

Determination 2025/053

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

108A Pohutukawa Avenue, Ohope

Summary

This determination considers the authority's decision to grant a building consent under section 72 of the Building Act, 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.

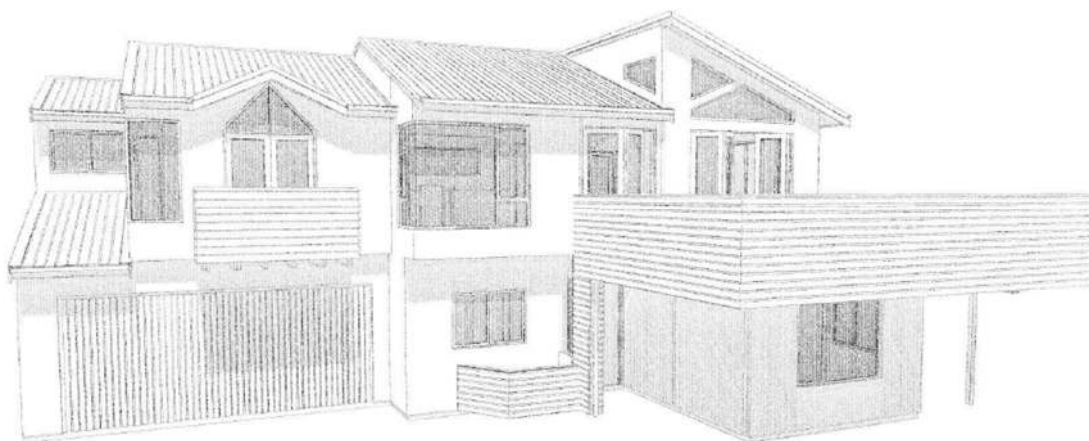


Figure 1. Architectural render of the dwelling from the approved building consent.

The legislation discussed in this determination is contained in Appendix A. 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, Andrew Eames, Principal Advisor Determinations, 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. The owners of the property, A Clough, S Clough and Matley Trustees No.1 Limited (“the owners”) who applied for the determination.
 - 1.2.2. Whakatane District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination relates to a building consent granted by the authority for alterations and additions to an existing two-storey 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, in terms of section 177(1)(b) and (2)(a) of the Act, is the authority’s decision to grant building consent BCC220158 under section 72 subject to the condition in section 73(1)(c) notifying the Registrar-General of land
- 1.5. In deciding this matter, I consider whether the building works undertaken, including the building consent amendment, constituted major alterations under section 71(1). The determination is limited to this point.

Matters outside this determination

- 1.6. Whether the site is subject or likely to be subject to the natural hazard of falling debris as per section 71(3) as this is not disputed by the parties.

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

2. The building work & background

- 2.1. In early April 2022 the owners applied for building consent to undertake alterations and additions.
- 2.2. The building is a two-storey dwelling with an attached garage. The original layout of the ground floor² consisted of a large entry hallway, two bedrooms, a bathroom and laundry and storage areas. The upper floor layout consists of a large open plan kitchen, dining and lounge area with separate WC in a hallway and a master bedroom, walk in robe and ensuite. The upper floor has three external decks, a main enclosed deck with access from the lounge and dining areas, a master bedroom deck and a rear deck with access from both the kitchen and a hallway.
- 2.3. The building consent application included the following building work:

Ground floor

- 2.3.1. Installation of a specific engineer designed (SED) lift and associated foundation works for lift pit.
- 2.3.2. Laundry relocated within garage utilising existing sanitary outfalls.
- 2.3.3. Removal of internal walls to reduce entry hallway area, reposition internal garage access and create new living area.
- 2.3.4. New internal and external steel SHS³ support posts for deck beams with associated footings and foundation pad extension.
- 2.3.5. New SED plywood bracing to bedroom 3 below deck.
- 2.3.6. New lintel for increased living area opening.

Upper floor

- 2.3.7. Removal and replacement of upper floor main deck with increased area and SED PFC and UB⁴ steel support beams.
- 2.3.8. New deck balustrade barrier with framed posts and cedar shiplap cladding.
- 2.3.9. New waterproof membrane for deck with associated internal gutter and overflow with SED floating aluminium deck framing system.
- 2.3.10. Removal of rear deck roof support posts and new SED cantilevered canopy.

² The internal alterations revised this layout as discussed in paragraph 2.3.3

³ Square hollow section (SHS) post

⁴ Parallel flange channel (PFC) and universal beam (UB)

2.3.11. New flitched joists to existing cantilevered joists to square off master bedroom deck with new balustrade barrier with SED posts and cedar shiplap cladding.

2.3.12. Lounge opening repositioned with stacker door and new lintel.

All areas

2.3.13. Removal of existing direct fixed EIFS⁵ cladding and replacement with AAC⁶ cladding on a cavity system.

2.3.14. New insulation and building wrap to external walls.

2.3.15. Removal of existing joinery and replacement with new double-glazed joinery.

2.4. The building consent was granted on 5 July 2022 (BC220158)⁷ under section 72 with the land subject or likely to be subject to the natural hazard of falling debris.

2.5. An application for minor variation was approved 26 May 2023 (MV1):

2.5.1. SED design deck point loads relocated from outside of existing building line.

2.5.2. Laundry location repositioned on other side of garage wall within lift passageway with new pipework to create compliant fall and drain overflow through blockwork wall retaining wall.

2.5.3. Lift revised to level entry requiring changes to SED lift pit.

2.5.4. SED foundation extension to match existing for the new living area.

2.6. An application for minor variation was approved 21 July 2023 (MV2):

2.6.1. Revised joist and beam sizing for the deck structure.

2.6.2. Removal of soffit vents under enclosed deck.

2.6.3. Removal of pavers and channel drain extension to achieve cladding clearances.

2.6.4. Removal of bedroom 2 wardrobe wall framing and installation of bar, sink and new impervious flooring.

⁵ Exterior insulation and finish system (EIFS) cladding is an integrated wall system that includes expanded polystyrene (EPS) insulation boards, planks, sheets or panels, a fibreglass mesh-reinforced plaster coating, and a final waterproof texture finish.

⁶ Autoclaved aerated concrete (AAC) panel cladding system.

⁷ While the authority's decision was on the 5 July 2022 scope of works, I consider the variations and amendments in the determination process as well to see if they would have any impact on the consideration of 'major alterations'. I have done this separately in the discussion.

- 2.7. An amendment to the building consent was approved 21 September 2023 (BC220158.A1):
- 2.7.1. Removal of ground floor bay window in bedroom 3 and SED extension of upper floor framing in kitchen to match existing ground floor building footprint.
 - 2.7.2. SED cantilevered lintel for kitchen corner joinery.
- 2.8. An application for minor variation was approved 19 October 2023 (MV3):
- 2.8.1. Deck balustrade cladding revised from cedar shiplap to fibre cement vertical cladding system.
 - 2.8.2. Deck barrier parapet lowered in height with additional SED glass balustrade system.
 - 2.8.3. New 190x90 top beams bolted to balustrade posts.
- 2.9. A post wrap/cavity inspection on 22 February 2024 recorded new trapezoidal roofing had been installed with these works included in the inspection summary. However, this change to the approved building consent was not recorded as an amendment nor as a minor variation. It is unclear whether these works were intended to be part of the building consent or undertaken by the owner by way of a Schedule 1⁸ exemption.
- 2.10. An application for minor variation was approved 6 December 2024 (MV4):
- 2.10.1. New internal epoxy membrane barrier to blockwork wall for bedroom 2 with new timber framed false wall and 20mm vent cavity under existing stairs to garage area.
- 2.11. A code compliance certificate was issued 22 July 2025.
- 2.12. The owners subsequently applied for a determination 8 August 2025.

3. Submissions

The owner

- 3.1. The owner acknowledges that the site is subject or likely to be subject to a natural hazard.

⁸ Building Act 2004, Schedule 1 - Building work for which building consent not required

3.2. The owner submits:

- 3.2.1. That the recladding work and replacement of joinery were maintenance related.
- 3.2.2. The installation of a new lift was minor works and future proofing for retirement.
- 3.2.3. The first-floor deck was minor works and the same footprint as the ground floor⁹ with cantilevered beams to square off the original 45° deck.
- 3.2.4. The rear deck post removal for the new cantilevered canopy was maintenance related due to the poor condition of the existing construction.
- 3.2.5. The amendment to increase the upper floor was within the same foundation footprint as the ground floor. Furthermore, this amendment was required as the joinery company would not warranty a replacement of the ground floor raking glass bay window.
- 3.2.6. While there were some onsite minor variations approved, they were not included within the formal amendment scope of works¹⁰.

3.3. The owner believes that the building works were minor as they continued to occupy the dwelling during construction.

The authority

- 3.4. The authority highlighted the extent of the building work throughout the dwelling, which included several elements of SED.
- 3.5. It believes that the cumulative effect of these alterations and additions materially changes the building in terms of structure, appearance and value.
- 3.6. The authority believes that the building work demonstrably exceeds the threshold of a minor alteration and meets the criteria for classification as a major alteration.

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 first consider whether the work consisted of 'major alterations' for the purpose of section 71(1).

⁹ The approved building consent plans provided detail the new first-floor deck extending beyond the existing ground floor footprint.

¹⁰ While the minor variations may not have been included in the amendment scope, they do form part of the building consent and are each supported by a 'Application for Minor Variations to Approved Plans' stamped and dated by the authority.

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.¹¹
- 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 falling debris. The existence and extent of the falling debris is not disputed between the parties. I note for completeness that the fact falling debris is likely to occur does not necessarily mean that a notification should be placed on the title.¹²
- 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. Determination 2025/025 discusses the interpretation of ‘major alterations’ and how the term ‘major alterations’ should be interpreted in light of the purpose of the natural hazard provisions and the purposes and principles of the Act.¹³
- 4.8. 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:

¹¹ 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].

¹² 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].

¹³ Determination 2025/025 *An authority’s decision to grant a building consent under section 72 and whether the building work was major alterations* (4 June 2025) at [4.7-4.10].

- 4.8.1. The design and construction of several elements of building work were complex and required specific engineering design supported through onsite construction monitoring by building professionals.
- 4.8.2. Whether the works are simple and low risk such as that those that would be exempt from the requirement to obtain building consent under Schedule 1¹⁴.
- 4.8.3. The extent and scope of building work undertaken to the building.
- 4.9. While there were several minor variations and an amendment to the building consent granted, the authority based its section 71(1) assessment on the initial scope of works described in the building consent.
- 4.10. Therefore, in deciding whether the building works were ‘major alterations to a building’ for the purposes of section 71(1), I first consider the scope of the original building consent and then later assess the subsequent amendment and minor variations.
- 4.11. Regarding the complexity of the work, the scope of the original consent included multiple engineer designed elements as part of the additions and alterations. These required a chartered professional engineer (CPEng) to provide specific design work, with design compliance pathways that do not use prescriptive Acceptable Solutions¹⁵, and a requirement for onsite construction monitoring to provide verification of building work.
- 4.12. A significant portion of building work to both the ground and upper floors involved removing the original deck and replacing with a larger enclosed deck. The design itself included multiple SED beams, posts and associated structural connections in addition to load bearing foundation support. A front pad extension to the exiting foundation was also required for at least one SHS post footing. Four of the SHS posts were positioned within the existing wall framing of bedroom 3 which required an SED plywood bracing system to further strengthen this area of the dwelling.
- 4.13. The owner’s position is that the new deck was minor work and the same footprint as lower level. However, the plans provided show the deck area increased beyond the existing ground floor footprint. With engineering oversight a requirement, undertaken through onsite construction monitoring and verification of steelwork, the structural alterations of the deck are not considered minor building works.

¹⁴ Building Act 2004 section 42A, Building work for which building consent is not required under Schedule 1

¹⁵ Acceptable Solutions give specific construction details, often for commonly used building materials, systems and methods for each New Zealand Building Code clause. Designs based on them must be accepted by BCAs as demonstrating compliance with the Building Code.

- 4.14. In addition, the extended enclosed deck, over the ground floor bedroom required a new waterproof membrane and associated surface water outfalls, such deck designs are not considered low risk or low complexity.
- 4.15. The removal of the rear deck posts required alterations to the roof framing to create a SED cantilevered canopy. The design incorporated flitched beams connected to existing rafters along with additional SHS posts where required for canopy alignment. The owner has stated that these works were necessary for maintenance purposes due to the poor condition of the existing roof support posts. In isolation, this element of building work would not be considered overly complex, however, it does need to be considered in combination with the totality of building work and full scope of the building consent.
- 4.16. The lift system is quite a significant investment in the existing building, the installation required structural alterations by the engineer to the dwellings foundations in addition to alterations to internal wall framing.
- 4.17. The replacement of the existing direct fix EIFS cladding to a new cavity system AAC cladding would not be considered low risk minor work. The complete reclad with a different system is complex and is quite a significant investment in the existing building.
- 4.18. The majority of the building work in the original scope was not exempt from the requirement to obtain building consent under Schedule 1 exemptions. I have taken this into account in terms in considering whether the proportion of building work that could be considered low risk and of minor complexity
- 4.19. Approximately 34% of the ground floor and 26% of the upper floor were subject to alteration works. In total there was an overall increase in floor area of 9% in addition to a full recladding of the building and replacement joinery. When taken together, this scale of alteration when combined with the complexity noted above adds up to a major investment in an existing building and something intended to be captured by the term 'major alterations'.
- 4.20. In conclusion, the aggregate effect of the scope of these building works, as laid out in paragraph 2.3, to the existing building constituted major alterations for the purposes of section 71(1).

Amendments and variations

- 4.21. I will also briefly consider the changes made during the process and whether these have any impact on the decision around major alterations.
- 4.22. The scope of building works approved under the building consent amendment was for an extension of the upper floor kitchen area with SED elements of midfloor framing and lintels.

- 4.23. The owner has noted that this amendment was necessary as the joinery company would not warranty the ground floor raking bay window. While this amendment could be considered as further maintenance and future proofing of the dwelling it did not lessen the extent or scope of building works and further increases the scope of the building work.
- 4.24. The approved minor variations further added additional SED elements of design and construction, including an increased area of foundation for the new ground floor living area, a revised lift pit design and new main deck balustrade system. As with the formal amendment to the consent, the minor variations did not lessen the overall scope of works and the authority's original assessment under section 71(1).
- 4.25. The variations and amendments do not reduce the amount of building work in the building consent, in fact they increase it, so it is appropriate it to consider the building works in the building consent continue to comprise major alterations.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine the building work that is the subject of building consent BCC220158 was major alterations for the purposes of Section 71(1), and I confirm the authority's decision to grant building consent under section 72 for building on land subject to a natural hazard on that point.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 31 October 2025.

Andrew Eames

Principal Advisor Determinations