

Section 36(2) condition on the building consent for a house on a flood-prone site

- 1 The matter before the Authority is a dispute over a territorial authority's decision to place a section 36(2) condition on the building consent for a house on a flood-prone site when that house complies with the building code.
- 2 The applicant was the owner. The territorial authority was the other party. Neither party requested the Authority to hold a hearing at which they could speak and call evidence.
- 3 The parties agree that the house complied with the building code, and in particular with clause E1.3.2:

Surface water, resulting from a storm having a 2% probability of occurring annually, shall not enter buildings.
- 4 In making its determination the Authority has not considered any other provisions of the building code or the Building Act. It has also not considered the territorial authority's powers under the Resource Management Act or any other Act except the Building Act. Section 35(3) of the Building Act makes it clear that issuing a building consent under the Building Act will not prevent the enforcement of any other Act.
- 5 The Authority has previously considered this question in Determinations 98/003 and 99/004. In the absence of case law, the Authority took the view that if the building work covered by the building consent complies with the building code then a section 36(2) condition is not required merely because the land on which the building is situated comes within section 36(1)(a).
- 6 Determination 99/004 is currently under appeal to the High Court. Unless and until the Court rules to the contrary, the Authority holds to the same view.
- 7 In accordance with section 20(a) of the Building Act the Authority hereby reverses the territorial authority's decision to place a section 36(2) condition on the building consent.

Signed for and on behalf of the Building Industry Authority on this 10th day of September 1999

W A Porteous
Chief Executive