

## **CONSTRUCTION RISK CHECKLIST > Pre-construction > Consent Required or Not**

### **One of the Most Expensive Assumptions a Builder Can Make**

*"I thought the homeowner had checked that."*

*"I assumed it didn't need a consent."*

These are common statements when a project runs into trouble with the council.

Many building disputes, delays and liability issues start with a simple assumption: someone else has confirmed whether a building consent is required.

Under section 40 of the New Zealand Building Act, building work generally cannot be carried out without a building consent unless a specific exemption applies. A person who breaches this requirement can face fines of up to \$200,000, plus additional daily fines for continuing offences.

Before any residential project begins, it is critical to verify whether the proposed work requires a consent and, if not, what exemption is being relied upon.

### **Building Consent Verification Checklist**

Before starting work, make sure you can answer "Yes" to the following:

- 1. Has someone specifically assessed whether a building consent is required?**
- 2. Have any Schedule 1 exemptions been verified rather than assumed?**
- 3. Has the client been advised in writing regarding consent requirements?**
- 4. If relying on an exemption, has the basis for the exemption been documented?**
- 5. Have any structural, plumbing, drainage or weathertightness implications been considered?**
- 6. Has the council or a suitably qualified professional been consulted if there is uncertainty?**
- 7. Does the contract clearly identify who is responsible for obtaining consents?**

**8. Has a copy of the consent been obtained if one is required?**

**9. Have all consent conditions been reviewed before work starts?**

One of the biggest misconceptions in residential construction is that responsibility automatically sits with the homeowner. While the owner has obligations under the Building Act, builders can also face significant consequences for carrying out work that should have been consented.

This is particularly important because many builders are now encountering projects where exemptions may apply.

Examples of common Schedule 1 exemptions include:

- Like-for-like repairs and maintenance.
- Replacement of comparable building elements in certain circumstances.
- Some minor detached buildings.
- Certain repair work following damage.
- The new granny flat exemption for qualifying standalone dwellings up to 70m<sup>2</sup> where strict conditions are met. These include requirements around design, Building Code compliance, council notification and Licensed Building Practitioner involvement.

However, one of the biggest risks is assuming an exemption applies when it does not.

For example, a builder may be carrying out a renovation where:

- A load-bearing wall is being removed.
- New structural beams are being installed.
- Plumbing is being relocated.
- A bathroom is being added.
- An extension alters the building envelope.
- New drainage work is required.

These types of works may require consent even if much of the surrounding project appears to be straightforward renovation work.

Likewise, a project that starts as a simple repair can become consentable if the work extends into substantial replacement of structural components or affects Building Code compliance requirements.

The safest approach is to make consent verification part of every project's pre-start process. Rather than asking whether a consent is *probably* required, ask what evidence exists to support that conclusion.

Where uncertainty exists, seek advice. The cost of obtaining clarification from the council, designer, architect or engineer is usually insignificant compared to the cost of dealing with unconsented work after construction has commenced.

Most importantly, document the discussion. If an exemption is being relied upon, record why. If responsibility for obtaining consents sits with the homeowner, ensure this is clearly recorded in writing.

The most successful builders understand that compliance is part of risk management. Before the first excavation is dug or the first piece of timber is installed, make sure someone has answered one simple question:

*"Does this work require a building consent?"*

If the answer is not absolutely clear, it is worth finding out before the project starts.