



Unauthorised Works / Certificate of Acceptance / Safe and Sanitary Report



What are the options for Unauthorised Works?

A Building Consent cannot be obtained after the fact, i.e. after the work has been done, and a Code Compliance Certificate cannot be issued without a Building Consent. Part of the requirements/process involves Council inspections and they can't be done once the work has been completed.

In circumstances where unauthorised work has been undertaken there are a couple of alternatives - a Certificate of Acceptance (COA) and/or a Safe and Sanitary Report (S&S). Duplicated below in *italics* with additional comments added is information in relation to these.

Below is an extract from the Building Act

Certificates of acceptance

The certificates of acceptance provisions in the Building Act 2004 came into force on 31 March 2005.

A certificate of acceptance is a new tool in the Building Act 2004. It can be used in situations where work has been done without a building consent, or where a building consent authority cannot issue a code compliance certificate.

A certificate of acceptance has some similarities to a code compliance certificate in that it will provide some verification for a building owner/future building owner that part or all of certain building work carried out complies with the Building Code.

*Certificates of acceptance **are based on the Code at the time the application** is made rather than what was in place at the time a building consent was granted, should have been applied for, or when the work was actually carried out.*

Note: A Certificate of Acceptance cannot be issued if:

- Council cannot be satisfied that the building work complies with the Building Code;
- The building works were carried out before 1 July 1992;
- A building consent has been granted by the Council for the building work in question;

Below is information from the New Zealand Institute of Building Surveyors website (www.buildingsurveyors.co.nz)

What is a "Safe & Sanitary" and how does this compare to a Certificate of Acceptance?

The term "Safe and Sanitary" came into existence after the first Building Act was introduced in 1992. There were specific sections in that act which made it clear that:

- 1. All building work required a building consent (there were exceptions, but they were very seldom relevant to domestic housing)*
- 2. A building consent cannot be issued retrospectively.*
- 3. Territorial Authorities (Councils) could declare buildings unsafe or insanitary, regardless of when they were built. This therefore applied to buildings or work built prior to July 1992 with or without what was then known as a building permit.*

Many members of the public who owned buildings which had work done (including the construction of the complete building) without a building permit or building consent believed that they could get such "illegal" or "unauthorised" works legitimized by obtaining a "Safe and Sanitary Report". This is simply not true.

However, councils do have discretion whether to allow such unpermitted or unconsented building work to remain in place. Their main consideration was and still is, Is the work dangerous or insanitary?

In essence, "dangerous" means likely in the ordinary course of events to cause injury or death to any persons or damage to other property; or would give rise to almost certain loss of life in a fire (again, in essence).

"Insanitary" means situated or constructed or in such disrepair as to be offensive or likely to be injurious to health; subject to undue dampness or without adequate potable water or sanitary facilities (for the intended use).

Councils don't like illegal work and will not preclude the possibility of taking steps at some stage, but they will accept a report from a suitably experienced person, (usually an NZIBS member) and issue in reply a "letter of comfort", which has come to be called a "Safe and Sanitary Certificate", despite the fact that it is not a "certificate" at all (it is usually just a letter), is limited to the time of issue, is non-statutory (doesn't appear in any law) and is not a consent or guarantee.

What this means is that if the illegal work is not dangerous or insanitary, the council has better things to do than make you tear it down and rebuild, but they do retain the right to take further action at some stage in the future should they decide it has become necessary because the work has become dangerous or insanitary.

What about additions or alterations?

Auckland Council have advised that an unconsented dwelling can be altered, extended etc. just as if it was consented and as with any and all such works a building consent must be obtained first. Once completed a Code of Compliance (CCC) would be issued for these works only. i.e. anything not touched/effected by the work would remain unconsented BUT if some areas of the existing dwelling were changed then these would be covered under the CCC.

Disclaimer: *This information is not intended to be a substitute for any interested party carrying out their own investigations as to whether the situation should be of concern to them. It is STRONGLY recommended that prospective purchasers carry out their own investigations to confirm the above information and also determine as to whether there will be any issues with Auckland Council, their bank and insurance companies BEFORE purchasing the property.*