BUILDING PERFORMANCE

Determination 2026/031

An authority's purported decision to refuse to grant a building consent for the construction of a new outbuilding on land subject to the natural hazard of inundation

76 Tyndall Street, Pahiatua

Summary

This determination considers the authority's purported decision to refuse to grant a building consent for the construction of a new outbuilding on a property that is subject to the natural hazard of inundation. It considers whether the hazard is likely and whether adequate provision has been made to protect the land, building work and other property.

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. M and M Remnant, the owners ("the owners"), who applied for this determination.

1.2.2. Tararua 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 requests for further information ("RFIs") during the processing of a building consent for an outbuilding[2] in relation to the natural hazard provisions of the Act, as the site has modelled inundation in a 0.5% AEP event[3]. The owners applied for this determination as they could not reach a resolution with the authority during the processing of the building consent, during which the authority indicated the consent could only be granted under section 72.

1.4. The matter for determination, in terms of section 177(1)(b) and (2)(a), is the authority's purported decision to refuse to grant a building consent in relation to the natural hazard provisions of the Act. The determination will consider the application of section 71 in relation to the natural hazard of inundation.

1.5. Both parties provided submissions on the matter, and these have been included within the discussion section 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] As defined by Clause A1 *Classified Uses*; **7.0 Outbuildings** 7.0.1 Applies to a building or use which may be included within each classified use but are not intended for human habitation and are accessory to the principal use of associated buildings. Examples: a carport, farm building, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.

[3] Annual exceedance probability (AEP) is the probability of a certain sized flood occurring in a single year.

2. Background and building work

2.1. The owners proposed to construct a new outbuilding at the northwest corner of the site to the rear of the existing dwelling. The outbuilding is to be steel framed and clad, with a concrete foundation slab and no internal linings. The stormwater is to be managed with attenuation tanks against the northwest external wall, connected with a slow feed to a disposal system that discharges to an existing kerb and channel point, with an overflow to the same outlet.

2.2. In February 2026, the owners applied for a building consent with the authority. On 11 February, the authority sent a number of RFIs regarding, among other things, the impact of natural hazards as the authority's modelling in a 0.5% AEP event showed it would result in inundation on the property.

2.3. In a response on 17 March, the owners provided a report by their engineer (dated 11 March 2026) concluding, in relation to the natural hazard provisions:

2.3.1. that if a 1% AEP event were to occur "…the water would be very shallow and would flow away quite quickly once the event passed".

2.3.2. that they are "…of the opinion that the [outbuilding] will not block any flow path, it will not divert water toward other buildings and it will not cause any velocity increase such that the land would be scoured",

2.3.3. "I would further be of the opinion that the proposed building works will not make the flood hazard worse or create a new flood hazard."

2.4. Following this report, the authority sent the owners a subsequent request for the report to expand upon the expected inundation levels in a 1% AEP event, and to provide commentary on whether the proposed building works would displace floodwater in a way that increased the inundation risk for other properties.

2.5. The owners provided a supplementary report by the engineer (dated 22 April 2026), within which the engineer compared the modelled 0.5% AEP event with an assumed 1% AEP event. The report stated, "clearly the 1% AEP event is smaller that [sic] the modelled event and will thus show a significantly lower flood depth…" and "it is likely that much of [the flooding shown in the model] would not show as a hazard for the 1% AEP event". The report also expanded on the considerations of floodwater displacement and velocities in relation to the owners and other property.

2.6. The report concluded with the engineer being "…of the opinion that the [outbuilding] building consent can be approved without any [section 72 notification on the record of title] as the flooding potential of [sic] the site is of a very low risk and frequency and that the land will not be affected by the potential inundation shown by the model and that this inundation will not accelerate, worsen or result in a material change to the natural hazard on this site of [sic] adjacent properties".

2.7. On 6 May, the authority sent a final RFI stating "…It appears the land is likely subject to inundation during a 1% AEP event. To enable the consent to be issued an instrument will be requirement to be registered on the title in accordance with section 72/73…". The owners then applied for this determination.

3. Discussion

3.1. The matter to be determined is the authority's purported decision to refuse to grant a building consent in relation to the natural hazard provisions of the Act. In order to decide this matter, I consider whether the hazard is likely, whether the building work is likely to accelerate, worsen, or result in a natural hazard, and whether adequate provision will be made to protect the land, building work and other property.

3.2. The natural hazard in question, in this case, under section 71(3)(d) is inundation.

3.3. The owners have concerns that the authority's intent, should the building consent be granted, would be to grant it under section 72 and the implications this has on "…affecting our property value and insurance premiums". The owners provided the reports by their engineer that were provided to the authority in support of their submission.

3.4. The authority has submitted that its view is that the land is likely to be subject to inundation, the building may make the flooding worse and that there has been no mitigation shown in the building consent. "Based on the available information, the situation appears to meet the threshold where:

- The consent should be refused under section 71, or
- At the very least, it should only be granted under section 72 with a notice on the title (section 73) to record the inundation risk."

The natural hazard provisions

3.5. 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. They provide a pathway for authorities to consider building consents on land that is subject to natural hazards. There are three outcomes for building consents: they must be either refused under section 71(1), granted in the normal way under section 49, or granted under section 72.

3.6. Section 71(1) provides that an authority must refuse to grant a building consent for the construction of a building, or major alterations to a building, on land that is subject to a natural hazard. However, section 71(2) creates exceptions where subsection (1) does not apply.

71 Building on land subject to natural hazards

(1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if –

(a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or

(b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.

(2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to –

(a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or

(b) restore any damage to that land or other property as a result of the building work.

3.7. With respect to the owners' property, the building work provided for in the building consent was for the construction of a new outbuilding.

3.8. 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 out is subject to a natural hazard.

72 Building consent for building on land subject to natural hazards must be granted in certain cases

Despite section 71, a building consent authority that is a territorial authority must grant a building consent if the building consent authority considers that –

(a) the building work to which an application for a building consent relates will not accelerate, worsen, or result in a natural hazard on the land on which the building work is to be carried out or any other property; and

(b) the land is subject or is likely to be subject to 1 or more natural hazards; and

(c) it is reasonable to grant a waiver or modification of the building code in respect of the natural hazard concerned.

3.9. If a consent is granted under section 72, then section 73 applies. This section 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.[4] 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.

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

The Section 71(1) tests

3.10. Section 71(1)(a) establishes a threshold for when an authority should refuse to grant a building consent for new buildings or major alterations to existing buildings: that "the land on which the building work is carried out is subject or likely to be subject to a natural hazard".

3.11. Regarding the land on which the building work is to be carried out, it is not sufficient that the owners' property is likely to be subject to inundation to any degree. Instead, as discussed in *Logan v Auckland City Council* and previous determinations, the land likely to be affected by the hazard must have an "intimate connection" to the building work.[5]

3.12. In this case, the building work is roughly on the same area of land that is shown to have some inundation in a 0.5% AEP event and therefore I consider this test to have been met.

3.13. The second test is the matter of whether a hazard is 'likely', which has also been considered in previous determinations and court decisions. Determination 2026/005 provides a review of these and concluded that the event scale that was used in these cases, a 1% AEP event, is an appropriate measure for whether inundation is likely to occur within the lifetime of a building, if it is intended to be at least 50 years,[6] as this scenario 'could well happen' within its lifetime.

3.14. For clarity, the Act and Building Code do not have maximum period for the performance of buildings. However, the minimum durability requirements of the Building Code are relevant here. Clause B2 *Durability* has a stated objective "to ensure that a building will throughout its life continue to satisfy the other objectives" of the Building Code. In relation to a building's intended life, performance criteria B2.3.1 requires:

> Building elements must, with only normal maintenance, continue to satisfy the performance requirements of this code for the lesser of the specified intended life of the building, if stated, or:
>
> (a) The life of the building, being **not less than 50 years**, if:

[5] *Auckland City Council v Logan* HC Auckland AP77/99 (1 October 1999), [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] Determination 2026/005 *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* (19 February 2026) and Determination 2008/082 *Building consent for a storage shed on land subject to inundation at 58 Brookvale Lane, Taupaki* (5 September 2008). Other determinations cited in those determinations include 2019/067, 2024/025 and 2024/053.

(i) ...

(ii) those building elements are difficult to access or replace, or

(iii) failure of those building elements to comply with the building code would go undetected during both normal use and maintenance of the building.

(my emphasis)

3.15. This timeframe is also referenced in section 113 of the Act. I therefore consider it appropriate to consider the building over a 50 year period for the purposes of the natural hazard provisions of the Act.

3.16. The authority has submitted that while previous determinations have generally used 1% AEP as 'likely', they do not indicate that "…smaller probability events (like 0.5% should be ignored. In practice, the difference between a 1% and 0.5% event is often small…".

3.17. The 1% AEP has been commonly used when considering inundation under section 71 in previous determinations because it provides a practical measure of whether an event could well occur.

3.18. The appropriate probability to use in a particular circumstance remains dependent on the legislative requirement or Building Code performance requirement being assessed and the nature and consequences of the event. Other Building Code considerations can require different return periods such as Clause E1 *Surface water* having performance criteria E1.3.1 specifying a 10% AEP event for assessing the likelihood of damage or nuisance to other property, while structural compliance documents require return periods specific to seismic events that are appropriate to the relevant limit state and building importance level.[7]

3.19. Compared to a 1% AEP, which has an approximately 40% probability of occurring in a 50-year period, a 0.5% AEP modelled event has an approximately 22% probability. I consider that this 'may happen' but is not 'likely', for the purposes of these provisions in the Act.

3.20. In this case, the authority has relied on the available 0.5% AEP, or 1 in 200-year, modelling, noting in its submission that it considers it "…reasonable to expect that a 1% event would also inundate the site, even if the exact depth isn't shown".

3.21. In the modelling of 0.5% AEP, the depths of inundation are generally between 0.2m and 0.5m across the property. Correlations between different event return periods can be made, as occurred in the situation that arose in Determination 2026/005 where 0.5% and 2% AEP models were provided. It is important to note that for this correlation between 0.5% and 1% AEP, it does not equal an exact halving of the inundation depths.

[7] See Determination 2006/112 *Stability of a house on a riverside site* (22 November 2006) at [6.3.6 – 6.3.9].

3.22. In this case, I have not been provided with data to undertake this correlation but as there may be some small amount of inundation on site I consider it relevant to continue to assess the natural hazard provisions for the purpose of making a clear determination.[8]

3.23. In its submissions the authority has raised a question about the Resource Management Act ("RMA") considering 0.5% AEP as 'likely'. As this is a separate piece of legislation, the 'likely' test may be different from that under the Building Act.

Will the work accelerate, worsen, or result in a natural hazard?

3.24. Section 71(1)(b) establishes the other threshold for when an authority should refuse to grant a building consent, which is if "the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property".

3.25. The authority has submitted that the proposed outbuilding sits within a depression where water collects, which could mean that the building could make the flooding worse by blocking or redirecting water, increasing ponding or affecting how water spreads across the site or nearby properties.

3.26. I consider the depth of ponding in a 1% AEP will be less than the 0.5% AEP range of 0.2 to 0.5 metres. The available evidence does not indicate that the building will materially obstruct or displace floodwater in a way that would result in the building work being likely to accelerate, worsen or result in a natural hazard on the owners' land or on other property.

Will adequate provision to protect be made?

3.27. As discussed above, section 71(2)(a) provides an exception to section 71(1) where a building consent must be refused, if "adequate provision has been or will be made to … protect the land, building work or other property".

3.28. The authority considers that in the building consent "there are no clear measures proposed to deal with the inundation risk…" and the owners' engineer report of 22 April 2026 "…does not provide any meaningful mitigation. There is no evidence that the building or land will be protected from flooding".

3.29. With regard firstly to the land connected to the building work, in *Tauranga City Council v Waddel* ("Waddel") Judge Lawson confirmed the approach in *Logan* that "adequate provision does not mean the elimination of any possibility in all conceivable circumstances of inundation", indicating that an assessment of this part of the provisions should involve a consideration of fact and degree.[9]

[8] This should not be seen as indicating a new trigger for applying the natural hazard provisions, instead it enables a resolution of the dispute between the parties.
[9] *Tauranga City Council v Waddel* [2026] NZDC 7006, at [30 – 31].

3.30. In this case, inundation is indicated to be ponding on the property. The owners' engineer stated that they "…would expect the velocity of any flow from the model in this area to be well less than 1m/s" indicating it is not anticipated that there would be an overland flow path. Their report has also considered that the building is not likely to increase flooding on neighbouring properties, block any flow paths, or cause an increase in water velocities.

3.31. The attenuation tanks will also provide protection, so as to not increase the concentrated runoff on the property or into the kerb and channel. The overflow is into the stormwater system (not onto the ground).

3.32. In a 0.5% AEP event, inundation is expected to be 0.2 to 0.5 metres in depth. The level of inundation would be lower in a 1% AEP event, therefore potential ponding would be at low levels/depths and able to disperse reasonably quickly without having much effect.

3.33. Therefore, I consider that adequate provision will be made to protect the land.

3.34. Secondly, with regard to whether adequate provision has been made to protect the building work covered by the building consent, I must consider compliance with the Building Code taking into account the natural hazard.[10]

3.35. Items in the Building Code that often need to be considered, which are relevant to this case, are:

3.35.1. ***B2 Durability*** – Performance criteria B2.3.1 is relevant, particularly in relation to the foundations, framing and cladding. In this case, the concrete foundations and the steel structure and cladding would comply with the performance criteria with normal maintenance should inundation occur. It is proposed that the building will remain unlined therefore there are no compliance concerns regarding the durability of any linings. On the basis that any inundation that should enter the building would be relatively insignificant, with normal maintenance and drying, the steel framing would also continue to meet the performance criteria in respect of durability.

3.35.2. **E1 Surface Water** – Performance criteria E1.3.2 requires that surface water "resulting from an event having a 2% probability of occurring annually, shall not enter buildings", but this clause is limited to housing, communal residential and communal non-residential buildings[11]. As this building is an outbuilding, this performance criteria does not apply.

3.35.3. ***G9 Electricity*** – Under section 43, energy work, including electrical work, does not require a building consent. Based on the building consent information provided to me, including the authority's processing check

[10] Determination 2024/025 *An authority's decision to grant building consents under section 72* (25 June 2024) at [6.51].
[11] As defined by Clause A1 *Classified Uses*.

sheet, electrical work was not covered. If this work is to be undertaken in the building, this needs to be carefully considered in relation to the hazard.

3.36. Based on this, I consider that adequate provision will be made to protect the building work as described in the building consent in respect of the natural hazard.

3.37. With regard to whether adequate provision has been made to protect "other property", as discussed above the stormwater disposal will be to the existing kerb and channel, and the overflow will not be to the ground, so it will not increase the flooding over boundaries onto neighbouring land. Furthermore, ponding depths are minimal, and the building will not cause any significant obstruction or displacement of inundation onto other property.

Additional commentary

3.38. The authority has asked the question "what an appropriately qualified person to write a report would be" for an applicant to provide in support of a building consent application involving natural hazards.

3.39. There is no specific requirement in the Act for a 'natural hazard report' to be provided as part of a building consent application. Depending on the nature of the hazard, the authority may already have sufficient information to make a decision, or it may seek further evidence from the applicant to assess the tests set out in section 71. Should authorities wish to have additional evidence in respect of the natural hazard as it relates to proposed building work, it should be made clear why this additional evidence is required.

3.40. Information that might be useful in an application for building consent involving inundation could be the clear identification of the source, exit and pathways of surface water, anticipated depth and velocity, extent and duration, the effects of the inundation on land intimately associated with the building work, effects on the building work and other property and any proposed mitigation methods to deal with the effects of inundation (storage, attenuation, flood protection etc). This will be different across different locations.

3.41. The level of information required should be proportionate to the nature and complexity of the hazard. In some cases, existing flood mapping and site information may be sufficient. In others, further site-specific assessment may be necessary to adequately understand the likely consequences of inundation. The critical issue is not the form of the information, but whether it provides a reliable basis for assessing the statutory tests in sections 71 and 72.

3.42. It is for the authority to put questions to the applicant and the applicant to respond, not for the format of that response to be prescribed by the authority. It would depend on the type and extent of the hazard as to who may be most suited to providing this additional evidence.

Depending on the circumstances, this may include licensed building practitioners or civil, geotechnical, or hydrological engineers.

3.43. Previous determinations[12] have also canvassed the three decision options for consents that trigger consideration of the natural hazard provisions. As discussed above, building consents must be either refused under section 71(1), granted in the normal way under section 49, or granted under section 72.

3.44. The intention of section 71(2) is to provide a means of consideration to grant a building consent, as it is the exception to refusal as described in section 71(1). As identified in *Waddel*, authorities should consider the impact of such a significant decision on all involved and "the decision should be undertaken with care and reasons should be given".[13]

3.45. As described in these previous determinations, if adequate provision has been made to protect the land, building work, and other property, the consent pathway should be under section 49. Therefore, when approaching an assessment, it should be in the mind of the authority to grant the consent under section 49, with section 72 being an alternative, should elements in section 71(2) not be able to be met.

4. Conclusion

4.1. I conclude that the available 0.5% AEP modelling does not, without further evidence, establish that the land intimately connected with the building work is subject or likely to be subject to inundation for the purposes of section 71(1)(a).

4.2. In any event, on the evidence before me, the proposed building work is not likely to accelerate, worsen, or result in inundation on the owners' land or any other property. I am also satisfied that adequate provision will be made to protect the relevant land, the building work, and other property. Section 71 therefore does not require the consent to be refused, and the requirements for granting the consent under section 72 are not met. The application is to be considered under section 49.

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I reverse the authority's purported decision to refuse to grant building consent.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 04 September 2026.

[12] Determinations 2024/025 at [6.5 – 6.6], and 2025/041 at [4.3 – 4.5].
[13] *Tauranga City Council v Waddel* [2026] NZDC 7006 at [3.2].

Andrew Eames

Principal Advisor Determinations