

# G07 Evidence of Compliance Process (Inspections and Producer Statements)

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## 1. REGULATORY LINKAGES

This document describes how ORC will meet the requirements of Regulations 7(2)(a)(iii), 7(2)(a)(iv) and 7(2)(e) of the Building (Accreditation and Building Consent Authorities) Regulations 2006.

## 2. OVERVIEW

ORC's Evidence of Compliance Process has several objectives:

- To enable a consent holder to demonstrate compliance with their building consent and approved variations and amendments of that consent;
- To assist an efficient and effective process for issuing Code Compliance Certificates, in that appropriate information has been collated to demonstrate the building work has been undertaken in accordance with the consent and approved variations and amendments of that consent;
- To assist in management of any non-compliances that arise requiring notices to fix, etc.;
- To manage the dam safety risks that may arise during the construction and commissioning process of the building work.

To meet these objectives, ORC will require evidence of compliance at appropriate milestones during the exercise of the consent.

### 3. PRODUCER STATEMENTS

Producer statements have no specific status under the Building Act 2004. However, they can be used as a mechanism for helping establish compliance with the Act and the Building Code. Producer statements can also cover work relating to a variety of different building control situations, such as statements associated with design proposals, statements covering design reviews, and statements made by practitioners who have constructed, installed or reviewed completed building work. ORC needs to have confidence that people providing producer statements have appropriate experience and competence in their field(s) and the content and accuracy of any producer statement will need to be assessed by the Lead Consultant appointed by ORC.

In a letter to BCAs dated 29 May 2009 the DBH has advised that *“regardless of the information provided by a producer statement author, the building consent authority remains solely responsible for deciding it is satisfied on reasonable grounds that any building work complies with the Building Code and approved building consent”*. The DBH has also held that producer statements are evidence of opinion not evidence of fact (see the October 2008 BCA Update available on the DBH website). Accordingly, the ORC treats producer statements as evidence of opinion not evidence of fact.

**The ORC requires that any “peer review” used to support an application be accompanied by a completed PS2. In keeping with the opinion of IPENZ, ORC requires all PS2’s to be accompanied by a clear statement as to the nature and depth of the review undertaken by the signatory to the PS2. This is particularly important because the brief given to the peer reviewer (by the owner) may have restricted the review to certain aspects of the project, meaning that some parts have not been subject to peer review. Where a peer review has been undertaken then the owner or their agent shall advise ORC of any recommendations arising from the review and whether and how they have been incorporated into the proposal.**

**Only producer statements signed by a Chartered Professional Engineer in a relevant area of competency are accepted by the ORC.** This is in keeping with advice provided by IPENZ in an article titled “Producer Statements” published in Issue 85 of Engineering Dimension (September 2009).

**Producer Statements for design (PS1), design review (PS2) or construction review (PS4) shall be in the latest form published by IPENZ and shall be completed fully and correctly.**

**The description of the building work shall be specific and shall itemise the relevant appurtenant structures and sitework.** This is to ensure no ambiguity in the assessment and that it is clear how the Act has been interpreted by the Producer Statement author.

### 4. ISSUES AND CONSIDERATIONS

Evidence of compliance and compliance monitoring are vital parts of the building control process and ORC’s processes, policies and systems reflect this. It is the experience of the ORC that building work often commences ahead of building consent being granted. This raises concerns as to whether the partially completed works have been the subject of proper construction monitoring, especially when the designer denies knowledge of the work having started.

One of the questions associated with the evidence of compliance process is “in a deliverable sense, what documents does the ORC expect to see from the consent holder?” In some cases this is best done by breaking down the requirements into the individual Building Code clauses.

For some projects there could be numerous Producer Statements being submitted to the ORC at different times as work is completed by the various installers and subcontractors. It is necessary to have one party collate and provide this material to the ORC in an orderly fashion as a package – this should be the consent

holder's agent (usually the lead designer). They also need to provide assurance that components of systems are properly integrated i.e. simply providing Producer Statements for individual components of a system is no guarantee that the system as a whole will function.

Clear accountabilities are crucial for this process. All parties need to be clear who has the authority to speak on behalf of the consent holder i.e. who is the owner's agent? The process needs to provide for the situation in which the advisers used by the consent holder, and the consent holder's agent, may change during the course of a project. Care is needed to ensure accountabilities and authorities are clear at all times. It is noted that the statutory accountabilities lie between the consent holder (or their nominated agent) and the ORC.

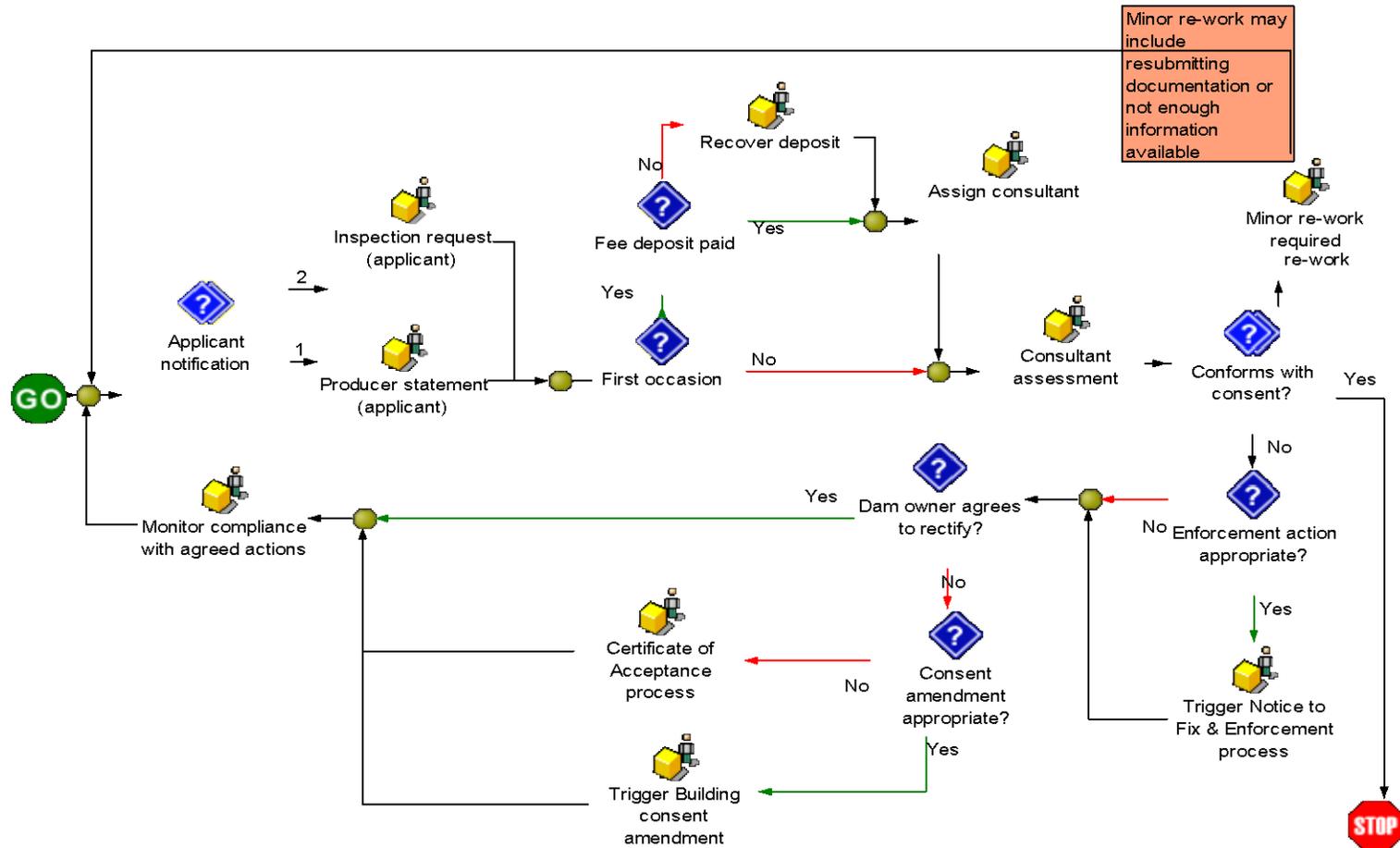
It is normal for the as-built structure to differ from that described in the plans and documents supporting the building consent i.e. "the design is not completed until the structure has been built". Part of the role of the ORC's adviser is to assess whether the as-built structure conforms to the scope of the building consent. If it does not conform fully then a certificate of acceptance will be required.

Applicants need to describe in their application how the work is to be implemented and commissioned along with the proposed construction schedule and the owner's plans for having the construction work verified. Building consent amendments will arise – the ORC will consider on a case by case basis what is and is not acceptable in terms of construction proceeding while a new building consent or an amendment or variation are obtained.

The applicant must state as part of their application for building consent how compliance is to be achieved. There are limitations on what can be specified as conditions on a building consent. Deficiencies in the information provided by the applicant shall be treated as a request for further information and the application put on hold pending receiving that information. Deficiencies shall not be remedied by way of conditions of consent.

## 5. PROCESS OVERVIEW

Process: P02 Evidence of Compliance Process



**BUILDING CONSENT AUTHORITY MANUAL – OTAGO REGIONAL COUNCIL**

**TITLE:** G07 Evidence of Compliance Process (Inspections and Producer Statements)

**RESPONSIBILITY:** Manager Consents

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**Process Description for P02 Evidence of Compliance Process**

<b>Stage(s)</b>	<b>Notes</b>	<b>Record created</b>
Applicant notification Inspection request Producer Statement	Applicant triggers the process through either an inspection process or provision of an inspection request. This may have been prompted by ORC being proactive in ensuring compliance and checking whether work is proceeding or by specifying conditions of consent.	Inspection request, or provision of producer statement noted in Objective in project folder.
First Occasion = "Yes" First Deposit paid Recover deposit	At the start of the inspection process is an opportunity for BCA Administration staff to check the billing arrangements with this consent and deposits paid to date.	Any invoice created saved into Objective.
Assign consultant	The consultant will probably be that used to process the consent, but is a separate assignment as other factors (e.g. availability, conflict of interest etc.) may have arisen after the granting of the consent.  The assignment process is as per G06.	See G06 for records created re ORC Brief and Job Confirmation checklist.
Consultant assessment	The Lead Consultant will assess, as per the guidance note, the information obtained by the inspection, or in the producer statement.	Evidence of Compliance Form completed by consultant, and provided to ORC and applicant.
Conforms with consent = "Yes"		Noted in Accella including reasons for accepting the evidence.
Conforms with consent = "Minor re-work required"	This loop enables minor re-works to be addressed. This could be re-submitting documentation, a re-test in a prescribed format etc.	Information request and correspondence to correct minor re-work saved into Objective.
Conforms with consent = "No" (and subsequent stages)	If the evidence of compliance indicates non-conformance with the consent, then a Notice to Fix will be issued.	All correspondence saved into Objective in Project folder.  Non BCA functions - other records generated as a result of other processes.

## 6. WHAT EVIDENCE WILL BE REQUIRED?

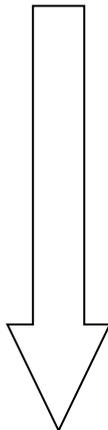
ORC will ensure that the consent that is issued identifies the evidence of compliance required. This may be inspections, producer statements or other specific information requirements. It is noted that ORC’s role is regulator rather than designer or construction supervisor, regardless of whether ORC uses consultants or its own staff for inspections.

The following table demonstrates that there is a range of evidence of compliance that may be required for differing scales of building work. There may also be differing skill-sets required to assess the evidence. With increasing complexity, the focus moves increasingly from ‘inspections’ through to ensuring systemic controls are in place and appropriate technical information relating to evidence is captured in the construction process. The ‘and/or’s in the table indicate that the types of evidence may be cumulative and not exclusive. Also the evidence required is indicative only – there will be simple building work that will require more complex evidence requirements such as producer statements.

### Scale of building work

### Indicative evidence required

Small, simple dam structures with Low Potential Impact Classification (PIC)



and/or

Inspection by ORC (e.g. verification that dam is being constructed in the right location)

and/or

Inspection by Lead Consultant (e.g. technical assessment of dam construction method)

and/or

Provision of certain as-built information during construction (e.g. post-excitation to confirm substrate)

and/or

Producer statements (appropriate technical assessment by Chartered Professional Engineer – see Section 2 of this Guide)

and/or

Additional certification from independent experts acting as QA to the dam designer

Evidence of compliance with industry practice in construction and commissioning e.g. NZSOLD Dam Safety Guidelines, ANCOLD Tailings Dam Guidelines.

Large, complex dam structures with High Potential Impact Classification (PIC)

For some smaller dams the owner is also the designer and builder. The ORC may require the owner to engage an expert to inspect and certify the dam at particular milestones during construction, and to submit this certification to the ORC as evidence of compliance.

## 7. EVIDENCE OF COMPLIANCE SOUGHT

Part of the role of the lead consultant conducting the regulatory review for ORC is to advise ORC on the requirements for ORC’s inspection programme.

Types of evidence sought through inspections, producer statements or other methods may include, but is not limited to the following:

- Sitings;
- Footings, foundations, or underpinnings;
- Findings from excavations;

- Compaction and strength certificates;
- Placement of formwork, reinforcing steel, conduits, drainage;
- Appurtenant structure or specified systems details;
- Site hydraulic conditions;
- Post construction hydraulic conditions;
- Routing of peak flood and super-design flows;
- Documentation evidence of design process including dam design QA process.

Where measurements have been undertaken as part of the processing of the application, or are required to be gathered as part of the evidence of compliance, then the Lead Consultant will state what measurements are required, their criticality to the determination of compliance, the accuracy and precision required of each measurement and the records to be provided by the applicant as evidence of compliance with this. The records received will be placed on the project file.

ORC may require as a condition of consent a pre-commencement inspection to verify that building work has not commenced ahead of building consent being granted. This is not a technical inspection.

ORC requires the dam owner to prepare and submit a commissioning plan, describing how the completed building work is to be commissioned.

## 8. ASSESSMENT OF EVIDENCE

Assessment of evidence of compliance will be the responsibility of the Lead Consultant. Note the Lead Consultant used may or may not be the same as assessed the application for Building Consent. This will be considered a separate appointment. The Lead Consultant may also identify other experts working for the Lead Consultant who may be required to provide the assessment of the evidence supplied. It is noted that there are some risks for Council in terms of continuity of knowledge in using an advisor for the compliance phase that differs from the advisor that undertook the regulatory review of the building consent application.

### Producer statements

ORC may decide, based on the recommendations of the Lead Consultant, to use information in a producer statement from a suitably qualified and experienced person to help decide whether it is satisfied on reasonable grounds that the provisions of the Building Act and Building Code have been met. The producer statement and supporting documentation must include:

- A full description of the work covered by the producer statement;
- Evidence of the author's competence, including qualifications, experience and evidence that the work covered by the producer statement lies within their practice area;
- Appropriate evidence of compliance, such as measurements, engineering calculations, reference to relevant standards, other compliance documents.

The Lead Consultant shall determine whether the producer statement includes adequate and appropriate detail and shall recommend acceptance or decline of the producer statement based on the information provided and on their assessment of author competence.

### Inspections

The Lead Consultant will generally be responsible for technical requirements of inspections. The consultant shall ensure that the appropriate documentation (e.g. plans and specifications) is available during the inspection to enable the actual work to be compared with that which has been approved.

ORC staff may be involved in inspections where:

- They may be able to assist in gathering information;
- They can observe the state of construction;
- As part of overall quality assurance and familiarisation with the Consent being exercised;

- Where there is potential enforcement issues requiring warranted officers or where ORC identifies there are broader dam safety, or complementary resource management issues to be assessed with the building works.

### **Record of assessment**

The Lead Consultant will assess the evidence of compliance using the Evidence of Compliance Form to record:

- Details of the evidence assessed;
- Findings and the reasons for these, with confirmation of whether or not the work is assessed to be compliant;
- Any further action required, such as action to address non-compliances and/or further inspections.

The result of this assessment may result in triggering Notice to Fix (see G11) or enforcement considerations. Non-compliances that may be identified during inspection include non-compliances with building code, non-compliance with building consent and use of building methods or products subject to a warning or ban in accordance with Section 26 of the Act. Compliance action must be actioned in accordance with staff delegations (refer report 2013/1194, A581730).

## **9. UNDERTAKING INSPECTIONS**

Where inspections are identified as appropriate, information is included with the consent on how to notify an inspection including:

- The relevant milestones requiring inspection;
- When to book an inspection and notice period required;
- How to book an inspection and what information is required;
- The information required to be available on-site;
- Any special requirements in regard to inspection (i.e. request for safety equipment).

Records of inspections will be made and saved into Objective.

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## **10. WHO WILL UNDERTAKE INSPECTIONS?**

The Lead Consultant will generally be responsible for technical requirements of inspections. If a Lead Consultant is to undertake an inspection to ensure compliance with a building consent or the building code, the BCA will issue a Building Warrant to the Lead Consultant (individual) allow authority to inspect building work on behalf of the BCA.

ORC staff may be involved in inspections where:

- They may be able to assist in gathering information;
- They can observe the state of construction;
- As part of overall quality assurance and familiarisation with the Consent being exercised;
- Where there is potential enforcement issues requiring warranted officers or where ORC identifies there are broader dam safety, or complementary resource management issues to be assessed with the building works.

## **11. COMMUNICATION OF DECISIONS AND UPDATE OF PROJECT INFORMATION**

Upon completion of the assessment, the Lead Consultant will provide this, together with supporting documentation, to the Consent Officer. All evidence of compliance information including the assessment and producer statement or inspection records will be saved into the dam's folder (DS) in Objective. The Consent Officer will also forward a copy of the completed assessment to the applicant (or the applicant's agent) as soon as practical.