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Ref

TS-31-Notice to Fix-NV

Date

27/05/2008

TS-31 NOTICE TO FIX

BCA AIM

To serve Notices to Fix in an accurate and timely manner, when this is necessary to achieve a satisfactory outcome.

ROLES AND RESPONSIBILITIES

- **BCA**

Responsible for developing policy and procedures in respect to identifying, managing, obtaining and collating information and determining matters of non-compliance in respect to notices to fix.

- **Building Manager**

Responsible for approving the serving of notices to fix within delegations.

- **Building Officer**

Responsible for identifying, managing, obtaining and collating information in respect to matters of non compliance and the serving of notices to fix.

BACKGROUND

1. Sections 163 – 168 of BA 2004 relate to Notice to Fix.
2. A Notice to Fix is a statutory notice requiring a person to remedy a breach of the Building Act 2004 or Regulations.
3. A Notice to Fix is required to be issued by a '*responsible authority*' which is defined in the Act as:
 - a building consent authority
 - a territorial authority
 - a regional authority.
4. A Notice to Fix is required to be issued to a '*specified person*' which is defined in the Act as:
 - the building owner, and
 - if the Notice to Fix relates to building work being carried out:
 - i. The person carrying out the work; or
 - ii. If applicable, any other person supervising the building work.
5. Section 165 requires that a Notice to Fix be issued on the prescribed form and that the form be correctly completed. Aspects to be addressed are:
 - reasonable time-frames within which the Notice to Fix is to be complied with
 - the type of building work that must be carried out to fix the building work (if applicable)
 - whether the owner is to obtain a certificate of acceptance for work if it has been undertaken without a building consent
 - whether on completion of the building work the specified person is required to contact the territorial authority for the district in which the work has been undertaken
 - whether work is required to cease immediately.
6. Section 394 states that a Notice to Fix is sufficiently served if it is:
 - delivered personally to the specified person



- delivered to the specified person's usual or last known place of residence or business
 - sent by fax or email to the specified person's fax number or email address
 - posted by a letter addressed to the person's last known place of residence or business.
7. It is an offence for a building owner to fail to comply with a Notice to Fix. People committing such offences may be liable to a fine not exceeding \$200,000 and, in the case of continuing offence, to a further fine not exceeding \$20,000 per day or part thereof.
 8. The BCA must be notified by the specified person that the building work has been fixed and a time arranged for that work to be inspected.
 9. On completion of the inspection, the BCA must notify the specified person in writing that the work to which the notice relates has been fixed or not fixed as the case may be.
 10. Notice to Fix could be issued in the following circumstances: -
 - Building work occurs without the required Building Consent
 - Building work is carried out not in accordance with Consent documents
 - Building is earth-quake prone, dangerous or insanitary (TA function)
 - Compliance Schedule items not complied with (TA function)
 - Failure to notify and obtain the approval of the TA for change of use of a building (TA function)
 - Failure to apply for a Certificate of Acceptance (TA function)
 - Failure to apply for a Code Compliance Certificate on completion of the building works or within the 2 year period from issue of the Building Consent
 - Failure to comply with the requirements of a Notice to Fix
 - Failure to provide the Building Warrant of Fitness
 - Exempt building work has been carried out not in accordance with the Building Code

PROCEDURE

1 BUILDING CONSENT AUTHORITY IDENTIFIES THAT WORK IS NOT IN ACCORDANCE WITH BUILDING CONSENT

1.1 On becoming aware that building work has not been undertaken in accordance with the building consent

OR

that work has been carried out for which a building consent should have been obtained

OR

exempt building work not carried out to requirements of Building Code

The BCA will initiate the issue of a Notice to Fix on the prescribed form.

2 DETERMINE IF STOP WORK IS REQUIRED

2.1 The Building Officer will need to determine whether work should cease immediately. If so, the issue of the Notice to Fix should be given high priority. Note: The Building Officer may have already issued a stop work, if they deemed the work to be unsafe.



3 IDENTIFY PARTIES INVOLVED AND MATTERS TO BE RECTIFIED

- 3.1 To enable the Notice to Fix to be completed, the Building Officer will need to identify the specified person(s) to whom the Notice to Fix is to be issued. This will be the building owner and the person supervising or carrying out the building work.
- 3.2 The Building Officer will need to clearly convey the matters to be rectified and state a reasonable time-frame in which compliance is to be achieved.
- 3.3 The Notice to Fix must also state whether the specified person is to contact the BCA once work has been completed.
- 3.4 If the Notice to Fix is to be issued as a result of building work having been carried out without a building consent, the Notice to Fix will need to state whether or not a certificate of acceptance will be required (refer to T-36).
- 3.5 If the Notice to Fix results in new work being required, an amendment to the building consent will be required.

4 CONTENT OF NOTICE

- 4.1 The notice should set out:
 - what work is to be remedied
 - clear description of the work
 - time-frames for compliance to be achieved
 - appropriate references to the Compliance Documents
 - whether consultation with a registered engineer or professional is required
 - whether an amendment to the consent is required
 - whether an application for a certificate of acceptance is required
 - whether a stop work applies
 - if Building Consent must be obtained before the work can be carried out.

5 SERVE NOTICE TO FIX

- 5.1 When satisfied that details on the Notice to Fix are correct and the notice is ready for issue, it may be posted, faxed, emailed or personally delivered to the specified person.

6 RECORD DECISION-MAKING PROCESS AND DIARY FOLLOW-UP DATES AND ACTIONS

- 6.1 Because the issuing of the Notice to Fix is the first step of an enforcement process that can potentially escalate to prosecution, it is important that the BCA keep comprehensive records of all communications.
- 6.2 The notice will specify the time-frames for compliance to be achieved. It is important that follow-up actions are instigated in a timely manner.


7 CARRY ON WITH BUILDING INSPECTIONS

- 7.1 The BCA will continue to inspect all building work associated with the building consent and issue the code compliance certificate on completion if it is satisfied that Code compliance has been achieved and all matters pertaining to the Notice to Fix have been resolved.
- 7.2 A record will need to be placed on the job card to clearly communicate which work is associated with the building consent and which is associated with the certificate of acceptance (if a certificate of acceptance has been issued).

8 INSPECTION AFTER EXPIRY OF NOTICE TO FIX

- 8.1 After the expiry of the Notice to Fix, an inspection should be arranged to verify what works have been carried out.

9 LIFTING A NOTICE TO FIX

	<p style="text-align: center;">Clutha District Council</p> <p style="text-align: center;">Building Consent Authority Manual</p>	Doc Ref	TS-31-Notice to Fix-NV
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- 9.1 If all work specified in the Notice to Fix has been completed, note on BCA records that the Notice to Fix is lifted.
- 9.2 Advise owner and other parties that the work has been carried out, and the Notice to Fix has been lifted.

10 NON-COMPLIANCE WITH NOTICE TO FIX

- 10.1 If some, but not all, of the work specified in the Notice to Fix has been carried out, it may be appropriate to lift the current Notice to Fix, and issue a further Notice to Fix dealing with the remaining work. The owner and other parties should be advised that the Notice to Fix has been lifted, and that a further Notice to Fix has been issued.
- 10.2 Alternatively, enforcement action could be considered for failure to comply with the Notice to Fix.
- 10.3 It may be possible to deal with further minor outstanding matters with written advice, and corresponding notes on BCA records.
- 10.4 If building remains earthquake prone, dangerous or insanitary, it should be dealt with according to the Policies for Earthquake Prone, Dangerous or Insanitary Buildings adopted by the TA.

NOTES

- Earthquake Prone Buildings Policy
- Dangerous and Insanitary Buildings Policy