

LBP found negligent for not checking building consent exemption

Posted: 10 February 2020

An LBP was fined \$6,000 after supervising building work without ensuring the necessary building consents were in place.



Between 2016 and 2018, the licensed building practitioner (LBP) in question supervised construction of 28 relocatable dwellings in Papamoa, 24 of which were completed and occupied. He had 10 years of experience in the industry, having previously carried out around 800 new residential builds.

During 2018, Tauranga City Council issued a stop work notice on the grounds that the construction of the 28 dwellings required building consents. The council later lodged a complaint against the LBP for carrying out unconsented work, and an investigation was opened by the Building Practitioners Board (the Board).

After learning of the complaint against him, the LBP provided a written response stating that he had been relying on advice from the property owner that building consents were not required for the project. He noted that, once he was made aware that this advice was incorrect, he had taken appropriate steps to obtain building consents.

Board decision

The Building Act states there may be grounds for discipline by the Board if an LBP has carried out or supervised building work or building inspection work in a negligent or incompetent manner. In this case, the Board had to decide whether the LBP had been negligent by carrying out building work that required building consents without those consents being in place.

The Building Act sets out that, unless an exception can be established, all building work requires a building consent. The Board noted that, after being informed by the client that building consent was not required, the LBP had taken no steps of his own to check that this was correct.

Because the LBP had continued with construction without checking whether building consents were required, the Board decided that he had committed a grave error in judgement, and that his actions constituted negligence. Due to the serious nature of the LBP's actions, the Board considered that disciplinary action was warranted.

What we can learn from this decision

It is the responsibility of LBPs to ensure that any building work they carry out or supervise has the necessary building consent in place before it is commenced. If LBPs receive advice from clients that building consent is not needed, it is still the responsibility of the LBP to check that this information is correct by making sure that it is covered under either Schedule 1 of the Building Act (which has limited exemptions) or by an exemption issued by the council. If there is any doubt, they should make enquiries with the building consent authority to ensure that full disclosure of the intended building work is made.

This decision and other past decisions can be read in full on the [LBP website \(https://www.lbp.govt.nz/\)](https://www.lbp.govt.nz/).

