Declining a Claim Guide – NHI Act

Natural Hazards Commission
Toka Tū Ake

NHI Act – For claims made in relation to initial damage from natural hazards occurring **on or after** 1 July 2024

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Contents

At a glance

In certain circumstances, there may be grounds to decline a claim, or part of a claim, for natural hazard damage to a residential building or residential land. This guide describes the circumstances when you may consider declining a claim (in whole or part). It is important to understand what documents you may need to review and what evidence you need to gather to support a decision to decline a claim for natural hazard damage.

Introduction

Terminology

Throughout this document, when we refer to 'we/our/us' we mean the Natural Hazards Commission Toka Tū Ake (NHC). When we refer to 'you/your', we mean any of the people described in the 'Who is this guide for?' section below unless we have specified otherwise.

Purpose

This guide sets out the circumstances for declining a Natural Hazards Cover (NHCover) claim under the Natural Hazards Insurance Act 2023 (NHI Act).

The primary aims of this guide are for you to:

- understand the grounds for declining an NHCover claim under the NHI Act, either in part or in full
- know where to seek additional information.

Who is this guide for?

This guide is for NHC and everyone authorised to perform claims management activities on our behalf:

- our staff and contractors
- private insurers (acting as our agent under the NHI Act Natural Disaster Response Agreement (NHI Act NDRA), as amended from time to time) and their staff and contractors
- third-party providers (authorised to act on our behalf, either appointed by us or an insurer as permitted under the NHI Act NDRA) and their staff and contractors.

How should you use this guide?

When dealing with NHCover claims, you must act in accordance with the NHI Act, all other applicable laws, our delegations, our instructions in relation to the application of the NHI Act, this guide and all other applicable parts of the NHC Insurers Manual.

Where the NHI Act does not cover the damage, you should consider whether a private insurance policy covers it. Where both the NHI Act and a private insurance policy cover the damage, we typically cover the first loss, so you should consider the coverage under the NHI Act first. In some cases, neither the NHI Act nor a private insurance policy cover the damage.

In all cases, you must comply with your organisation's own internal processes and delegations, including the Fair Insurance Code (FIC). Under the NHI Act, you are also required to manage NHCover claims in accordance with the Code of Insured Persons' Rights. This Code sets out the rights of the insured person as well as the obligations of NHC and anyone authorised to perform claims management activities on our behalf. The Code of Insured Persons' Rights specifically relates to NHCover claims and does not replace the FIC.

When we (or persons we authorise) make a referable decision[1] about an NHCover claim, an affected person[1] who disputes the decision may refer the dispute to the dispute resolution scheme.

Updates to this guide

We may update this guide from time to time. Updates will be in writing.

This guide sets out our interpretation of the NHI Act as at 1 July 2024. It therefore applies to claims made in relation to initial damage[2] from a natural hazard occurring on or after 1 July 2024.

An updated part of this guide may set out our interpretation of the NHI Act as at a later date, whether because of legal developments or otherwise. We will record that date against the updated part of the guide. The update will be effective from the date recorded against the update, or otherwise from the date we notify the required party of the update.

[1] 'Referable decision' and 'affected person' are defined in section 104(6) of the NHI Act. Also, for information on decisions that are not referable decisions, see regulation 17, NHI Regulations.

[2] Initial damage is defined in section 53 of the NHI Act.

NHI Act interpretation

We must comply with the NHI Act and all applicable laws. This guide sets out our interpretation of the NHI Act (as informed by relevant case law) as agreed by private insurers under the NHI Act NDRA in accordance with the NHC Insurers Manual development process under that agreement. However, this guide does not act as a substitute for the NHI Act because:

- claims will arise in a diverse range of fact situations
- the interpretation of the NHI Act may be contested.

You should escalate the matter to the appropriate NHC representative where this guide, the NHC Assessment Manual – NHI Act, the NHC Claims Manual – Residential Buildings – NHI Act, or the NHC Claims Manual – Residential Land – NHI Act:

- do not clearly provide for the fact situation or circumstances at hand,
- are capable of more than one interpretation, or
- have been applied using more than one interpretation.

Understanding declining a claim

What do we mean by declining a claim?

The provision of NHCover for residential buildings or residential land is subject to the conditions set out in section 67 of the NHI Act.

This section sets out the circumstances where you may decline, or only meet part of, a claim as follows:

> (1) The Commission may decline a claim (in whole or part) if it is satisfied that grounds to do so exist under sections 68 to 77.
>
> (2) The Commission may decline the claim at any time regardless of any action the Commission has taken towards assessing, deciding, or settling the claim.
>
> (3) If the Commission declines a claim (in whole or part) after making any payment in respect of the claim (or that part of the claim), section 86 applies in relation to that payment.
>
> Section 67, NHI Act 2023

This means you may decline a claim (in whole or part) at any stage of the claim process, regardless of any action you have taken. These actions may include:

- determining whether the claim is valid
- assessing the claim
- determining the outcome of the claim
- settling the claim.

You generally cannot change your settlement decision once you have communicated it to the insured person.[3] An exception is where it is reasonable to do so in light of further information you have obtained.

Section 57(4) of the NHI Act states that if it is reasonable to do so, you may:

- reconsider your decision in light of the new information, and
- change your decision, which may include declining the claim (in whole or part).

[3] In line with section 60 of the NHI Act.

Declining a claim when we have limited liability

There are circumstances where we may limit NHCover for future natural hazard damage to the residential building or land (or both).[4] If this occurs, we send the customer written notice that tells them:

- about the limitation and the reasons for the limitation, and
- that a claim for future natural hazard damage (from the same type of natural hazard that the limitation relates to) may be declined.

We also send a certificate to the Registrar-General of Land to register a section 51(2) notice on the record of title (RT).

We may limit NHCover where repeat damage to a property is reasonably preventable. This applies where:

- natural hazard damage to any residential land or building has occurred as a direct result of a landslide, or to any residential land as the direct result of storm or flood, and
- we consider it likely that the property will suffer further natural hazard damage (future damage) of substantially the same kind, and
- the insured person could take reasonable steps to mitigate the risk of that future damage.

If we have issued a notice under section 51(2) of the NHI Act (or section 28 of the EQC Act), you may be able to decline a natural hazard damage claim made after the insured person received the notice. In these cases, the grounds for considering declining the claim would likely be under section 73.

A notice limiting liability is uncommon, but when they are identified, you must investigate the circumstances relating to the notice and consider declining the claim.

Where we have limited NHCover, we can reinstate it where appropriate under section 50(4) and give a notice to the Registrar-General of Land to remove the notice from the RT.

For further information, see Section 73 – The damage occurred (or was made worse) because the insured person did not take reasonable steps to mitigate the risk of natural hazard damage.

[4] Section 50, NHI Act.

Under what circumstances can you decline a claim?

You may decline an NHCover claim under sections 68 to 77 of the NHI Act only in the following circumstances.

Under section	You may decline the claim if
68	A delay materially prejudices your ability to assess the claim
69	There is no financial loss to the insured person
70	A condition under regulations has not been complied with
71	The insured person knowingly gave you misleading information
72	The claim is fraudulent
73	The damage occurred (or was made worse) because the insured person did not take reasonable steps to reduce the risk of natural hazard damage
74	The damage occurred (or was made worse) because of an intentional act, omission or negligence
75	The damage occurred (or was made worse) because the insured person did not comply with the law
76	The damage occurred (or was made worse) because of substandard construction
77	There is a natural hazard notification on the record of title

For information on other types of NHCover claim outcomes, see NHC Claims Manual – Residential Buildings – NHI Act, Section 10.B How is an NHCover claim closed?/NHC Claims Manual – Residential Land- NHI Act, Section 11.B How is an NHCover claim closed?.

Not accepting a claim is not the same as declining the claim. You would not accept a claim if it does not meet the prerequisites to be accepted as a valid claim, for example, if:

- there is no natural hazard damage to the property, or
- we have cancelled the NHCover for the property.

For more information, see:

- the NHC Claims Manual – Residential Buildings – NHI Act, Section 7.c Has the NHCover been cancelled?/NHC Claims Manual – Residential Land – NHI Act, Section 8.c Has the NHCover been cancelled?, and
- the Determining a Valid Claim Guide – NHI Act.

Who can decline a claim?

The decision to decline a claim must be made by:

- NHC staff and contractors with appropriate delegation, or
- another person whose decision-making power has been properly delegated[5] by us.

What is the decision-making process?

Determine whether a claim is valid

You can only accept a claim where you are satisfied the claim is valid.

If a claim does not meet the prerequisites required for it to be a valid claim, you cannot accept it. This is different to declining a claim for one of the reasons set out in sections 68–77 of the NHI Act.

You usually confirm a claim is valid before you consider whether there are grounds for declining it. This is because you complete the validity checks as soon as the claim is made but you do not usually have the information to decline a claim until later in the assessment. However, if you do have this information early in the assessment, you may decline the claim regardless of whether it is valid. For example, you might decline the claim when you obtain the property's RT for a landslide claim and:

- it has a section 72 natural hazard notice (Building Act 2004) relating to landslide, and
- it is reasonable to decline, or partly decline, the claim in the circumstances under section 77.

The basic requirements for an NHCover claim to be accepted as a valid claim are set out in section 59 the NHI Act.

For more information see:

- the NHC Claims Manual – Residential Buildings – NHI Act, Section 3 Is the NHCover claim valid?, Section 4 Is there an insured 'residential building'?, Section 5 Is there 'natural hazard damage'? and Section 7 What are the grounds for declining an NHCover claim?
- the Determining a Valid Claim Guide – NHI Act

[5] We have delegated these decision-making powers to insurers acting as our agents under the NHI Act NDRA. In these circumstances, the decision to decline a claim must be made by a person in your organisation who has the proper delegation according to your organisation's delegations framework.

- our Declinature Policy.

How to decide whether to decline a claim

You must:

- consider the issues with an open mind
- consider all viewpoints and relevant evidence, including information the customer has supplied
- not consider any irrelevant matters
- approach each decision on a case-by-case basis and on its own facts
- consider whether the claim is declined in part or in whole, or is accepted
- ensure all steps in the decision-making process have been reasonable
- give the customer a reasonable period to respond to your considerations for declining the claim
- give the customer a fair hearing
- notify the customer in writing of the decision and the reasons for it.
- advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

For further information see Customer Claim Complaint Guide – NHI Act.

You should identify any grounds for declining as early as possible to avoid unnecessary activities.

If you decide to exercise the discretionary power to decline a claim, your decision must be lawful, procedurally fair, reasonable and made with an open mind.

For further information, see our Declinature Policy.

When multiple grounds for declining an NHCover claim may apply

You should consider all relevant grounds for declining a claim. Sometimes the claim specific facts make it possible to decline a claim under multiple sections of the NHI Act.

If you decide to decline the claim, you should do so under all sections of the NHI Act that apply. Many of the same facts and evidence that support your decision to decline may be relevant under more than one section. However, you may also need additional information to support some of the specific grounds.

Exercising discretion

The power to decline a claim under section 67(1) is discretionary (and is subject to legal challenge, including by way of judicial review). You can only make the decision if you have the delegated authority to do so.

Declining a claim can have significant implications for us and our customers, so you must consider your decision carefully.

General steps for considering declining

1. Identify whether there are grounds for declining.
2. Quantify the extra damage that the ground for declining caused (if any).
3. Consider whether it is appropriate to recommend declining the claim.

Managing customer queries, complaints and disputes

Sometimes a customer disagrees with a decision to decline their claim. The decision to decline is a referable decision[6] under the NHI Act. This means if a customer disputes the decision to decline their claim (in full or in part), they may refer their dispute to the dispute resolution scheme.

For more information on customer queries, complaints and disputes, see the Customer Claim Complaint Guide – NHI Act.

[6] However, our (or our agent's) decision as to which method (or combination of methods) set out in section 61(1)(a), (c), or (d) of the NHI Act, that is used to settle an NHCover claim (in full, or in part), is not a referable decision. See regulation 17, Natural Hazards Insurance Regulations 2024 (NHI Regulations).

Declining a claim in practice

This section provides examples of the main grounds for declining a claim under sections 68 to 77. These (simplified) examples are provided by way of guidance and reference only and are not intended to be exhaustive in their coverage. Every claim must be considered on its own facts, and you must always use the discretion to decline claims fairly and reasonably.

Section 68 – A delay materially prejudices your ability to assess the claim

Under section 68 of the NHI Act, you may decline a claim if:

- it is lodged more than 3 months after the earliest damage included in the claim occurs (the 'standard claim date'), and
- this delay 'materially prejudices' your ability to assess the claim.

Section 54 of the NHI Act sets out the time limits below for a claim to be made.

An insured person with an insurable interest in the property must make a claim against the property's natural hazard cover within two years (the 'extended claim date') of the natural hazard damage occurring.

This date is determined from the first working day after the natural hazard damage that the claim relates to first occurred, and expires at midnight two years after this date.

If the notice is provided after three months (the 'standard claim date'), but within two years (the 'extended claim date'), after the date of natural hazard damage, there may be grounds to decline the claim if that lapse of time materially prejudices your ability to assess the claim.

A material prejudice means you have been materially disadvantaged in assessing the claim. The NHI Act does not define 'materially prejudiced'. In practice, we consider it is more than just prejudiced, because 'materially' adds a much stronger meaning to it. You should take the following into consideration when determining whether you are materially prejudiced in your ability assess the claim.

There must be a delay in making a claim for damage

To decline on this ground, there must be a delay in making a claim for damage and that delay must have materially prejudiced your ability to assess the claim. Short delays are less likely to cause material prejudice because there is less time to cause the types of consequences listed below. You must determine each case on its own facts. Delay on its own is not enough to establish prejudice. The delay must cause other consequences that materially prejudice your ability to assess, such as where:

- you would need to spend a far greater amount of money to assess the claim after the delay. This must be more than the amount that would have been needed if the insured person made a claim earlier, and more than just a small increase. This increase is the increased cost to assess the claim. It is not an increased claim settlement payment.
- the delay makes time-sensitive evidence of the insured event inaccessible.
- witnesses are no longer be available, e.g. where the home has subsequently been sold.
- available witnesses' memories have become dulled and there might be doubt or suspicion on the merit of the evidence of witnesses who do remember clearly.
- the passing of time has made it impossible to distinguish between insured damage and damage caused by exposure to the elements.

Some prejudice is not enough

The threshold for being materially prejudiced is high and you should not decline a claim based on late notification if you suffered less than material prejudice.

Some degree of prejudice is almost inevitable with even slight delays, e.g. because witnesses' memories become less clear over time. A delay may not be enough to establish material prejudice if it has caused:

- only some of the consequences noted above, or
- consequences that have had a minimal effect on the assessment or settlement of the claim.

As far as is reasonably possible, you should find out whether the person making a claim late has materially prejudiced your ability to assess it. This will depend on the claim-specific facts in each case.

You must consider the reason for the delayed notice and the circumstances surrounding it. For example, you might consider whether the insured person mitigated against factors causing prejudice by taking prudent and reasonable steps to:

- keep or record evidence, or
- protect property against weathering.

When you make these inquiries, you should act in the same manner as any prudent, reasonable and objective decision-maker would if placed in the same position as you.

Section 69 – There is no financial loss to the insured person

Under section 69 of the NHI Act, you may decline a claim if the natural hazard damage has not caused (and is not likely to cause) financial loss to the insured person because:

- the damaged property has been, or will be, reinstated by a third party at no cost to the insured person, or
- before the natural hazard occurred, the insured person intended to demolish the damaged property.

This part of the Act is about the financial loss that NHCover would meet. Consequential loss is not considered to be financial loss to the insured person.

Reinstatement by a third party

Reinstatement by a third party applies when:

- a third party has agreed to reinstate the damaged property, and
- the insured person is not required to meet the cost of that reinstatement.

As an example, a territorial authority (TA) decides to carry out area-wide work (such as drainage repair).

Option 1: If the TA decided to do this without recovering costs from homeowners, reinstatement by a third party could apply.

Option 2: If the TA entered into an agreement with the insured person to carry out the repairs on the basis that the insured person would pay them, there may not be grounds to decline the claim under section 69. This is because the insured person may have suffered financial loss.

Demolition considerations

When considering whether the insured person intended to demolish the property (or part of the property) factors include whether the insured person:

- intended to demolish the property before the natural hazard occurred, and not because it occurred
- took steps towards demolishing the property before the natural hazard damage occurred, and there is evidence to support this
- still intends to demolish the property.

For this section of the Act to apply, you must establish that:

- the insured person intended to demolish the property before the natural hazard damage occurred, and
- the natural hazard damage did not cause (and is not likely to cause) financial loss to them.

Scenario 1 – Landslide damage to a driveway

A customer has made a claim for natural hazard damage to their driveway.

A landslide on a neighbouring property has resulted in debris inundation on the customer's driveway. When the assessor carries out a site visit, they can see the debris that was on the driveway has been removed and the driveway can be used as normal. The customer tells the assessor their neighbour removed all the debris the previous day at their own cost. The customer also confirms that there is no other natural hazard damage to the property.

The assessor tells the claims manager their findings and provides evidence that the debris has been removed.

The claims manager:

- reviews the assessor's recommendation to decline and agrees
- tells the customer they are considering declining the claim, and their reasons for doing so (there has been no financial loss to the customer)
- provides the customer with the assessment report
- tells the customer that they have a right of reply and that if they have any additional information, they should provide it for the claims manager's consideration.

The customer:

- considers the assessment report and the claims manager's reasons for potentially declining the claim
- contacts the claims manager and says they have no further information to provide.

The claims manager proceeds with the recommendation to decline the claim under section 68 of the NHI Act and provides the recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Scenario 2 – Earthquake damage to a residential building

A customer has made a claim for natural hazard damage to their residential building following an earthquake. The customer tells the claims manager they were intending to demolish the house before the earthquake, but there has been damage to the property from the earthquake that they would like assessed before the demolition goes ahead.

The assessor visits the site. The customer tells the assessor they had already moved out of the property and entered a contract to have the house demolished. The assessor confirms there is no additional cost for the demolition of the building due to the natural hazard damage.

The assessor tells the claims manager their findings and provides their assessment report, recommending to decline the claim because:

- the customer intended to demolish the property before the earthquake (and they still intend to do so)
- there is no additional cost to demolish the building due to the earthquake
- there is no financial loss to the customer because they will not be repairing the natural hazard damage, and the cost to demolish the house is the same as before the earthquake.

The claims manager:

- reviews the assessor's recommendation to decline and agrees
- tells the customer they are considering declining the claim, and their reasons for doing so (there has been no financial loss to the customer)
- provides the customer with the assessment report
- tells the customer that they have a right of reply and that if they have any additional information, they should provide it for the claims manager's consideration.

The customer:

- considers the assessment report and the claims manager's reasons for potentially declining the claim
- contacts the claims manager and says they have no further information to provide.

The claims manager proceeds with the recommendation to decline the claim under section 69 of the NHI Act and provides the recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Scenario 3 – Landslide damage to a residential building

A customer has made a claim for natural hazard damage to their residential building caused by debris inundation from a landslide. The customer tells the claims manager the property is a rental property that was going to be demolished to allow for redevelopment.

The assessor visits the site. They determine that there is debris inundation at the back of the property and minor cracking to the exterior brickwork from the debris. The property can still be occupied by tenants after the landslide, but first some of the damage must be repaired. The customer tells the assessor they will have the debris inundation removed because it is a health and safety risk to the tenants. But they will not repair the damage to the brickwork because they still intend to demolish the property.

The assessor tells the claims manager about their findings and submits their assessment report. The claims manager can consider partially declining the claim under section 69 of the NHI Act because the customer has not suffered any financial loss for the natural hazard damage to the brickwork. The customer has said they still intend to demolish the property and will not repair this damage.

The claims manager can settle the cost to repair the debris inundation as normal.

The claims manager proceeds with the recommendation to partially decline the claim and provides the recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Section 70 – A condition under regulations has not been complied with

Under section 70 of the Act, you may decline a claim if:

- the insured person does not comply with a condition that the regulations impose, and
- the regulations state that not complying with the condition is grounds for declining a claim.

There are currently no regulations under the NHI Act imposing conditions on NHCover that state that non-compliance with conditions is grounds for declining the claim. This means an NHCover claim cannot be declined under section 70 of the NHI Act.

Section 71 – The insured person knowingly gave you misleading information

Under section 71 of the NHI Act, you may decline a claim if the insured person knowingly gives misleading information to:

- the NHC or an authorised person for the purposes of the Act, or
- the fire insurer in relation to the fire insurance contract or any claim they make under it.

This means there are grounds to consider declining an NHCover claim where an insured person gives misleading information to:

- you, as an authorised person, i.e. our agent under the NHI Act NDRA
- you (or any other private insurer who is not our agent under the NHI Act NDRA) in your own capacity when the information relates to your policy (that includes a fire insurance contract), or any claim made under that policy.

Misleading information means information that is:

- false, such as a fabricated version of documents, or
- materially misleading because of anything that is provided or omitted. This means the person receiving the information could misunderstand it or its context. For example, it would be misleading if a customer did not declare that they only used their sleep-out to operate their business.

The insured person must have given (or omitted) the information knowing that it was misleading. When an insured person provides misleading information, the intention of it is likely to obtain a better claim settlement – but this does not have to be the case to decline under this section.

The misleading information can relate to any information that affects the claim outcome. When determining whether there are grounds to decline a claim under this section, you may consider how significant the misleading information was.

Declining a claim under this section may have some overlap with Section 72 – The claim is fraudulent).

Section 72 – The claim is fraudulent

You may decline a claim under section 72 of the NHI Act if it (or any part of it) is fraudulent.

Fraud is defined as a dishonest act or omission that causes, or is intended to cause, actual or potential financial loss through deception or misrepresentation. Fraudulent behaviour does not have to be just by the insured person but may be by any person in relation to the NHCover claim. Fraud usually happens when a person:

- knowingly provides false information, or
- deceives someone to get a benefit or advantage for themselves or someone else that they would not otherwise be entitled to.

If you find fraudulent behaviour, you can recommend to the delegated authority holder that they decline the claim in part or in whole, depending on the circumstances.

For more information, see the Suspected Fraudulent Claims Guide – NHI Act.

Scenario 4 – Earthquake damage to a chimney

A customer makes an NHCover claim for earthquake damage that is mostly minor, apart from damage to a chimney. They submit an invoice for emergency repairs that were done to make the chimney safe.

Example 4.1 – The claim is declined

Triage

- The claims manager reviews the claim and calls the customer to discuss the earthquake damage.
- The customer explains the minor damage and requests reimbursement for the emergency works to the chimney.
- The claims manager reviews the invoice and identifies irregularities on the invoice, specifically:
    - there is no invoice number
    - there is no supplier address
    - the invoice is supplied as a Word document (editable format).
- The claims manager refers the invoice to their organisation’s fraud investigator.

Investigation

The fraud investigator:

- is unable to locate the supplier named on the invoice on the company register.
- contacts the customer for more information.
- interviews the customer, who advises that:
    - the fire service made the chimney safe as a part of their emergency response
    - no cost was incurred
    - the customer created the invoice and submitted it to us for reimbursement.

Recommendation

The fraud investigator recommends that:

- the chimney damage be declined due to fraudulent behaviour.
- the case be referred to an external agency to commence prosecution actions.[7]
- they consider it appropriate to proceed with declining the claim under section 72, NHI Act. The fraud investigator provides a recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and tells the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

If the customer refers their dispute to the dispute resolution scheme, while being prosecuted through a court or tribunal for matters that are related to their dispute, the dispute resolution proceedings may be placed on hold until the prosecution has concluded and all appeal rights are exhausted.

The scenario above describes a response that is proportionate to the circumstances of the claim. The property has suffered minor earthquake damage apart from the chimney, and creating or altering a document is considered a serious offence. However, as explained previously, cases must always be considered on their own facts.

Where there are mitigating circumstances, you may consider declining part of the claim. For example, consider a scenario like the one above, except that the property has suffered severe damage, is uninhabitable and is considered a total loss. When interviewed, the

[7] If you are working for a private insurer, you must refer to us any recommendation to prosecute. Only we have the delegated authority to decide whether to refer a fraudulent claim to an external agency for prosecution.

customer explains that they were highly stressed and used the amount on the invoice as a 'shout' for the fire service. While we take a stern view of fraudulent behaviour, you may, in this case, choose to proceed with declining part of the claim, only declining the chimney portion of the claim. This is because the loss of the home is disproportionate to the fraudulent activity.

Section 73 – The damage occurred (or was made worse) because the insured person did not take reasonable steps to mitigate the risk of natural hazard damage

You may decline a claim under section 73 of the NHI Act if:

- the insured person has not taken reasonable steps to mitigate the risk of natural hazard damage (or further natural hazard damage if damage has already occurred) to their residential building or residential land, and
- the claimed natural hazard damage occurred (or was made worse) as a result.

The insured person must take reasonable steps to mitigate the risk of natural hazard both before and after natural hazard damage.

'Reasonable steps' are steps the insured person could reasonably be expected to take, in the available time frame, to mitigate the risk of natural hazard damage to their property.

You should consider whether:

- the insured person could foresee the risk of the natural hazard damage being claimed for (or the risk would have been obvious in the circumstances)
- there were steps that the insured person could have taken to mitigate the risk or prevent the damage (such as carrying out construction work) and these steps could have reasonably been carried out in the available time before the damage occurred
- the steps were appropriate to the level of risk
- the insured person took the steps to mitigate, and whether those steps were enough in the circumstances to realistically expect they would work
- the natural hazard damage occurred (or was made worse) because the insured person did not take reasonable steps.

There may be grounds to decline the claim under this part of the Act if:

- there is a significant risk that the insured person could foresee (or should have foreseen), and
- they ignored it by not taking reasonable steps.

For example, there may be grounds to decline a landslide claim resulting from the collapse of a customer's retaining wall if:

- the timber pole retaining wall on their insured property had significant rot in a number of poles
- the rot was clearly visible
- the insured person has not taken steps to deal with the rot.

Using a previous cash settlement to repair natural hazard damage

One method for settling claims is cash settlement. The customer then uses the cash settlement to carry out the necessary repairs of the natural hazard damage.

However, there may be grounds to decline the current claim in part (or in full) under this section of the Act if:

- the customer does not carry out the repairs within a reasonable time frame, and
- new natural hazard damage occurs (or existing damage gets worse) because of the earlier unrepaired natural hazard damage.

You must seek advice from the relevant experts to help determine whether the new natural hazard damage has occurred because of (or existing damage was made worse by) the earlier unrepaired natural hazard damage. Relevant experts may include a structural engineer for building damage or a geotechnical engineer for land damage.

If the insured person carried out the following steps, these would likely be considered reasonable:

- consulting with appropriately qualified experts, and
- carrying out repair work for the initial natural hazard damage in line with the recommendations they received.

You would need to consider whether the steps were adequate if the insured person:

- had not consulted with appropriately qualified experts in circumstances where it would have been reasonable to do so in light of the risk, and
- instead took some steps themselves to mitigate the risk.

If the insured person took steps that they knew would most likely not be adequate to mitigate the risk (or they should reasonably have known that), these would not be considered reasonable steps.

If a cash settlement has been made on the basis of diminution of value (for some or all of the natural hazard damage),[8] there are probably no reasonable steps the insured person could have taken to mitigate the damage, and this section would therefore not apply.

Scenario 5 – Landslide

In heavy rains in October 2024, a customer's property suffered landslide damage to the eastern end of an unretained cliff face. The customer lodged a claim with us.

The property was assessed. The claim was accepted and settled for the landslide damage. The recommended conceptual remediation strategy from the geotechnical engineer was to build an anchored palisade retaining wall across the front of the cliff face.

During a storm in May 2025, the customer's property suffers further landslide damage in a similar area. The customer lodges an NHCover claim for the landslide damage.

Example 5.1 – The claim is declined

Triage

- The claims manager receives the claim file and identifies there is a prior NHCover claim for landslide damage.
- The claims manager calls the customer to discuss:
    - the location of the damage,
    - whether that location is in the vicinity of the damage from the prior claim, and
    - whether any repairs have been undertaken.
- The customer advises that the 2025 damage is in the same or similar location to the damage that the 2024 claim relates to, and they have not undertaken any repairs to the area.
- The claims manager advises the customer that this information will be considered when assessing the current claim.
- The claims manager requests an assessment and provides the assessor with information regarding the prior claim, including the prior engineering and assessment reports.

Assessment

The assessor:

[8] See NHC – Residential Land – NHI, Section 7.A.c.vi What is diminution of value?

- reviews the information supplied by the claims manager, especially taking note of the location and extent of the previous natural hazard damage.
- attends the site and confirms the damage is further lost (evacuated) land at the eastern end of the cliff face, which was the subject of the previous claim.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken.
- identifies that there may be grounds to consider declining the claim under section 73 of the NHI Act.
- identifies that a geotechnical engineer will be required to attend the site and advises the customer of this.
- reiterates to the customer that the circumstances of the prior claim will be considered.

The geotechnical engineer:

- reviews the assessment report for the current claim.
- quantifies and measures the land damage that has occurred.
- overlays this damage with the assessment and geotechnical reports from the prior claim.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken.
- provides a geotechnical report to the assessor and claims manager advising that in their expert opinion, if the recommended repair for the 2024 damage had taken place, the 2025 natural hazard damage **would not** have occurred.

The assessor reviews the geotechnical report and considers, based on the engineer's advice, that it is appropriate to recommend declining the claim under section 73 of the NHI Act

<u>Settlement</u>

The claims manager:

- reviews the assessor's recommendation to decline and agrees.
- advises that they are considering declining the claim, and their reasons for doing so.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that they have a right of reply, and that if they have any additional information in support of their claim, they should provide this for their claims manager's consideration.

The customer:

- reviews and considers the assessment and geotechnical reports provided.
- contacts their claims manager and advises they have no further information to provide.

The claims manager:

- considers it appropriate to proceed with the recommendation to decline under section 73 of the NHI Act.
- provides a recommendation to the relevant delegated authority holder.

The delegated authority holder:

- reviews and agrees with the recommendation.
- advises the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Example 5.2 – The claim is partially declined

Consider a claim with similar circumstances, except the landslide is much larger and spans the entire cliff boundary of the property and into neighbouring properties.

<u>Triage</u>

- The claims manager receives the claim file and identifies there is a prior NHCover claim for landslide damage.
- The claims manager calls the customer to discuss:
  - the location of the damage.
  - whether that location is in the vicinity of the damage from the prior claim.
  - whether any repairs have been undertaken.
- The customer advises that the 2025 damage is in the same or a similar location to the damage in the 2024 claim, but it is a much larger landslide. They also advise that they have undertaken some repairs to the previously damaged area consisting of a non-engineered timber retaining wall spanning approximately half the length of the section.
- The claims manager advises the customer that this information will be considered when assessing the current claim.

- The claims manager requests an assessment and provides the assessor with information about the prior claim, including the prior engineering and assessment reports.

Assessment

The assessor:

- reviews the information supplied by the claims manager, especially taking note of the location and extent of the previous natural hazard damage.
- attends the site and confirms the damage is further lost (evacuated) land at the eastern end of the cliff face that was the subject of the previous claim, as well as lost land spanning the entire cliff face and extending into neighbouring properties.
- confirms through visual observations and discussion with the customer that the customer's landscaper built a timber pole retaining wall (about one metre high with a pole embedment of about one metre) without engineering consultation, in response to the damage from the previous 2024 landslide.
- identifies that there may be grounds to consider declining the claim under section 73 of the NHI Act.
- identifies that a geotechnical engineer will be required to attend the site and advises the customer of this.
- reiterates that the circumstances of the prior claim will be considered.

The geotechnical engineer:

- reviews the assessment report.
- quantifies and measures the land damage that has occurred.
- overlays this damage with the assessment and geotechnical reports from the prior claim.
- confirms through visual observations and discussion with the customer that the timber retaining wall repair has taken place as described above.
- quantifies and measures the landslide damage, ensuring the recording clearly identifies new damage as well as damage that could have been prevented if a sufficient repair had been undertaken.
- provides a geotechnical report to the assessor and claims manager for consideration. This report advises that in their expert opinion, if the recommended repair for the 2024 landslide damage taken place, the 2025 landslide damage to the:
  - eastern end of the cliff face **would not** have occurred
  - western end of the cliff face **would** have occurred.

The assessor reviews the geotechnical report and considers, based on the engineer's advice, it is appropriate to recommend to:

- decline the claim for damage to the eastern end of the property under section 73 of the NHI Act, and
- settle the claim for the landslide damage suffered to the western end of the cliff face.

Settlement

The claims manager:

- reviews the assessor's recommendation to partially decline and agrees.
- advises the customer that they are considering partially declining the claim, and their reasons for doing so.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that they have a right of reply and that if they have any additional information, they should provide this for the claims manager's consideration.

The customer:

- reviews and considers the assessment and geotechnical reports provided.
- contacts their claims manager and advises they have no further information to provide.

The claims manager:

- considers it appropriate to proceed with the recommendation to decline part of the claim under section 73 of the NHI Act.
- provides a recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation, and advises the claims manager to proceed with declining part of the claim.

The claims manager:

- formally advises the customer in writing of the decision and the reasons for their decision to:
    - accept part of the claim for damage to the western end of the cliff face, and
    - decline part of the claim for damage to the eastern end of the property.
- advises the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

- takes the necessary steps to pay a settlement for landslide damage to the western end of the cliff face and closes the claim.

Example 5.3 – The claim is accepted

Triage

- The claims manager receives the claim file and identifies that there is a prior NHCover claim for landslide damage.
- The claims manager calls the customer to discuss:
  - the location of the damage.
  - whether that location is in the vicinity of the damage from the prior claim.
  - whether any repairs have been undertaken.
- The customer advises that the 2025 damage is in the same or a similar location to the damage in the 2024 claim, and that they have not undertaken any repairs to the area.
- The claims manager advises the customer that this information will be considered when assessing the current claim.
- The claims manager requests an assessment and provides the assessor with information regarding the prior claim, including the prior engineering and assessment reports.

Assessment

The assessor:

- reviews the information supplied by the claims manager, especially taking note of the location and extent of the previous natural hazard damage.
- attends the site and confirms the damage is further lost (evacuated) land at the eastern end of the cliff face that was the subject of the previous claim.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken.
  identifies that there may be grounds to consider declining under section 73 of the NHI Act.
- identifies that a geotechnical engineer will be required to attend the site and advises the customer of this.
- reiterates that the circumstances of the prior claim will be considered.

The geotechnical engineer:

- reviews the assessment report for the current claim.

- quantifies and measures the land damage that has occurred.
- overlays this damage with the assessment and geotechnical reports from the prior claim.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken.
- provides a geotechnical report to the assessor and claims manager for consideration. This report advises that in their expert opinion, even if the recommended repair for the 2024 landslide damage had taken place, the 2025 natural hazard damage **would** still have occurred.

The assessor reviews the report and considers, based on the engineer's advice, that it is appropriate to accept the claim for natural hazard damage.

Settlement

The claims manager:

- reviews the assessor's recommendation to accept the claim and agrees.
- advises the customer in writing of the decision and the reasons for it.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.
- takes the necessary steps to pay and close the claim.

Scenario 6 – Landslide

An NHCover claim is lodged in October 2024 for a 6 m wide landslide that occurred adjacent to the northern side of the customer's dwelling. The customer's insurer engages engineers and their assessment in November 2024 identifies that the damage is landslide damage as defined by the NHI Act. The claim is cash settled in December 2024 based on valuation.

In March 2025, a 9 m landslide occurs on the same property and an NHCover claim is lodged.

Example 6.1 – The claim is accepted based on further information provided by the customer

Triage

The claims manager:

- receives the claim file and calls the customer to confirm the damage and advise the claim process.

- reviews the customer's prior claim history and identifies claims lodged for building damage caused by earthquakes and the 2024 land claim.
- requests an assessment and provides the assessor with information relevant to the assessment.

Assessment

The assessor:

- reviews the information supplied by the claims manager especially taking note of the location and extent of the previous natural hazard damage and books a site visit to perform an assessment.
- attends the site and:
  - identifies that the damage is natural hazard damage as defined by the NHI Act.
  - confirms the damage is further lost (evacuated) land and further inundation in the area that was the subject of the previous claim.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken.
- identifies that there may be grounds to consider declining under section 73 of the NHI Act.
- identifies that a geotechnical engineer will be required to attend the site and advises the customer of this.
- reiterates that the circumstances of the prior claim will be considered.

The geotechnical engineer:

- reviews the assessment report for the current claim.
- quantifies and measures the land damage that has occurred.
- overlays this damage with the assessment and geotechnical reports from the prior claim:
  - 21 m^2 of evacuated land, including 4 m^2 area of realised imminent damage from the 2024 claim.
  - 14 m^2 of inundation, including 4 m^2 area of realised imminent damage from 2024 claim.
  - 8 m^2 of imminent damage re-inundation, including 5 m^2 area of realised imminent damage from the 2024 claim.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken for the 2024 claim.

- confirms that the land area affected by the most recent landslide falls partially within the area of damage and imminent damage assessed in 2024.
- notes the dwelling is not at risk of further imminent damage as a direct result of the current landslide that has occurred.
- provides a geotechnical report to the assessor and claims manager for consideration, advising that in their expert opinion, if the recommended repair had taken place:
  - the re-inundation and evacuation damage within and adjoining the footprint of the 2025 landslide **would not** have occurred.
  - the damage located further upslope, adjoining the road reserve, **would** have occurred.

The assessor reviews the geotechnical report and considers, based on the engineer's advice, that it is appropriate to recommend to:

- decline the damage in relation to the re-inundation and evacuation damage within and adjoining the footprint of the 2024 landslide under section 73 of the NHI Act.
- settle the claim for the remaining landslide damage further upslope, adjoining the road reserve.

<u>Settlement</u>

The claims manager:

- reviews the assessor's recommendation to decline and agrees.
- advises the customer that they are considering partially declining the claim, and their reasons for doing so.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that they have a right of reply and that if they have any additional information, this should be provided for the claims manager's consideration.

The customer:

- reviews and considers the assessment and geotechnical reports provided.
- provides their claims manager with a quote from a construction company they had engaged after the 2024 claim. The quote was dated two weeks after their insurer cash settled the 2024 claim, and the work was booked to start the following month depending on the weather. The 2025 landslide occurred just before this expected start date, so the works were subsequently cancelled.

The claims manager:

- reviews the further information provided by the customer.
- notes that the cash settlement of the 2024 claim was only a few weeks before the new damage occurred in 2025. In this time, the customer had obtained a contractor's quote (provided to the insurer) and the contractor was booked to start work the following month.
- considers that it is not appropriate to decline the claim for new land damage because the customer has shown they were taking steps within a reasonable timeframe to remediate the damage arising from the 2024 claim.
- requests that the assessor provide a settlement recommendation based on the areas of new damage not previously settled.
- drafts a recommendation to the delegated authority holder to proceed with claim settlement.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with settlement.

The claims manager notifies the assessor to take the necessary steps to provide a recommendation for settlement.

The assessor arranges for valuation and costing of the natural hazard damage. Once they receive this information, they provide a recommendation to the claims manager to settle the claim.

The claims manager:

- advises the customer in writing of the decision and the reasons for it.
- advises the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.
- takes the necessary steps to pay and close the claim.

Section 74 – The damage occurred (or was made worse) because of an intentional act, omission or negligence

Under section 74 of the NHI Act, you may decline a claim if the natural hazard damage occurred because of (or was made worse by):

- an intentional act,
- an intentional omission, or
- negligence.

Under section 74, it must be the insured person who:

- carried out the intentional act, omission, or negligence, or
- was aware of an intentional act, omission, or negligence by any previous owner or occupant of the property when the insured person acquired the property.

For this section to apply, there must have been a significant risk of damage that the insured person could foresee (or should reasonably have foreseen), and the insured person must have:

- acted deliberately ('an intentional act'),
- not complied with a duty or obligation, and in doing so disregarded significant risks of a consequence occurring by not complying ('intentional omission'), or
- performed a negligent act or omission, and in doing so disregarded the risk ('acted negligently').

In addition, these actions must have caused the natural hazard damage or made it worse.

The insured person must have been aware of (or should reasonably have been aware of) the intentional act or omission of, or negligence of the previous owner or occupier when the insured person bought the property. It is not sufficient if the insured person found out about the relevant facts after the insured person bought the property. In this situation, there may be grounds to decline an NHCover claim under section 73 if the insured person has then failed to mitigate the risk of natural hazard damage.

Section 74 of the Act can overlap with section 75, which states a claim can be declined due to unlawful conduct. For example, a landslide occurs and a 3 m high retaining wall on the customer's land fails, causing damage to the residential building. Under the Building Act 2004, a building consent is required for a retaining wall higher than 1.5 m. The customer had not obtained a consent. After a site visit, the engineer confirms:

- the wall was not built to the appropriate standards at the time of construction,
- the construction of the wall caused the natural hazard damage or made it worse, and
- that if the wall has been constructed to the appropriate standards, the damage would not have occurred.

There may be grounds to decline the claim under:

- section 74 (because they did not carry out their legal duty to obtain a consent),
- section 75 (because they have failed to comply with the Building Act legislation), or
- section 76 (because the wall was not constructed to the appropriate standard at the time of construction).

Scenario 7 – Land slumping

A customer lodges an NHCover claim for land slumping in an area retained by a rock wall.

Example 7.1 – The claim is declined

Triage

The claims manager:

- receives the claim file and calls the customer to confirm the damage and advise the claim process.
- discusses the damage with the customer and does not identify any issues through the conversation.
- assigns an assessor.

Assessment

The assessor:

- reviews the information supplied by the claims manager and books a site visit to perform an assessment.
- at the assessment, considers that the slumping is a natural hazard landslide.
- notes that the ground around the retaining wall is quite wet.
- on further investigation, identifies that a blocked drain upslope has caused stormwater and grey water to be redirected towards the retaining wall, which appears to have contributed or caused the wet ground.
- prepares a report and requests a geotechnical engineer attend the site.

The geotechnical engineer:

- reviews the assessment report.
- quantifies and measures the land damage that has occurred.
- confirms through visual observations and discussion that the rock wall is adequate for its purpose. However, the excessive redirected stormwater over time has weakened the supporting land and caused the rock wall to fail at that point.
- reviews the council property file and identifies that a council notice had been issued in regard to the redirected stormwater. A council investigation had been triggered by a complaint from a neighbouring property downslope, which was also experiencing increased localised ponding. The council notice was issued approximately two years ago and required the customer to fix the redirected stormwater issue.

- provides a report to the assessor and claims manager for consideration advising that in their expert opinion, if the drain had been maintained (unblocked), the damage **would not** have occurred.

The assessor reviews the report and considers, based on the engineer's advice, that it is appropriate to recommend declining the damage under section 74 of the NHI Act because the:

- natural hazard damage was caused by redirected stormwater.
- customer was made aware that there was an issue in relation to the redirected stormwater.
- customer had a reasonable period to remediate the redirected stormwater issue.
- customer was negligent in that they failed to remediate the redirected stormwater issue within that reasonable period of time.

Settlement

The claims manager:

- reviews the assessor's recommendation to decline and agrees.
- advises the customer that they are considering declining the claim and their reasons for doing so.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that they have a right of reply and that if they have any additional information, this should be provided for our consideration.

The customer:

- considers the information they have received in relation to the claim being declined.
- contacts us and advises they have no further information to provide.

The claims manager proceeds with the recommendation to decline under section 74 of the NHI Act and provides a recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Section 75 – The damage occurred (or was made worse) because the insured person did not comply with the law

Under section 75 of the Act, you may decline a claim if:

- the insured person did not comply with any law or legal requirement, and
- the natural hazard damage occurred (or was made worse) as a result.

Customers have various obligations under the law (including acts, regulations, council bylaws and other law-making instruments). These obligations are often found under building law and resource management law, but are sometimes found under other areas of law (e.g. the Health and Safety at Work Act 2015).

If the actions of a third party engaged by a customer to carry out the work have caused the damage, the customer is responsible, as the insured person who engaged the third party, for ensuring the work is compliant.

To decline a claim under section 75, there must be a failure by the insured person to comply with:

- the Building Act 2004
- the Resource Management Act 1991
- any other relevant law
- any predecessor laws in force at the relevant time (i.e. the time of natural hazard damage).

In all cases, to decline under section 75:

- there must have been a significant risk of damage that the insured person could foresee (or should reasonably have foreseen),
- the failure to comply must be on the part of the **insured person**, not a previous owner, and
- that failure to comply must have **caused or made** the natural hazard damage **worse**.

If the failure to comply with any law or legal requirement was due to the previous owner, there would not be grounds to decline the claim under section 75. However, you should consider whether there are grounds to decline under section 74.

If there is any doubt that failure to comply with any law has caused or exacerbated the natural hazard damage, it is likely inappropriate to decline the claim under this section.

When considering whether the claim should be declined under this section, the relevant experts should be engaged to provide their opinion in relation to causation or exacerbation. Relevant experts could be a structural engineer for building damage or a geotechnical engineer for land damage.

Scenario 8 – Landslide

The rear (western) block wall of a garage attached to a dwelling also acts as a retaining wall to support land at the rear of the garage. This retaining wall also supports the foundations of a deck built at the southwestern end of the dwelling.

The customer identifies that the waterproofing membrane of the block wall has deteriorated over time, and engages a contractor to replace it. The works begin at the site in August 2024 and, to provide access to install the new membrane, an area 1.6 m high, 10 m long, and 1 m wide is excavated behind the garage.

In September 2024, a landslide occurs under the deck and the resulting debris inundates the excavated area behind the garage. The contractor takes remedial action to stabilise the slope after the slip occurred, by installing plywood sheeting and braces.

The excavation works remove material behind the garage that was previously supporting an existing retaining wall beneath the deck as well as the footings, leaving them exposed in the open excavation.

The customer lodges an NHCover claim for the landslide damage.

Example 8.1 – The claim is declined

<u>Triage</u>

The claims manager:

- receives the claim file and calls the customer to confirm the damage and advise them of the claim process.
- requests an assessment and provides the assessor with information relevant to the assessment.

<u>Assessment</u>

The assessor:

- reviews the information supplied by the claims manager and books a site visit to perform an assessment.

- during the assessment, identifies that the damage is landslide damage as defined by the NHI Act.
- prepares a report recommending that a geotechnical engineer be engaged to confirm whether the excavation caused or exacerbated the landslide damage, and provides this to the claims manager.

The claims manager receives and reviews the assessment report and agrees that a geotechnical engineer is appropriate in this circumstance.

The geotechnical engineer:

- undertakes a review of the assessment report.
- prepares a geotechnical engineering report, proposing a conceptual remediation strategy of a palisade wall and deck repair to address the area affected by natural hazard damage. However, the report also advises that, based on the evidence, they consider:
    - the landslide that has affected the property would not have occurred if the recent excavation had not been made under the deck.
    - the deck is situated within the area affected by the excavation and the excavation removed the ground support for the deck foundations.
    - the initial excavation appears to have undermined the existing wall, which would have compromised the retaining capacity of that wall.
    - they are unaware of any preventive measures being undertaken to protect the cut slope for the several days that it was exposed.
    - temporary shoring should have been applied to the cut face to prevent slope instability, but the support measures (i.e., plywood shuttering and braces) were only applied after the landslide had occurred.
    - the contractor had not taken adequate steps to make sure that appropriate precautions were taken to make the face safe to meet regulation 24(1) of the Health and Safety in Employment (HSE) Regulations 1995, which require any excavated face more than 1.5 m high to be shored, so far as reasonably practicable.

The assessor reviews the engineering report and considers, based on the engineer's advice, that it is appropriate to recommend declining the claim under section 75 of the NHI Act.

Settlement

The claims manager:

- reviews the assessor's recommendation to decline and agrees.

- contacts the customer and confirms that they failed to comply with the requirements of HSE regulation 24(1).
- advises that for this reason, they are considering declining the claim.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that they have a right of reply and that if they have any additional information, they should provide this for our consideration.

The customer:

- reviews and considers the assessment and engineering reports.
- contacts the claims manager and advises they have no further information to provide.

The claims manager:

- considers it appropriate to proceed with the recommendation to decline under section 75 of the NHI Act, and
- provides a recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Section 76 – The damage occurred (or was made worse) because of substandard construction

Section 76 of the NHI Act applies if a claim relates to damage to:

- any part of a residential building that is not an 'integral component' of the 'eligible building'[9], or
- a retaining wall, or a bridge or culvert.

The parts of a residential building referred to above are:

- appurtenant structures (that are not an integral part of the eligible building), and
- service infrastructure.

[9] An integral component is a part that is integrated into the building. Without it, the building could not be considered complete or whole.

You may decline the claim (to the extent that it relates to the damage to the above property) if:

- the damaged property was not constructed in line with the standard appropriate for that property at the time it was constructed, and
- the damage occurred (or was made worse) as a result.

It does not matter who was responsible for the non-compliant appurtenant structure, service infrastructure or land structure, e.g. it may have been a previous owner.

Insured services are, generally, services infrastructure that forms part of the residential property. Typically:

- water supply
- drainage
- sewerage
- gas
- electricity
- heating
- telecommunications.

For more information on insured appurtenant buildings and structures, see NHC Claims Manual – Residential Buildings – NHI Act, Section 4.D What is an 'appurtenant structure'? and the Appurtenant Structures Guide – NHI Act.

For more information on insured services, see NHC Claims Manual – Residential Buildings – NHI Act, Section 4.E What is 'service infrastructure'?.

For more information on insured land structures, see NHC Claims Manual – Residential Land – NHI Act, Section 4 Is there insured 'residential land'?.

Scenario 9 – Rotated retaining wall and slumping

A retaining wall has been damaged in a recent storm event. The damage reported consists of a rotated retaining wall with some slumping observed behind the wall.

Example 9.1 – The claim is declined

Triage

- The claims manager receives the claim file and calls the customer to confirm the damage, advise them of the claim process and discuss the damage.

- The customer explains that the wall was about 2 m high and was there when they bought the property.
- The claims manager assigns an assessor.

Assessment

The assessor:

- reviews the information supplied by the claims manager and books a site visit to carry out an assessment.
- reviews the retaining wall and considers that it does not appear to have been constructed to an appropriate standard.
- prepares an assessment report and assigns a geotechnical engineer.

The geotechnical engineer:

- reviews the assessment report.
- quantifies and measures the land damage that has occurred.
- confirms through visual observations and discussion with the customer that no repairs have been undertaken.
- provides a geotechnical report to the assessor and claims manager for consideration. This report advises that in their expert opinion:
    - the retaining wall has not been constructed in line with standards considered appropriate for the property at the time the wall was constructed (explaining the reasons why),
    - the damage was caused (or made worse) because of the failure to comply with the appropriate standards, and
    - if the retaining wall had been constructed to an appropriate standard, the damage **would not** have occurred.

The assessor reviews the report and considers, based on the engineer's advice, that it is appropriate to recommend declining the damage under section 76 of the NHI Act. The claims manager:

- reviews the assessor's recommendation to decline and agrees.
- advises the customer that they are considering declining the claim, and their reasons for doing so.
- provides the customer with the assessment and geotechnical reports.
- advises the customer that they have a right of reply and that if they have any additional information, they should provide this for our consideration.

The customer:

- engages an engineer to comment on the cause of the damage.
- contacts their claims manager and advises that their engineer agrees with their assessment of the damage and that they have no further information to provide.

Settlement

The claims manager:

- considers it appropriate to proceed with the recommendation to decline under section 76 of the NHI Act, and
- provides a recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Case study: Damage to retaining walls

Assessment

- 5 m^2 area of scoured evacuated land upslope (west) of retaining wall 3 (not pictured). The customer regraded the scoured area before our site visit. The assessor has made an estimate of the damaged land area.
- 30 m^2 area of inundation (primarily silt) up to 100 mm depth.

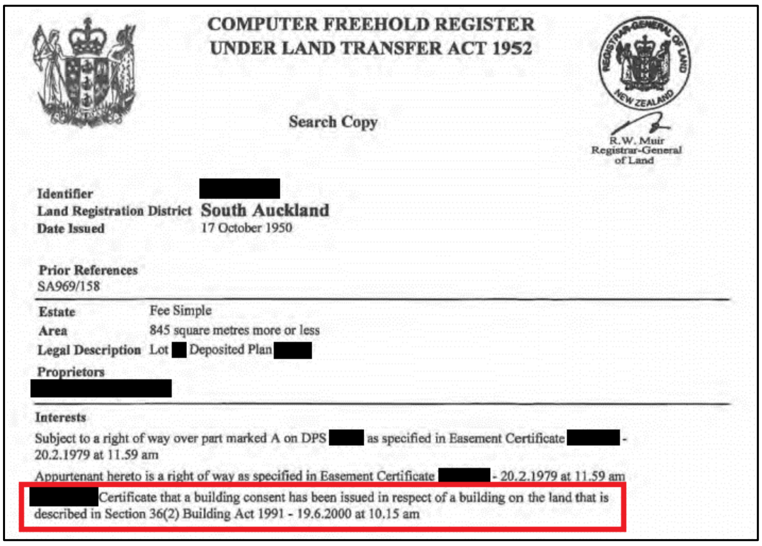
- Damage to retaining wall 1, including rotation of 1 to 2° of square posts, 100 mm width at 1 m centres, and bowing of an 8 m length, 1.7 m height, affecting a 14 m^2 face area.
- The claims manager has triaged the claim and confirmed damage to retaining walls 1 and 3.
- The assessor has confirmed the extent of damage and the need for a geotechnical engineer.
- The assessor engaged an engineer.
- The engineer has confirmed that retaining wall 1 would have required a building consent to construct.
- The engineer has confirmed that retaining wall 1 was insufficiently engineered to support the soil slope and as such would have failed to have met the building code.
- The engineer also considered that had retaining wall 1 been constructed in accordance with the building code, the wall would not have been damaged by this natural hazard event.
- The claim was partially declined in accordance with process.
- The claims manager informed the customer in writing of the decision and the reasons for it. They also advised the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Section 77 – There is a natural hazard notice on the record of title

Under section 77 of the NHI Act, you may decline a claim if:

- the RT for a property contains an entry under section 74 (in relation to a building consent granted under section 72) of the Building Act 2004
- the notice relates to a natural hazard (as defined in section 71 of the Building Act 2004) that is also a natural hazard as defined in section 23 of the NHI Act, and
- the claim relates to damage that is a direct result of a natural hazard of the kind that the notice relates to.

The above also applies if there is an entry on the RT from legislation that preceded the Building Act 2004 (namely an entry under section 36(2) of the Building Act 1991 or section 641A of the Local Government Act 1974).



COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier [redacted]
Land Registration District South Auckland
Date Issued 17 October 1950

Prior References
SA969/158

Estate Fee Simple
Area 845 square metres more or less
Legal Description Lot [redacted] Deposited Plan [redacted]
Proprietors
[redacted]

Interests
Subject to a right of way over part marked A on DPS [redacted] as specified in Easement Certificate [redacted] - 20.2.1979 at 11.59 am
Appurtenant hereto is a right of way as specified in Easement Certificate [redacted] - 20.2.1979 at 11.59 am
[redacted] Certificate that a building consent has been issued in respect of a building on the land that is described in Section 36(2) Building Act 1991 - 19.6.2000 at 10.15 am

Conditional building consents

The Building Act 2004 allows a council to grant a conditional building consent, in some circumstances, where the land where the building work is to be carried out is subject (or likely to be subject) to one or more identified natural hazards.

You will be able to identify whether a conditional building consent has been granted by reviewing the RT and checking for the following entries:

- Section 72 of the Building Act 2004
- Section 36(2) of the Building Act 1991
- Section 641A Local Government Act 1974

Notifications under section 36(2) of the Building Act 1991 and section 641A of the Local Government Act 1974 have been superseded by section 74 notifications of the Building Act 2004 (in practice the RT will show a section 74 notification as being under section 72 of the Building Act 2004).

The superseded notifications still appear on some RTs. They now have the same effect as a section 74 notification.

Section 74 notifications are placed on the RT where the:

- TA grants a conditional building consent and the applicant accepts those conditions by carrying out the related work; and
- land (that the building work is carried out on) is, or will likely be, subject to one or more natural hazards.

The natural hazards, as defined in section 71 of the Building Act 2004, are:

- erosion (including coastal erosion, bank erosion, and sheet erosion)
- falling debris (including soil, rock, snow, and ice)
- subsidence
- inundation (including flooding, overland flow, storm surge, tidal effects and ponding)
- slippage.

The two important questions to consider when determining whether there are grounds to decline a claim under section 77 of the NHI Act are:

1. Is the claim for damage that is a direct result of the type of natural hazard that the notice relates to?

   If the claim is for damage from a different type of natural hazard than the natural hazard notice relates to, this section does not apply.

   For example: A section 72 notice is registered in relation to a landslide hazard. The insured person makes a claim for earthquake damage. The notice does not affect the insured person's claim for the earthquake damage to the property.

2. Has the insured person assumed the risk for the type of damage referred to in the notice?

   You may decline a claim for natural hazard damage to insured property where the customer has accepted the risk of (the same) natural hazard for that property.

   A TA may approve an owner's consent application to alter their property with the condition that a natural hazard notice is placed on their RT. When this happens, the owner is considered to have assumed the risk for any natural hazards specified in the notice. This only applies in relation to the part of the property that has been altered (see example 10.1 below).

   However, when a property is purchased with a hazard notification in place, the new property owner is considered to have assumed the risk for any specified hazards for the entire property.

   These grounds to decline a claim can only be considered when there is a natural hazard notice on the RT. There may be cases where a council has identified a natural hazard affecting the property, as documented on the council property file, but this has not progressed to a natural hazard notice being applied to the RT.

Scenario 10 – Silt inundation

A property has been damaged by flooding. The customer lodges an NHCover claim. The customer reports silt inundation across the property and banked up against the garage.

Example 10.1 – The claim is partially declined

Triage

The claims manager:

- reviews the information on the RT and identifies that there is a section 72 notification recorded.
- calls the customer to confirm the damage and discuss the section 72 notification. The customer advises that the section 72 notification relates to inundation (flooding) risk, and was applied when they built a garage and new access way to it. There was no section 72 notification on the RT when the house was purchased.
- reviews the LINZ data regarding the section 72 notification and confirms the customer purchased the property in 2009, and that the section 72 notification was applied in 2018.
- assigns an assessor and draws attention to the section 72 notification.

Assessment

The assessor:

- reviews the information supplied by the claims manager and books a site visit to perform an assessment.
- quantifies and measures the land damage that has occurred.
- requests and reviews the council property file.
- notes the section 72 notification was applied when consent for the garage and new access way was issued.
- confirms, on review of the council property file, that
    - the customer is entitled to cover for the land within 8 m of the dwelling, including an area of land that overlaps with land within 8 m of the garage,
    - the customer is not entitled to cover for the land within 8 m of the garage (except for the overlapping land), nor for the new access way to the garage.
- confirms that the customer is entitled to this land cover because they assumed the natural hazard risk when they built the garage and not when they purchased the property.
- provides the claims manager with an assessment report, and a settlement recommendation to:
    - partially decline the claim for land damaged by flooding within 8 m of the garage under section 77 of the NHI Act, and

- settle the claim for flooding damage to the land within 8 m of the house (including the area of overlapping land).

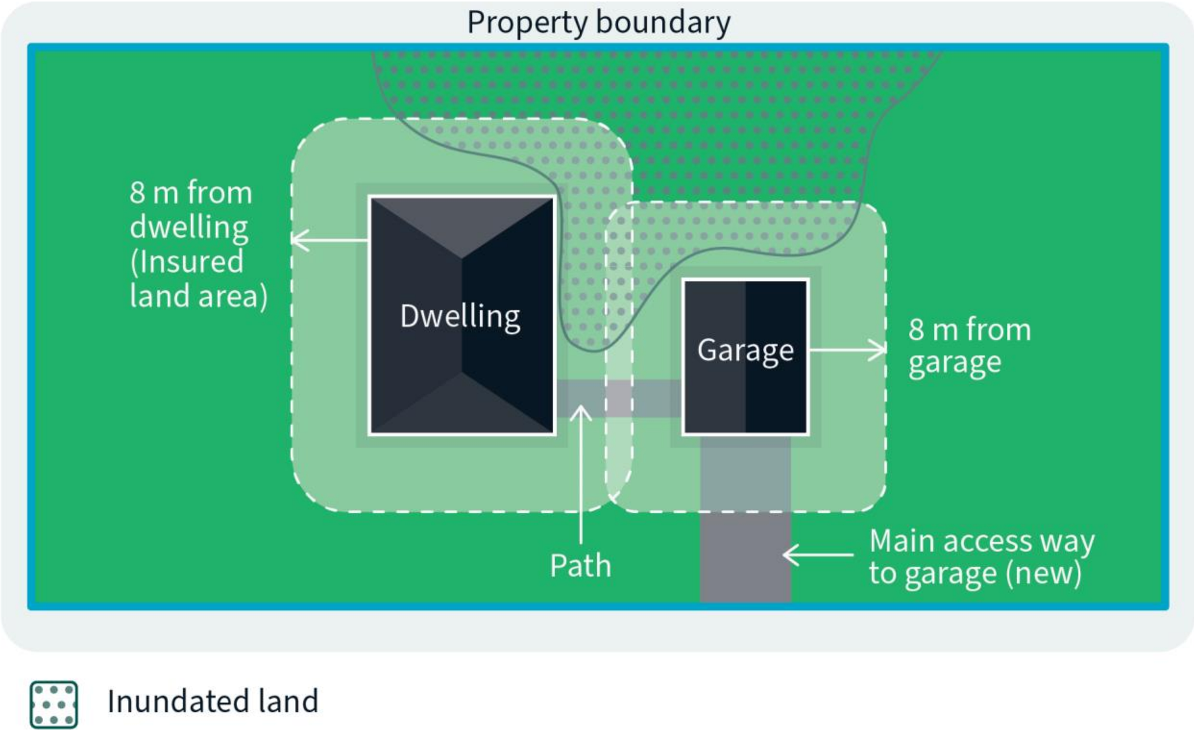


Figure 1: Flood damage to a property that has a natural hazard notice on its RT

<u>Settlement</u>

The claims manager:

- reviews the assessor's recommendation to partially decline and agrees.
- advises the customer that they are considering partially declining the claim and their reasons for doing so.
- provides the customer with the assessment report.
- advises the customer that they have a right of reply and that if they have any additional information, they should provide it for their claims manager's consideration.

The customer:

- considers the assessment report and the claims manager's reasons for potentially declining the claim.
- contacts their claims manager and advises they have no further information to provide.

The claims manager:

- considers it appropriate to proceed with the recommendation to partially decline under section 77 of the NHI Act.
- provides a recommendation to the relevant delegated authority holder.

The delegated authority holder reviews and agrees with the recommendation and advises the claims manager to proceed with declining part of the claim.

The claims manager informs the customer in writing of the decision and the reasons for it. They also advise the customer that if they disagree with the decision and wish to dispute it, they may refer their dispute to the dispute resolution scheme.

Sources

Title
NHC Claims Manual – Residential Buildings – NHI Act
NHC Claims Manual – Residential Land – NHI Act
Suspected Fraudulent Claims Guide – NHI Act
Determining a Valid Claim Guide – NHI Act
Customer Claim Complaint Guide – NHI Act
Appurtenant Structures Guide – NHI Act
Using NHC Information Guide – NHI Act
Declinature Policy