

How unauthorised building work is assessed

The purpose of this document is to provide information for building owners about how Council deals with unauthorised building work e.g. building work that should have had a building permit (**constructed before 1 July 1992**) or a building consent (**constructed on and from 1 July 1992**).¹

What is a certificate of acceptance (CoA)?

A certificate of acceptance (CoA) can only be applied for if building work was constructed without a building consent on and from 1 July 1992.

A CoA provides a limited assurance, in certain circumstances, that the Council has inspected unconsented building works, or building works undertaken urgently, and is satisfied to the best of its knowledge and on reasonable grounds, to the extent that it has been able to determine, that the building work complies with the New Zealand Building Regulations 1992 (Building Code).

A CoA may be issued on a limited or qualified basis only, if it is unable to properly satisfy itself that the works comply with the Building Code. Because the Council will not have had the opportunity to assess and approve an application for building consent, it is likely that it will not have had the ability to inspect the work during construction to ensure it has been done in accordance with the Building Code.

After works are complete it may be difficult, expensive or impractical for the Council to carry out an effective inspection of the building works that will enable it to satisfy itself that the building works are compliant with the Building Code, and there may be no other effective means of determining compliance other than through inspection.

If you apply for a CoA, providing evidence from a suitably qualified and independent professional would assist Council to establish how the building work complies with the Building Code.

A CoA will list the building work that the Council has inspected and can therefore establish compliance for. Any building works that cannot be verified as complying with the Building Code will also be listed and excluded on the CoA.

Council may refuse to issue a CoA if compliance cannot be demonstrated; you may also be required to remove the building work if action is taken under s.124 of the Building Act and the building is deemed dangerous or insanitary or approval under the Resource Management Act 1991 cannot be obtained.

Notes:

1. A building consent cannot be issued retrospectively for building work that has already been completed and a Code Compliance Certificate cannot be issued for any building works, which is subject to a CoA.
2. It is an offence under s.40 of the Building Act 2004 for a person to carry out building work without building consent (unless the building work is exempt under Schedule 1). The issuing of a CoA for unconsented building work does not limit the Council's ability in respect to enforcement action. However, in cases where a CoA has been issued for unconsented building work, the Council will take that into account.

Issuing or refusing to issue a CoA

A CoA may be issued for building works in the following circumstances:

- When urgent work is carried out to protect life or health, or prevent serious damage to property and it is not practical to obtain a building consent in advance.
- When a building consent authority (that is not a territorial authority) or an Organisation accredited to the BCA Regulations is unable or refuses to issue a code compliance certificate for work carried out under a building consent.

¹ Although the BA91 came into effect on 1 July 1992, most Territorial Authorities started issuing building consents on 1 January 1993

A CoA can only be issued if:

- Council is satisfied, to the best of its knowledge and belief and on reasonable grounds, as far as it has been able to ascertain, that the building work complies with the Building Code.
- The building works were carried out after 1 July 1992.
- A building consent has not been granted by the Council for the building work in question.

If a CoA is refused, Council will provide the reasons for the decision in writing. If Council refuses to issue a CoA, the decision can be challenged via a Determination under s.178 of the Building Act. Refer to the Ministry of Business Innovation and Employment website for further details about the determination process.

How can I find out if work on my property had a building permit or building consent?

You can find out whether building permits or building consents were granted for buildings on your property by applying for a Land Information Memorandum (LIM). You can apply for a LIM online at www.aucklandcouncil.govt.nz

Note: Sale and Purchase agreements often have a clause under the vendor's warranties and undertakings that confirms the vendor has not done, caused or permitted any work on the property to be done without any permit, resource consent or building consent required by law (this clause can be removed by agreement).

How do I report unconsented building work?

If you suspect that work is being carried out or has been carried out, which ought to have had a building consent, please contact the customer service centre on 09 301 0101

How do I apply for a CoA?

We recommend that you attend a pre-application meeting. This is not mandatory, but is recommended.

The purpose of a pre-application meeting is to determine whether:

- a project information memorandum (PIM) is required (this document contains planning and building advice)
- a building consent is required (note that *some* building work is exempt from requiring a building consent under Schedule 1 of the Building Act)
- resource consent is required (all work must comply with the District Plan, if resource consent is required then this must be obtained first)
- the building work is likely to obtain approval.

Pre-application meetings are held at the main area office (Orewa, Henderson, Central, and Manukau) closest to where the building is sited unless the building work involves a reclad in which case the pre-application meeting is held at 35 Graham Street, Auckland. A building officer, planner and any other Council officer that is deemed to be required will attend the meeting; this will depend on the type of building work that has been carried out. These officers will provide advice and discuss options with you; following the meeting you will receive minutes summarising the discussion.

Pre-application meetings incur a cost; please refer to the fee schedule at www.aucklandcouncil.govt.nz

If there are no additional approvals required you may lodge your CoA application. However, if a PIM or resource consent or any other approvals is required, you should obtain these before you apply for your CoA.

A CoA application form and applicable lodgement checklist must be completed and all the applicable requirements of the checklist must be supplied, along with payment. Please refer to the fee schedule at www.aucklandcouncil.govt.nz.

What information is required to accompany an application for a CoA?

The following information must accompany an application for a CoA:-

- Application form and fee
- Record of title, lease agreement, sale and purchase agreement, or other document showing the full name of all owners of the building
- Pre application meeting minutes (if applicable)
- A PIM (if applicable)
- Resource consent (if applicable)
- Reasons why an application for CoA is necessary
- Two copies of fully-detailed plans and specifications professionally drawn and supported with engineering, bracing and / or energy efficiency calculations as applicable; please refer to building

consent lodgement checklist for an overview of the type of information required demonstrating compliance with the New Zealand Building Code

- Building report describing the building work which must include a statement confirming compliance with the Building Code supplied by a suitably qualified and independent professional such as a Chartered Professional Engineer, Registered Architect, Registered Building Surveyor (NZIBS), Level 3 Accredited Building Surveyor (BOINZ) or a Solid Fuel Appliance Installation Technician (SFAIT) (for solid fuel heaters only). The person producing the report will depend on the nature and extent of the unconsented building work; please contact the Durability Team for further clarification if required. Note: All authors should be listed on the Auckland Council Producer Statement Register; the register can be found at www.aucklandcouncil.govt.nz

All documentation submitted with a CoA must contain and be to the same standard as that submitted for building consent. The Building Act requires that all plans submitted demonstrate compliance with the current Building Code rather than the Building Code that was in place at the time of construction.

Additional information may include:-

- Statements by the owner
- Delivery dockets
- Invoices
- Photographs
- Certificates or statements from personnel who carried out or witnessed the work being carried out
- Energy works certificates (gas or electrical)

What happens after the CoA is accepted?

Council officers will assess the building work and plans and specifications provided against the Building Code; they will also consider any evidence that has been provided in support of the application including the opinion of the author of your building report. In most cases, an inspection will also be conducted to assess compliance.

How long does the CoA process take?

If all information is acceptable and no requests for further information are required the application will take 20 working days to process. If further information is required, the clock is stopped and does not resume until all information is provided. Furthermore, under s.99AA of the Building Act if a development contribution is required, Council may withhold issue of the CoA until payment is received.

How do I find out if building work is exempt?

Over the years there have been many changes to the Building Act 2004, these changes have resulted in an increased scope of building works that are exempt from requiring a building consent. This might mean that building work which may have required a building consent in the past, no longer does. However, if the work was not exempt at the time the work was carried out, it may still require a COA. It may also mean that Council records do not reflect the as-built situation.

Purchasing a home is one of the most significant purchases a person will make in their lives, for this reason Council strongly recommends that purchasers seek independent advice from a suitably qualified specialist.

To determine whether a building consent is required refer to Schedule 1 of the Building Act 2004; a copy of this Schedule can be sourced from www.legislation.govt.nz

For further information and advice on exempt building work including whether a specific building project is exempt or not, refer to the following websites that provide further information

- www.building.govt.nz
- www.consumerbuild.org.nz
- www.aucklandcouncil.govt.nz

What value does a CoA have?

A CoA is an acknowledgement that the building work is recognised by Council and provides limited assurance that the building work complies with the Building Code; it does not have the same value as a building consent which has been assessed, inspected and issued with a Code Compliance Certificate.

Are there any penalties associated with this process?

Council can decide to issue an infringement notice, lay a complaint about the practitioners who did the work and / or prosecute the offender as it is an offence under s.40 of the Building Act to carry out building work without a building consent (unless the building work is exempt under schedule 1). Whether this action is taken, will depend on the circumstances leading to the application.

Do I have to obtain a CoA for unconsented building work carried out after 1 July 1992?

No, you can:

- Demolish the unconsented building works (refer to Schedule 1 of the Building Act 2004 to determine if a building consent is required to demolish the building work. You should also refer to the District Plan to find out whether a resource consent is required); then if you wish to reconstruct the building works, obtain a building consent prior to undertaking re-construction; or
- Do nothing. If the building works comply with the Building Code and are not dangerous or insanitary then you can decide to take the risks associated with owning them. There may be consequences that arise with respect to, amongst other things, insurance coverage and/or compliance with the terms of sale and purchase agreements. You should seek independent expert advice if you choose to take this option.

What can I do about unpermitted building work carried out before 1 July 1992?

A CoA cannot be issued for building work carried out prior to the inception of the Building Act. Work carried out prior to the Building Act 1991 was subject to the Building Bylaws and the building permit system. Whilst it is not necessary to do anything about this work, if you are concerned that the unpermitted building work does not comply with the Building Code, you can either:

- Demolish the unpermitted building work (refer to Schedule 1 of the Building Act 2004 to determine if a building consent is required to demolish the work) You should also refer to the District Plan to find out whether a resource consent is required); then if you wish to reconstruct the building works, obtain a building consent prior to undertaking re-construction; or
- Obtain a third party report (see next section)

What if I have obtained a third party report relating to unpermitted building work carried out before 1 July 1992?

If Council receives a third party report, this report is placed on the property file as a public record ONLY. This report will need to be submitted and signed by the owner / agent agreeing '**that Council accepts no liability for the contents of the report, nor is it liable for any representations made within the report**'. This report will not be included on the Land Information Memorandum (LIM)

Third party reports

If Council receives a third party report for unpermitted building work, it must be accompanied by an application form entitled "AC2114 Third party reports received for building work carried out under the Building Bylaw regime".

The form must be completed in full and signed by the owner / agent. If the report is submitted by an agent on behalf of the owner, the agent must provide a letter of authority signed by the owner, to act on the owner's behalf.

Council does not accept any responsibility for checking or validating this report nor does it accept liability for the contents. The report is merely placed on file as a matter of public record with advice stating '**that Council accepts no liability for the contents of the report, nor is it liable for any representations made within the report**'.

What about building work which was subject to a building permit that has not been signed off?

Building work carried out under the previous Building Bylaws system cannot be inspected and signed off.

Quite often solicitors acting for either a vendor or purchaser of a property will ask for this work to be inspected by Council and the works certified as 'completed'. There is no requirement under the Building Act 2004 for Council to inspect and / or report on such work, and it does not do so as it cannot apply the current Building Code standards to works undertaken prior to the Building Act 1991.

If you wish to have such work inspected, the mechanism for doing so is via a third party report.



Auckland Council Quick Guide to Certificate of Acceptance (CoA) Process

1. Customer wishes to apply for CoA to rectify some unconsented work



2. Phone Council on 09 301 0101 and request a CoA application pack or download from our website



3. Engage a designer to help prepare your plans; speak to relevant tradespeople and obtain an expert's report on the unconsented work

6. Meet with Council Building Inspector and Town Planner to discuss your application (if applicable)



5. Make an appointment for a pre-application meeting (if applicable) NB fee applies



4. Collate documentation e.g. photos, invoices, expert report, application form, etc



7. Council staff will provide advice and let you know if any pre-approvals are required



8. Obtain pre-approvals if required e.g. resource consent; TransPower; Watercare, NZ Heritage



9. Collate and lodge your application at your local area office. NB Deposit required



12. Clock may stop during processing if further information is required



11. Council processes application (20-working days)



10. If all information provided, application accepted; clock starts!



13. Final decision and payment



Stuck? Don't know where to start... you can come in and seek advice before the pre-application meeting if required