject to waivers or modifications of building code

- (1) A building consent authority that is a territorial authority may grant an application for a building consent subject to a waiver or modification of the building code.
- (2) A waiver or modification of the building code under subsection (1) may be subject to any conditions that the territorial authority considers appropriate.
- (3) The territorial authority cannot grant an application for a building consent subject to a waiver or modification of the building code relating to access and facilities for people with disabilities.

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:
 - (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.

A.2 The relevant sections of the Building Act 1991 discussed in this determination:

34(4)

The territorial authority may grant a building consent subject to-

- (a) Such waivers of modifications of the building code, or any document for use in establishing compliance with the building code, subject to such conditions as the territorial authority considers appropriate; and
- (b) Such conditions as the territorial authority is authorised to impose under this Act or the regulations in force under this Act.

A.3 The clauses of the Building Code referred to in this determination:

Clause E1 – Surface Water

E1.3.2 Surface water, resulting from an event having a 2% probability of occurring annually, shall not enter buildings.