



## **BUILDING CONSENTS**

There are risks related to architects advice in relation to Building Consents. The playing field has changed with the Building Act 2004.

There are implications beyond those arising from the contract, the contractor and the building owner should work be undertaken without Building Consent.

Be aware - there is no such thing as a retrospective consent. Completed work without a Code Compliance Certificate has significant consequences to owners and to subsequent owners of property.

Although the amendment on 14 March 2008 to the Building Act introduced extended criteria for exemption to the need for Building Consents – there remains only limited work involving construction or alteration to buildings that is exempt. Maintenance work is not necessarily one of these.

The Building Act creates it as an offence to do work, or permit work, without holding a Building Consent or an amendment to that consent.

The exceptions are listed in the Exempt Work Schedule 1 of the Building Amendment Act 2008. In practical terms these are limited to defined areas of maintenance – but no longer the understanding that “replacement of like with like” is one of these.

Refer: The Building Act 2004.and Amendments 2008.

### **Schedule 1 – Exempt Building Work**

The following summarises the work exempted by Schedule 1.

A building consent is not required for the following building work:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, except:
- (b) complete or substantial replacement of a specified system
- (c) complete or substantial replacement of any component or assembly contributing to the buildings structural behaviour or fire safety properties
- (d) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability,  
e.g through a failure to comply with the external moisture requirements of the building code
- (e) repair or replacement of any water storage heater connected to a solid-fuel heater or other supplementary heat exchanger, except for repair or replacement with a

- comparable heater, of any open vented water storage heater using the same pipework
- (f) the opening and reinstatement of any purpose made access point within a drainage system that is not a NUO (Network Utility Operator) system or part of a NUO system and is carried out in accordance with the Plumbers, Gasfitters and Drainlayers Act 1976
  - (g) the construction of any retaining wall that retains not more than 1.5 metres depth of ground and does not support any surcharge or load addition.
  - (h) the construction of any wall, fence, or hoarding, not exceeding 2 metres height.
  - (i) the construction of any tank or pool, except a swimming pool:
    - not exceeding 35,000 litres capacity and supported directly by the ground
    - not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground
    - not exceeding 500 litres capacity and supported not more than 4 metres above the supporting ground
  - (j) the construction of any tent or marquee
  - (k) the construction of any platform, bridge from which it is not possible for a person to fall more than 1 metre.
  - (l) the construction of any temporary storage stack of goods
  - (m) building work in connection with any detached building, or a building closer than its own height to any residential accommodation or legal boundary that:
    - houses fixed plant or machinery, or
    - into which people cannot or do not normally go, or
    - is used only by people engaged in the construction or maintenance of another building, or
    - does not exceed 1 storey and 10 square metres in floor area and does not contain sleeping accommodation or sanitary facilities or storage of potable water.
  - (n) the closing in of an existing veranda, patio with a floor area not exceeding 5 square metres.
  - (o) any other building work in respect of which the territorial authority considers that a building consent is not necessary, because it:
    - is unlikely to be carried out otherwise than in accordance with the building code,
    - or
    - is unlikely to endanger people.

The Building Regulations prescribe the requirements to be observed by the Building Consent Authority.

Clearly the emphasis remains on matters of health, safety, and welfare.

In principle the Building Consent Authority (the Council) is charged with approving the issue of a Building Consent and satisfying itself during construction that it is built as it should be to satisfy, safety, health and amenity criteria approved at the time of issue of the Building Consent

## **Consented Drawings**

Building Consent and Code Compliance is now issued based on the drawings - not on what is subsequently built and inspected. The inspection confirms “what is built is what was applied for and approved”.

- A PIM must be issued before a Building Consent
- An amendment to the Building Consent must be applied for whenever the work to be undertaken is different from that originally covered by the Building Consent.
- The Council is unable to issue a Building Consent retrospectively – after the work has been undertaken. Council may not accept liability for the issue of a Code Compliance Certificate without the ability to undertake appropriate inspection of the work during construction.

### **Unauthorised Work**

Each Council: will adopt its own procedures for recording and where necessary correcting inadequate work undertaken without consent. A Notice to Fix may be a part of this and itself will require a Building Consent.

But - this does not legitimise the unauthorised work and may not permit the issue of a Code Compliance Certificate by the Council for unauthorised work, which will remain on record in the property file of the Council and be accessible to the general public.

The procedure may involve:

Requiring the Owner to supply a “Safe & Sanitary Report” prepared by an approved qualified person. The report will also be accessible to the public on the property file (and will alert an intending purchaser of the property to the condition of the property.)

The Council may, as a result, require the building owner to take out a Building Consent for corrective work to make safe or sanitary the unauthorised work.

This does not legitimise the unauthorised work nor does it permit the issue of a Code Compliance Certificate for the original work.

In some circumstances a consent authority may issue a Certificate of Acceptance.

### **Implications of No Consent**

There exist serious implications to the Architect (as agent of the Owner), to the property owner in terms of loss of value and to a third party as a future owner, if work is undertaken without consent.

A purchase made by a third party without knowledge of the unauthorised work may result in litigation (at a later date) between the purchaser and those responsible for the unauthorised work.

The Architect should not be a part to, or offer advice to an Owner to apply for a Building Consent after the event – although this may be seen as correcting an oversight.

Consultation between the Owner and the Council is the only available remedy.

### **Leaky Buildings / Durability Issues**

A defining issue with correction of defects and Building Consents is recognition that replacement of a system, e.g. a cladding system, or structural system constitutes an exclusion from the exemptions for a Building Consent.

The failure within the durability provisions of the Building Code B1 i.e. say within 15 years of an accessible component or system triggers the requirement that replacement of like with like is no longer permissible and consent is required for the replacement which will need to demonstrate better durability.

If you are in doubt, recommend discussion with the Consent Authority.

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