

How unauthorised building work is assessed

Purpose

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 Schedule 1 of the Building Regulations 1992 (Building Code).

A CoA may be issued on a limited or qualified basis only, if the Council is unable to properly satisfy itself that all of 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 (RMA) cannot be obtained. Any RMA non-compliance will be dealt with under the RMA, not the Building Act.

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 are 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 of a type that requires a building consent without first obtaining a building consent. Some Building work, as described in S.41 of the Building Act 2004 does not require a building consent, but all building work is required to comply with the Building Code. 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

Section 96 Requirements

Council may issue a CoA only if the criteria of Section 96(2) are met:

- The building work was done after 1 July 1992.
- The work was done without a building consent (unless exempt under Schedule 1).
- Council is satisfied, to the best of its knowledge and belief and on reasonable grounds, that the building work complies with the Building Code, to the extent that it can be reasonably ascertained.
- Due to the lack of inspections during construction, Council may only be able to partially verify compliance, leading to a qualified CoA.

Refusing a CoA – Section 96 Implications

Under Section 96(3), Council must refuse to issue a CoA if it cannot be satisfied on reasonable grounds that the building work complies with the Building Code. If compliance cannot be demonstrated, a CoA will be refused, and the owner may be:

- Issued a Notice to Fix under Section 164
- Required to remove the unauthorised work if it is considered dangerous or insanitary under Section 124

If a CoA is refused, the applicant has the right to apply for a Determination under Section 178 of the Act, a formal process administered by MBIE to resolve disputes regarding decisions made by the territorial authority.

Key Notes on Section 96 and CoA Applications

- A Code Compliance Certificate (CCC) cannot be issued for unauthorised work; only a CoA is available.
- The CoA only applies to completed work and cannot be issued for proposed or incomplete work.
- Council's decision to issue or refuse a CoA is discretionary, limited by the extent of evidence available to verify compliance (as per Section 96(2)).

Supporting Information & Professional Reports

Section 96 places the burden of proof on the applicant to demonstrate that the unauthorised building work complies with the Building Code. As such, Council recommends that applicants provide:

- Reports by independent and suitably qualified professionals.
- Plans and specifications that match the standard of a building consent application.
- Supporting evidence (e.g. photographs, delivery dockets, construction records) to assist the assessment.

Note: Council can accept third-party reports as supplementary evidence, but under Section 96, it must still be independently satisfied of compliance on reasonable grounds.

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 would have been required for all of the building work (note that *some* building work is exempt from requiring a building consent under Schedule 1 of the Building Act 2004)
- 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 (Albany, 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 135 Albert 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 a 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 made, the application will take up to 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 2004: 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 2004 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. Unless the unauthorised building work means that the building is unsanitary or dangerous no enforcement action can be taken against an owner of a property if they were not the owner at the time when the building work was done.

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

- If the building works are not deemed dangerous or unsanitary and you did not own the property when the unauthorised building work was undertaken, you may decide to accept the associated risks of ownership by taking no action. However, this decision could have implications, particularly regarding insurance coverage or compliance with the terms of sale and purchase agreements. It is strongly recommended that you seek independent expert advice before proceeding with this option. If the Council becomes aware of unauthorised building works then that information will be included on the LIM for the property.
- If you were the owner of the property when the unauthorised building work was done then the Council can issue a notice to fix under S.164 of the Building Act 2004 which can, among other things, require you to apply for a CoA.

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 1991. 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 you wish to submit a third-party report to Council for unpermitted building work, it must be submitted online here (<http://aucklandcouncil.govt.nz/building-and-consents/building-consents/building-certificates-compliance/Pages/place-third-party-safe-sanitary-report-property-file.aspx>)

If the application is submitted by an agent on behalf of an owner, written approval from the owners must be provided to Council.

If you are unable to apply digitally, visit one of our [libraries with council services](#) for assistance in making your online application.

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, '**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.