

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

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. E Gray and J Tweedie, the owners of the property that has the entry recorded against its title (“the owners”)
 - 1.2.2. Whangarei District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. This determination arises from the authority’s decision to refuse to remove a notification pursuant to section 72 (“the entry”) on the record of title of the owners’ property. The owners requested the authority consider that the entry was no longer required under section 74(3) on the grounds that it should not have been transferred to their property’s record of title following earlier subdivisions of land. The original entry relates to a building consent carried out prior to the subdivision works. The authority considered that the entry was still required, on the grounds that the owners’ property was at risk of slipping and had suffered slip damage in recent weather events.
- 1.4. Accordingly, the matter to be determined, in terms of section 177(1)(b) and (2)(a), is the authority’s decision to refuse to remove the natural hazard entry from the owners’ record of title under section 74(3).
- 1.5. Because the property has undergone several subdivisions since the entry was first recorded, I will outline the process for how the entry came to be on the current record of title for the property. However, any decisions made under the Resource Management Act are outside the ambit of this determination.

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

2. The background

- 2.1. The owners' property is a 2680m² lifestyle block in a semi-rural area. The property slopes downhill from the southern to northern boundaries. The main structure on the property is a 52m² dwelling on the south-eastern boundary.
- 2.2. The record of title for the property currently has a natural hazard entry recorded against it. The entry has been carried over from previous records of title following a separate boundary adjustment and subdivision of the original 22.5-hectare allotment ("the grandparent property") that the owners' property was initially part of.
- 2.3. In 2004, prior to any subdivision work, a building consent (BC76542) ("the 2004 building consent") was granted under section 36 of the Building Act 1991 for a new dwelling to be constructed on the grandparent property ("the 2004 dwelling"). An entry in respect of this building consent was subsequently made on the grandparent property's record of title pursuant to section 72 of the current Act. Based on the information in the 2004 building consent, I understand the natural hazard identified was slippage.² The 2004 dwelling was constructed between 2004 and 2007.
- 2.4. In 2010, a subdivision was undertaken to make a boundary adjustment between the grandparent property and a neighbouring allotment. As a result, the land that now forms the owners' property became part of the neighbouring allotment ("the parent property") and was no longer part of the grandparent property in respect of which the 2004 building consent had been granted (see figure 2).
- 2.5. New property titles were issued for both properties following this subdivision and the natural hazard entry was duplicated onto the record of title for the parent property, noting that the entry "affects part formerly [the grandparent property]".
- 2.6. During the subdivision process, according to the authority, it specifically considered whether the natural hazard entry on the grandparent property's title should be "inherited" by the parent property, after the solicitor acting for the owners of the parent property requested that it be removed. The authority decided that the entry should remain on the title of the parent property because, as the authority noted in correspondence at the time, the entry's purpose was "to give notice of the natural hazards affecting the land" (authority's emphasis).

² The building consent and the entry against the title list all of the potential natural hazards described by section 36 of the Building Act 1991, with slippage being one of these.



Figure 2: The approximate original (dotted) and new (solid) boundaries following the 2010 boundary adjustment

- 2.7. In 2012, the authority granted a building consent (BC1200146) for a chicken shed to be constructed on the parent property in an area that now forms the owners' property. During the assessment for the consent, the authority concluded that the proposed chicken shed was a "minor building, and didn't warrant a specific consideration of the natural hazard provisions", as it was of "low economic consequence and risk, and this approach is consistent with current practice to forego full investigation of hazards for such projects where the cost of the investigations outweighs the risks". The authority issued a code compliance certificate for the construction of the chicken shed in November 2012.
- 2.8. In 2017, there was a two-lot subdivision of the parent property, which created the owners' property (with the chicken shed still in place) (see figure 2). The new records of title created as a result of this subdivision include the natural hazard entry on both the parent property and owners' property titles, including the note regarding the grandparent property.



Figure 3: The approximate boundaries post-2010 boundary adjustment (dotted) and new (solid) boundaries following the 2017 subdivision to form the owners' property

- 2.9. At some point following the 2017 subdivision, the previous owners of the property demolished the chicken shed down to the foundation slab. A new building was then constructed on the slab, which subsequently became a dwelling. The previous owners did not apply for a building consent for this building work, so the authority was unable to consider the natural hazard provisions in the Act in relation to the work (see paragraph 4.4). In 2020, the authority granted a certificate of acceptance (CA2000005) for the building work to construct the dwelling.³
- 2.10. The current owners purchased the property in 2021. In February 2023, Cyclone Gabrielle impacted parts of the North Island, including the Whangarei area and damage occurred to the owners' property. This has been subsequently described by the owners as a "crack/slide starting half way up [the] driveway, running under [the] house and out the other side... [it] was not visible at all prior to this event". This damage has resulted in movement in the dwelling, so that the finished floor level is now on an angle, movement in the pipes and cables servicing the dwelling, movement in the deck structure connected to the dwelling, and structural damage to landscaping retaining walls.
- 2.11. The owners made an insurance claim for the damage, in the process of which the natural hazard entry on the property's record of title was raised as an issue. A geotechnical engineer engaged by the insurer assessed the property and confirmed

³ The certificate of acceptance excluded several Building Code clauses, including B1 Structure. The authority submitted clause B1 'in a broad sense can be considered to apply to building structural elements, and the ground supporting it'.

that a landslip had “occurred beneath the northern portion of the property ...[causing] large-scale ground cracking in the driveway and beneath the deck and dwelling.”

- 2.12. Also in 2021, the remaining portion of the grandparent property was subdivided again, with the land on which the 2004 dwelling was built becoming a smaller approximately 3500m² property and no longer bounding the owners’ property. Following this, the distance between the owners’ property and the property on which the 2004 dwelling has been built, at the closest point, is approximately 75m, with an approximate distance of 110m between the owners’ dwelling and the 2004 dwelling. These distances are measured over another property containing a downhill slope from the 2004 dwelling, a gully and small creek, before a slight rise to the owners’ property (see figure 1).
- 2.13. In March 2024, the owners applied to the authority to have the natural hazard entry removed from the property’s record of title under section 74. The owners also questioned the process the authority had followed when assessing the 2004 and 2012 building consents in respect of the natural hazard of slippage and the effects of that slippage on the area that is now part of their property. They noted that a geotechnical report dated 2004 “only assessed the area relevant to the [2004] dwelling...and is entirely silent on our land”.
- 2.14. Correspondence passed between the owners and the authority about slippage that had occurred and the entry on the record of title and the authority made a site visit to the owners’ property. On 2 April 2024, the authority sent an email to the owners refusing their request to remove the entry from their property’s record of title. The reason given by the authority for the refusal was that:
- ...any attempts by [the authority] to justify removal of the notice from the land would be a direct contradiction to the fact a natural hazard has occurred on the land. In-line with the relevant legislation (building Act 2004, S.74), the decisions to remove this from the title is based on us determining the entry is no longer required. In this instance, the natural hazard is evident, and there is still risk of further slippage. In simple terms, [the authority] cannot reasonably justify the removal of the notice based on the facts now at hand.
- 2.15. The authority suggested that the owners undertake engineer-designed physical works at their property to mitigate the hazard, at which point it could reconsider its decision regarding the natural hazard entry.

3. Submissions

The owners

- 3.1. The owners made a submission with their application for determination. They set out the background that had led to the creation of their property and the construction of the dwelling upon it and submitted that “the section 72

[notification] should never have been applied to our property” and asked for it to be removed.

The authority

- 3.2. The authority made a submission in response to the application for a determination, in which it too set out the background of the matter. The authority submitted that it had not been able to determine, pursuant to section 74(3), that the entry on the record of title was no longer required and was therefore of the view that the entry should remain. The authority provided the following summary of its reasons for reaching this decision.

We have declined to remove the notice from the title of [the owners’] property as:

- It is clear that the property is at risk of slippage;
- The property has suffered slippage;
- There is a risk of further slippage;
- No work has been completed on site to address the risk of slippage (effectively mitigate the hazard).
- The house is safe to occupy but has clearly suffered damage from land movement.

- 3.3. The authority repeated its earlier advice that, “Should further work be undertaken to mitigate the hazard” it would reconsider its decision to refuse to remove the natural hazard entry from the title.
- 3.4. The authority also clarified its understanding of how the entry had been carried over to the owners’ record of title from that of the grandparent property, stating that “the interests on an underlying title apply to all of the land in that title and continues to do so upon subdivision, hence all interests carry over by default unless it is determined that they should not and the relevant authority ... resolves not to register [the interests] against a new title.” The authority also submitted that it was clear from the correspondence that it gave “due consideration” to the question of whether it should remove the entry from the parent title as part of the 2010 subdivision and declined to do so.

4. Discussion

The legislation

- 4.1. The legislation relating to building work on land that is subject to natural hazards, can be found in sections 71 to 74.⁴ The provisions set out the circumstances in which a natural hazard entry in respect of building work will be registered on a property’s record of title and removal of such entries.

⁴ Refer also section 36 of the Building Act 1991.

- 4.2. Section 71(1) provides that an authority must refuse to grant a building consent for new buildings or major alterations to existing buildings if the land on which the building work is to be carried out is subject or likely to be subject to a natural hazard⁵, unless an exception under section 71(2) applies.
- 4.3. Section 72 identifies situations where an authority must still grant the building consent, even though the land on which the building work is being carried is subject to a natural hazard.
- 4.4. It is important to note that the natural hazard provisions described in sections 71 to 74 only relate to situations when an authority is processing an application for a building consent to carry out building work. If building work is carried out without a building consent, either because a consent is not required or the owner of the property where the work is being carried out fails to apply for one, then the provisions do not apply.
- 4.5. Section 73 describes the condition that must be included in a building consent when it is granted under section 72, including notification of the consent to the appropriate person, usually the Registrar-General of Land, with the notification identifying the natural hazard concerned.⁶
- 4.6. Section 74 sets out the steps that the Registrar-General of Land must take after receiving a notification from an authority under section 73. This includes recording on the property's record of title an entry confirming that a building consent has been granted under section 72 and the natural hazard to which it relates.
- 4.7. Subsections 74(3) and 74(4) apply in situations where an authority determines that an entry against a property's record of title is no longer required.⁷ In these situations, the authority must notify the Registrar-General of Land that this is the case, and the Registrar-General of Land must amend their records or remove the entry from the title.

⁵ *Auckland City Council v Logan* HC Auckland AP77/99 (1 October 1999) discussed the meaning of what is now described as 'land on which the building work is carried out', in the context of the Building Act 1991 at [40] and [48]. Also see Determinations 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 4.14 – 4.17 and 2025/041 *An authority's decision to grant a building consent under section 72 for building work on land subject to the natural hazard of slippage* (26 September 2025) at 4.19 – 4.27.

⁶ Other persons include 'the appropriate Minister and the Surveyor-General' in respect of an application made by, or on behalf of, the Crown (section 73(1)(a)) or 'the Registrar of the Māori Land Court' in respect of an application made by, or on behalf of, owners of Māori Land (section 73(1)(b)). In this case, I will only refer to the Registrar-General of Land, as this is the appropriate person under section 73(1)(c).

⁷ This provision applies to entries relating to building consents granted under section 72 of the Act and the previous section 36 of the Building Act 1991, as well as entries under section 641A of the Local Government Act 1974 for the issuance of building permits where land was subject to a natural hazard.

- 4.8. The history and purposes of the natural hazard provisions in sections 71 to 74 have been discussed in detail in Determination 2024/025⁸, including the purposes of the entry made on a property's record of title:⁹

It is important to note that the requirement to enter a notice on a property title should not be understood solely as a stand-alone measure to warn prospective purchasers of hazard risks. Rather, I consider the requirement for such notice to be ancillary to the purpose of managing council liability for certain situations. More specifically, these notices provided for prospective purchasers of the land to be made aware that council would receive specific statutory immunity from liability in return for permission to undertake building work.

- 4.9. An entry on the title under these provisions is not the only means of alerting prospective purchasers that land is subject to a natural hazard. The Local Government Official Information and Meetings Act 1987 ("LGOIMA") imposes broad obligations on authorities to make available hazard information relating to land that is known to the authority.¹⁰

- 4.10. Against the broader disclosure requirements of LGOIMA, section 392(3) of the Building Act provides for statutory immunity for building consent authorities in respect of building consents the authority has issued for building work carried out on land that is subject or likely to be subject to a natural hazard:

The [building consent authority concerned and its members, employees and agents] are not liable in any civil proceedings brought by any person who has an interest in the building referred to in subsection (2)¹¹ on the grounds that the building consent authority issued a building consent for the building in the knowledge that the building for which the consent was issued, or the land on which the building was situated, was, or was likely to be, subject to damage arising, directly or indirectly, from a natural hazard.

- 4.11. This provision is specific in that it concerns proceedings brought by any person who has an interest in the building (not simply an interest in the land) and relates specifically to the decision to issue a building consent in circumstances where the authority knew the building or the land on which the building was situated was, or was likely to be, affected by a natural hazard.

⁸ Determination 2024/025 *An authority's decision to grant building consents under section 72* (25 June 2024) [at paragraphs 6.3 to 6.12].

⁹ *Ibid*, at paragraph 6.12.

¹⁰ Refer LGOIMA section 44B(2), and the associated explanatory note in the Local Government (Natural Hazard Information in Land Information Memoranda) Regulations 2025.

¹¹ Ie, if a building consent has been issued under section 72; and the building consent authority has given a notification under section 73; and the building consent authority has not given a notification under section 74(4) that it has determined that the entry made on the record of title of the land is no longer required; and the building to which the building consent relates suffers damage arising directly or indirectly from a natural hazard.

The entry on the record of title

- 4.12. Before considering the substantive matter, I will first outline how the entry ended up on the owners' title.
- 4.13. As set out in paragraphs 4.5 and 4.6, an entry on a record of title that a building consent has been granted under section 72 is made under section 74. It is recorded against all of the land encompassed by the title, identifying the building consent to which it relates and the particulars of the natural hazard involved. The original entry on the record of title for the grandparent property read:
- ...Notification that a building consent issued pursuant to Section 72 Building Act 2004 identifies erosion, avulsion, alluvion, falling debris, subsidence, inundation (flooding) or slippage as natural hazards...
- 4.14. It is the building consent documentation that includes information about the nature and scope of the natural hazard insofar as it relates to the building work and the land on which the building work was proposed to be carried out.
- 4.15. Where land with such an entry on its record of title is subdivided, the entry will be carried forward to the records of title for each of the new subdivided allotments.¹² This is because the original title is for all of the land that makes up the allotment and the entry on the record of title is not required to differentiate or identify the land that relates to the building work.
- 4.16. While a survey plan must be provided to the territorial authority for approval as part of a subdivision sign-off¹³, that plan will not address matters that only concern the title of the land being subdivided (such as an entry on its title under section 74), rather it will address new matters for the new allotments being created under the subdivision, such as right of way or drainage easements.
- 4.17. I note that the process of a subdivision consent requires the relevant authority to consider whether there are any natural hazards on the land, and the subdivision may be refused under section 106(1) of the Resource Management Act if there is a significant risk from a natural hazard. A subdivision consent may also include, under section 220(d) of the Resource Management Act, a condition requiring protection of the land from a natural hazard.
- 4.18. In this case, the entry has ended up on the record of title for the owners' property following subdivisions of the grandparent and parent allotments.¹⁴ There are no provisions in the Building Act or the Resource Management Act that explicitly require authorities, when making decisions about subdivisions, to consider whether

¹² This entry can be pursuant to section 72 of the Act or section 36 of the Building Act 1991, and the same process would apply to entries recorded on titles under either.

¹³ Under section 11(1)(a) and section 223 of the Resource Management Act 1991.

¹⁴ I note that the entry on the owners' record of title, as copied down from the parent property's title, does indicate that the entry is to affect the portion of land formerly part of the grandparent property.

an entry against a title concerning a natural hazard should be passed down to any new records of title.

- 4.19. However, section 74(3) does give building consent authorities an opportunity and mechanism to consider and determine whether an entry on a record of title is no longer required. In the context of a subdivision, this could arise in various situations, such as where a property owner has commissioned improved site-specific modelling to demonstrate a hazard is not 'likely' on their land or has carried out work to mitigate the risks of the hazard. In situations such as these, I consider that section 74 would be the appropriate mechanism for an authority to use to determine whether an entry is no longer required on a child (or parent) record of title.
- 4.20. The owners have requested the authority to determine, under section 74(3), that the entry is no longer required on their record of title, which has ended up there as a result of the subdivision processes. However, the authority has refused to do so, providing the owners with reasons why it believes the entry should remain. I must therefore consider the basis for the authority's decision and whether the entry against the record of title is no longer required. In making this assessment, I considered the location of the building work and the land on which it was carried out that the entry applies to, and the purpose of the entry with regard to statutory immunity from liability.

Location of the building work that the entry applies to

- 4.21. As indicated in paragraph 4.4, the natural hazard provisions in sections 71 to 74 are considered when building consent applications are made for new buildings or for major alterations to existing buildings, and section 71(1)(a) requires authorities to consider whether the land on which the building work is to be carried out is subject or is likely to be subject to one or more natural hazards, and whether the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- 4.22. It is clear from the provisions in sections 71 to 74 and section 392 that an entry made on the record of title for a property is specific to the building consent described in the notification and the building to which that consent relates and the land on which the building work is carried out. In this case, the entry on the owners' record of title relates to the building work carried out under the 2004 building consent, being the construction of the 2004 dwelling on land that was part of the grandparent property.
- 4.23. Section 74(3) describes the mechanism available to building consent authorities to determine that entries under the natural hazard provisions are 'no longer required'. In my view relevant considerations to whether the entry is no longer required are the building work for which the building consent was granted and the identified natural hazard insofar as it relates to the building and land on which the building work was carried out.

- 4.24. The 2004 building consent shows the building work to construct the 2004 dwelling was carried out on an elevated area of the grandparent property near the southeastern boundary and adjacent to the gully (prior to the initial 2010 boundary adjustment). This is an important consideration because, while an entry made against the title for the original allotment is attached to the entire allotment as described by the title, for the purposes of the Building Act it does not relate to the entirety of the land in all cases. For the purposes of the Building Act, the entry instead refers to the building consent described in the notification and the effects of that entry are confined to the building and land where the building work was carried out, and land affected by the building work (if any). Put another way, for the purposes of the title the area of the allotment that the entry relates to is not differentiated, but for the purposes of the Building Act it is.
- 4.25. Based on evidence provided by the parties and on aerial photographs, following the 2021 subdivision the owners' property no longer bounds the land on which the 2004 dwelling was built, with the distance between the nearest point of the owners' property boundary and the 2004 dwelling being approximately 110m. There is also a small gully with a creek running between these two locations. Contours on the authority's GIS mapping system show that from the nearest point on the owners' property boundary there is a drop in elevation of two to four metres to the bottom of the gully before the land rises steeply up to the 2004 dwelling, which is located at a level 15m higher than the owners' property boundary.
- 4.26. The entry against the title relates to the land on which the 2004 building work was carried out, which is on the other side of the gully from the owners' property, not within the owners' property and is a considerable distance from the owners' property. In terms of section 74(3), I consider that the entry against the record of title for the owners' property is no longer required.
- 4.27. This is the case with respect to the specific configuration and circumstances of the owners' property. Here, it is clear that the owners' land is not where the original building work nor the land on which that building work was carried out was located, due to the size of the grandparent allotment. However, it will not always be the case that the subdivision of a parent allotment that has an entry against its title will mean the entry is no longer required on the child titles. There may be other situations where the matter is not so clear, or where it may be appropriate for an entry to remain on a new child allotment.
- 4.28. An example would be where the building consent includes building work to construct more than one building on a property that is subject to a natural hazard, and the subdivision incorporates one of those buildings within the new child allotment. The entry is in relation to the building consent and the building work it describes, and that work is now on both allotments. An additional consideration is the whether the land on one or other, or both, allotments remains subject to or likely to be subject to the identified natural hazard, in which case it would be appropriate for the entry to remain on the new child record of title.

- 4.29. In an alternative scenario, the new child allotment may be created without the building work falling within the child allotment's boundaries. Although the new allotment may still be likely to be subject to the identified natural hazard, because the original building work is all now within 'other property' (as it is defined by the Act), ie the land on which the building work was carried out is not within the child allotment, the entry would no longer be required on the child title. In this situation, an authority can consider the natural hazard provisions in respect of the child allotment at the point that it receives a building consent application for building work proposed on that land.
- 4.30. These examples are given to demonstrate the nature of the factors to consider when assessing whether an entry against a record of title is no longer required under section 74(3). They are not intended as definitive and in each case an authority must consider the particular factors that apply to the property in respect of which a request to remove an entry has been made. However, in all situations, a primary consideration will be whether the building consent that led to the entry being recorded against the title, and building work covered by that consent, were granted and carried out on land that is either fully or partially within the allotment being considered. If this is the case, further consideration should be given to the extent of the natural hazard on the land on which that building work was carried out.
- 4.31. In situations such as the owners', where the subject of the notification (the building work and the land on which it was carried out) is not located on the owners' land, there is no relevant building work to which the authority's immunity would apply should a natural hazard occur on the owners' land. Additionally, as I have already concluded that the owners' property is a significant distance away from the land on which the building work for the 2004 dwelling was carried out, it is not the owners' land that was relevant when considering the building work described in the 2004 building consent and the land on which that work was carried out. Therefore, the provisions under section 392(3) would not apply in respect of damage to the land that is now the owners' property, solely as a result of an entry relating to the 2004 building work on the grandparent property. Both of these considerations reinforce my opinion that the entry is no longer required.

The authority's decision

- 4.32. The authority has stated that its reasons for refusing to determine that the entry is no longer required, as set out by section 74(3), are that "it is clear that the property is at risk of slippage", and that the property has already suffered slippage with no mitigation work having been completed.
- 4.33. However, as discussed above, the assessment of whether an entry on a title is no longer required should consider the building work the entry relates to and the land on which that work was carried out. The entry should not be treated as a 'blanket' entry applying to the entire parcel of land or as applying to any other building work than that covered by the building consent to which the entry relates.

- 4.34. Rather, in assessing whether an entry is no longer required, it is relevant to consider the basis for making the notification in the first instance as well as any new information or altered circumstances. This includes the application of the natural hazard provisions to the original building consent decision, which should be evidenced by well-documented decisions made by the authority at the time of the building consent, and that the relates to a specific building consent and the land on which the building work was carried out. As noted in paragraph 4.19, circumstances may also have changed since the original decision, for example changes to the likelihood of the land being subject to the natural hazard or provisions having subsequently been made to protect the land on which the building work had been carried out.
- 4.35. There is no dispute between the parties that the owners' property has been affected by slippage in recent years. However, the potential hazard risk on the property was not addressed in the building consent issued for the construction of the chicken shed, and subsequent work was carried out without building consent – meaning there was no entry on the title for the building work on the owners' property.
- 4.36. There is still an opportunity for the natural hazard provisions to be considered for building consents for any new building or major alterations to an existing building on the owners' property.

5. Conclusion

- 5.1. There is no provision in the Building Act to stop natural hazard entries on property titles from passing down to new records of title following a subdivision.
- 5.2. Section 74 is a mechanism for authorities to determine if an entry on a title resulting from a consent granted under section 36 of the Building Act 1991 or 72 of the Building Act 2004 is no longer required.
- 5.3. The building work that was the subject of the 2004 building consent to which the section 72 entry on the owners' title relates and the land on which that building work was carried out is not on the owners' property and the entry is no longer required on the record of title of the owners' property.
- 5.4. I leave it to the authority to communicate this decision with the Registrar-General of Land under section 74(4).

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I determine that the entry under section 74(1)(b) on the record of title for the owners' property is no longer required, and I reverse the authority's decision to refuse to remove this entry.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 26 March 2026.

Peta Hird

Lead Determinations Specialist