SPARCON

REGULATORY CONSTRUCTION CONSULTANCY SERVICES

Byrin Malone, Director Skill Built Group Ltd

Sent by email to:

byrin@sbgroup.co.nz

Dear Byrin,

Please find below my advice as an expert on council practices and compliance with regulatory requirements in relation to 42 Donovan Road, Paraparaumu Beach.

Your instruction from your email, for clarity, is duplicated below. I have broken down my report into the relevant legislative requirements under the Building Act 2004 and where I have referred to information, publications or public information I have provided a link or provided the name of the document.

1. Your instructions:

1.1 Provide a letter addressing the scope of work carried out to refurbish the bathroom and to consider the work against Schedule 1 of the Building Act 2004.

2 Documents Provided:

2.1 I have been provided with the following documentation:

a. Sales listing and photos
b. Photos of the construction of the bathroom
c. Email from Kapiti Coast District Council.

3 Brief description and background:

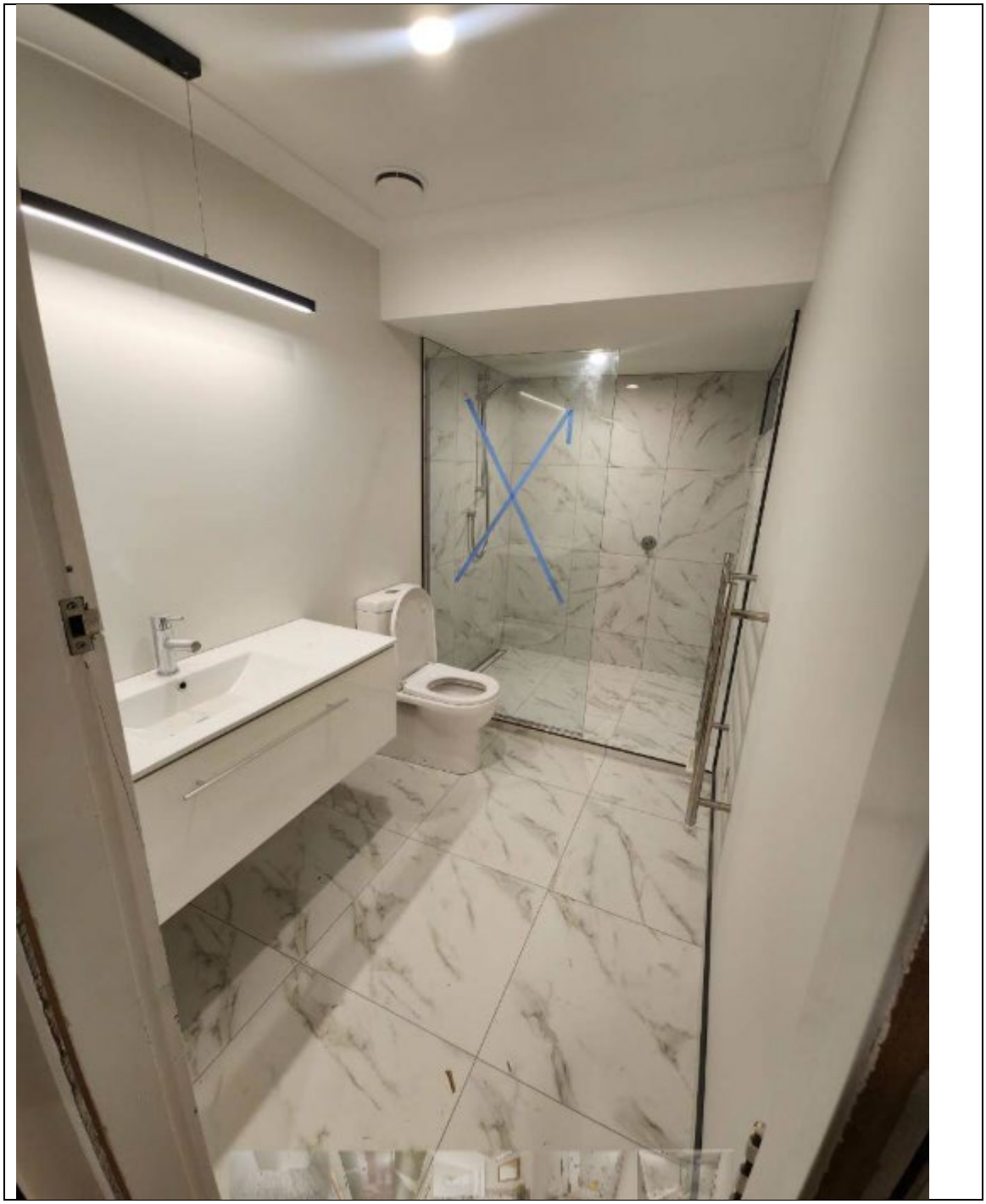
The building consists of a single-storey dwelling with three bedrooms and one bathroom. The original dwelling was constructed circa 1960s and obtained a building permit also in the 1960s.

The building is constructed from light timber frame construction with weatherboard cladding and lightweight metal roofing (corrugated iron). The foundation system consists of timber piles, bearers and floor joists and native T&G flooring. The buildings use is a residential dwelling and a single household unit (SH).

The building has been extensively renovated inside with fresh painting, new kitchen and new bathroom fixtures. The bathroom, when bought by my client, originally consisted of a toilet, vanity and bath (refer to photo below taken from previous real estate listing)



The new bathroom includes a vanity toilet and a walk-in tiled shower (refer to photo below supplied by my client).



As you can see the vanity has been moved to the opposite wall and the bath has been replaced with a walk-in tiled shower.

I have been informed by my client that initially their real estate agent asked if the bathroom renovation had a building consent, it did not. My client then went to Kapiti Coast District Council, and they advised that a building consent was required and that my client would have to apply for a certificate of acceptance. I have been provided an email that says my client should not have done unauthorised building work and that they should have applied for a building consent.

4 Assessment

In completing my assessment I have also relied upon:

- The Building Act 2004.
- The guidance document 'Building work that does not require a building consent' dated August 2020 published by the Ministry of Business, Innovation and Employment acting in its role as Regulator (MBIE guidance document).
- Relevant determinations provided by MBIE
- Photos provided by my client
- Real estate photos

Relevant legislation:

The Building Act 2004 (the Act) provides for the regulation of building work. The scope of work to undertake the alteration of the existing bathroom fits within the definition of building work as provided in Section 7 of the Act, in that the work is for, or in connection with, the construction, alteration, demolition, or removal of a building.

Building Code:

Section 17 of the Act requires all building work to comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

Building consent:

Section 40 (1) of the Act provides that a person must not carry out any building work except in accordance with a building consent. Section 41 sets out when a building consent is not required. Section 42A (1)(a) of the Act provides that despite the provisions of Section 40, subject to the conditions set out in subsection (2) and whether or not a building consent would otherwise have been required, a building consent is not required for building work described in Part 1 Schedule 1 of the Act (Schedule 1) or Part 2 of Schedule 1 when carried out by an authorised person.

Therefore, for the purposes of determining whether the proposed building work requires a building consent, the test is to determine whether that building work is described in Schedule 1.

If it is determined that the proposed building work is described in Schedule 1, then section 42A(2) applies. This requires that after the proposed building work is completed, the building will continue to comply with the building code at least to the same extent as it did previously comply.

The renovation:

As I understand from the documents supplied to me by my client, the bathroom was renovated by:

1. Removing all sanitary fixtures (bath, vanity and toilet).
2. Removing all wall linings in the bathroom
3. Replacing the bath and cradle with a walk-in tiled shower (with a tile shower tray)
4. Removing and replacing damaged flooring with H3.2 ply.
5. Installing new vanity and toilet
6. Install new tile underlay to floor.
7. Waterproof shower walls and bathroom floor and install new floor and wall tiles.

Analysis:

Below I will detail what is clearly exempt building work that have their own standalone exemptions under schedule 1.

1. Replacing flooring, wall and ceiling linings . Schedule 1 exemption 12 Internal linings or finishes of any wall, ceiling, or floor of an existing dwelling. This allows the replacement of any internal flooring, wall and ceiling linings and the new flooring, wall or ceiling linings can be different from the original materials used.
2. Moving or replacing sanitary fixtures within the same space. Schedule 1 exemption 35 Alteration to existing sanitary plumbing. This allows the replacement and moving of sanitary fixtures within a building as long as the number of sanitary fixtures are not increased and specified systems are not are not affected.

I have been informed that the main issue is the installation of the walk-in tiled shower and associated linings and membrane.

Schedule 1 exemption 12, as discussed above, allows internal linings to be replaced. It does not require that those replaced internal linings be replaced with similar materials (that is Schedule 1 exemption 1). This exemption allows new linings, waterproofing systems and the final surfacing (in this case tiles) to be installed without out the need for a building consent with the only requirement that the work is within a dwelling.

Determination 2024/054 considered whether the installation of wet area membranes for two tiled showers was building work that required a building consent. Its conclusion was that the substrate, wet area membrane and the finished tiles was building work that can be exempt from the requirement of a building consent under Schedule 1 exemption 12. I have duplication the main excerpts from the determination below and highlighted the conclusion.

4.14. The parties dispute whether the installation of the wet area membrane, as part of the tiled walls to the showers, falls within the scope of clause 12 of Schedule 1.

4.15. Clause 12 of Schedule 1 states:

> **12 Internal linings and finishes in existing dwelling**
>
> Building work in connection with any internal linings or finishes of any wall, ceiling, or floor of an existing dwelling.

4.16. For the two tiled showers the internal linings include the backing substrate attached to the timber framing, the wet area membrane applied to the substrate, the tiles adhered to the wet area membrane, and associated fixings, adhesives, and grouting.

4.17. As the building is an existing dwelling, and the scope of work involves the removal of the existing linings and installation of new ones, the work to install the wet area membrane falls within the scope of clause 12 of schedule 1.

4.18. I note that the current owners referred to the Ministry's guidance that states building consent is required to install wet area membranes as it is "critical building work". This guidance has been issued under section 175 of the Act, which notes that any information published under this section is guidance only.[4] The guidance does not supersede the Act or its regulations. Clause 12 of Schedule 1 does not exclude wet area membranes as internal linings covered under that exemption.

4.19. I conclude that building consent was not required to carry out the installation of the wet area membrane as part of installing the two tiled showers, and therefore there was not a contravention of section 40.

Relevant Schedule 1 exemption sections are appended to this letter.

Conclusion:

As I have detailed above, the work to renovate this dwelling, specifically the bathroom renovation and installation of the walk-in shower, is exempt work under Schedule 1 of the Building Act 2004.

Kind regards,



Director SPARCON NZ Ltd.

Schedule 1 Exemptions

1 General repair, maintenance, and replacement

(1) The repair and maintenance of a building product or an assembly incorporated in or associated with a building, provided that a comparable building product or assembly is used.

(2) Replacement of a building product or an assembly incorporated in or associated with a building, provided that—

(a) a comparable building product or assembly is used; and

(b) the replacement is in the same position.

(3) However, subclauses (1) and (2) do not include the following building work:

(a) complete or substantial replacement of a specified system; or

(b) complete or substantial replacement of a building product or an assembly contributing to the building's structural behaviour or fire-safety properties; or

(c) repair or replacement (other than maintenance) of a building product or an assembly incorporated in or associated with a building that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or

(d) sanitary plumbing or drainlaying under the Plumbers, Gasfitters, and Drainlayers Act 2006.

12 Internal linings and finishes in existing dwelling

Building work in connection with any internal linings or finishes of any wall, ceiling, or floor of an existing dwelling.

35 Alteration to existing sanitary plumbing (excluding water heaters)

(1) Alteration to existing sanitary plumbing in a building, provided that—

(a) the total number of sanitary fixtures in the building is not increased by the alteration; and

(b) the alteration does not modify or affect any specified system.

(2) Subclause (1) does not include an alteration to a water heater.

Short BIO of the Author.

Peter has extensive construction and regulatory industry experience, initially a carpenter in the New Zealand Army (Royal New Zealand Engineers) and has worked in local and central government.

Peter has considerable central government experience having undertaken policy and regulatory reviews for the Building Industry Authority, Department of Building and Housing, and the Ministry of Business Innovation and Employment (MBIE). He was also the General Manager of Consenting and Compliance at Christchurch City Council in response to the Canterbury earthquakes, then returned to Wellington as a Director for MBIE. He also consulted to the Department of the Prime Minister and Cabinet in response to the Kaikoura earthquake.

An avid champion of education, Peter spent almost 6 years developing and lecturing on NZQA approved building surveying qualifications including at certificate, diploma and degree level. Peter also provides expert witness services to law firms around New Zealand and is currently the Vice President of the Building Officials Institute of New Zealand (BOINZ).