PROPERTY FOCUS

FLOOD RISK AND SECTION 73 NOTICES | APRIL 2026

District Court Clarifies Proportionate Approach to Section 73 Notices in Flood Risk Areas

A pragmatic and much-needed clarification from the District Court on how natural hazard provisions under the Building Act should be applied — and an important one for Tauranga.

The Court considered Tauranga City Council's appeal of a formal MBIE decision (a "determination") made to resolve a dispute under the Building Act, ultimately confirming that while the legal interpretation required clarification, a section 73 notice was not necessary for a residential property subject to minor flood risk.

In effect, section 73 is only engaged where section 71(1) applies. That is, where a natural hazard exists and adequate provision has not been made to protect the land. Where adequate provision is made, section 71(1) is not triggered and no notice is required.

The decision confirms something the development sector has long argued — the presence of a natural hazard should not automatically trigger a Section 73 notice. Instead, the correct test is whether adequate provision has been made to protect the land, assessed through a common-sense, proportionate lens.

The decision does not reduce the importance of natural hazard considerations, nor does it limit the circumstances in which a section 73 notice may be appropriate. Rather, it confirms that the statutory test requires a balanced, fact-specific assessment.

From an Urban Task Force perspective, this is a significant and welcome outcome.

At a time when housing affordability and development feasibility remain front of mind locally, decisions like this matter. Proportionate, practical application of the rules is essential to enabling sensible outcomes on the ground.

In practice, low-level or manageable flood risks have often resulted in Section 73 notices being applied, despite design solutions already addressing the practical effects of the risk. The consequences for property owners are real — impacts on property value, insurability, financing, and market perception.

This decision reinforces that "adequate provision" does not mean eliminating all risk. It requires a qualitative assessment of the nature, scale and consequences of the hazard, and whether the measures in place appropriately address those risks in the circumstances. It recognises that minor, short-duration flooding with minimal impact can be appropriately managed without penalising landowners through unnecessary title encumbrances.

Importantly, the Court has struck a balanced position — confirming that hazards must be taken seriously, while also ensuring that regulatory responses remain grounded in evidence and reality, not precaution alone.

For Tauranga and beyond, this should drive greater consistency, predictability and confidence in the consenting process.

We support this direction and encourage councils to adopt this commonsense approach moving forward.

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