
Real Estate

Continuing Professional Development

Council compliance: Essential documentation

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Estimated time needed: 1 hour and 30 minutes

Version 2.0 Adapted for use on rea.govt.nz

05 August 2019

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Learning Outcomes

Knowledge and understanding of council documentation as applied to real estate agency work, including:

- important considerations in relation to Land Information Memorandum (LIM) reports
- what is contained within a property file
- compliance with the Resource Management Act 1991 and the Building Act 2004
- district, regional and unitary plans
- zoning and associated activities
- resource consents
- building consent or building permit
- code compliance certificate, or certificate of acceptance
- safe and sanitary report
- notice to fix
- Section 95A letter

and understanding of other council-related issues.

Land Information Memorandum (LIM) report

A Land Information Memorandum (LIM) report is an up to date summary of information that a council holds on a property in their jurisdiction as of the day it is issued.

Where a licensee is in possession of a LIM report for a property they have listed or are selling, they are required to read and understand the basics of the report.

Information provided in a LIM report can include the following:

- Valuation data
- Yearly rates payable for the property
- If there are any unpaid rates
- Any outstanding charges for water
- Information about building permits, consents and compliance documentation for the property
- Any information regarding whether it is a protected or historic building, or site, and if there are any protected trees, structures, or wahi tapu
- Any relevant planning issues or planning zones that impact the property
- Any resource consents issued for the property
- Any resource consents issued in the immediate neighbourhood
- Information on subdivisions and developments affecting the property and the immediate area
- Drainage information relating to both private and public sewer or storm water on the property
- Special land features including potential erosion, avulsion, falling debris, slippage and possible hazardous substances
- Consents, certificates, notices, orders or requisitions affecting the land or buildings
- District Plan classifications that relate to the land or buildings
- Methamphetamine contamination, where the council has been notified (varies between councils)

Further details regarding what a council is required to provide in a LIM can be found in the Local Government Official Information and Meetings Act 1987.



Note

Licenses are not legally required to obtain a copy of a LIM report. However, it is strongly recommended that they do so. In some instances, a vendor may offer the licensee a copy. The licensee should verify that this copy is up to date.

If the licensee does receive a copy (or obtain a copy on his or her own initiative) then **a licensee will be expected to read the report** and not just act as a conduit in passing the report along to third parties.

A licensee who does not obtain and read a property's LIM report puts themselves at risk of not knowing all relevant information about the property and inadvertently making misrepresentations about it.

Reference: <http://www.propertytoolbox.co.nz/council-lim-report/#what%20is>

Important considerations for licensees in relation to information provided in a LIM report

Where a licensee is in possession of a LIM report the following points apply:

- It is necessary for licensees to highlight and properly communicate any issues contained within a LIM report that may be material to prospective purchasers. Agencies must also have appropriate processes and procedures in place to make sure that any material issues arising from LIM reports are communicated to licensees within the agency as well as to prospective purchasers
- Councils do not carry out a visual inspection of the land or buildings to verify the accuracy of information included in a LIM report or determine the current condition of the property. For example, the survey measurements of boundaries may not be accurately reported in council records
- Councils are not legally obliged to hold information relating to building work prior to the Building Act 1991. It is possible that council records prior to 1991 are incomplete, and councils do not accept responsibility for the accuracy or completeness of those records
- Ask your client or vendor what, if any, alterations have been done on the property and if all associated permits or consents were obtained. Cite any relevant documentation provided and check these against the LIM, if you have a copy. If you are aware of any unpermitted or non-consented alterations, you will have to meet your disclosure obligations in respect of these



Note

Where a matter that is identified in the LIM is uncertain, complex, or beyond the expertise of the licensee, the assistance of the supervising agent or branch manager is to be sought.

If the supervisor confirms that the matter is uncertain, complex, or beyond the agency's expertise, prospective purchasers must be advised, in writing, to seek independent technical or legal advice.

Information not included in a LIM report

- While the council may hold additional information about a property, the LIM report will only contain what is legally required to be included
- LIM reports will not show illegal or unauthorised work on the property if it is not known to the council. For example, the non-consented removal of a load-bearing wall
- Some elements of the property may be excluded from LIM reports. For example, installations of septic tanks, gas bottles, etc. If these types of installations are present at the property you may need to seek expert advice on these items
- A LIM does not contain information about suitability for cross lease or redevelopment, or detailed provisions on what may be built on the land. It will not usually advise whether any consents have been granted for neighbouring properties (except for Christchurch City Council which lists every consent granted for properties within a certain radius of the subject property)
- A LIM will also not advise what services are available to a property, any money owing on a property; for example, schemes such as insulation programmes which may attach repayment obligations to regional authority rates, or whether the property is subject to central government right of acquisition

Reference: <http://www.propertytoolbox.co.nz/council-lim-report/#what%20is>

Read the following scenario and consider if the licensee(s) has breached the Rules (refer Appendix 1).

Scenario 1

Two licensed salespersons were involved in the marketing of a residential property. The Agency they were engaged by had obtained a LIM from council (Note: the LIM for the property was addressed to the Agency; not the vendor).

The marketing and advertising material stated: "potential exists to use your imagination to use the huge space downstairs to your advantage".

A prospective purchaser viewed the property and was told by the licensees that there was potential for two or three bedrooms in the basement area.

The licensees provided a copy of the LIM to the prospective purchaser but failed to highlight anything of significance within the report.

At no time did the licensees advise the prospective purchaser to seek independent legal and other advice.

Prior to entering into a sale and purchase agreement, the prospective purchaser was informed that he was in a 'multi-offer' situation. He was requested to sign a form provided by the licensees which referred to the "potential for a multi-offer". Note: this form was inconsistent with the agency multi-offer form and was also inconsistent with the requirement for an offer to be in writing before a multi-offer situation exists.

The prospective purchaser was unaware of the inconsistencies and duly signed the multi-offer form and proceeded to make a written offer in the belief that he was a multi-offer situation.

After the initial offer was prepared the prospective purchaser had further discussions with the licensees and was advised to increase his offer by \$15,000 prior to it being presented to the vendor. The offer was increased accordingly, presented to the vendor and accepted.

The sale and purchase agreement later became unconditional and was settled.

After moving into the property, the purchaser experienced flooding to the basement area and subsequently found that the property was located in a flood zone which was identified on the LIM.

The purchaser complained to the Real Estate Authority (REA) on the grounds that the licensees had not disclosed the flood zone entry noted on the LIM.

The licensees were adamant that the prospective purchaser had been verbally informed of the flood zone issues. However, no written record [file notes or diary notes] of such a discussion was provided by the licensees to substantiate this.

Complaint number: C20306

<http://decisions.dotnous.com/reaa/v2/abstract.aspx?case=12636>

Additional facts:

The licensees told the prospective purchaser that it was a multi-offer situation when it was not. The licensees also told him there was a back-up offer when there was not.

The prospective purchaser was not given the opportunity to review or reconsider his offer in light of these facts.

Note the following comment from the Committee:

[para 3.7] “The Licensee has not provided any file notes or diary notes recording advice they gave to the Complainant at any relevant time. They have not provided any documentary evidence of following up verbal advice they say they gave to the Complainant, in writing...”

[para 3.26] “By failing to advise the Complainant of the risk of flooding disclosed in the LIM report (and to red flag it for him) prior to signing the ASP, the licensees have not dealt fairly with him, have failed to provide information which in fairness should be provided to a customer, and they have failed to exercise proper skill, care and competence.”



Key Point

A key message from this case is that the CAC found that it is not enough for a licensee to pass on a LIM report if they have a copy. A licensee is expected to have read and understood a LIM report, and highlight any material information that may be relevant to a prospective purchaser.

Property file

Most authorities will now provide a property file (sometimes known as a ‘property bag’). These differ from a LIM report as they will hold additional, detailed information that is not included in a LIM report.

This additional information may include: any property-related correspondence from owners or neighbours sent to the authority, applications in process for building and resource consent documentation, plans and specifications, and other property-related information that has not appeared, or may not appear on the LIM report.

While it is not a licensee’s duty to routinely obtain a property file, if a property raises suspicions to the licensee that the vendor is not able to answer, the licensee may (depending on the facts of the case) be required to obtain a copy of the property file and read and understand it. If in doubt, refer the decision to the supervising agent or branch manager.

Applications for property files are made to the relevant local authority. How property file information is presented and packaged varies depending on the authority and location of the property. Costs also vary.

As with all information that a licensee passes on to parties involved in the transaction, it is vital that the licensee fully understands any information being passed on, and that any issues are properly disclosed.

Compliance with the Resource Management Act 1991 and the Building Act 2004

District, regional and unitary plans

All building projects must comply with the Resource Management Act 1991 (RMA) and the Building Act 2004.

Regional authorities prepare regional plans under the RMA that focus on the management of environmental issues - air, water, land and soil.

City and district authorities prepare city and district plans that focus on managing aspects of subdivision and land use that can affect the environment. These include, for example, height, appearance and location of buildings and signs, noise, glare and odour associated with the activities that take place in and around the area.

Every district or regional plan is different and reflects the desires and aspirations of the local community.

Unitary authorities prepare unitary plans. These cover both district and regional planning.

Building Act 2004 and the Building Code

The Building Act (implemented by local district and city councils, and unitary authorities) covers the construction, alteration, demolition and maintenance of new and existing buildings and other structures. It sets standards and procedures to make sure buildings are safe, healthy, and meet building standards. The Building Act outlines how work can be done, who can do it, and consent and inspection requirements.

Under the Building Act, the Building Code provides a common set of minimum rules for the whole of New Zealand and defines the minimum standards buildings and other structures must meet.

Note: Information on building consents, code compliance certificates, certificates of acceptance, building permits and safe and sanitary reports, and what to do when compliance cannot be verified follows later in this topic.

Zoning

District, city and unitary plans divide their territory into specific zones, these being residential, rural, commercial and industrial. Common standards or requirements apply to each zoning category. Each zone has its own aims and objectives and rules to achieve these. The rules set the limits on the development of any one site, and on the types of development, use or activity allowed in a particular zone.

Within each type of zone there may be further sub-types. For example, residential zones are frequently divided into subsets according to the density of development they allow. The use or development of a specific property is governed by its zone's rules.

Properties may also be affected by controls in regional plans, such as water permits or pollution restrictions. The district, city or unitary plan set the range of activities that can be undertaken at a given property, and details when resource consents may be necessary. Resource consents are needed when an activity is not automatically allowed in a zone.

In some situations, there is a need to consult the regional plan or regional coastal plan, both of which are administered by the regional council or unitary authority. This is especially likely for properties within the coastal environment, or activities involving air quality, water management, pollution control, and the use and disposal of hazardous substances. Regional plans use the same five categories of activity as district, city, and unitary plans.

The five main categories of activity are:

- Permitted
- Controlled
- Discretionary
- Non-complying
- Prohibited

There is also a further category, 'protected customary right', which is applied to activities or practices established in accordance with the requirements of the Marine and Coastal Area (Takutai Moana) Act 2011, but these are confined largely to coastal margins.

Permitted activity

A permitted activity is considered appropriate within a particular zone. Automatic permission is granted for that activity because the local authority is satisfied that such a development would cause no adverse effects in the zone. For example, in a residential zone the construction of a single household unit is one for which permission would automatically be granted. If the activity requires new buildings or alterations to existing buildings, these must be constructed within the requirements of the Building Act 2004.

Controlled activity

Some activities are considered suitable in the zone if certain conditions are met. For example, a local authority may consider small blocks of apartments as suitable in a residential zone, but require controls on certain aspects, such as the number of storeys permitted or their design and external appearance.

Discretionary activity

Councils reserve this category for activities that may be suitable, but not on every site within that zone. For example, while it may be appropriate to have a childcare centre located on some sites in a residential area, many sites would not be suitable, particularly where there could be traffic safety issues.

There is a further subset of discretionary activity, which is 'limited' or 'restricted' discretionary. This is used where an activity is likely to have significant adverse environmental effects. In such cases district, city, or unitary plans specify the criteria that are used to assess the proposed activity.

Applications for discretionary activities must be publicly notified, and any person may make a submission to the council, either for or against the application. The council considers all submissions and makes a decision. This decision may be appealed to the Environment Court.

Non-complying activity

An activity is non-complying if it would generally have an adverse environmental impact. For example, a panel-beating shop in an industrial zone that borders a residential zone. As with discretionary activities, the application must be notified, and the public is entitled to make submissions.

In some cases, if the adverse impact can be minimised, approval may be granted. For example, a proposal to build a large supermarket on the outskirts of a residential area. The supermarket developer might require high-level lighting of the building and car park during the evenings. Both may be undesirable to nearby residents. The council may impose measures to minimise the impact, such as requiring a particular type of light standard or using high fencing as perimeter screening to reduce light spill on to neighbouring properties.

Prohibited activity

Activities in this category are those that will not be allowed in a particular zone. For example, in one coastal residential zone, dwellings and accessory buildings are prohibited within 20 metres of the closest area of the cliff face.

The following table summarises decision-making on various categories of activity. It is important to note that it is the local authority’s decision to select which category any proposed development fits into.

Type of activity	Requires resource consent	Must be granted consent	Can be granted consent	Can restrict matters to be considered	Must have effects that are minor or consistent with plan
Permitted	No	N/A	N/A	N/A	N/A
Controlled	Yes	Yes	Yes	Yes	No
Restricted discretionary	Yes	No	Yes	Yes	No
Discretionary	Yes	No	Yes	No	No
Non-complying	Yes	No	Yes	No	Yes
Prohibited	N/A	N/A	No	N/A	N/A

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Key Point

Licensees are expected to be familiar with all proposed zoning changes or planned developments in the areas they list and sell in. This is part of the basic knowledge that a reasonably competent licensee should obtain.

This applies to residential, lifestyle, rural, and commercial real estate transactions.

Resource consent

A resource consent is a formal approval for a certain activity; for example, the use or subdivision of land, the use of water, the discharge of contaminants in water, soil or air, or the use or occupation of coastal space. For businesses this may affect, for example, parking requirements and trading hours.

Activities are often defined as permitted or prohibited under the relevant authority’s plan. Whether a resource consent is required for a certain activity varies from one area to another. Any activity not listed as permitted may require a resource consent.

New buildings, or a proposed new use of an existing building may require resource consent.

Note: The terms of a resource consent are limited by conditions, e.g. provision of parking, amount of water taken. A resource consent will lapse if work is not started within five years of the date the resource consent was granted. Land use and subdivision consents last forever unless a limited term is given as a condition in the consent. Coastal, discharge and water consents are only granted for a limited period.

When relevant to a transaction, licensees must draw attention to any lapsed resource consents in place, so that parties are not misled as to what they can do.



Key Point

Important note for licensees

While licensees are not expected to be planning experts, where he or she is aware of resource consent issues (for example, building restrictions on a block of land, or potential issues they should be aware of, such as in coastal areas) they should disclose this information to prospective purchasers. Whether a licensee ought to be aware of resource consent issues will be specific to the facts of the case.

Licensees should therefore ask a purchaser what they intend to use the property for. If it is for a purpose other than owner / occupier, they should recommend that the prospective purchaser seeks legal advice prior to submitting an offer to determine whether their intended use of the property is permitted (or otherwise).

Read the following scenario and consider if the licensee(s) has breached the Rules (refer Appendix 1).

Scenario 2

A prospective purchaser attended an open home held by a licensed salesperson. They had previously met the salesperson at a lifestyle expo and had explained they were interested in finding a property from which they could run their business, preferably within a specific region where properties were cheaper and resource consent rules were more lenient.

At the time, the salesperson strongly advised the prospective purchaser to check with council regarding consent and permit requirements.

After viewing the property, the potential purchaser checked with local council whether the business would likely meet the resource consent requirements. A council officer informed her the property was very suitable for the business because it fitted in with neighbours who had market gardens and horse racing stables. The council officer further informed her that the consent process would be a 'non-notifiable' or 'limited-notifiable' resource consent and did not foresee any issues, especially considering that the main land owner and adjacent neighbour was the vendor of the property.

A sale and purchase agreement was prepared and an offer was made to the vendor.

At no time did the salesperson inform the vendor of the intended use of the property by the prospective purchaser because they regarded that information as personal and confidential to the purchaser.

The offer was accepted, and the sale and purchase agreement later became unconditional and was settled.

Soon after moving into the property, the vendor (neighbour) found out about the intended use of the property. The vendor had previously worked next door to the business so had first-hand experience of the potential noise and increased traffic flow that would occur. This was a major concern to the vendor and he claimed he would not have sold the property to the purchasers if he had been made aware of the intended use.

Objections from the vendor and others in the neighbourhood led to insistence by the council on a formal resource consent application process before consent was provided or not, despite the council having advised the prospective purchaser verbally that the premises would be suitable for operating their business.

Because of the council's decision, associated delays and costs, and the potential of having to deal with the aggrieved neighbour who provided water rights to the property, the purchasers felt driven to abandon their plans for the property, sell it and make several staff redundant.

Complaint Number: C18434

<http://decisions.dotnous.com/reaa/v2/abstract.aspx?case=12546>

Note the following comments of the Committee - Decision on Orders:

[para 3.6] "The CAC considered a relatively modest fine of \$2,000, well short of the \$10,000 maximum, was appropriate. That is essentially for the reason that, ironically, he [the licensed salesperson] breached the Rules because he was assiduously endeavouring to follow the Rules and do the right thing by the Complainants [the purchasers]. He is now aware that this endeavour was misconceived, but it was nonetheless a genuine and conscious endeavour, in an area of real estate practice which is not free from complexity."



Note

It is uncommon for parties on both sides of a real estate transaction to be aggrieved as a result of the actions of a licensee. This case highlights the necessity to understand disclosure obligations (refer rule 6.4 "...withhold information that should be law or in fairness be provided to a customer or client" and rule 9.17 "... A licensee must not disclose confidential personal information relating to a client...").

Council Consent and Sign off

Building consent

A building consent is a formal approval granted by the relevant local authority that allows a building work to be carried out, when it is satisfied the proposed building work has met the requirements of the Building Code.

Building work includes work in connection with the construction, alteration, demolition or removal of a building.

All building work unless exempted in Schedule 1 of the Building Act requires a building consent.

Schedule 1 can be found at this link:

<http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM5770963.html>

All building work must meet the minimum requirements of the Building Code even if no building consent is required.

Code compliance certificate

A code compliance certificate (CCC) confirms that any building work carried out under a building consent complies with the building consent as issued. Code compliance certificates issued for building consents are recorded in the LIM report and building status report for a property.

Any work completed that is not part of the building consent will not get a code compliance certificate.

An application for a code compliance certificate must include certificates relating to any gas fitting work or prescribed electrical work. Failure to provide an energy work certificate is sufficient reason for the authority to refuse to issue a code compliance certificate.

If the authority cannot clearly identify 'reasonable grounds' for issuing the code compliance certificate, they may instead issue a 'Notice to Fix' or a 'Section 95A letter'.

Many property owners may not realise that they do not have all the code compliance certificates that relate to building work carried out on their property until they decide to list it for sale. Not being able to provide all code compliance certificates is often seen as problematic by buyers and it is a common reason for transactions not to proceed.

Note: Information on what licensees should do in such situations follows in the section 'When compliance cannot be verified'.

Certificate of acceptance

A certificate of acceptance (COA) can be applied for, for historic work where no code compliance certificate (CCC) was obtained. At the local authority's discretion, a certificate of acceptance can usually be issued for work done after 1 July 1992 (when building consents were introduced) where:

- the work was urgent, necessary to protect lives or property and there was no time to get a building consent (section 42 of the Building Act 2004); or,
- an owner (or previous owner) should have got consent but didn't (under either the 1991 or 2004 Building Acts); or,
- when an accredited building consent authority (not a territorial or regional authority) granted consent but is unable, or refuses, to issue a code compliance certificate; or,
- when work was started or consented before 31 March 2005 and affects public premises.

A certificate of acceptance provides some verification for a building owner or potential owner that part, or all, of certain building work complies with the Building Code.

The value of a certificate of acceptance to the building owner and a potential buyer depends, however, on how much of the work the authority was able to inspect. In many circumstances, it's not possible to see everything so the certificate will only specify the elements of the building that can be approved.

Note: Information on what licensees should do in such situations is included in the section 'When compliance cannot be verified'.

Building permit

Building permits (not building consents) were issued up until 1992. A building permit was signed off after work was completed and following the final inspection, provided the structure met the required building standards.

Local authorities still hold some building permit records, but it is important to remember that there was no legal requirement for them to do so and the records may be incomplete or missing. Signed off permits may, however, have been retained by the property owner, or other parties such as an architect involved in the building project.

Safe and sanitary report

Under the building permit regime (prior to 1992), there was no code compliance certificate (CCC) issued following a final inspection as is the case with a building consent.

A 'safe and sanitary' report may exist for any building work undertaken that required, but was not issued with, a building permit, prior to July 1 1992.

Note: Information on what licensees should do in such situations follows in the section 'When compliance cannot be verified'.

When compliance cannot be verified

In the event that compliance of a structure cannot be verified under either the building consent or building permit regime, licensees must (following consultation with the vendor client) advise prospective purchasers that they have been unable to sight compliance documentation.

Prospective purchasers should then be advised to seek independent technical and legal advice as to any implications that might have for them (refer rule 9.7).

Note that some non-complying work may have the effect of all, or part, of the building or structure being uninsurable. This could also severely limit the ability to raise funds, such as a mortgage.

Important note for licensees

Licensees have a primary fiduciary duty to their vendor client. A licensee should always make every effort to consult with their client prior to making a disclosure. Where this is not possible, the licensee should make a file note or email note of why they could not consult their client prior to making the disclosure. This is most likely a rare event and most probably related to health and safety issues.

Where compliance issues affect a property, the licensee must liaise with the vendor client to see what their preferred marketing strategy is. A vendor may wish to rectify the compliance deficiency before proceeding to further market the property. Or, they may disclose the lack of compliance documentation and include an exclusion clause in the sale and purchase agreement.

Notice to fix

A notice to fix is a statutory notice requiring a breach of the Building Act 2004 or regulations under that Act to be remedied by the specified party.

A notice to fix in relation to building work lists the areas of non-compliance with the building code that apply to the property.

Once issued, a notice to fix must be abided by, or large fines may apply. The only alternative is for the property owner to apply for a determination (from the Ministry of Business, Innovation and Employment) if they believe the notice to be unfair.

Section 95A letter

These letters are issued under section 95A of the Building Act.

95A Refusal to issue code compliance certificate

If a building consent authority refuses to issue a code compliance certificate, the building consent authority must give the applicant written notice of -

- (a) the refusal; and
- (b) the reasons for the refusal.

While a 95A letter provides warning to a prospective purchaser, it does not require the vendor to enter into any repair work prior to sale.

'As is, where is'

'As is, where is' conditions of sale may apply in transactions where code compliance certificates cannot be provided and a section 95A letter has been issued.

'As is / where is' means that a vendor is selling, and a purchaser is buying, property or land in whatever condition it represents at the time of signing a contract. The purchaser is accepting all present faults. In these situations, the vendor will often need to accept a lower sale price.

The 'as is / where is' provision does not negate a licensee's disclosure obligations under rules 10.7 and 6.4.

Extracts from Land Information Memorandum – Example 1

Status of Requisition or Notice

Application Type	Number	Description	Application Status
Requisition	REQ-2001-731	Unauthorised Building - Basement Garage Made into Habitable Rooms - works declared sound refer WCC letter 8/11/01.	Satisfied

The following Building Permit and Consents have been lodged on this property.

Permit/Consent	Number	Type of Work	Status
Building Consent	ABA-2006-2206	Heater installation /solid fuel heater	CCC Issued
Building permits pre 1/07/1992	BPM-1985-27406	Dwelling	Issued
Building permits pre 1/07/1992	BPM-1987-32674	Addition to Dwelling - Deck	Complete

Building permits pre 1/07/1992	BPM-1989-3984	Carport & Deck	Complete
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Civic Centre
6 Walpareira Ave
Waitakere City

Telephone
09 836 8000
Facsimile
09 836 8001

DX CX 10250 Auckland Mail Centre
Email: info@waitakere.govt.nz

8 November 2001

Private Bdg 93109
Henderson
Waitakere City

Refer: Mr Greaves: pt (Field Services)
Extn. 8699 (Civic Centre)

K Wright & B Anderson
11 Hueglov Rise
West Harbour
WAITAKERE CITY

COF 7

Dear Sir/Madam

SAFE & SANITARY REPORT
PROPERTY LOCATION: 11 HUEGLOW RISE, WEST HARBOUR
LOT 312 DP 88754

A recent inspection has established that internal walls have been erected downstairs without the authority of a building consent.

It has been established that the said works are in a safe and sanitary condition therefore no further action will be initiated by Council unless the building becomes dangerous or insanitary as specified under S64 of the Building Act 1991.

Yours faithfully


Richard Greaves
CUSTOMER FIELD ADVISOR
(BUILDING COMPLIANCE)

Extracts from Land Information Memorandum – Example 2

The following Building Permit and Consents have been lodged on this property.


Permit/Consent	Number	Type of Work	Status
Building permits pre 1/07/1992	BPM-1955-2739	Dwelling & Workshop (Removed)	Issued

Part 4. Planning – Section 44A (2) (a) (ii)

(a) Land Use Consents under the Resource Management Act

The following Land Use Consents have been lodged on this property.

Note: if there are any conditions, then only that portion of the consent will be included in the attachments section. It is the owners responsibility to ensure that all conditions of resource consents are complied with and continue to be complied with.

 For information on any outstanding conditions or ongoing monitoring contact Auckland Council 301 0101, ask for Duty Planner

Number	Description	Status
LUC-2015-1667	Two lot subdivision with the proposed lots measuring 450sq.m and 470sq.m (nett)	Issued

Part 5. Subdivision and Development

Type	Number	Description	Status
Subdivision Consent	SUB-2015-1668	Subdivide in to two freehold lots	Issued

Note: A request for a LIM does not cause the subdivision potential of the land to be investigated. All subdivisions require resource consent, which will be subject to appropriate conditions.

Decision on application(s) for resource consent under the Resource Management Act 1991



Restricted Discretionary activity

Application number(s): LUC 2015 - 1667 & SUB 2015 - 1668

Decision

I have read the application(s), supporting documents, and the report and recommendations on the consent application(s). I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application(s).

Acting under delegated authority, under sections 104, 104C the application(s) are **GRANTED**.

Property development

Plans to change the use of a property are likely to require resource consent.

Where there is no intention to change the use of the property, parties should be reminded to check their plans with the local authority because resource consent, as well as building consent, may be needed. For example, the plans might involve adding another storey to a residential property, which would exceed the allowed height limit, or an extension of the living area that would infringe the required minimum yard space.

Either of the following two scenarios may apply:

- The party is satisfied that council approval will be granted before making an offer to purchase the property.
- The party makes such approval a condition of any agreement for sale and purchase of the property (this will not be possible if the property is being marketed for sale by auction).



Key Point

The licensee must be very cautious when a customer is proposing to subdivide, or when advertising a property as sub divisible or potentially sub divisible. If this were not possible without the likelihood of incurring considerable and unusual expense, and the licensee made a statement implying that it was possible, such a statement would likely be considered a breach of the Fair Trading Act 1986.

Dealing with different authorities

As we have seen, local authorities deal with LIM reports and zoning. Regional authorities deal mainly with environmental issues such as coastal, water, air, contamination, and erosion. In some cases, local and regional authorities are a single entity (unitary authority); for example, Auckland Council.

It is important that licensees are familiar with the workings of the authority relevant to the location they are working in as regional and area differences do apply.

There may be differences in information that may be included in the LIM report by different authorities. For example, methamphetamine contamination records may or may not be included in the LIM report depending on the authority's reporting methods.

The process and time involved in getting a LIM report, the cost, differences in information put on LIM reports can all vary by authority.

Web page showing jurisdiction of local and regional authorities in New Zealand:

<http://www.lgnz.co.nz/home/nzs-local-government/new-zealands-councils/>

Appendices

Appendix 1 – Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012

Contents

Pursuant to section 14 of the Real Estate Agents Act 2008, the Real Estate Agents Authority, with the approval of the Minister of Justice given in accordance with section 17 of that Act, and after consultation in accordance with section 16 of that Act, makes the following rules.

Rules

These Rules make up the Real Estate Agents Authority code of professional conduct and client care. The Rules were made by the Authority and notified in the New Zealand Gazette.¹ The rules set minimum standards of conduct and client care that licensees are required to meet when carrying out real estate agency work and dealing with clients.

Important note

The Real Estate Authority (REA) is the operating name of the Real Estate Agents Authority (REAA). Please note that this publication uses the legal name 'Real Estate Agents Authority (REAA)' due to a requirement to maintain consistency with legislation.

1 Title

These rules are the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

2 Commencement

These rules come into force on 8 April 2013.

3 Scope and objectives

- 3.1 These practice rules setting out a code of professional conduct and client care have been prepared by the Real Estate Agents Authority (**the Authority**). They constitute the Professional Conduct and Client Care Rules required by section 14 of the Real Estate Agents Act 2008.
- 3.2 These practice rules set out the standard of conduct and client care that agents, branch managers, and salespersons (collectively referred to **as licensees**) are required to meet when carrying out real estate agency work and dealing with clients.
- 3.3 These practice rules are not an exhaustive statement of the conduct expected of licensees. They set minimum standards that licensees must observe and are a reference point for discipline. A charge of misconduct or unsatisfactory conduct

may be brought and dealt with despite the charge not being based on a breach of any specific rule.

- 3.4 These practice rules must be read in conjunction with the Act and regulations, and do not repeat duties and obligations that are included in the Act or regulations.

4 Interpretation

- 4.1 In these rules,—

Act means the Real Estate Agents Act 2008.

customer means a person who is a party or potential party to a transaction and excludes a prospective client and a client.

prospective client means a person who is considering or intending to enter into an agency agreement with an agent to carry out real estate agency work.

regulations means regulations made pursuant to the Act.

- 4.2 Unless the context otherwise requires, terms used in these rules have the same meaning as in the Act.

5 Standards of professional competence

- 5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.
- 5.2 A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

6 Standards of professional conduct

- 6.1 A licensee must comply with fiduciary obligations to the licensee's client.
- 6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.
- 6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.
- 6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.

7 Duty to report misconduct or unsatisfactory conduct

- 7.1 A licensee who has reasonable grounds to suspect that another licensee has been guilty of unsatisfactory conduct¹ may make a report to the Authority.
- 7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct² must make a report to the Authority.
- 7.3 A licensee must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.

¹ Unsatisfactory conduct is defined in the Act: see section 72

² Misconduct is defined in the Act: see section 73

- 7.4 If a licensee learns that a person is committing an offence by undertaking real estate agency work without a licence, the licensee must immediately report the matter to the Authority.

8 Duties and obligations of agents

Promoting awareness of rules

- 8.1 An agent who is operating as a business must display these rules prominently in the public area of each office or branch, and provide access to them on every website maintained by the agent for the purposes of the business.
- 8.2 A licensee must make these rules available to any person on request.

Supervision and management of salespersons

- 8.3 An agent who is operating as a business must ensure that all salespersons employed or engaged by the agent are properly supervised and managed.³

Ensuring knowledge of regulatory framework and promoting continuing education

- 8.4 An agent who is operating as a business must ensure that all licensees employed or engaged by the agent have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.
- 8.5 An agent who is operating as a business must ensure that licensees employed or engaged by the agent are aware of and have the opportunity to undertake any continuing education required by the Authority.

9 Client and customer care

General

- 9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.
- 9.2 A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.
- 9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.
- 9.4 A licensee must not mislead customers as to the price expectations of the client.
- 9.5 A licensee must take due care to—
- (a) ensure the security of land and every business in respect of which the licensee is carrying out real estate agency work; and
 - (b) avoid risks of damage that may arise from customers, or clients that are not the owner of the land or business, accessing the land or business.

³ The Act defines what is meant by a salesperson being properly supervised and managed by an agent or a branch manager for the purposes of section 50 of the Act: see section 50(2)

9.6 Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

Agency agreements and contractual documents

9.7 Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or other contractual document, a licensee must—

(a) recommend that the person seek legal advice; and

(b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and

(c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).

9.8 A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent.

9.9 A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for signature unless all material particulars have been inserted into or attached to the document.

9.10 A licensee must explain to a prospective client that if he or she enters into or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent in the event that a transaction is concluded.

9.11 On notice of cancellation of an agency agreement being given or received by the agent under the agreement, the agent must advise the client, in writing, of the name of each customer (if any) in respect of whom the agent would claim a commission, were the customer to conclude a transaction with the client.

9.12 An agent must not impose conditions on a client through an agency agreement that are not reasonably necessary to protect the interests of the agent.

9.13 When authorised by a client to incur expenses, a licensee must seek to obtain the best value for the client.

Conflicts of interest

9.14 A licensee must not act in a capacity that would attract more than 1 commission in the same transaction.

9.15 A licensee must not engage in business or professional activity other than real estate agency work where the business or activity would, or could reasonably be expected to, compromise the discharge of the licensee's obligations.

Confidentiality

9.16 A licensee must not use information that is confidential to a client for the benefit of any other person or of the licensee.

9.17 A licensee must not disclose confidential personal information relating to a client unless—

- (a) the client consents in writing; or
- (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client; or
- (c) the licensee is required by law to disclose the information; or
- (d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.

9.18 Where a licensee discloses information under rule 9.17(b), (c) or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.

10 Client and customer care for sellers' agents

10.1 This rule applies to an agent (and any licensee employed or engaged by the agent) who is entering, or has entered, into an agency agreement with a client for the grant, sale, or other disposal of land or a business.

Appraisals and pricing

10.2 An appraisal of land or a business must—

- (a) be provided in writing to a client by a licensee; and
- (b) realistically reflect current market conditions; and
- (c) be supported by comparable information on sales of similar land in similar locations or businesses.

10.3 Where no directly comparable or semicomparable sales data exists, a licensee must explain this, in writing, to a client.

10.4 An advertised price must clearly reflect the pricing expectations agreed with the client.

Relationship between prospective client's choices about how to sell and licensee's benefits

10.5 Before a prospective client signs an agency agreement, the licensee must explain to the prospective client how choices that the prospective client may make about how to sell or otherwise dispose of his or her land or business could impact on the individual benefits that the licensee may receive.

Agency agreements

10.6 Before a prospective client signs an agency agreement, a licensee must explain to the prospective client and set out in writing—

- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the appraisal provided under rule 10.2;
- (b) when the agency agreement ends;
- (c) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur;

(d) that the client is not obliged to agree to the additional expenses referred to in rule 10.6(c):

(e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

Disclosure of defects

10.7 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Where it would appear likely to a reasonably competent licensee that land may be subject to hidden or underlying defects⁴, a licensee must either—

(a) obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or

(b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.

10.8 A licensee must not continue to act for a client who directs that information of the type referred to in rule 10.7 be withheld.

Advertising and marketing

10.9 A licensee must not advertise any land or business on terms that are different from those authorised by the client.

Contractual documentation and record keeping

10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.

10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.

10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

11 Client and customer care for buyers' agents

11.1 This rule applies where an agency agreement authorising an agent to undertake real estate agency work for a client in respect of the purchase or other acquisition of land or a business on the client's behalf (a buyer's agency agreement) is being entered into, or has been entered into.

⁴ For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could reasonably be expected to know of this risk (whether or not a seller directly discloses any weathertightness problems). While a customer is expected to inquire into risks regarding a property and to undertake the necessary inspections and seek advice, the licensee must not simply rely on caveat emptor. This example is provided by way of guidance only and does not limit the range of issues to be taken into account under rule 10.7.⁴

- 11.2 Before a prospective client signs a buyer's agency agreement, a licensee must explain to the prospective client and set out in writing —
- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the average of the estimated price range of the land or business that the client is seeking to purchase:
 - (b) when the agency agreement ends:
 - (c) any additional services that the licensee will provide, or arrange for the provision of, on the client's behalf and the expenses relating to those services payable by the client:
 - (d) that the client is not obliged to agree to the additional expenses referred to in rule 11.2(c):
 - (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.
- 11.3 A licensee must not undertake real estate agency work with customers, or other licensees, on terms that are different from those that are authorised by the client on whose behalf the licensee is carrying out real estate agency work.
- 11.4 A licensee must submit all offers that the licensee is instructed by the client to make concerning the purchase or acquisition of any land or business, provided that such offers are in writing.
- 11.5 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.
- 11.6 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

12 Information about complaints

- 12.1 An agent must develop and maintain written in-house procedures for dealing with complaints and dispute resolution. A copy of these procedures must be available to clients and consumers.
- 12.2 A licensee must ensure that prospective clients and customers are aware of these procedures before they enter into any contractual agreements.
- 12.3 A licensee must also ensure that prospective clients, clients, and customers are aware that they may access the Authority's complaints process without first using the in-house procedures; and that any use of the in-house procedures does not ⁵preclude their making a complaint to the Authority.
- 12.4 A licensee employed or engaged by an agent must advise the agent within 10 working days of becoming aware of—

(a) any complaint made to the Authority against them, the decision of the Complaints Assessment Committee made in respect of that complaint, and any order made by the Committee in respect of that complaint; and

(b) if the matter proceeds to the Tribunal, the decision of the Tribunal in respect of the matter, and any order made by the Tribunal in respect of the matter.

- 12.5 If a licensee was employed or engaged by a different agent at the time of the conduct relevant to the complaint referred to in rule 12.4, the licensee must also provide the information referred to in rule 12.4(a) and (b) to that agent within 10 working days of becoming aware of the complaint.

13 Revocation

The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (SR 2009/304) are revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989. Date of notification in Gazette: 13 December 2012. These rules are administered by the Real Estate Agents Authority, PO Box 25 371, Featherston Street, Wellington