

Regulation 7(2)(f) – Code compliance certificates, compliance schedules, and notices to fix

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MBIE's guidance on meeting the accreditation requirement

Regulation 7(2)(f) of the Building (Accreditation of Building Consent Authorities) Regulations 2006 (the Regulations) must be read in conjunction with regulations 5 and 6.

The policies and procedures required by regulation 7 must be written and/or electronic, and appropriate for purpose.

A Building Consent Authority (BCA) must ensure that the policies, procedures and system required by regulation 7 are consistently and effectively implemented. BCAs must ensure they record the decisions they make under regulation 7, including the reasons for the decisions, as well as the outcomes.

[Checklist for regulation 7\(2\)\(f\)](https://www.building.govt.nz/building-officials/bca-accreditation/detailed-regulatory-guidance/checklists/) (<https://www.building.govt.nz/building-officials/bca-accreditation/detailed-regulatory-guidance/checklists/>) outlines the minimum criteria for compliance.

Regulation 7(2)(f) requires a BCA to have a policy, procedure and system in place for issuing (or otherwise) code compliance certificates (CCCs), including where no application has been received two years after the date a building consent was granted. It also requires a BCA's policies, procedures and systems to provide for:

- issuing a CCC in compliance with the legal test in section 94 of the Building Act 2004 (the Act)
- the issue of any required compliance schedules and notices to fix (NTF) that are its responsibility.

Issuing a CCC, compliance schedule or NTF is a technical job. It must be undertaken by a competent employee or contractor. However, it is not a breach of the Regulations where a manager has been given the administrative authority to officially sign out a CCC, compliance schedule or NTF on the BCA's behalf, even where the decision has (effectively) been made by someone else.

Printing and sending or emailing out a CCC, compliance schedule or NTF is not a technical job.

Applications for CCCs

A BCA must have a policy, procedure and system in place for receiving code compliance certificate (CCC) applications that:

- ensures all relevant information required on the prescribed Form 6 is completed by the owner or their agent
- describes what happens if the application is not complete, eg reject or return
- describes what happens if the application is complete.

The BCA collects the following information from an applicant for a CCC where required:

- certificates that relate to the energy work
- evidence showing the specified systems are capable of performing to the performance standards identified on the issued building consent.

A BCA should ensure that its CCC application form requests any required records of work from licensed building practitioners who carried out

any restricted building work. However, the onus is on the building owner to provide this information and the BCA does not require the information to make a decision on the issue (or otherwise) of a CCC under section 94 of the Act. This matter has been discussed in detail in determination 2014/064.

For the purposes of an accreditation assessment, a BCA will not be found to be non-compliant with the Regulations where the:

- application forms it uses contain minor differences from a prescribed form as long as any form it uses has the same effect as the prescribed form and captures all the relevant information required
- BCA refuses to accept an application that does not contain all the required information
- applicant does not provide all the information required by the form, but the BCA chooses to accept the application and make a decision under section 94 of the Act.

An application for a CCC can be made at the same time a final inspection is booked, if a BCA allows for this. There is also nothing preventing a BCA from issuing a CCC without an application where they are satisfied that the requirements of section 94 of the Act have been met.

Accepting a CCC application where the building consent was granted by another BCA

A BCA's policies, procedures and systems must include a process for accepting (or otherwise) a CCC application for building work where the building consent was granted by another BCA. The process must cover:

- seeking the applicant's agreement to the BCA considering the application
- how the BCA makes a decision to consider the application.

A BCA does not have to accept any CCC application for building work where the building consent was granted by another BCA. Where an application is returned or rejected, it is adequate for the BCA to advise the applicant that:

- it has not been accepted because the BCA did not issue the original consent
- if no BCA is willing to issue a CCC, the applicant may apply to the relevant territorial authority for a certification of acceptance under section 96 of the Act.

Refusing to accept a CCC application that does not contain all the relevant information

A BCA does not have to accept any CCC application that does not contain all the relevant information. Its policy, procedure and system for refusing a CCC application may provide that it returns or rejects an application without the relevant information.

Where an application is returned or rejected, it is adequate for the BCA to reference where the application is deficient or the relevant information is absent.

For example, the BCA may make a statement such as:

"We consider that your application is non-compliant with the Building Act 2004 and associated regulations that require certain information to be provided to us. You have failed to provide the following information:

- the required energy work certificate."

Timeframes for making decisions on the issue of a CCC

The statutory timeframe in section 93 of the Act requires CCC applications to be decided within 20 working days of receipt. To support compliance with section 93, a BCA's policy and procedure must enable it to record a CCC application in its processing system and record:

- the date it was received
- any acknowledgement of the receipt of the application made to the applicant
- the date/s upon which any acknowledgments were made.

A BCA cannot unilaterally extend the timeframe in which an application must be decided. Section 93(1)(b) provides that any extended timeframe must be agreed between the BCA and the owner (or agent).

Making and receiving requests for information about a CCC application

It is of benefit to a BCA and an applicant that as few as possible RFIs are made in the course of processing a CCC. MBIE expects that a BCA's policy, procedure and system supports a process of coordinating an RFI request as far as is possible. This is not intended to result in an accreditation requirement that only one RFI is made – a BCA must be able to seek further information at any time.

MBIE would also like to see all BCAs adopt a process that any RFI is made to the applicant with a copy sent to the building owner however, this is not an accreditation requirement.

"Stopping the clock" when an RFI is made

Where an RFI is made, a BCA may stop counting the working days in which it is required to decide a CCC under section 93 of the Act. A BCA may stop counting the working days from the day after the RFI is made. The day the RFI is made must be counted as a working day.

“Restarting the clock” when requested information is received

A BCA is not required to restart counting working days until:

- all of the information requested in an RFI has been received
- the information is sufficient and adequate to support a decision being made.

Deciding a CCC application

A BCA’s policies, procedures and systems for deciding whether to issue a CCC must include processes for:

- complying with the legal test in section 94(1)(a) of the Act and how the BCA applies the test of being 'satisfied on reasonable grounds'.
- considering whether the specified systems in the building are capable of performing to the performance standards set out in the building consent
- considering whether there are any applicable warnings or bans related to any building method or product that may have been used
- making a decision where no application has been made two years after the date on which the building consent was granted
- making a decision about whether to extend the timeframe in which the code compliance of the building work may be determined.

A BCA is not required to undertake any inspections when making a code compliance decision where no application has been made two years after the date on which the building consent was granted.

Issuing a CCC

Any CCC issued must meet the requirement of section 95 of the Act and include the declaration that the BCA is satisfied, on reasonable grounds that the building work complies with the building consent and, where relevant, the specified systems in the building are capable of performing to the performance standards set out in the building consent.

A BCA’s process for issuing a CCC must enable it to ensure that it has received any required:

- development contribution under section 198 of the Local Government Act 2002
- fee for the processing of the application.

Issuing any required compliance schedule

A BCA’s policy, procedure and system for issuing CCCs must enable it to:

- identify where a compliance schedule must be issued with the CCC
- issue a compliance schedule consistent with the requirement of section 103 of the Act
- (where a BCA is not a territorial authority) provide the relevant territorial authority with a copy of the certificate within five working days (s 104).

Refusing a CCC application

A BCA must have a policy, procedure and system for refusing a CCC application. It may cover situations where:

- there is inadequate or insufficient information in the application
- it is not satisfied, on reasonable grounds, that the building work complies with the building consent
- any required energy work certificate has not been provided
- any required development contribution fee has not been received.

When refusing a CCC application it is adequate for a BCA to state, as applicable, the reason that it has been refused. There is no legislative requirement for a BCA to provide detailed reasons for refusing a CCC application, but natural justice requirements apply. The applicant should be provided with sufficient detail for them to rectify any deficiencies in the application. It is acceptable for a BCA to identify the relevant:

- consent matter for which there was not enough information to be reasonably satisfied of compliance
- building method or material for which there was not enough information to be reasonably satisfied of compliance with the consent.

Notices to fix

A BCA must have a policy, procedure or system, where required by section 164 of the Act, for making decisions to:

- issue a notice to fix (NTF)
- notify another responsible authority of the potential need for a NTF.

When to issue a NTF

A BCA's policy, procedure or system may provide a standard approach to refer matters that sit outside the BCA's general decision-making powers and authorities to another responsible authority that may be better placed to take action. For example, the BCA may refer matters related to building warrants of fitness to the relevant territorial authority or dam warrants of fitness to the relevant regional authority.

Form and content of a notice to fix

Where a BCA decides to issue a NTF, its policy, procedure and system must support it to comply with the requirements of section 165 and 166 of the Act.

A BCA that is not part of a territorial or regional authority must advise the relevant territorial or regional authority of any NTF it issues within five working days.

You can read the following on the Legislation website:

- [The Building Act 2004 \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html)
- [The Local Government Act 2002 \(http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170873.html\)](http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170873.html)

Read [Determination 2014/064 \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2014-064/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2014-064/).

[Working days \(https://www.building.govt.nz/building-officials/bca-accreditation/terms-and-abbreviations/#working\)](https://www.building.govt.nz/building-officials/bca-accreditation/terms-and-abbreviations/#working) definition can be found in the glossary.



New Zealand Government

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