

INSPECTING UNCONSENTED WORK

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Recent media articles about properties constructed without building consent, and high-profile failures such as Tauranga's Bella Vista subdivision, have increased public scrutiny of the engineer's role in the building consent process. So what are engineers' obligations and how should they supervise building work?

Building consent authorities (BCAs) are telling us they have serious concerns about engineers supervising construction or signing PS4s for properties that don't have building consent.

Under the Building Act 2004, all building work must have building consent unless it meets certain exceptions set out in the Act. Due to time pressures, contractors and property owners sometimes want to proceed with building work before consent has been granted. This is illegal and can result in a fine of up to \$200,000.

When you sign a PS4, you are saying that you believe on reasonable grounds that building work complies with building consent and the building code. If you sign a PS4 for building work that does not have building consent, you could be held liable for breaching the Building Act or face other commercial liability. You could also face other penalties or professional discipline under the CPEng Act and Engineering New Zealand's Disciplinary Regulations.

A client may ask you to supervise construction or issue a PS4 for work that does not have building consent. This may be uncomfortable, and your client may place significant pressure on you to proceed. They may even tell you your contract with them obliges you to sign off work when they ask. We have heard from engineers who sometimes feel the most pragmatic thing to do is sign the PS4 and leave it up to their client to deal with any building consent issues. We understand the desire to keep your client happy, and to keep a project moving forward, especially if there are delays on the part of a BCA. However, it is not in your client's best interest for you to help them carry out illegal building work. If you do, they could face prosecution and a significant fine.

You could also be placing yourself at significant legal and professional risk if you do not take reasonable steps to check that building consent has been granted before you inspect or certify work. BCAs rely on engineers to act as an important check in the building consent process. While this has always been the case, BCAs are increasingly aware of their responsibility to ensure compliance with the Act, and the consequences for not doing so.

BCAs rely on engineers to ensure that where a project does not have building consent, it will not be constructed. You are a critical check to ensure the process runs smoothly and applicable laws are followed.

BCAs can also raise complaints with Engineering New Zealand when engineers supervise work that does not have building consent. Under the Engineering New Zealand Code of Ethical Conduct, engineers must act with honesty and integrity. If an engineer supervises work or signs a PS4 for work that does not have building consent, they could be found to have acted with a lack of honesty or integrity. Engineers are also obligated to comply with applicable New Zealand laws, including the Building Act. A complaint can be stressful, time-consuming and potentially lead to a disciplinary finding against you.

In some cases, you may have assumed building consent existed, without explicitly asking your client or sighting the consent. Before you sign a PS4, you must believe on reasonable grounds that the work complies with the building consent. This requires you to take positive steps – it is more than assuming there is building consent for the work. Ask and confirm there is building consent before you sign a PS4. This protects you against any suggestion you knowingly signed a PS4 or supervised work that had no building consent.

In summary, if your client asks you to supervise building work that does not have building consent, warn them that continuing would risk breaching the Building Act, and that you cannot supervise the work or sign a PS4 until consent has been granted. If you are worried about your contractual obligations or the legal risks of supervising unconsented work, we recommend talking to a lawyer about your concerns.

This article was originally published in the June 2019 edition of EG magazine. Stacey Campbell LLB, BA, Grad Dip (Journalism) is the Legal Manager at Engineering New Zealand.