**GUARANTEE**

To **guarantee** in the ordinary use of the word it means to give an assurance or promise that something will be done or will happen. But it is not possible to forecast the future with absolute certainty so if a tradesperson says s/he **guarantees** to start work on a certain day but fails to, it depends on any contract that may be in place as to whether that creates a legal right, such as entitling the employer to a remedy of damages for example, or it is just another broken promise, where workers say they will turn up at such and such a time, but seldom do. But if in the same circumstances such a statement was put into writing, **legislation** may create an enforceable obligation, even absent consideration. Contractors, subcontractors, suppliers, and manufacturers **guarantee** their workmanship, materials, and equipment as required under express contract terms. Legislation typically implies such terms into agreements for the sale and purchase of goods and contracts involving consumers supplied with goods and services. Persons may also **guarantee** to answer for the debts, defaults, and undertakings of others.

**WARRANTY**

One common meaning of **warranty** is a **guarantee** or assurance given in regard to goods under a contract of sale. A **warranty** is collateral to the contract’smain purpose and its breach gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated. Such provisions are typically set out and defined in **legislation** for the sale and purchase of goods.

**PRODUCER STATEMENTS**

A **producer statement** was defined in the **Building Act 1991** as any statement supplied by or on behalf of an applicant for a *building consent*, or by or on behalf of a person who has been granted a *building consent* that certain work has been or will be carried out in accordance with certain technical specifications. *Producer statements* cover a wide range of design and construction.

The **Building Act 2004** does not refer to the use of *producer statements*; however, **Auckland Council** continues to use them as a mechanism for establishing compliance with the **New Zealand Building Code** and they are widely accepted by the industry. See **AC2301 Producer Statement Policy**.

**AS-BUILT DRAWINGS**

The following perspective in the US is interesting for comment by the **American Institute of Architects** that it receives many queries about the meanings of the terms “**as-built drawings**,” “measured drawings,” and “record drawings” which it says can be confusing and misapplied.

**As-built drawings** are prepared by the sub/contractor to show on-site changes to the original construction documents.

Measured drawings are prepared in the process of measuring a building for future renovation or as historic documentation. They are created from onsite measurements.

Record drawings are prepared by the architect and reflect on-site changes the contractor noted in the **as-built drawings**. They are often compiled as a set of on-site changes made for the owner in the owner-architect contract.

The terms “measured drawing” and “record drawing” have been used for more than 100 years. The implied meaning and overlapping use of the terms have evolved informally. A 1952 edition of **Architectural Graphics** by C. Leslie Martin defined “measured drawing” as: “*The measured drawing gives a description of some detail, element of architecture, or building.*”

When an infrastructure project is complete, the professional team has to prepare drawings representing the infrastructure, as it was completed in the end. All on-site changes and deviations from designs are incorporated in these drawings. This is very important particularly to services which are difficult to locate once they have been covered, like pipelines and underground power lines.

These drawings are typically labelled in New Zealand as "**as built**" but legal advice in the US recommends changing that to "***as recorded***", because "***as-built***" implies the drawings are a perfect representation of what has been built. By using the phrase "*as recorded*", it is suggested that any liability or responsibility for incorrect drawings becomes unclear.

SUMMARY in a typical *traditional contract*:

* The ‘client employed’ designer produces tender drawings which the building consent authority [under **s273(1)(a)** **Building Act 2004**] approves to become the building consent drawings.
* The contractor builds in accordance with the building consent drawings.
* Changes are made for various reasons to the work in progress by the client’s instructions.
* When work is finished the main contractor and subcontractors produce **as-built drawings** which show what they actually built and the contractor gives these to the architect.

\* The architect accommodates the **as-built drawings** into record drawings and presents them

 to the client for operational purposes [the architect has better facilities to do this than the

 contractor but who is bound by whatever the contract specification says happens].

 The Specification typically sets out detailed requirements for the content of **as-built drawings**

which may be passed to the client without necessarily being checked by the architect. The

“*Engineer*” to a contract using **NZS 3910** must under **5.20.3** check the **as-built drawings** and

give his/her “*consent*” to them when s/he considers they are of an acceptable standard. The

“*Engineer*” then presumably passes them to the client without further amendment.

Engineers or architects checking design documents prepared by others typically rely on a term in the agreement that obliges them to do the checking that effectively says ‘approval’ does not **warrant** that the documents are correct in all respects. S/he [engineer or architect] may refer to any issues s/he notices need attention but accepts no responsibility for anything s/he misses. The extent to which such *disclaimers* are valid in law will only be tested if a dispute arises and the client sues the person that ‘approved’ the drawings, claiming s/he was *negligent*. The outcome of any formal process is affected by the nature and severity of the outcome of what was ‘missed’.

* In the US it is recommended that to avoid potential liability for being responsible for drawings containing information produced by others that both **as-built drawings** and record drawings be titled record drawings thereby avoiding use of a term suggestive of their accuracy [a position that has never been adopted in NZ to the writer’s knowledge].

**MAINTENANCE MANUALS**

**Maintenance manuals** are usually asked for together with **as-built drawings** [see for example **5.20 NZS 3910**] and these are increasingly important in modern buildings as ‘systems’ proliferate including the current tendency for many to be operated by remote control ‘off-site’.