



G11 Notice to Fix

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1. TRIGGER FOR NOTICE TO FIX

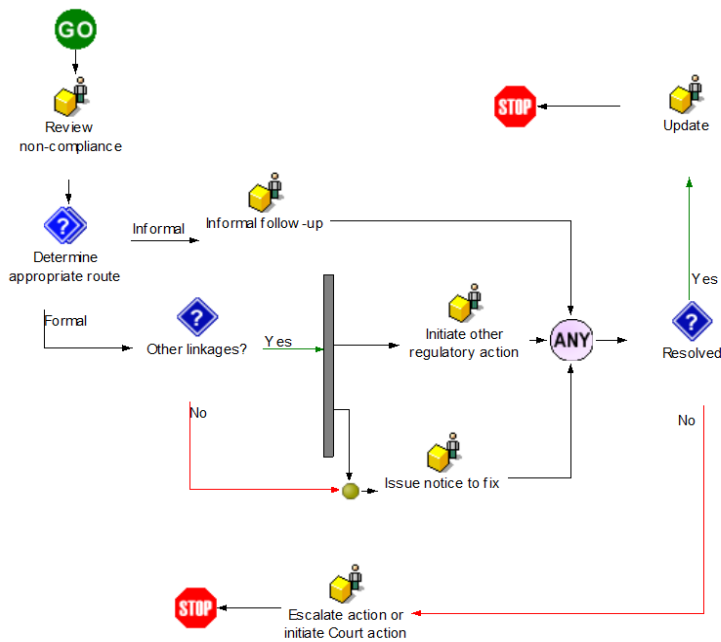
Notice to Fix is a statutory notice requiring a person to remedy a breach of the Building Act 2004 or Regulations. It can arise from identification of illegal building work or from work not undertaken in accordance with an issued building consent, amongst other things. It may be identified:

- During the evidence of compliance process (G07) or upon application to issue a Code Compliance Certificate if there is identified on the Application Assessment that there is a Notice to Fix requirement;
- Through application for a Certificate of Acceptance;
- As part of exercising Council’s Policy on Dangerous Dams;
- In response to an issue identified in a Dam Safety Assurance Programme (DSAP);
- During the course of ORC’s general monitoring and compliance activity;
- By notification from an inquiry or complaint by a member of the public.

Where appropriate, issues may be resolved through non-regulatory intervention however the issuing of a Notice to Fix even for a matter that is not disputed by the parties is preferred in most cases as it sets a formal and enforceable pathway to resolution and avoids any misunderstandings about remedies and timeframes. Issues will still be recorded in an email or letter to the party to the breach and saved into the project folder and/or complaints folder in Objective.

Consideration will be given to whether it is appropriate in the circumstances to issue an abatement notice under the RMA instead of or as well as a Notice to Fix under the Building Act.

The range of options and overall process is as indicated in the following process map.



The Consents Officer will review the non-compliance issue and take advice from the Lead Consultant as required. Recommendations will be made to the Director Engineering, Hazards and Science on the appropriate action. The timeframe for the remedy of the non-compliance shall be determined having regard to the consequences of the non-compliance and the nature of the actions needed to remedy the non-compliance.

For matters outside Otago refer the relevant transfer agreement regarding authority and process for issuing a Notice to Fix.

2. ISSUE OF NOTICE TO FIX

Section 165 of the Act requires that a Notice to Fix be issued on the prescribed form (Form 13) and that the form be correctly completed. The ORC template (saved in Objective) shall be used. All fields shall be completed. Particular care shall be taken to comply with the form and content specified in the Act otherwise the Notice to Fix may be invalid.

The procedure to issue a 'Notice to Fix' is:

- The Legal Counsel will advise the Director Engineering, Hazards and Science who will decide whether to proceed with preparation of a Notice to Fix.
- Where appropriate the advice of the Director Policy Planning and Resource Management and/or Chief Executive will be sought.
- The Legal Counsel will prepare the Notice to Fix based on the recommendations of the Consent Officer and/or Director Engineering, Hazards and Science as to the particular contraventions and remedies.
- The Director Engineering, Hazards and Science, the Chief Executive, the Director Policy Planning and Resource Management or Legal Counsel will sign the Notice to Fix. Individually signed copies will be prepared where more than one party is involved.
- The Legal Counsel will ensure that each Notice to Fix is served in accordance with the above requirements. As a minimum it will be served by two different methods (e.g. posted and emailed, or posted and faxed).
- The receiver(s) of the Notice to Fix will be requested to confirm in writing that they have received the Notice to Fix.
- All documentation and correspondence will be saved into Objective including copies of each and every signed Notice to Fix (even if the content is identical for each party it is served on) and, where relevant, copied to the regional authority (if the matter relates to a location outside Otago).

3. COMPLIANCE WITH NOTICE TO FIX

All follow-up actions must be instigated in a timely manner. Time-frames stated on the Notice to Fix will be enforced. The Legal Counsel will monitor the completion and keep the Manager Consents and Director Engineering, Hazards and Science informed.

The specified person after the building work has been fixed, shall supply appropriate evidence, and/or arrange for that work to be inspected. On completion of the inspection or assessment, the specified person will be notified in writing that the work to which the notice relates has been fixed or not fixed as the case may be.

Inspections may be carried out by the Lead Consultant, the regional authority, or ORC as determined by the Director Engineering, Hazards and Science. Where the work is not satisfactory ORC will issue a further Notice to Fix in respect of that building work.

Where ORC is exercising functions on behalf of other regional authorities, all information will be copied between the ORC and the regional authority.

A person commits an offence if they fail to comply with a Notice to Fix. Prosecution actions shall only be commenced with the approval of the Chief Executive.

4. PROCEDURE FOR CLOSE-OUT OF NOTICE TO FIX AND MAINTAIN RECORDS

Evidence of compliance with the Notice to Fix includes some or all of the following being supplied:

- Updated Application Assessment checklist (as when the Lead Consultant has been supplied with the required information);
- Correspondence including a recommendation from the Lead Consultant;
- Other means specified in the Notice to Fix being fulfilled.

The Director Engineering, Hazards and Science will review the evidence that has been supplied. If satisfied that the Notice to Fix has been complied with they will record the decision in Objective and inform the Legal Counsel. The Legal Counsel will prepare and issue correspondence to the dam owner (or their nominated agent), and the regional authority (if the dam lies outside Otago) confirming that the Notice to Fix has been complied with.

Where the Notice to Fix has not been complied with in a timely manner, then the Director Engineering, Hazards and Science will assess and develop a specific plan in accordance with the Building Act.

The originating regional authority will be informed throughout.

Where applicable, cost recovery and billing will be initiated by the Legal Counsel in consultation with the Director Corporate Services.