

7. BUILDING IN FLOOD-PRONE AREAS - BUILDING ACT 1991 SECTION 36

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Corporate Plan Output:	

The purpose of this report is to advise Councillors of the recent decision of the Court of Appeal regarding the way in which the Building Act is to be administered where building work is proposed on land potentially liable to flooding.

The report also identifies some implications for owners of properties in flood-prone areas, and measures being taken to ensure these issues are more widely known and understood.

BUILDING ACT 1991 - SECTION 36

Until recently building consents have been issued for building work on flood-prone land provided that the floor of the building is sufficiently raised above the potential flood level.

In the case of *Logan v Auckland City Council*, the Court of Appeal ruled on the correct interpretation of Section 36 of the Building Act. It has determined that a building consent can be issued only if the territorial authority is satisfied that adequate protection is given to the building work **and** the land from the effects of flooding. The Court has said that it is not sufficient solely to raise the building height to an adequate level. To satisfy Section 36 the land itself must be given similar protection.

Options available to owners include raising the ground level by filling above the flood level, or building a bund or stop bank around the perimeter of the property. Filling creates problems with recession plane compliance and privacy issues, and bunding or stopbanks are costly and unpopular in residential areas.

Where it is impractical to protect the land, Section 36 does provide flexibility to allow the issue of a building consent with notice on the title. The notice ensures that potential purchasers are warned of the hazard and the Council is exempt from any civil liability for issuing the consent knowing that flooding may occur. Procedures are now in place to ensure building consents are issued subject to a notice on the title where appropriate.

IMPLICATIONS OF SECTION 36

There are significant areas within the City which are exposed to potential or actual flooding, principally in the coastal areas, eg Brooklands, Estuary, Redcliffs and the margins of the Avon, Styx and Heathcote Rivers. Other flood-prone areas are around the City Outfall Drain in Linwood and the Sumner Main Drain.

Areas such as Bexley and parts of the Avon and Estuary environs are already protected by stopbanks or pumping systems maintained by the Council. It is not proposed to require a notice on the title in those circumstances. Similarly, minor alterations to existing houses and accessory buildings such as pergolas, car ports and small garden sheds will be exempt.

Where it is necessary to place a Section 36 notice on the title of a property there are implications for the owner. For instance, insurance cover or premiums may be affected and the property may have a lower market value.

PROCESS FOR ADVISING OWNERS

Although broad areas of the City where flooding may occur are known, the extent to which individual properties are exposed is less clear, except where ground levels have already been identified when building consents have been issued in the past.

It is therefore proposed to advise in several ways owners of properties to which Section 36 may apply if they wish to carry out any building works:

- (a) Land Information Memoranda (LIMs) will continue to identify potential for flooding and additional comments regarding Section 36 will be added in each case.
- (b) Project Information Memoranda (PIMs) will identify land which might be subject to Section 36 and the options (if any) to avoid a notice being placed on the title if a building consent is issued.
- (c) The Council's "City Scene" will be used to ensure a wider understanding by property owners of Section 36 issues.
- (d) The Environmental Services Unit "Gazette", which is circulated to architects, designers, engineers, developers and building companies, will continue to clarify the impact of Section 36 on building consent applications.

FURTHER IMPLICATIONS OF SECTION 36

The decision of the Court of Appeal has implications also for land which is likely to be subject to other natural hazards such as rockfall, subsidence, erosion, etc. These issues are currently being worked through.

Chairman's

Recommendation: That the information be received.