

Acting on a council notice to fix

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If your building work does not meet the requirements of the Building Act, your council can issue you with a 'notice to fix' for any breaches of the Building Act or Regulations.

Your council, in its capacity as a territorial authority or a building consent authority, issues notices to fix on both complete and partial builds.

They will issue them to the person carrying out the work or the person supervising and the building owner. You can be issued with a notice to fix for all breaches of the Building Act 2004, not just current consented building work.

The main points to note about notices to fix are:

- A council must issue a notice to fix for any work that doesn't meet the requirements of the Building Act 2004 and building regulations (for example, failing to obtain a building consent when it is required).
- If a notice to fix relates to building work carried out without a building consent, the notice can require the owner to apply for a certificate of acceptance.
- When a notice to fix has been issued by an independent building consent authority (an agent working on behalf of the council), the council decides whether the notice has been complied with and confirms this in writing.
- If a council is not satisfied that building work required by a notice has been completed it must provide written notice of its reasons and issue a further notice to fix to the specified person. For example, after a follow-up inspection.

The council, or its agent, must issue a notice to fix if it considers on reasonable grounds that:

- a specified person is breaching or failing to meet the requirements of the Building Act 2004 (for example, doing building work without a building consent when one is required or not in accordance with a building consent)
- a specified person is breaching or failing to meet the requirements of the Building Regulations under the 2004 Act (including the Building Regulations 1992, containing the Building Code)
- a building warrant of fitness or dam warrant of fitness is not correct
- the inspection, maintenance or reporting procedures stated in the compliance schedule are not being, or have not been, complied with.

Content of a notice to fix

The notice to fix must require a specified person to:

- remedy the contravention or comply with the Building Act 2004 or Regulations
- correct the building warrant of fitness
- properly comply with the inspection, maintenance or reporting procedures stated in the compliance schedule.

A notice to fix must also:

- be issued on Form 13 of the Building (Forms) Regulations 2004
- set a reasonable timeframe within which the notice must be complied with
- instruct the specified person to contact the territorial authority or building consent authority on completion of the building work (if applicable).

A notice to fix may:

- require the owner to apply for a building consent, or for an amendment to an existing building consent
- require the owner to apply for a certificate of acceptance for building work without a building consent

- state that all or any building work must cease immediately until the responsible authority is satisfied that the specified person is able and willing to resume operations in compliance with the Building Act 2004 and Regulations.

Use of discretion

It is possible for other matters, besides those listed above, that relate to remedying a contravention of the Act or regulations, correcting a building warrant of fitness, or complying with procedures in a compliance schedule to be included in a notice to fix.

Responsible authorities have some discretion in what they choose to include in notices to fix. They should use this discretion to ensure a notice to fix is appropriate to the circumstances of a particular situation.

Notice to fix for building work

There are three situations in which a notice to fix can be issued for building work that has not been, or is not being, carried out in accordance with the Act or the building consent. The notice to fix only applies:

- to building work required during the period in which a building consent is operative
- in respect of building work for which a building consent should have been obtained
- in respect of building work for which a building consent was not required, but where there was a requirement that the work meet the Building Code.

(Where the building consent authority is independent, it must supply a copy of the notice to fix to the relevant territorial authority within five days of issuing.)

Following up a notice to fix for building work

Once the relevant building work has been completed the person specified in the notice to fix must let the council know.

The council will then inspect the relevant building work and decide if the work is complete or not. Either way, they must advise the person specified in the notice, in writing.

Confirming compliance with the notice to fix

The council must provide a copy of the confirmation advice to the building consent authority that issued the notice to fix (this might be the same or a different part of the council).

Non-compliance with notice to fix

If a notice to fix has not been complied with, the council must:

- give the specified person written notice of the refusal and the reasons for it
- issue a further notice to fix in respect of the building work.

Recommendations

Inspecting work under a notice to fix

- Where a notice to fix requires building work, the council may need to inspect this work as it proceeds. If the work is not covered by the original consent, it may require the specified person to apply for a new or amended consent for that work. If this is the case, inspections will be arranged when the consent is issued.
- The Building Act's Section 222(4)(a)(iii) entitles an authorised officer to conduct inspections to determine compliance with a notice to fix.

Example of a notice to fix

A large laundry and a small kitchen/dining room are located in a lean-to at the rear of a house. The owner obtains a building consent to:

- remove the wall between the laundry and kitchen
- extend the laundry and kitchen area
- remodel the kitchen
- install one set of French doors from the kitchen out on to a new deck – the deck is only 900mm high and not covered by the consent (Schedule 1 exemption).

During the project the owner decides to install an additional set of French doors from the rear bedroom onto the same deck. The door opening is under construction when the building officer arrives at the site to inspect the work.

The building officer identifies that the work is not part of the building consent, as it meets the requirements for an exemption under Schedule 1, however the officer notices that the building work being undertaken does not comply with the Building Code and issues a notice to fix with the following instructions:

- install a correctly sized lintel over the new opening
- call for inspections before the lintel is covered over.



New Zealand Government

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