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Development in natural hazard areas

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Development in natural hazard areas

This guidance document provides a brief overview of Simpson Grierson's legal opinion on councils' ability to limit development in natural hazard areas, available at www.lgnz.co.nz/climate-change-project.

Note that this guidance document is not comprehensive, and should not be treated as a substitute for review of the detailed legal opinion or independent legal advice.

Question: Can councils prevent new development and/or the extension of existing development in natural hazard areas, under the Resource Management Act 1991 (RMA)?

Short answer:

Yes. The RMA provides councils with a comprehensive mandate to prevent or restrict new development and the extension of existing development in natural hazard areas.

Note: It should also be noted that the legal opinion sets out councils' ability to prevent new development and extended development in natural hazard areas under the provisions of the Building Act 2004.

What does the RMA say about how councils should deal with risks from natural hazards?

The RMA states that the management of significant risks from natural hazards is a matter of national importance, which decision makers must recognise and provide for.

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This means that a council's planning provisions now need to recognise and provide for the management of significant risks from natural hazards.

What tools can a council use to prevent or restrict development in hazard areas?

The RMA provides a number of tools that councils can use to prevent or restrict new or extended development in hazardous areas, including:

- Objectives and policies in planning documents;
- Non-complying activity status;
- Prohibited activity status; and
- Sections 106 and 220 of the RMA if the development is in a subdivision in a hazard area.

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What high level planning provisions need to be in place to enable a council to classify developments in hazard areas as a prohibited activity?

The ease with which planning prohibitions on development can be put in place depends on how supportive national and regional planning instruments are of prevention of development in hazard areas.

Including prohibited activity status for an activity in a natural hazard area will be easier to justify if higher order planning documents provide a substantial basis for doing that (ie if higher order planning documents require councils to make such provision in their plans).

A Regional Planning Statement (RPS) that clearly states that development in hazard areas should be "avoided" would send a strong message that regional and district plans need to contain provisions that prevent development in hazard areas.

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When should an activity be prohibited?

An activity should only be prohibited if that is the most appropriate option available.

To determine whether prohibited activity status for new or further development in hazard areas is the most appropriate option, councils must:

1. Identify whether there is any other reasonably practical option for achieving the objective of no new or further development in the hazard area;
2. Assess the efficiency and effectiveness of prohibited activity status for achieving the objective of no new or further development in the hazard area; and
3. Summarise the reasons for deciding on prohibited activity status.

What can councils do if someone seeks to subdivide in areas at risk from natural hazards?

The RMA now provides that councils may refuse subdivision consents if there is a significant risk from natural hazards. Councils should take a risk-based approach to granting subdivision consents.

Alternatively, councils can grant subdivision consents in areas at risk from natural hazards but include a condition that requires provision to be made for the protection of the land against natural hazards, generally arising or likely to arise as a result of the subdividing of the land subject to the consent.

Practical implications

If a council is considering a consent for development in a hazard prone area that is not a subdivision, it will not be able to rely on the subdivision provisions outlined above.

As such, councils will need to ensure that appropriate planning provisions are in place to ensure that new or extended developments in hazard-prone areas are avoided, or their effects mitigated.

Territorial authorities and regional councils should work together to ensure that the RPS is consistent with the objective they are trying to achieve. If there is a desire to prevent development in hazard areas, the word “avoid” should be included in an RPS. This sends a strong message that the intention is that new or further development be prevented.