



*Kaipara te Oranganui • Two Oceans Two Harbours*

# **GUIDANCE DOCUMENT NATURAL HAZARDS**





## Contents

Contents .....	2
Reference .....	3
What are natural hazards as they relate to a building consent? .....	3
[Section 71 - 3 (a-e)_Building Act 2004]: .....	3
Building under the legislation (section 71-74).....	3
How do I know if my property is in a hazard area? .....	4
What does the Council consider when a building consent application is submitted?.....	4
Kaipara District Council Process .....	4
Step (1).....	4
Step (2).....	4
Legislative Requirements .....	6
What is Section 71? .....	6
What does it mean to 'Protect'/'Restore - Land, building work subject to natural hazard?.....	7
What is Section 72? .....	8
Important note: .....	8

Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	2 of 8



## Reference

[Building Act 1991 - Section 36](#)

[Building Act 2004 - Section 64](#)

[Building Act 2004 - Section 71](#)

[Building Act 2004 - Section 72](#)

[Building Act 2004 - Section 73](#)

[Building Act 2004 - Section 74](#)

[Building Act 2004 - Section 392](#)

[Local Government Act 1974](#)

## What are natural hazards as they relate to a building consent?

### [Section 71 - 3 (a-e)\_Building Act 2004]:

- a. erosion (including coastal erosion, bank erosion, and sheet erosion):
- b. falling debris (including soil, rock, snow, and ice):
- c. subsidence
- d. inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):
- e. slippage.

### Building under the legislation (section 71-74)<sup>1</sup>

All new buildings **and major alterations**<sup>2</sup> are affected by sections 71-74 of the Building Act 2004; the nature of the alterations (i.e., whether they are minor or not), is assessed on a case-by-case basis.

The following factors guide staff and are considered major alterations:

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

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<sup>1</sup> Documents referred - Auckland Council [AC2229 (version 4)]; Kapiti Coast District council; Marlborough District Council - natural hazards guidance practice notes. Links:-

- i. <https://www.aucklandcouncil.govt.nz/building-and-consents/Documents/ac2229-building-on-land-subject-to-natural-hazards.pdf>
- ii. [https://www.kapiticoast.govt.nz/media/34459/form-570-building-consents-natural-hazard-guidance-information-593510-\\_.pdf](https://www.kapiticoast.govt.nz/media/34459/form-570-building-consents-natural-hazard-guidance-information-593510-_.pdf)
- iii. [https://www.marlborough.govt.nz/repository/libraries/id:1w1mps0ir17q9sgxanf9/hierarchy/Documents/Services/BC/BC%20Documents%20list/Building\\_on\\_Land\\_Subject\\_to\\_Natural\\_Hazards.pdf](https://www.marlborough.govt.nz/repository/libraries/id:1w1mps0ir17q9sgxanf9/hierarchy/Documents/Services/BC/BC%20Documents%20list/Building_on_Land_Subject_to_Natural_Hazards.pdf)

<sup>2</sup> MBIE determination 2021/013 (along with 2011/034 and 2017/055) provides some good guidance on 'major alterations' and that the context/situation of the application is an important aspect in concluding one or deriving the factors to conclude one.

Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	3 of 8



## How do I know if my property is in a hazard area?

Areas which have been identified as hazard areas (Floods and flood susceptible soils) are identified in the Council's planning maps and Northern Regional Council (NRC) maps. This may also be noted on the Project Information Memoranda (PIM).

## What does the Council consider when a building consent application is submitted?

When an application for a building consent is lodged, the Building Act 2004 requires Council to consider whether the land, on which the building work is to be carried, out is subject to, or likely to be subject to, any natural hazard(s). Sections 71-74 of the Building Act 2004 set out the matters to be considered and the actions to be taken by Council.

New building works or alterations should be designed with natural hazards in mind. In some circumstances, Council may refuse to grant the building consent. In other circumstances, under Section 72 of the Building Act 2004, Council may grant the building consent, subject to conditions. If the consent is granted under Section 72, the Council must notify the Registrar General of Land and an entry will be made on the Record of Title. This would indicate a building consent was granted under Section 72 and would identify the natural hazard concerned.

## Kaipara District Council Process

### Step (1)

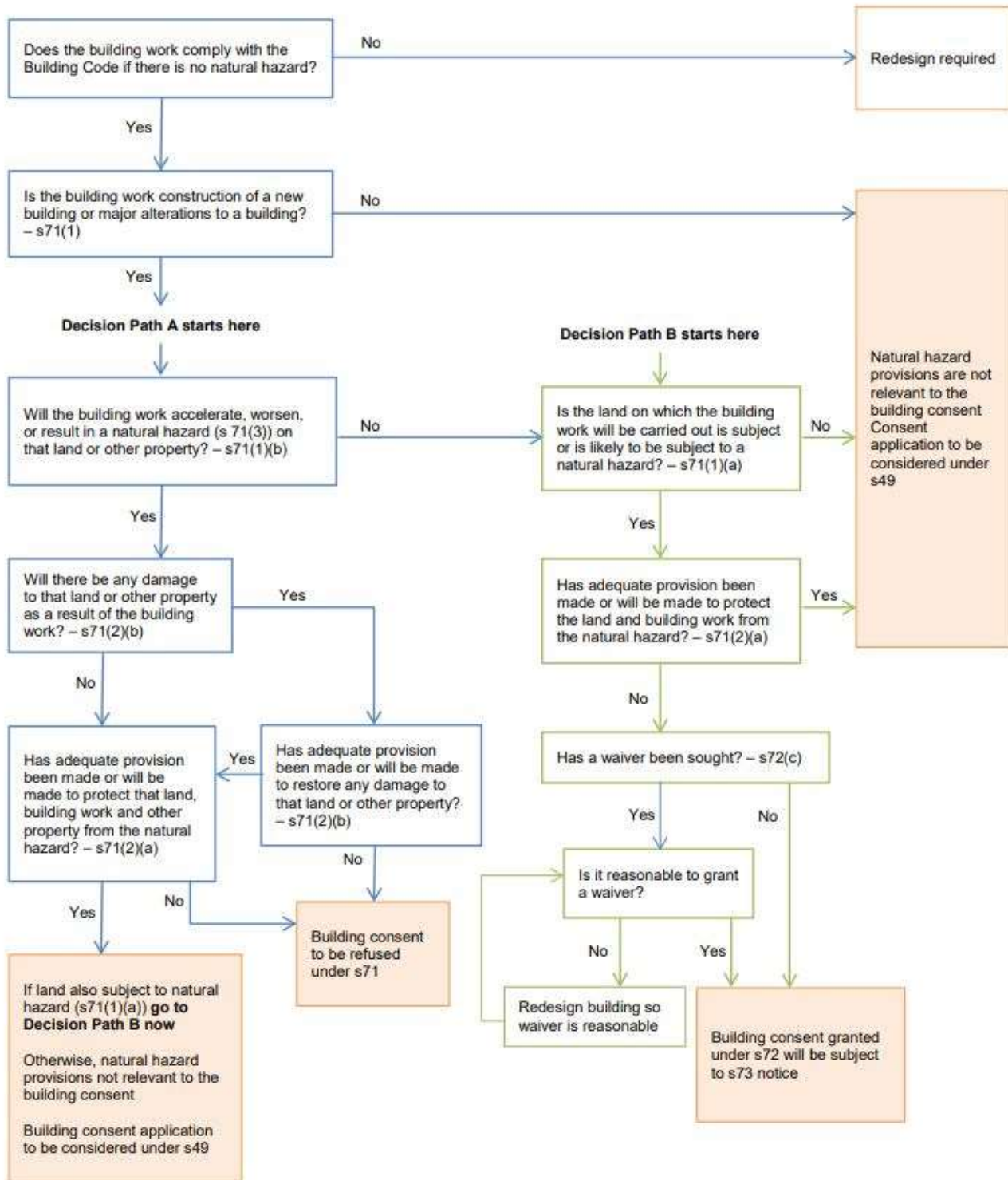
If a proposal is on a site containing natural hazards, the owner/agent will be notified at the vetting stage via a Request for Information (RFI). The RFI will suggest the different scenarios for the application along with the documentation requirements – with/without the need of registering the natural hazards on certificate of title. One of Kaipara District Council's Building Service Officers will work with the Technical Support (Vetting) team to screen the applications having risks of natural hazards.

### Step (2)

**The Natural Hazards Decision Tree (MBIE Determination 2017/048) chart is referred to for consistency.**

Original document reference: <https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2017/2017-048.pdf>

Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	4 of 8



Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	5 of 8



## Legislative Requirements

The Building Consent Authority (BCA), i.e., Council, is responsible for registering notices against properties, which are subject to one or more natural hazards.

This power is contained under:

- s.73 of the Building Act 2004, or under previous legislation s.36 of the Building Act 1991; and
- s.641A of the Local Government Act 1974

Such notices can be removed by Council, if a specialist report<sup>3</sup> is accepted by Council, which demonstrates that the natural hazard is no longer present.

When a property owner exercises his or her rights to build on land subject to a natural hazard, Council is protected against civil liability under section 392 of the Building Act 2004, when it grants a building consent pursuant to section 72.

In order to ensure that Council's civil liability is protected, Council officers need to follow the requirements of the Building Act 2004 and make sure that the effects of a section 73 notice on the title of a property are clearly understood<sup>4</sup> by the owner or owners of the land on which the building is to be constructed.

### What is Section 71?

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 one or more **natural hazards**<sup>5</sup>; or
  - b. the building work is likely to **accelerate**, worsen, or result in a **natural hazard** on that land and 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

<sup>3</sup> It is expected that the specialist report will present a clear conclusion along the lines of either Section 71, 72 of the Building Act 2004 that proposal closely sits with. For example, if sits with Section 71 -

*It is the conclusion of \_\_\_\_\_ that the building area is suitable for the proposal provided the recommendations and limitations stated within this report are adhered to.*

*\_\_\_\_\_ also concludes that subject to the recommendations of this report, in terms of Section 71(1-a,b) of the Building Act 2004;*

*(a) the land is neither subject to nor likely to be subject to a Natural Hazard; or*

*(b) 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*

*Natural Hazard as defined by Section 71 of the Building Act being:*

*(a) erosion (including coastal erosion, bank erosion, and sheet erosion):*

*(b) falling debris (including soil, rock, snow, and ice):*

*(c) subsidence:*

*(d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):*

*(e) slippage.*

<sup>4</sup> KDC – The Technical Support (vetting) team on the request of the BCA contacts the owner with forms and information explaining the effect (owner's liability, insurances not covered, etc.) of section 73 notice.

<sup>5</sup> This is a critical step as this involves assessing whether the proposal (land, building work) is subject to natural hazard(s) or not. Please note that some of MBIE determinations are of the view that if event(s) [defined as natural hazard under section 71(3)] has a potential to only be of a minimal or trivial impact, may not even be considered as Natural hazard(s) and therefore, as a result, all the other sections (71-74) of the building Act 2004 will not even be applicable. Please refer the determination such as 2018/057, 2017/048, 2013/081, 2013/047, and 2008/82 in this regard as they provide some discussions around when an event may/may not be considered a Natural Hazard.

Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	6 of 8



- a. **protect**<sup>6</sup> the land, building work, and or other property referred to in that subsection from the natural hazard or hazards; **or**<sup>7</sup>
  - b. **restore** any damage<sup>8</sup> to that land or other property as a result of the building work.
3. Clarity around natural hazards (refer the definition section of this document).

## What does it mean to 'Protect'/'Restore - Land, building work subject to natural hazard?

The building work required by section 71 - (2), that protects the proposed building site to make it free from a natural hazard which might otherwise exist on the land or restore any damage, should meet the following requirements:

- a. The protection works should be designed to have a life span of **100 years**, in order to meet the standard definition of a natural hazard and to ensure the protection of the proposed building works for the expected **> 50-year life of the proposed building work**.
- b. In the event that such protective structures have maintenance requirements to ensure the structural integrity for such work for the next 100 years, an encumbrance or a covenant should be registered against the property title setting out the structures maintenance requirements. The design of structures to protect the land from a hazard shall require design and durability assessments from a suitably qualified person (e.g., a chartered professional engineer) experienced in hazard mitigation work. Expertise required would, for example, involve experience in flood protection, geotechnical assessment, and coastal protection.

Building consents for building work, such as a bund to protect against flooding or barrier pile wall to protect against land instability will not result in a section 73 notice against the land.

## Freeboard

Freeboard is the component of the flood level that makes allowance for wave action. Wave action is determined by the sites exposure to wind or as a result of vehicles travelling along a road. It also provides an allowance in floor levels above the modelled flood level, modelling inaccuracies, construction tolerances, etc. and KDC holds a view that they are a minimum to **protect**<sup>9</sup> building work from Inundation (Natural Hazard).

We align with the Regional Policy Statement (Northland)<sup>10</sup> on the recommendations of freeboard for deriving min. FFLs for a Habitable dwellings and non-habitable buildings, -

How minimum floor levels have been derived:

	East coast	West coast
Assessed 1% AEP sea level	1.8m OTP	2.8m OTP
Allowance for Sea Level Rise (to 2115)	1.0 m	1.0 m
Freeboard (habitable dwellings )	0.5m	0.5m
Freeboard (non-habitable buildings)	0.3m	0.3m

<sup>6</sup> Determination document (2017/48) defines the word 'protect' as having an ordinary, everyday meaning: to guard against, to take care of. On this view, the statutory obligation is not just to do something about the results of an inundation that has in fact occurred. It is to protect against the inundation of the site itself where (at least in this case) the building and the site are intimately connected.

<sup>7</sup> Determination document (2017/48) notes that the usage of word 'or' necessarily requires that the **land** as well as the **building work** to be protected. Similarly, provision for both protection (a) as well as restoration (b) may be required in some cases.

<sup>8</sup> The damages to the neighbouring sites should be considered for the proposal. For example, if a specialist suggest mitigation for the site but has a potential of becoming a hazard for the neighbouring site such as for overland flow path, etc.

<sup>9</sup> In the context of Sections 71-74 Building Act 2004 (Natural Hazards).

<sup>10</sup> <https://www.nrc.govt.nz/media/clxj0ndy/regionalpolicystatementfornorthlandmay2016updatedmay2018.pdf>

Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	7 of 8





Determinations by the Ministry of Business Innovation and Employment require the physical environment to be taken into account. Hence, in an area where wave action is minimised or adjacent structures protect the building work against wave action, the freeboard may be reduced<sup>11</sup> from the standard amount provided for in the flood level determination.

However, freeboard is only relevant to the buildings (habitable and non-habitable) and the determination of the height of the floor level. Freeboard is not relevant in determining if the land is prone to flooding and affected by a natural hazard.

## What is Section 72?

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 building consent application 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 one or more natural hazards; and
- c. <sup>12</sup>it is reasonable to grant a waiver or modification of the building code in respect of the natural hazard concerned.

## Important note:

1. The land is sufficiently remote or intimately connected - If the natural hazard comes within **20 metres** of the proposed building work, the natural hazard will need to be assessed and it will need to determine what distance around the proposed building will need to be protected from the natural hazard to avoid a section 73 notice on the title of the land<sup>13</sup>.
2. Please note that Auckland Council practice note **AC2229** (natural hazards) is connected/makes reference to the **MBIE determination 2017/048**. Both these documents are often sited/adopted in other Council's practice notes (across New Zealand) as well as MBIE more recent determinations – for example 2019/017, 2021/013.
3. Broad consideration of the impact of the natural hazard (case-by-case basis) should be taken into account by the Building Consent Processor irrespective of whether the building and or building work is or not intimately connected to the affected land.
4. Other Council(s) practice notes such as Marlborough District Council, Auckland Council, Kapiti Coast District Council, Far North District Council, Whangarei District Council, etc. along with the MBIE determination documents around natural hazards, have been referred to before preparing this document.
5. MBIE Determinations such as 2008/082 and 2017/080 clarifies that **1%AEP** (100-year event) reflects the 'likelihood' test in Section 71(1) of Building Act, 2004.

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<sup>11</sup> Section 72(c) has a provision for 'waiver or modification of the building code' on reasonable grounds (technical justification/argument).

<sup>12</sup> As per Auckland Council AC2229 (version 4) - If there is no waiver or modification required to be considered by the Building Code, item c, can be regarded as having been satisfied. Furthermore, Subsection (C) requires that Council determines whether it is reasonable to grant a waiver or modification of the Building Code.

- The presumption is that the hazard will not injure or take a person's life. Given that there is little or no historical evidence of injury or death associated with natural hazards occurring this tends to be a low threshold.
- Whilst not always necessary, the reasonableness is enhanced if the building structure is able to resist damage when it is subject to a hazard event.
- In a number of instances, there will not be a waiver or modification of the building code to grant. In these circumstances, this prerequisite is met.

<sup>13</sup> In alignment with Auckland Council AC2229 (version 4) & Marlborough District Council - practice notes.

Document Ref:	Document Name:	Version	QAM Author	Date	Page
gdnh	Guidance Document Natural Hazards	1.5	QAM	May 2023	8 of 8