

**As of 1 July 2009, a deposit fee is required to accompany all building consent applications.**

**Please refer to the Buller District Council's Fees and Charges, or contact our Customer First Team on 03-788-9111.**

*For further information please contact:*

*[www.bullerdc.govt.nz](http://www.bullerdc.govt.nz)*

*Buller District Council  
P O Box 21, Westport  
Phone: (03)-788-9111  
Fax: (03)-788-8041*

*Reefton Service Centre  
P O Box 75, Reefton  
Phone: (03) 732 8821  
Fax: (03) 732 8822*

**BAM 405  
Customer guide to**

**BUILDING CONSENTS ISSUED  
UNDER S.72 OF THE BUILDING ACT 2004 (HAZARD AREAS)**

09/11/09



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**Customer guide to**

**BUILDING CONSENTS ISSUED  
UNDER S.72 OF THE BUILDING  
ACT 2004 (HAZARD AREAS)**

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**Hazards**

Includes information about:

- types of hazards;
- identifying hazard areas; and
- implications of building in a hazard area.

*A member of the Mainland Building Consent Authorities Group*

Publication: BAM 405

## Natural Hazards

If you are thinking about carrying out building works it is important to consider any natural hazards that may affect how the project complies with the Building Act 2004 and the New Zealand Building Code. Natural hazards include:

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

A Land Information Memorandum or Project Information Memorandum will provide information about hazards that the Council knows about.

New building works or alterations should be designed with any natural hazard in mind. The Building Act 2004 requires the Council to look closely at building consents for new buildings or major alterations to a building on land subject to a natural hazard. The Council can refuse to grant a building consent in some circumstances or it can grant consent subject to conditions under Section 72 of the Building Act 2004.



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### Will a building consent be issued in these areas ?

Section 72 of the Building Act 2004 states that Council shall refuse to grant a building consent for the construction of a building or major alterations unless it is satisfied that adequate provision has been or will be made to protect the land or building work, or other

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### How does a section 73 affect my general insurance?

Your insurance company may provide natural disaster damage cover beyond the maximum cover provided by EQC. This is often referred to as top-up cover.

If EQC decides not to accept a claim due to a section 73 notice on the title, then your general insurer may not pay a claim under the top up cover.

General insurers can also provide cover for property not covered by EQC, such as gates, fences, retaining walls and swimming pools, as well as temporary accommodation costs. This is also known as “difference in conditions” cover. However, claims for these items are unlikely to be accepted, particularly if the insurance company was unaware that a covenant was in place on the property.

*You should notify your insurer immediately of the section 73 notice on your title. Your insurer will more than likely request that you obtain an independent engineer's report commenting on the stability of the property. Should the report be favourable, then the insurer may continue to provide top up cover and difference in conditions cover.*

Contact:  
Insurance Council of NZ

P O Box 474, WELLINGTON  
Phone: 04-472-5230  
Fax: 04-473-3011  
E-mail: [icnz@icnz.org.nz](mailto:icnz@icnz.org.nz)

If a certificate of title endorsement is required for the issue of a Building Consent you will be asked to sign a Section 72 Request acknowledging that you are aware of the implications of a Section 72 notice on the title of your property

territorial authority issuing a building consent subject to what is generally called “a section 73 condition” to the effect that:

- a) The territorial authority is protected against legal liability, and
- b) An entry is made on the certificate of title to the land to put on record that the land is hazardous and that the territorial authority is protected from liability.

**Contact:**  
**Department of Building & Housing**

P O Box 10-729, WELLINGTON  
Freephone: 0800 242 243  
E-mail: info@dbh.govt.nz

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### **How does a section 73 affect my EQCover?**

Where there is a section 73 on a title, the landowner may be presumed to have undertaken the building work on the understanding that the land is at a risk of instability. Accordingly, where an insured property owner has knowingly assumed a significant risk, it would be unreasonable to pass that risk to the insurer, the Earthquake Commission.

The Earthquake Commission Act provides that the Commission **may** decline, or meet part only of a claim. The Commission has discretion under its Act and exercises it in each case in accordance with relevant legal principles, after consideration of the circumstances of the particular claim.

It should be remembered that a section notice does not cancel EQCover. The cover applies to earthquake, volcanic eruption, tsunami, hydrothermal activity and landslip. The relevance of a section 73 will depend on the nature of the natural disaster damage to which the claim relates.

**Contact:**  
**Earthquake Commission**

P O Box 790, WELLINGTON  
Phone: 04-978-6400  
Fax: 04-978-6431  
E-mail: info@eqc.govt.nz

property concerned from those hazards, or restore any damage to the land or property concerned that may result from the building work.

Where a building consent is applied for on land that is subject to one or more of the above hazards and the territorial authority considers that the building work itself will not accelerate, worsen, or result in erosion, subsidence, inundation etc, then the building consent can be issued subject to Section 72.

When a building consent is issued subject to Section 72, the Council *must* notify the District Land Registrar to arrange an endorsement on the Certificate of Title advising that the consent has been issued pursuant to Section 72 of the Building Act 2004.

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### **If I apply for a building consent in a known hazard area will I need to have a report from a Geotechnical Engineer or Hydrologist ?**

Unless the work is of a minor nature you may need a report from one of these professionals. You should check with the Council prior to lodging a building consent.

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### **What are the implications of having a Section 72 on the Certificate of Title?**

If there is a Section 72 endorsement on the Certificate of Title and the building is subsequently damaged by a hazard event then the owner, and subsequent owners, cannot claim against the Council for issuing the consent.

*“The existence of an entry under Section 74 of Building Act 2004 may limit statutory natural disaster insurance. Refer Clause 3(d) of Third Schedule to the Earthquake Commission Act 1993.”*

You are strongly advised to contact your solicitor, insurance

company or the Earthquake Commission if you are purchasing a property in these areas or you are planning on doing any alterations or additions in the future.

**Please Note:** *Section 36 of the Building Act 1991 covered natural hazards. Prior to the Building Act 1991 all building permits were issued under the Local Government Act 1974.*

*Section 641(A) of the Local Government Act is similar to Section 72 of the Building Act so check your Certificate of Title for any relevant endorsement.*

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### **How do I know whether there is already a hazard-related endorsement on the Certificate of Title ?**

You need to obtain a copy of the Certificate of Title from Land Information New Zealand.

**Contact:**  
**Land Information New Zealand**

For LINZ and Landonline queries, phone 0800 665 463 (New Zealand callfree only) or email [info@linz.govt.nz](mailto:info@linz.govt.nz)

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### **Will all building consents in hazard areas be issued subject to Section 72 ?**

Not necessarily. Section 72 allows the Council to issue a building consent if it is satisfied that adequate provision has been made either to protect the land or building work or other property from the hazard or to restore any damage to the land or other property arising out of the building work.

Section 72 applies to the construction of a building or major alterations to a building. While there is no definition of major alterations, the Council considers that the installation of domestic fires and minor interior alterations would not attract action under Section 72.

The Council strongly recommends that you or your advisors discuss your proposals with our Consents staff prior to lodging your building consent application.

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### **Can a Section 72 endorsement be entered on my Certificate of Title if I don't apply for a building consent ?**

No.

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### **What are Sections 72 and 73 of the Building Act 2004 and how do they affect me?**

- **Department of Building & Housing**

The Building Act provides necessary controls on building work, in the public interest and with due regard to national costs and benefits. City and district councils (territorial authorities) are charged with the day to day application of those controls and wishes to ensure that they are properly understood and applied.

**Section 72** is concerned with land which is subject to a range of hazards – flooding, slippage and erosion for example. There are obvious difficulties in building on such hazardous land. Those difficulties affect not only owners, but also territorial authorities, because they can be sued if they do not use reasonable skill and care in applying the Building Act.

This creates a conflict of interest between an owner who wishes to build on hazardous land and the territorial authority which could be liable for future damage to the building if it issues a building consent.

**Section 73** offers a solution by allowing, in certain situations, an owner to take the risk of building on hazardous land without exposing the territorial authority to future liability. This involves the

