BUILDING PERFORMANCE

Determination 2026/012

An authority's decision to grant a building consent under section 72 on land that is subject to a natural hazard of slippage

181 Penetaka Heights, The Lakes, Tauranga

Summary

This determination considers the authority's decision to grant a building consent under section 72 for construction of a new dwelling on a property that is subject or likely to be subject to the natural hazard of slippage. It considers whether the hazard is likely and whether 'adequate provision' has been made to protect the land, building work and other property.

Figure 1. Artist impression of dwelling taken from approved building consent

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 owner of the property, V Collin, who applied for the determination ("the owner")

1.2.2. Tauranga City Council, carrying out its duties as a territorial authority and building consent authority ("the authority").

1.3. This determination arises from the authority's decision to grant a building consent under section 72 of the Act for building work at the property in relation to the natural hazard of slippage.[2] This included a condition on the building consent that a section 73 entry be made on the property's record of title. The owners of the property dispute the need for the building consent to be granted under section 72.

1.4. The matter to be determined, in terms of section 177(1)(b) and (2)(a), is the authority's decision to grant building consent BC340112 under section 72.

1.5. In deciding this matter, I will consider whether the owners' land is likely to be subject to a natural hazard (as required by section 71(1)(a)) and whether adequate provision has been made to protect the land, building work and other property from the natural hazard, in terms of section 71(2)(a). The determination will also consider the relevance of the building restriction line, established at the time of the property's subdivision, to the natural hazard provisions in the Act.

Issues outside this determination

1.6. The determination will not consider any matters relating to the Resource Management Act 1991 (RMA).

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

[2] As defined in section 71(3).

2. The building work

2.1. The owner's property is an 804m² site on the south-eastern side of The Lakes subdivision in Pyes Pa, Tauranga.

2.2. The property slopes down, at a gradient of between 5° and 15°, from its north-eastern side to the crest of the slope above the gully on its south-eastern side, before the slope dips more sharply down, at a gradient of approximately 30°, to the bottom of the gully approximately 25m below. A Building Restriction Line (BRL)[3] has been recorded against the record of title of the property at subdivision stage (see paragraph 3.5 for more details).

2.3. The building work was a single-storey three-bedroom dwelling with an attached garage constructed on the north-western end of the property, adjacent to the road. The building platform for the dwelling was created by excavating the natural slope of the property, and extensive retaining walls have also been constructed at the end and along the sides of the dwelling, at the property's northern end, to create the platform for the dwelling and retain the neighbouring properties.

2.4. Construction of the dwelling commenced in late-2024 and was completed by late-2025. Just over half the property is above the BRL and the dwelling has been constructed entirely within this area and above the line; as shown in Figure 2.

Figure 2. Site plan showing ground contours, BRL, revised BRL and location of dwelling (Source: Owner's geotechnical report)

[3] See later in the determination for further commentary on the BRL.

3. Background

3.1. The owner's property was part of stage '3H' of a larger subdivision, with the majority of earthworks for the stage completed during 2014 and 2015. The area developed during stage 3H encompassed a sloping terrace on the edge of the plateau, with the terrace dipping from approximately RL 59m in its western extents to approximately RL 49m in the east, before dropping sharply down from its eastern edge into a gully. Properties within stage 3H received fill as part of the subdivision earthworks, as outlined in paragraph 3.3

3.2. In August 2014, a company of geotechnical surveying and engineering consultants ("the geotechnical subdivision consultants") provided an Earthworks Completion Report (ECR) for stage 3 of the subdivision (including stage 3H), which recommended 'that the stability of the eastern slope should be reassessed in the [geotechnical completion report] and an appropriate BRL be defined for lots along the crest of this slope'.

The Geotechnical Completion Report

3.3. On 17 February 2017 the geotechnical subdivision consultants issued a Geotechnical Completion Report (GCR), which included stage 3H of the subdivision. The GCR recorded that during 2013 and 2014, properties within stage 3H of the subdivision had received up to 4m of fill material. Static settlements below the fill were monitored at two locations, and some consolidation settlement occurred within 2 to 3 months of the earthworks. Thereafter, settlement would enter a long-term 'creep' phase, with the potential for 100mm of future creep within the lots over the lifetime of the proposed dwellings. However, differential settlement beneath the dwellings would be within "the allowable range" (of 25mm/6m length) provided that any additional fill did not exceed 0.6m.

3.4. The GCR also stated that the lots within stage 3H of the subdivision were located above a steeper slope (being the slope into the gully), with this slope exhibiting areas of instability. Results from hand auger samples and test pits showed the presence of colluvial soils, and topographic and other evidence suggested the slope had been affected by larger-scale ancient instability. Analyses of the slope noted that stability values were generally less than those required by the authority's Infrastructure Development Code (IDC)[4] for residential development and indicated that further instability may occur on the slope in the future.

[4] The authority's Infrastructure Development Code provides 'technical and process information to ensure that landforms and infrastructure developed in Tauranga achieve appropriate outcomes' - available on their website. Accessed February 2026.

3.5. Given this, a BRL had been established for lots in stage 3H of the subdivision. The line was to be defined by either projecting a 1V:2.5H line from the toe of the steepest adjacent slope, or by measuring 15m back from the slope crest, whichever was smaller. The GCR stated that, 'the proposed setback distance [imposed by the BRL] is considered adequate for the residential development in this area'.

3.6. The GCR further noted that the BRL does not specifically preclude development beyond the line, but any development between the BRL and the slope would require specific geotechnical input and may require additional slope protection work. With respect to the lots within stage 3H, the report recommended the following restriction:

> Any part of a dwelling or structure which extends beyond the BRL must be reviewed and approved by [an authority] Category 1 Geo-Professional prior to the building consent application. A geotechnical report must be provided including the specific design of any mitigation works proposed.

3.7. The GCR also discussed a stormwater pipeline, drilled horizontally beneath the slope to the east of the stage 3H lots as part of the civil infrastructure installation for the subdivision in 2026. The geotechnical subdivision consultants had recommended the pipe should be installed at least 3m below the existing ground level to reduce the risk of damage in the event of slope failure, noting:

> Lots 493 to 503 within Stage 3H [which included the owner's property] also meet or exceed the conditions for 'good ground' as defined by NZS 3604. However, as the lots are moderately steeply sloping, development on these lots may require deep excavation to form a level building platform. We recommend that whenever the proposed depth of excavation exceeds 1.5m, additional investigation should be undertaken by [an authority] Category 1 or 2 Geo-Professional at the design/building consent stage to confirm soil conditions below the proposed foundations. A consent notice to this effect should be added to the affected lots.

3.8. In its conclusions, the GCR noted that, providing the recommendations were followed for lots that had BRLs, it was considered finished lots would have a low risk of erosion, falling debris, subsidence, inundation or liquefaction. Furthermore, these lots were "adequate" for residential development without the need for section 72 restrictions to be imposed under the Act.

3.9. A title was issued for the owner's property in March 2017. On 31 March 2017, a consent notice was registered against the title, pursuant to section 221 of the Resource Management Act 1991, advising of the existence of the BRL and the need to comply with it.

The application for a building consent

3.10. The owner purchased the property on 16 January 2023. At that point the property was a vacant section, with no other construction on it other than a retaining wall at the south-eastern end of the property,[5] which has subsequently been removed.

3.11. On 2 February 2024 a building consent application was submitted to 'Erect a single level, three-bedroom dwelling with attached double garage and retaining walls'.

3.12. In the initial design for the dwelling, parts of the master bedroom and its ensuite were proposed to be cantilevered 1.2m over the BRL. In addition, a structurally separated deck, opening out from the master bedroom, was shown extending over the BRL. The plans noted that this area of deck was excluded from the consent as exempt building work under Schedule 1 of the Act.[6]

3.13. The submitted design also included excavation of a cut platform (ranging between 200mm and 1700mm deep) to form a level platform for the dwelling, with the cut faces to the neighbouring property to be supported by engineered timber-pole retaining walls.

3.14. On 1 March 2024, the authority sent the owner a request for information (RFI), which included the requirement of a copy of the section 221 consent notice, referenced on the 'certificate of title',[7] and for a Category 1 Geo-professional to review the structure that extends beyond the BRL.

3.15. On 21 May 2024, the authority added a further request to its initial RFI, stating that because the owner's property was 'subject to slope hazards', it was appropriate for a 'Section 72 notice' to be registered against the property's record of title and requesting that the owner complete a 'Section 72 Building Act Certificate[8] for the subject allotment'.

3.16. The owner queried the requirement for a section 72 entry, given that the proposed building works were behind the BRL and stated that the authority had given 'no explanation as to why the BRL would not be a sufficient protection mechanism for the land'.

[5] Between July 2021 and January 2022, a partially constructed retaining wall with no backfill was established across the lower south-eastern part of the property.
[6] Schedule 1 outlines certain work that can be carried out without a building consent.
[7] Should have been a reference to 'Record of Title.'
[8] The Act does not include a 'section 72 building act certificate'. This is likely the authority's own form for the owner to acknowledge the registration of a section 73 on record of title.

The owner's geotechnical report

3.17. The owner engaged his own geotechnical consultant who provided a geotechnical report ("the owner's geotechnical report") dated 5 June 2024. The report was based on a geotechnical assessment undertaken in April 2024 that included a site visit and tests.

3.18. The report noted the owner's property had a gentle to moderate slope (5 to 15°) towards the south-east and was bound to the south-east by a very steep (~30°) 25m-high slope that borders an adjacent gully (see Figure 3); and that no signs of instability were observed across the south-east slope.

3.19. The report detailed the subsoils encountered at various locations on the site and included the conclusions of a slope analysis conducted for two design conditions as follows.[9]

3.19.1. Static fully drained condition, for which a minimum factor of safety[10] (FOS) of 1.5 is required – the analysis showed the slope had a critical FOS of less than 1.0 in places, which was less than the required minimum; although the areas with an FOS below 1.0 were restricted to the failing fill wedge on the downslope side of the existing walking track. Other areas of the slope with a FOS below the 1.5 minimum could potentially extend up to 15.5m from the existing crest of the slope, defined in this instance as the point at which the slope gradient exceeds 18°.

3.19.2. Elevated groundwater condition, for which a minimum FOS of 1.2 is required – the analysis showed the slope had a critical FOS of less than 1.0 in places, which was less than the required minimum, although again the areas with an FOS below 1.0 were restricted to the failing fill wedge on the downslope side of the existing walking track. Other areas of the slope with a FOS below the 1.2 minimum could potentially extend up to 15.5m from the existing crest of the slope.

[9] I have not considered earthquakes and effects from seismic events referenced in the report as these are not listed as natural hazards in section 71(3).
[10] A common quantitative measure of the stability of a slope, not the only method.

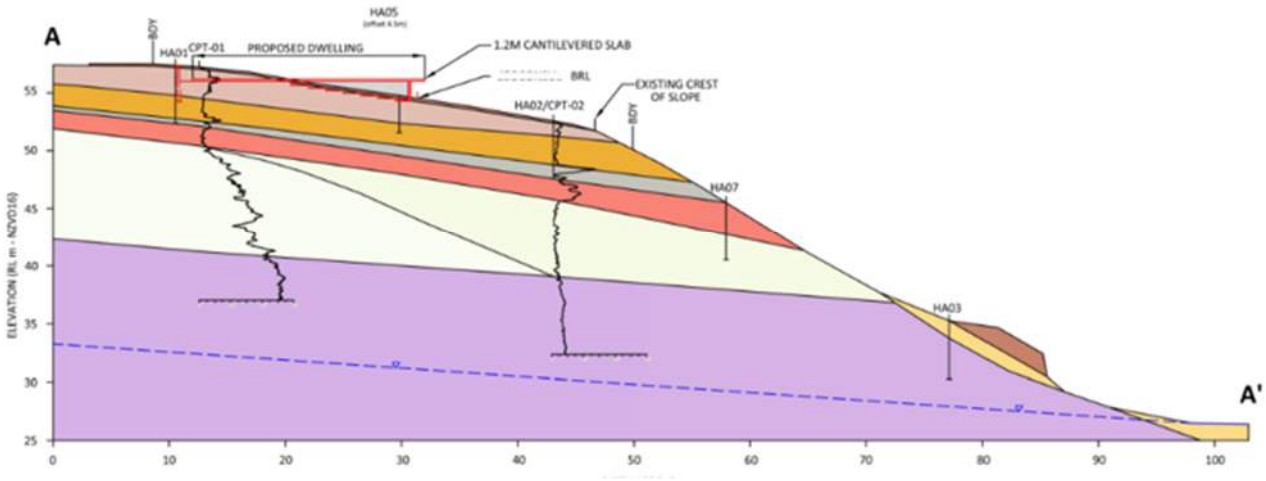

Figure 3. Site stability analysis showing ground contours.[11] (Source: Owner's geotechnical report)

3.20. Based on these results, the owner's geotechnical report revised the BRL to 15.5m from the slope crest. It is unclear if this revised BRL has been reflected in the consent condition on the record of title.

3.21. The report recommended no additional earthworks or building development other than that assessed should be undertaken beyond the BRL. This included placing fill behind the existing lower retaining wall which would increase the risk of instability. The report goes on to recommend removing the retaining wall to ensure future owners do not fill behind it without knowing the potential consequences of doing so.

3.22. The report further noted that shallow-seated retrogressive slope failure and/or soil creep may occur beyond the BRL on an irregular basis over the lifetime of the proposed dwelling. However, as these were expected to occur beyond the BRL, any structures located on or behind the line were not expected to be 'affected'.

3.23. The report noted that a low height, structurally separated, deck was proposed beyond the BRL. As it was a lower category structure, which could be readily re-levelled or removed if required, it considered no further geotechnical input into the deck's construction was needed.

3.24. The report stated that stormwater collected from paved areas, roofs, tank overflows and other sources should be collected and discharged to the network system. Any discharge onto or into the ground would be detrimental to foundation conditions and site stability. It concluded with an assessment of the siteworks, foundations and retaining walls that were proposed to be built behind the BRL.

[11] Note that the original cantilevered of the proposed dwelling was revised for the final design from that shown in the figure.

3.25. During June and July 2024, the owner and the authority continued to exchange emails regarding the natural hazard. The owner's view was that as all of the proposed building work would be positioned behind the BRL, this mitigated any potential natural hazard and section 72 did not apply. However, the authority was of the view that while adequate provision had been made to protect the building itself, the land remained unstable.

3.26. On 26 August 2024, the owner's geotechnical consultant provided a geotechnical design review of the building consent drawings for the proposed dwelling ("the geotechnical design review"). The findings of the report confirmed the recommendations of the earlier 5 June 2024 report.

The building consent and code compliance certificate

3.27. On 11 October 2024, the owner submitted a signed section 72 acknowledgement form to the authority.

3.28. The authority issued building consent BC340112 on 20 November 2024. The final approved design was revised to remove the cantilevered section of the dwelling, with the dwelling now positioned wholly behind the BRL. The consent was issued subject to the condition that the authority would notify the Registrar-General of Land that the site was subject to the natural hazard of slippage in accordance with section 73 of the Building Act 2004.

3.29. An amendment to the building consent was subsequently issued on 13 August 2025 to include two additional type-1 sumps, connecting to the property's stormwater system, to collect drainage from the retaining wall subsoil drainage. A new sewer pump with boundary kit was also added to the design.

3.30. The building work was carried out over the remainder of 2024 and 2025. On 11 July 2025, the owner's geotechnical consultant provided a report confirming that the building work and filling on the site had been carried out in accordance with the recommendations in its earlier report.

3.31. The authority issued a code compliance certificate for the work on 12 December 2025.

4. Submissions

The owner

4.1. The owner made the following submissions (in summary):

4.1.1. The subdivision set a BRL setback which was considered adequate for residential development. The BRL provides adequate provision to protect the land and building work for the purposes of the Act. Its purpose is to

identify suitable land for residential development and acts as a protection mechanism to isolate any natural hazard in areas of unsuitable land.

4.1.2. The application of a BRL has little significance to the protection of the dwelling unless it is firstly seen in the context of protecting the land. Only where a proposed dwelling extends over the BRL should it be subject to the provisions in section 72.

4.1.3. The proposed design for the dwelling ensured that it did not extend over the BRL. If the building were to extend over the BRL, then this would require measures to protect the land and building, such as a retaining wall, but this is not the case.

4.1.4. The authority's own guidance notes that: "A [BRL] on the subdivided property as a result of geotechnical considerations does not mean that the property will automatically be subject to the natural hazard provisions of the Building Act".

4.1.5. The subdivision's GCR states that the lots (including the owner's property) are suitable for residential development without the need for restrictions under section 72.

4.1.6. No damage is expected to occur to the land on which the building is situated, being the part of the land behind the BRL, which directly supports the building work. The land is "good ground" and is not subject to a natural hazard. There is no indication that the construction of the dwelling will accelerate or worsen the risk of the natural hazard.

4.1.7. Other properties in the subdivision that are subject to the same BRL have not been subject to section 73.

4.1.8. Any potential slippage in the area would be expected to occur downslope and largely on neighbouring land. The building and land supporting it would not be at risk. There is no evidence that a potential slip would undermine the existing structures on the land.

4.1.9. The authority should take a common-sense approach, as discussed in Logan v Auckland City Council.[12] In that case, the court stated that the land subject to a natural hazard was not by default all the land comprised in a title, and that adequate protection does not require the elimination of all possible hazards. The court stated "a fact-specific assessment" is required in each case.

4.1.10. Previous determinations confirm it is insufficient that the property in general is subject to a natural hazard; the land affected must be the land on

[12] Logan v Auckland City Council [2000] NZCA.

which the building work is being carried out. Here that land has been "disassociated" from the risk of slippage through the BRL.

4.1.11. The deck is being constructed under Schedule 1 of the Act.

The authority

4.2. The authority made the following submissions (in summary):

4.2.1. In processing the building consent, the authority considered the slope hazard modelling in the landslide slope susceptibility and slope hazard reports prepared for the authority; the Ministry's natural hazard guidance dated October 2023[13]; its own practice note on natural hazard management and the IDC (in particular the FOS calculations); previous determinations and case law that considered the natural hazards provisions in the Act.

4.2.2. The authority was satisfied that adequate provision would be made to protect the building work and other property from the natural hazard of slippage, but not to protect the land intimately connected with the building work. The land was still subject to the natural hazard, so the consent was issued under section 72.

4.2.3. The land intimately connected with the building work is not limited to the land supporting the building work. The site is "relatively small" and in the authority's view the whole site, including the backyard, is intimately connected and land on which the building work was is to be carried out under section 71(1)(a). The construction of the deck in this area reinforces this view.

4.2.4. The backyard is adjacent to the gully, both of which are within a "slope hazard zone" and are "immediately adjacent to land that is highly susceptible to landslide". Slippage of the slope in this area would have a damaging effect on the site, which would have challenges to remediate.

4.2.5. The BRL applied at subdivision was made pursuant to the Resource Management Act 1991, to prevent the risk of the hazard worsening through additional loading being imposed by structures or infrastructure within the natural hazard area. The revised BRL recommended by the owner's geotechnical consultant is located less than 1m from the dwellings north-eastern corner and 100mm from its south-eastern corner. The BRL protects the building work but does not remove the slope hazard zone.

4.2.6. The technical information received at the time of the subdivision land management is not usually site-specific enough or sufficient for the

[13] Ministry of Business Innovation and Employment. *Natural Hazard Provisions. Guidance on complying with Sections 71 to 74 of the Building Act 2004.* Version 1. October 2023.

purposes of the building consent and is therefore reassessed at the stage of the building consent application.

4.2.7. Potential future damage to the land is likely to be due to the slippage of the slope. If the slope was to fall away, this would be challenging to remediate and restore to its current state. Damage caused by slippage would be loss of soil or land down the slope and potential undermining of other parts of the land.

4.2.8. The site-specific geotechnical assessment carried out by the owner's geotechnical consultant's report confirms that the FOS thresholds are not met, and that the land is likely to be subject to damage arising, directly or indirectly, from the natural hazard.

5. Discussion

5.1. The matter to be determined is the authority's decision to grant the building consent for the construction of the owner's dwelling under section 72 and subsequently have an entry registered on the property's record of title under section 73. The authority made this decision because it believed adequate provision had not been made to protect the land from the natural hazard of slippage.

The legislation

5.2. The legislative provisions relating to the construction of buildings on land that is subject to natural hazards can be found in sections 71 to 74 of the Act.

5.3. Section 71(1) provides that an authority must refuse to grant a building consent for certain types of building work on land that is subject to a natural hazard, while section 71(2) creates exceptions where subsection (1) does not apply.

5.4. With respect to the owner's property, the building work was for the construction of a dwelling, which meets the threshold test in section 71(1).

5.5. Section 72 identifies situations where an authority must still grant a building consent for building work, even though the land on which the work is being carried is subject to a natural hazard.

5.6. Section 73 describes the conditions that must be included in a building consent when it is granted under section 72, including notification of the consent to the Registrar-General of Land.[14] Upon receiving the notification, the Registrar-General of Land must record 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.

[14] The Surveyor-General and the Registrar of the Māori Land Court are not applicable in this case.

5.7. As has been previously discussed in Determination 2024/025,[15] one of the purposes of this entry on the record of title is to make prospective purchasers of land "aware that council would receive specific statutory immunity from liability in return for permission to undertake building work".

5.8. Accordingly, in the current case I must consider:

5.8.1. whether the land on which the building work has been carried out is subject or likely to be subject to the natural hazard of slippage, under section 71(1)(a) and,

5.8.2. whether adequate provision will be made to protect the land, building work and other property, under section 71(2)(a).

Is the hazard 'likely'?

5.9. The hazard in question in this case, in terms of section 71(3)(e), is slippage.

5.10. The parties do not dispute that for certain areas of the owner's property there is a possibility that slippage could occur. However, for the purposes of the natural hazard provisions in the Act, the mere possibility of a natural hazard is not sufficient.

5.11. Section 71(1)(a) requires that the land on which the building work was carried out "***is*** subject or ***is likely*** to be subject" to slippage [my emphasis].

5.12. Previous determinations[16] have discussed the use of the term 'likely' in section 71. In determination 2008/082[17] the discussion took into account a number of court decisions that had looked at the meaning of 'likely', and more recently, this discussion has been referred to in 2024/025. I continue to agree with the statements made in these determinations regarding the meaning of 'likely' in section 71.

5.13. The parties have provided a variety of evidence about the risk of slippage occurring on the owner's property. A primary source of information for both parties is the authority's geographic information system (GIS), which includes natural hazard mapping, based on a landslide susceptibility study technical report and slope hazard study, both commissioned by the authority in 2023. The maps for the slope hazard study show three types of slope hazard zone, defined as:

- failure zone (2H:1V; previously called 2:1) – the area where landslides typically begin, generally on moderately steep to steep slopes

[15] *Determination 2024/025 An authority's decision to grant building consents under section 72* at paragraph 6.12.
[16] See for example determinations 2008/082, 2019/067 and 2024/025.
[17] *Determination 2008/082 Building consent for a storage shed on land subject to inundation at 58 Brookvale Lane, Taupaki.*

- regression zone (3H:1V; previously called 3:1) – the area typically upslope of a failure zone where if landslides are not identified and/or remediated, land in this zone may become more vulnerable to landslides over time

- runout zone (4H:1V; previously called 4:1) – the land downslope of the failure zone which can be inundated with debris when a landslide occurs.

5.14. In their report, the owner's geotechnical consultant noted that the authority's GIS viewer "indicates that a 2:1 Failure Zone associated with the adjacent eastern slope extends approximately 4 to 8 m into the south-easternmost end of the site while a 3:1 Regression Zone encompasses the eastern two-thirds of the property".

5.15. The GCR for the subdivision identifies areas of instability in the slope below the owner's property. Stability analysis of the slope recorded that the FOS values were less than those required by the IDC[18]. This indicated that further instability may occur in future extreme rainfall events. As the slope was considered insufficiently stable for residential development, a BRL was imposed to ensure adequate geotechnical input was provided for any building or structure that required a building consent.

5.16. The owner's geotechnical consultant's report included further slope-stability analysis, providing further evidence of the potential instability of the site. After confirming the instability on the site, the report recommended that the BRL be extended further into the section, so that it is now located at 15.5m from the crest of the slope.

5.17. Taking into account the evidence provided, I consider the owner's property is likely to be subject to slippage in terms of section 71 of the Act.

Is the land connected to the building work?

5.18. It is also not sufficient that the owner's property is simply likely to be subject to slippage, as section 71(1)(a) specifies that it is 'the land on which the building work is to be carried out' that must be likely to be affected.

5.19. I have discussed this requirement for the 'land' to be 'intimately connected' to the building work in previous determinations. In determination 2021/013,[19] I stated that consideration must be given to 'the position of the building work on the property relative to that part of the land affected by the hazard'.

5.20. The owner's property is 804m², with a significant portion placed beyond the BRL: the BRL established in the GCR placed approximately 44% (354m²) of the property beyond the BRL, and this was subsequently increased to approximately 48% (383m²) by the owner's geotechnical report.

[18] This by itself is not the determinative factor but is contributing evidence of potential slope instability risk.
[19] *Determination 2021/013 Regarding the proposed granting of a building consent for an alteration to a building on land subject to a natural hazard at 45 Darlington Road, Miramar, Wellington*, at paragraph 6.42.

5.21. The owner's dwelling has a floor area of 226.15m² and at its closest south-eastern corner is located just 100mm from the BRL. There is also a 79.55m² driveway between the building and the roadway on the property's north-western end. The outdoor living space for the property is positioned beyond the BRL, towards the crest of the slope and south-eastern boundary, and this is where the structurally independent deck is to be or has been constructed.

5.22. Given this, I consider the land intimately connected with the building work in this case is not limited to only the land directly supporting the building work. A significant portion of the property is beyond the BRL, and this land is used in association with the dwelling.

5.23. Accordingly, I am of the view the entire property constitutes the 'land' for the purposes of "the land on which the building work is to be carried out" in section 71(1)(a).

Has 'adequate provision' been made?

5.24. Section 71(2) provides that if adequate provision to protect the land, building work and other property from the natural hazard has been or will be made, then section 71(1) does not apply, and a building consent must be granted in the normal way under section 49(1) and without any conditions that would result in an entry being made against the property title.

5.25. I must therefore consider what, if any provision, had been made to protect each of these three areas from the natural hazard of slippage at the time that the building consent was granted.

The land

5.26. It is important to note that, while the authority's modelling and the various geotechnical reports indicate that slippage may occur, and while I have determined that this hazard is 'likely' in terms of section 71(1)(a), the fact that slippage may occur does not in itself mean that inadequate provision has been made to protect the land.

5.27. As discussed in Determination 2024/025, in assessing the adequacy of provisions made for protection, the assessment should consider whether "the land on which the building [will be] situated… [is] likely to be, subject to ***damage*** arising, directly or indirectly, from [the] natural hazard" [my emphasis] with this threshold being set out in section 392(3).

5.28. On the owner's property, the land was excavated to form a level platform for the dwelling's foundations, with cut faces created measuring between 200mm and 1.7m deep and retaining walls constructed in front of the faces to retain the neighbouring land.

5.29. The owner's geotechnical report noted that slope failures and soil creep may occur in the land beyond the BRL on an irregular basis over the lifetime of the proposed dwelling. It recommended that that no additional earthworks or building development should be undertaken in the area beyond the BRL without further geotechnical input.

5.30. In addition, the owner's geotechnical report recommended removing the lower retaining wall. This was to reduce the risk of uncontrolled back fill being added, which may increase the risk of site instability.

5.31. Other than the excavated building platform, no additional site stabilisation measures to mitigate the risk of slippage on the site were proposed in the building consent, design reviews, or subsequently undertaken; despite their being an identified risk of slope failure and soil creep.

5.32. The effects of slippage on a site can be significant. It may result in damage to the land, such as slides, spreads and debris flow, which can then also present a risk of damage to other property and to the safety and wellbeing of people. Such damage can be costly to remediate.

5.33. Accordingly, I am of the view that adequate provision has not been made to protect the land. The risk of damage from the natural hazard of slippage remains for the lower portion of the site.

The building work

5.34. With respect to the provisions undertaken to protect the building work, I note that the building work associated with the dwelling was supported by a Chartered Professional Engineer's structural design and a geotechnical design review assessment of the consented plans, neither of which expressed any concerns about the risk to the building work from slippage.

5.35. The owner's geotechnical consultant's report stated that structures located on or behind the BRL were not expected to be affected by slope failure.

5.36. In terms of building work beyond the BRL, I note that a short section of the stormwater pipework system for the paved areas of the property and the dwelling extends beyond the BRL to connect to the subdivision stormwater network system. However, this would be considered shallow ground works and was not identified as a risk, in terms of building work, under the geotechnical design review. The subdivision's stormwater network system had also been previously completed to run across the slope beyond the BRL and had been verified as being at an adequate depth by the subdivision GCR.

5.37. In addition, I note that a low-level structurally isolated deck has been positioned beyond the BRL as building work that is exempt from requiring a building consent under Schedule 1. The authority has not challenged the deck's ability to be

constructed under Schedule 1. Accordingly, this deck is outside the scope of section 72.

5.38. I therefore consider that adequate provision has been made to protect the building work from the natural hazard of slippage.

Other property

5.39. The geotechnical design review of the building consent documents included the proposed groundworks and stormwater system. This included the timber pole retaining walls. The report recommended that 'Free draining granular backfill and a perforated drain coil should be provided behind all retaining walls' and that 'Stormwater from paved areas, roofs, tank overflows and all other sources should be collected in sealed pipes and discharged to the [subdivision stormwater network] system'.

5.40. As far as I am aware, the groundworks and stormwater system have been constructed in accordance with the approved plans. All stormwater runoff for the new dwelling and paved areas around the dwelling have been designed and built to be collected in sealed pipes and discharged to subdivision stormwater network system to ensure runoff does not affect site stability.

5.41. I note that, while subsoil drainage was included in the original approved retaining wall design, the design did not appear to include appropriate outfalls for this subsoil system. However, a subsequent building consent amendment addressed this design shortfall to include sump collection for the retaining wall drainage, with the sumps then connected to the sealed stormwater system.

5.42. I therefore consider that the building work did not increase or redirect the risk of damage from slippage onto the neighbouring properties and that adequate provision has been made to protect other property in terms of section 71.

The building restriction line

5.43. The parties have made extensive submissions about the BRL and its relationship to the natural hazard provisions in section 71 to 74 of the Act. I will therefore make some brief comments about them here for the guidance of the parties.

5.44. I note that the terms 'building restriction line' or 'BRL' are not defined terms in the Act. Historically, BRL were imposed under the RMA or the Public Works Act 1981 and were placed on a property's record of title at the time of subdivision.

5.45. In the case of the owner's property, a consent notice was placed on the record of title at the time of subdivision under section 221 of the Resource Management Act 1991. The notice states (among other things) that the property contains a building restriction area, as shown on the survey plan, and that 'All buildings or structures requiring a Building Consent in accordance with the Building Act 2004, shall be

located outside of the identified building restriction areas unless a specific design is certified by a Category 1 geo-professional'.

5.46. The BRL shown on the survey plan is therefore intended to denote the building restriction area imposed in the consent notice. This is to inform people of the conditions that apply for geotechnical assessment and design solutions for any building work carried out pursuant to a building consent within the restricted area. It does not automatically prohibit construction beyond the BRL, nor does it mitigate or address hazard assessment or identification within it.

6. Conclusion

6.1. I therefore conclude that:

6.1.1. the owner's property is subject to the natural hazard of slippage

6.1.2. the land on which the building work has been carried out is not limited to the land directly beneath and supporting the building work; the entire property constitutes 'land' for the purposes of section 71(1)(a)

6.1.3. while adequate provision has been made to protect the building work and other property from the natural hazard of slippage, adequate provision has not been made to protect the land.

7. Decision

7.1. In accordance with section 188, I determine that the authority had grounds to grant building consent BC340112 under section 72 of the Act with respect to the natural hazard of slippage, and I confirm that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 31 March 2026.

Andrew Eames

Principal Advisor Determinations