

SECTION 72 – SECTION WITH A HAZARD NOTATION

Section 72 – natural hazard means any of the following:

Erosion (including coastal erosion, bank erosion and sheet erosion)

Falling debris (including soil rock snow and ice)

Subsidence

Inundation (including flooding, overland flow, storm surge, tidal effects and ponding)

Slippage

Full initials and name(s) of legal owner –

Legal Description of property(ies) – Eg: Lot, DP, Section Blk)

Firm and lawyers name –

I instruct the Central Otago District Council to satisfy Section 72 of the Building Act regarding registration on the Certificate of Titles for the building work contained in BC _____

I/We accept all reasonable fees and charges related to this registration.

.....
(Signature)

BUILDING ON LAND THAT IS SUBJECT TO NATURAL HAZARDS

Advice to Land Owners

Section 71, 72 & 73 of the Building Act 2004

Sections 71, 72 & 73 of the Building Act impose certain obligations on the Council and property owners where an application is made for a building consent on land where natural hazards exist, such as the potential for flooding, over land flow, storm surge, ponding, falling debris, erosion, subsidence or land slippage.

Before granting a building consent, the Council must be satisfied that the building work will not make the hazard situation worse and that it is reasonable under the circumstances to grant a waiver or modification of the building code in respect to the natural hazard.

If the Council issues a building consent, it must notify the Register-General of Land who is required to record the information on the Certificate of Title for the property (commonly called a Section 73 notice).

By following this process, the Council is not liable for any subsequent damage or loss that may occur as a result of the hazard. The owner therefore acts at his or her own risk.

This may have implications for the value of your property and your insurance cover, including disaster insurance provided by the Earthquake Commission.

The Council strongly recommends that you discuss this issue with both your legal advisor and your insurer.

The Council will not continue this process without your agreement. If you still wish to proceed please complete Application Form CO45 and return to C.O.D.C. PO Box 122, Alexandra.

Some commonly asked questions:

Q. If my property is subject to potential flooding do I need to have a Section 73 notice recorded on the Certificate of Title if I am adding a second storey to an existing dwelling?

A. Yes - if the land is likely to flood then the Council may issue a building consent only if the owner accepts that a Section 73 notice will go on the title.

The notice under Section 73 relates to the risk of both the land and any building on the land being flooded.

Q. If I accept that a Section 73 notice will be placed on the Title because of potential flooding, can I then construct ground floor additions at the same floor level as the existing house?

A. The Council does not generally recommend that approach which would almost certainly result in water entering the additions at some time. Your insurer may also have some reservations about the potential risks.

However the Council may agree to a proposal to build at the same level as the existing dwelling if the addition is minor and it is not practicable to construct the floor level higher than the existing floor level.

Q. Will a Section 73 notice affect insurance cover by the Earthquake Commission?

This is what the Commission has to say:

"The Earthquake Commission Act 1993 gives the Earthquake Commission discretion to decline, or meet part only of a claim, where the certificate of title for the affected property contains such an entry. Whether the Earthquake Commission will actually decline part or all of a claim on this ground depends in part on the nature of the natural disaster that may occur.

If it is determined by EQC that a claim for natural disaster damage will not be met due to the presence of a Section 73 covenant, then your general insurer will not be able to pay a claim under the top-up cover.

General insurers may provide cover for property not covered by EQC, such as gates, fences, retaining walls and swimming pools. However, claims made to general insurers are unlikely to be accepted if the insurer was unaware that a covenant was in place on the property.

You should notify your insurer immediately if your property has a Section 73 covenant under the Building Act noted on your title. It is likely your insurer will request that you obtain an independent engineer's report commenting on the stability of the property. Your insurer may resume cover if the report is favourable.

Disclosure of a Section 73 covenant on your property to your insurer is vitally important."

Insurance Council

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Website: www.icnz.org.nz