



Exempt building work – part 3

Parts 1 and 2 of this series covered exempt building work and some of the exemptions. This third and final part looks at exemption 1, which often comes down to interpretation as opposed to a bright line measurement.



Not up to Building Code – a reroof with fixing over existing roof cladding, thin timber battens and inadequate fixings.

AS A BRIEF RECAP from our previous articles, all building work requires a building consent, except work covered by Schedule 1 of the Building Act 2004. MBIE has issued guidance on Schedule 1 with helpful and practical examples – you can find the guidance on MBIE's website www.building.govt.nz.

Always check if you need a building consent by reading MBIE's guidance and contacting your local building consent authority. This will help you avoid fines from councils or penalties from the Building Practitioners Board.

Advice from Building Practitioners Board

The Board has considered a number of complaints that relate to work undertaken using Schedule 1 and has the following advice for practitioners:

'Licensed building practitioners have to be cautious when making enquiries as to whether a building consent is required or not. It is recommended that, if they are to rely on such advice, they:

1. disclose the full extent of the building work to be undertaken
2. seek to obtain the advice in writing so that they have a means of verifying it or, if written advice cannot be obtained, that they make a contemporaneous record of the enquiry and verbal response received
3. if in doubt, seek professional advice from an engineer or similarly qualified person.'

Exemption 1 – general repair, maintenance and replacement

Exemption 1 allows you to repair, maintain or replace building elements without needing to obtain a building consent provided a series of conditions are met.

You cannot use this exemption on sanitary plumbing work as this is covered by exemptions 32-38.

Condition 1 – comparable materials used

The repair and maintenance of any element incorporated in or associated with a building is exempt building work provided that comparable materials are used.



Poor job – roof detail with poor finishing of flashings and excessive and inappropriate use of sealant.

This covers general repair and maintenance but does not cover repair or replacement of an element that has failed its durability requirement under the Building Code. This also includes a failure to comply with the external moisture requirements of the Building Code such as in a leaky building.

You can read about Building Code clause B2 *Durability* requirements on the Building Performance website. At a very high level they are:

- easy to access and replace elements, such as coatings (paint) and light fittings, must last a minimum of 5 years
- moderately difficult to access and replace elements, such as interior wall linings, claddings or windows, must last a minimum of 15 years
- difficult to access and replace, or critical components of a building, such as structural wall framing or foundations, must last a minimum of 50 years.

Condition 2 – in the same position

Replacement of any element incorporated in or associated with a building is exempt building work provided that a comparable element is used and the replacement is in the same position.

This is commonly referred to as a like-for-like replacement, but this is not technically correct. You are able to use a comparable element - not necessarily an alike element - provided it is in the same position.

You cannot use this exemption if you are replacing an element contributing to the structural behaviour or fire safety properties or most or all of a specified system such as emergency lighting. You are also not able to use this exemption for replacement work that has failed its durability test as discussed above.

Some older products need modern substitute

Some older products might meet the comparable test but not comply with the current Building Code. For example, you would not replace asbestos cladding with asbestos cladding. Besides being unavailable to buy, you would breach clause F2 *Hazardous building materials*. Instead you could use the modern-day substitute, fibre-cement based sheet.

If you are in any doubt, a useful test is provided in Verification Method B2/AS1. The assessment of comparability is as much about the level of performance for a product or element as its likeness or comparability.

What does this actually mean?

This means that you can do a lot of repair, replacement or maintenance work without needing to obtain a building consent. It is a judgement call sometimes on whether your material is comparable or whether the element you are replacing has failed its durability requirements under the Building Code. You'll need to do some thinking before you use this exemption.

You may have questions about using this exemption on site because it can be tough to reach a clear decision. In this case, seek an exemption 2 from the council or apply for a building consent rather than risk it. You can also check out the helpful examples in the MBIE guidance document referred to earlier.

Discipline after roofing didn't meet Building Code requirements

In addition to this, an example of a roof replacement was recently brought to MBIE's attention. In this instance, the roofer in question elected to reroof over an existing roof cladding but did not do a Building Code-compliant or quality job.

Exemption 1 in Schedule 1 was utilised, but the building work failed to meet the performance requirements of the Building Code. The LBP was disciplined by the Building Practitioners Board and had his licence cancelled. However, the Board decided not to publicly name him in this instance. ◀

Quiz

1. What kind of building work is covered by exemption 1?
 - a. New builds and repairs.
 - b. Additions and alterations.
 - c. Garages and maintenance.
 - d. Repairs, replacements and maintenance.
2. In terms of Schedule 1, what else do I need to consider when replacing something with a similar component?
 - a. The value of the work.
 - b. Whether the new component will be Building Code compliant and will be in the same position.
 - c. Whether I hold the right kind of LBP licence.
3. If my house has 30-year-old timber weatherboards that are beginning to degrade, can I replace them with new timber weatherboards without a building consent?
 - a. Yes, it's covered by exemption 1.
 - b. No, you need a building consent regardless of anything else.
4. Do I need a building consent to install a new long-run corrugated metal roof to replace my leaking 12-year old waterproof membrane roof?
 - a. No, because it involves replacing a roof cladding with another roof cladding.
 - b. No, because the replacement roof cladding is in the same position.
 - c. Yes, because the existing roof cladding has failed its 15-year durability requirement.

1. d 2. b 3. a 4. c

ANSWERS