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Thursday, 7 September 2023

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*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*

**Hastings District Council**

**Council Meeting**

*Kaupapataka*

# Attachments

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*Te Rā Hui:*  
Meeting date: **Thursday, 7 September 2023**

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*Te Wā:*  
Time: **1.00pm**

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*Te Wāhi:*  
Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

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**HASTINGS DISTRICT COUNCIL**  
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**TE KAUNIHERA Ā-ROHE O HERETAUNGA**

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## Guidance for Building Consent Applications in Te Matau a Māui / Hawke's Bay following Cyclone Gabrielle

### 1. Introduction

- 1.1 In February 2023, Te Matau a Māui Hawke's Bay faced devastation and loss from Cyclone Gabrielle – one of the largest natural disasters in the history of Aotearoa New Zealand. Across the region, communities have endured significant impact to their lives, livelihoods, whānau, homes, farms, orchards, vineyards and neighbourhoods.
- 1.2 On 1 June 2023 initial risk categories were identified that continue to be refined. Further information about that process is available at <https://www.hastingsdc.govt.nz/land-categorisation-hb/>. As Hawke's Bay progresses its recovery, the question of how councils will process building consents in categorised areas has come into focus.

### 2. Purpose of this Guidance Document

- 2.1 The purpose of this Guidance Document is to clearly outline how Hastings District, Napier City and Central Hawke's Bay District Councils (**councils**) will approach residential building consenting under the Building Act 2004 (**the Act**) across the region during Hawke's Bay's recovery from Cyclone Gabrielle.
- 2.2 This Guidance Document considers the applicability of sections 71-74 of the Act, which relate to natural hazards. It is designed to provide as much certainty as possible, to allow communities to make decisions that have future and inter-generational safety at their heart. We also don't want our communities spending money on building consent applications that may be unlikely to ever be granted due to the risk of natural hazards.
- 2.3 This is uncharted territory for how Aotearoa New Zealand deals with natural disasters of this scale and while we don't yet have all the answers, we are committed to sharing what we do know, when we know.

### 3. Important things to note

- 3.1 The councils will process all applications for building consents in accordance with the Act, on their individual merits.
- 3.2 This Guidance Document should be read alongside the Ministry of Business, Innovation and Employment's Guidance on sections 71 to 74 of the Act, which is published on the MBIE website.
- 3.3 This Guidance Document applies only to residential buildings or sleeping accommodation. Getting people back into their homes where possible is the priority right now and the councils will communicate their approach to consenting commercial buildings in due course.
- 3.4 Using the categories of land that Hawke's Bay Regional Council has identified, building consent applications in relation to:
  - a. Category 1 land will almost invariably be processed in accordance with s 71(2)(a) of the Act; and
  - b. Category 2C, 2C\*, 2P and 3 land will almost invariably be processed in accordance with s 72 of the Act.
- 3.5 Building consent processing in relation Category 2C, 2C\* and 2P land is likely to exceed the statutory timeframe provided in the Act and we ask for your understanding and patience as we try to get these difficult decisions right.

- 3.6 Category 2A, where significant further assessment is required, falls outside the Guidance Document. Once further assessment and re-categorisation of properties in this category has occurred, they will be considered in accordance with their new categorisation.
- 3.7 For all categories where minor building work is applied for, the Council will process those applications in accordance with sections 48 and 49 of the Act and the natural hazards provision in the Act (ss 71-74) do not apply.
- 3.8 Finally, this Guidance Document has been created on the basis of relevant information available to the councils at today's date. Should more comprehensive data becomes available from Hawke's Bay Regional Council, the Guidance Document will, to the extent necessary, be promptly updated.

Approach to Building consenting by Category

Category 1 <sup>1</sup>	Category 2C, 2C* and 2P	Category 3
<p><b>Business as usual</b></p> <ul style="list-style-type: none"> <li>All applications will be processed in accordance with the Act</li> <li>Applicants are encouraged to speak to Council before applying</li> <li>In reliance on assurances from HBRC, informed by expert advice, that flood protection measures have or will be reinstated to pre-Gabrielle standards, and that it is reasonable to assume the stopbanks will perform as designed, it is considered that adequate provision has been or will be made to protect this land, building work, or other property, from inundation under s 71(2) of the Act</li> <li>Building consents will be processed based on pre-Gabrielle finished floor levels but higher levels may be required on a case-by-case basis</li> <li>Applications must meet the test specified by s 49 of the Act</li> <li>Unlikely s 72 of the Act will be considered; or s 73 certificates will be issued for inundation specific to Cyclone Gabrielle</li> </ul>	<p><b>Detailed assessments needed</b></p> <ul style="list-style-type: none"> <li>All applications will be processed in accordance with the Act</li> <li>Applicants are encouraged to speak to Council before applying</li> <li>The land is subject to a natural hazard (inundation) and councils are unlikely to be satisfied that adequate provision has been or will be made to protect the land, building work, or other property from the natural hazard (s 71(2) of the Act)</li> <li>Applications are most likely to be granted if s 72 of the Act is satisfied</li> <li>Applications may be considered by an independent panel consisting of appropriate experts. The panel, if asked, will provide a recommendation to the relevant Council as to whether they consider s 72 is satisfied and in particular whether waiver or modifications should be granted in relation to Building Code clauses. The costs of this process will be met by the relevant Council and not passed onto the applicant</li> <li>Councils who engage the independent panel are not obliged to follow the recommendation and all decisions rest with the relevant Council</li> <li>Building consents, if granted under s 72, will require s 73 certificates to be registered on the property's title</li> <li>The need for s 73 certificates to remain on a property's title will be promptly reviewed once information becomes available from HBRC as to flood protection measures</li> <li>Not all s 73 certificates will be able to be removed from titles and some may remain indefinitely</li> </ul>	<p><b>Significant challenges for applicants</b></p> <ul style="list-style-type: none"> <li>All applications will be processed in accordance with the Act</li> <li>Applicants are encouraged to speak to Council before applying, as applicants for new buildings or major building work face significant challenges</li> <li>HBRC and Central Government consider that future severe weather event risk cannot be sufficiently mitigated and there is an intolerable risk of injury or death in these areas</li> <li>Permitting new buildings or major work to proceed or continue (including any active consents granted prior to Cyclone Gabrielle) may be contrary to the purposes of the Act, specifically to ensure that:                         <ul style="list-style-type: none"> <li>People who use buildings can do so safely and without endangering their health;</li> <li>Buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and</li> <li>Buildings are designed, constructed, and able to be used in ways that promote sustainable development.</li> </ul> </li> </ul>

<sup>1</sup> Including Category 2C\* land recently migrated to Category 1.





























