BUILDING PERFORMANCE

Determination 2025/025

An authority's decision to grant a building consent under section 72 and whether the building work was major alterations

116B Michaels Avenue, Ellerslie, Auckland

Summary

This determination considers an authority's decision to grant a building consent under section 72 of the Building Act 2004, which meant that a natural hazard notice was entered on the property's record of title. The determination considers whether the building work was 'major alterations' for the purpose of the natural hazard provisions of the Act.

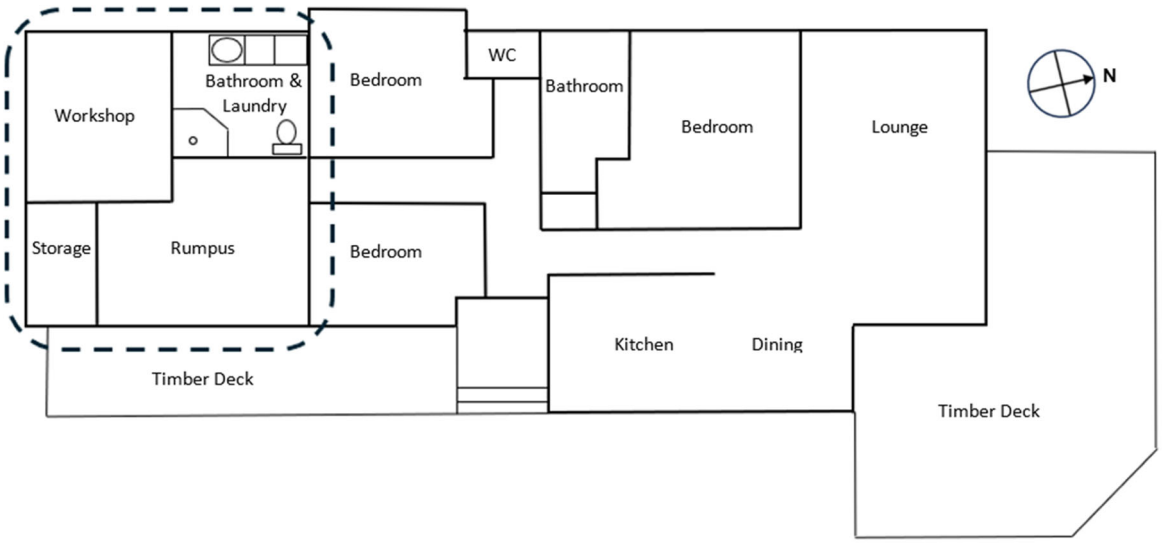

Figure 1: Diagram showing the layout of the building and the alterations (area of alterations shown within dashed line)

In this determination, unless otherwise stated, references to "sections" are to sections of the Building Act 2004 ("the Act") and references to "clauses" are to clauses in Schedule 1 ("the Building Code") of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

1.1. This is a determination made under due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment ("the Ministry").[1]

1.2. The parties to the determination are:

1.2.1. G Paddison ("the owner"), the owner of the property and applicant for the determination

1.2.2. Auckland Council ("the authority"), carrying out its duties as a territorial or building consent authority.

1.3. This determination relates to a building consent which was granted by the authority for alterations to a room in an existing dwelling (see Figure 1). The consent was granted under section 72 of the Act, which meant that an entry was made on the property's record of title regarding a natural hazard.

1.4. The matter to be determined[2] is the authority's decision to grant building consent B/2010/5687 under section 72 subject to the condition in section 73(1)(c) notifying the Registrar-General of Land. The determination considers whether the building work in the consent was a 'major alteration' as per section 71(1).

1.5. I have not considered whether the building work complies with the Building Code. Also, I have no jurisdiction under other legislation and so I do not consider the Resource Management Act 1991 and/or District Plan requirements; reference to these requirements are for context only.

2. Background and building work

2.1. The building was consented in 1987, and originally consisted of a single level house with an internal access garage. The house is 97.38m^2 and original garage area is 35.3m^2, meaning the total footprint of the building (excluding the decks) is approximately 132.68m^2 (see Figure 1).

[1] The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

[2] Under sections 177(1)(b) and (2)(a).

2.2. The current owner purchased the property in 2010. Prior to this, the garage had been converted into a room with a laundry ("the room"). The garage door had been removed and replaced with a ranch slider.[3] At some point, a deck was also installed next to the garage. In October 2010, the owner applied for a certificate of acceptance for this previously completed work.

2.3. The authority wrote to the owner on 22 October 2010 regarding the building consent for alterations, noting the plans did not comply with the District Plan and if not amended would require an application for resource consent:[4]:

> [District Plan] Rule 5D.6.1 Land Subject to Flooding. The change of use within the building from non habitable (garage) to habitable (living space) means that the existing floor level of 27.47 does not meet the minimum flood level requirements. The required level is 27.95.

2.4. The owner states "Plans were amended accordingly to show it changed to a non-habitable area…". The certificate of acceptance was issued in December 2010 for "Removed garage door, installed ranch slider and deck".

2.5. In October 2010, the owner also applied for the building consent, which was issued on 6 December 2010. The building consent plans and subsequent documentation show:

2.5.1. Four internal walls and three internal doors were installed (see Figure 1). An internal wall is described on the cross-section as "90mm timber frame with 2-side 10mm [plasterboard]".

2.5.2. A shower, toilet and basin were added to the part of the room originally containing the laundry (see Figure 1), and associated plumbing and drainage was installed. A waterproof membrane was applied to the bathroom/laundry floor. New wall linings and a hot water system were also installed.

2.5.3. The proposed floor plan shows "1400x800 A grade safety glass" in the bathroom/laundry area, and a producer statement (PS3) was issued for "Toughened glass and glazing 2 no. panes in bathroom". Together these indicate that windows in the bathroom/laundry were replaced.

2.5.4. An electrical certificate was issued for "Turn switchboard around 180 deg. Inst lights and power in new bathroom/laundry. Inst an extractor fan".

[3] This building work was not carried out under a building consent.

[4] The owner states the application for the certificate of acceptance was paused due to this notification.

2.6. The building consent contained the following conditions:

> 1. ADVICE NOTES
>
> 1.1 The existing garage being converted to Storage, Rumpus, Workshop, Bathroom and Laundry remains a non-habitual [sic] area. This means the finish floor level remains to be higher than the 1 in 10-year floor (i.e. 27.30m). The non-habitable floor level has been chosen to be 27.425m.
>
> The 1 in 50-year floor level is 27.50m. The existing floor level of the house is 27.60m, hence complies with the building act requirement.
>
> 1.2 Section 72 will be registered on the certificate of title as there [sic] flooding exists.
>
> 2. FLOOD RISK
>
> SECTION 71-74 OF THE BUILDING ACT
>
> The land on which the building work is to be carried out is subject to or is likely to be subject to inundation (including flooding, overland flow, storm surge, tidal effects, and ponding).
>
> Hence, an entry is to be made on the Certificate of Title to the land, pursuant to Section 72 of the Building Act 2004.
>
> …

2.7. In February 2011, the authority notified the owner that the building work had passed the final inspection. The following notation was added to the record of title:

> 8708821.1 Notification that a building consent issued pursuant to Section 72 Building Act 2004 identifies inundation as a natural hazard – 24.2.2011 at 7:00am (affects fee simple)

2.8. The owner lodged an application for a code compliance certificate in early March, which was issued on 13 April 2011.[5]

2.9. The owner subsequently came to the view that the building consent should not have been issued under section 72 but should have been issued in the ordinary way under section 49, and for that reason there should not have been an entry on the record of title.

[5] There is a discrepancy between the issued building consent and the code compliance certificate as to the use of the room. The issued building consent refers to a rumpus, workshop, storage and combined laundry/bathroom, while the code compliance certificate refers to a bedroom and combined laundry /bathroom.

3. Submissions

The owner

3.1. The owner submits:

3.1.1. The entry should not have been applied to the record of title, because the alterations were not "major alterations", noting:

(1) The alterations were internal only.

(2) The internal wall is not a structural supporting wall as the space was originally an internal garage.

(3) None of the factors in section 3 of the authority's guidance (AC2229[6]) are present, confirming the alterations should be considered minor. These factors, which are intended to guide staff as to whether alterations are considered major, are:

- an increase of more than 20m^2 to the floor area of the building
- the alteration affects more than 30% of the existing floor area of a building; or
- an addition which forms part of an alteration which increases the effect of the natural hazard on the existing building.

3.1.2. The building work did not accelerate, worsen, or result in a natural hazard on that land or any other property.

3.1.3. The property was not damaged during the "Gabrielle" weather event.[7]

The authority

3.2. The authority submits:

> From the information available to [the authority] at the time of the building consent issued in 2010, approximately 14 years ago, it would appear the site… is subject to natural hazards of a Flood plain and flood prone area that maybe subject to inundation.
>
> There is a possibility the alteration could be considered major due to its percentage of the dwelling. The Building Act 2004 does not appear to technically define "major alterations" nor does the "Natural Hazards Provisions" version 1 October 2023 guidance document.

[6] Auckland Council Practice Note AC2229 *Building on land subject to natural hazards*, version 4 issued April 2019.

[7] Cyclone Gabrielle, February 2023.

> The alterations are contained within the existing footprint of the existing dwelling. It is unlikely the building carried out as part of the approved building consent would worsen the natural hazard or create a natural hazard.

3.3. The authority also noted that the currently available version of AC2229 (referenced by the owner) is Version 4 dated 2019, which was not available at the time the building consent was issued.

4. Discussion

4.1. The matter to be determined is the authority's decision to grant the building consent under section 72 subject to the condition in section 73(1)(c) notifying the Registrar-General of Land. In order to decide this matter, I must consider whether the building work consisted of 'major alterations' for the purpose of section 71(1).

The natural hazard provisions

4.2. Under section 49(1), a building consent authority must grant a building consent if it is satisfied that the building work will comply with the Building Code. However, if the building work is on land that is subject to a 'natural hazard' for the purposes of the Act, the building consent authority must consider sections 71 to 74 ("the natural hazard provisions").

4.3. Determination 2024/025 sets out the natural hazard provisions and discusses their purpose and legislative history of the natural hazard provisions.[8]

4.4. Section 71 is the starting point for the natural hazard provisions. Section 71(1) provides:

> (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. [my emphasis]

4.5. The hazard in this case, in terms of section 71(3)(d), is inundation by flooding. The existence and extent of the inundation is not disputed between the parties. I note for completeness that the fact inundation is likely to occur does not necessarily mean that a notification should be placed on the title.[9]

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[8] Determination 2024/025 *An authority's decision to grant building consents under section 72* (27 May 2024) at [5.1-5.9] and [6.3-6.12].

[9] See Determination 2024/025 *An authority's decision to grant building consents under section 72* (27 May 2024) at [6.47], and Determination 2024/053 *An authority's decision to grant a building consent under section 72 for building work on land that is subject to a natural hazard of inundation* (1 October 2024) at [4.23].

4.6. At issue is whether the building work that was the subject of the building consent consisted of 'major alterations'. If the building work was not the "construction of a building, or major alterations to a building" under section 71(1), then the natural hazard provisions do not apply.

Were there major alterations?

4.7. There is no definition of "major alterations" in the Act. However, section 7 defines "alter" as:

> Alter in relation to a building, **includes** to rebuild, re-erect, repair, enlarge, and extend the building. [my emphasis]

4.8. I am satisfied that the building work was alterations as it consisted of work to a room in an existing building.

4.9. As there is no definition of 'major' or 'major alterations' in the Act, it is appropriate to consider the natural and ordinary meaning of this term. The Oxford English Dictionary defines the adjective 'major' as:

> Greater in size, importance, etc. Designating the greater (in various senses) or relatively greater of or of two things, classes, etc., that have a common designation (opposed to minor). Also: unusually important, serious or significant; main, chief, principal, leading.[10]

4.10. Considering this definition of 'major', I am of the view that alterations must be considered in the context of and relative to the building and the site they relate to**.** I also consider that the terms 'major' and 'major alterations' should be interpreted in light of the purpose of the natural hazard provisions and the purposes and principles of the Act.

4.11. There are a number of case specific factors that may be relevant when assessing whether building work constitutes major alterations. In my view, the following factors are relevant in this case:

4.11.1. The design and construction of the building work was not complex, and the majority of the work was exempt from the requirement to obtain a building consent under Schedule 1, which indicates it is of a low-risk nature.

4.11.2. The area in which the work occurred is approximately 27% of the building's footprint.[11] However, it was not a substantial reconstruction or alterations to the existing structure or external envelope, rather it consisted mainly of internal alterations.

[10] From the Oxford English Dictionary at www.oed.com as at 15 May 2025.

[11] Noting that the size of the altered room is 35.30m^2, while the size of the existing house excluding the decks is 97.38m^2. The size of the total existing building is approximately 132.68m^2.

4.11.3. The alterations repurposed an existing space and did not expand the building's footprint. There was no change to site coverage or the amount of impervious surfaces.

4.12. Taking the above factors into account, together with the purpose of the natural hazards provisions, in the context of and relative to the building and site, I consider the alterations were not "major" for the purposes of section 71(1).

4.13. Because the building work was not 'major alterations' the natural hazard provisions do not apply. Therefore, the applicable pathway for the granting of the building consent was section 49, and for that reason I modify the authority's decision in granting the building consent to remove the section 73(1)(c) condition

5. What happens next?

5.1. Section 74 provides for building consent authorities to notify the Registrar-General of Land if the building consent authority determines that an entry on the title is no longer required (subsections (3) and (4)).

5.2. There is a single entry on the record of title for a building consent issued pursuant to section 72 of the Act, and it is clear from the correspondence between the parties that this entry relates to building consent B/2010/5687.

5.3. This determination modifies the building consent to remove the section 73(1)(c) condition, and so it is for the authority to now notify the Registrar-General of Land that the entry on the title relating to building consent B/2010/5687 is no longer required.

6. Decision

6.1. In accordance with section 188 of the Building Act 2004, I determine the building work that is the subject of building consent B/2010/5687 was not major alterations, and I hereby modify the authority's decision to grant the building consent to remove the section 73(1)(c) condition.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 4 June 2025.

Peta Hird

Lead Determinations Specialist