

## CONSENTS

The Building Act 2004 ensures that buildings are constructed to protect the health and safety of the people who use them and requires anyone doing building work or permitting others to do building work to obtain a consent from the local authority. Such consents depend on builders meeting or exceeding the minimum standards required by the New Zealand building code.

Not only must a building consent be obtained, in many instances a Resource Management Consent must also be obtained.

It is very important to understand that there are very serious consequences from building without consent, which can include being required to remove the structure and face a substantial fine.

There are two regimes for work done without consent:

For work done prior to 1st January 1993 (when building consents first became mandatory) without consent it is possible to lodge a "safe and sanitary report" by a registered building surveyor with the council but it must be stressed that this is not consent and it does not resolve the problem.

It is neither a retrospective Resource Management Consent nor a building consent. It merely means that the offending work has been inspected after the event and so far as the building surveyor is able to see, complies with building standards.

Property purchasers may be asked by the vendor or the agent to accept such a report on the file, but we have strong reservations, as it is no guarantee, the "title" to the property remains defective and this may affect future sales.

The council disclaims any liability in receiving such report. Usually the council receives the report, but this does not mean that the council approves or accepts the report; it merely records them on the property file. In our view, they do not cure the problem. As at July 2007 Auckland City charges a lodgement fee of \$241. The council was reported in NZ Herald 12.7.2007: "if accepted by the territorial authority this report would be placed on the property file and no further action taken."

Our advice in such matters is conservative, either to avoid the transaction, or if you must buy, insist on a substantial price reduction to recognise the defect and understand that as a purchaser you will be faced with the same problem when you come to sell. If the defect relates to a carport deck or garage then perhaps it is less significant, but it is very significant if it relates to the house.

The 2004 Building Act has introduced a specific regime to deal with work done without consents (which applies to work done since 1st January 1993). Under the new act an application can be made to the local authority for a Certificate of Acceptance. This involves lodging plans and specifications in much the same way as if a new consent was being applied for. However the council will limit its liability to the extent that it is able to inspect the work.

If a building was erected without building consent, or has no code of compliance certificate, then a certificate of acceptance will give prospective purchasers an assurance that the territorial authority is aware of the problem and has satisfied itself that the building complies with the building code to at least the extent identified in the certificate. Perhaps more importantly the certificate of acceptance indicates that the territorial authority's inspections did not indicate that the building was dangerous or insanitary.

Auckland City advised (reported NZ Herald 12.7.2007): "For work carried out after July 1992, the Building Act introduced the Certificate of Acceptance as a means to legalise building work carried out without building consent approval. The property owner should submit to the territorial authority an application for a certificate with the plans detailing the extent of the work and showing compliance with the building code requirements. A deposit of \$949 should accompany this application. Should the application for a certificate be declined because of severe non-compliance, there would be no refund of the deposit. To date, fewer than 5% of all applications have been declined, resulting in removal."

Purchasers are warned that buying any property that has a safe and sanitary report lodged or even a certificate of acceptance, are still buying a less than perfect title, which they in turn will have to address when they come to sell.

Sadly, we live in times of many defective buildings and it will become more and more important, especially in a flat or falling buyers' market that the title is clean and has neither the need for either the safe and sanitary report or certificate of acceptance.

## Disclaimer

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