



PRACTICAL COMPLETION CERTIFICATES – A REPEAT CAUTION-

Don't provide a PPC for your design project, unless you have provided full project observation and administration services.

The Claims Committee consistently sees Professional Indemnity claims relating to commissions where the architecture firm has **not** been commissioned to undertake contract administration services, nor construction observation. In these cases the firm is engaged only “ *to provide sufficient documentation for building consent application purposes*”.

Later on, when the developer/client seeks a draw-down of the project funding, the bank invariably seeks evidence of a practical completion certificate before releasing further funds.

In such situations, when the client requests a property inspection and the issuance of a Practical Completion Certificate, the architect should **NEVER** acquiesce and provide this service – no matter how qualified the **PCC** is.

If the architect's name is on all drawings, construction details and specifications and other documentation and then if the architect has provided a Practical Completion Certificate, a legal inference may be made between the architect's documentation and project inspection and associated construction defects and damages, if there is subsequent litigation.

The legal inference is that the architect would have inspected the completed works against the background knowledge of the construction drawings and documentation: and that the architect ought to have closely inspected any critical construction detail for contract compliance **BEFORE** issuing the Practical Completion Certificate. If the detail was critical in order to guard against construction failure, a Court will want to know why the known detail was not carefully inspected. Lack of observation may be evidence of negligence.

There are very substantial time and emotional costs to architects involved in defending their position. The associated legal costs are certainly not inconsequential, and the litigation risk to the architect (*and their Insurer*) is substantial.

The NZACS Claims Committee has sighted claims where the non-observing architect has had a perfectly credible defence against any allegations of poor documentation – i.e. No Liability at all, but the subsequent discovery of the architect's Practical Completion Certificate has resulted in a claims exposure of multi-million dollars.

In terms of risk management, the firm would have earned minimal time-charge income by issuing the PPC, but at enormous risk. Why accept this risk for so little financial reward?

If you want to maintain an ongoing professional relationship with the client, it is wiser to clearly explain that since you were not engaged to provide construction services, you cannot provide the certification. Politely recommend another party who was involved in construction to provide documentation to suit the bank or other party. This could be

another architect who is clearly disassociated from the design and documentation. Any liability attaching to the alternative person/architect will be measured against the conduct of an experienced person/architect providing a simple visual inspection; not against an additional background of detailed professional knowledge for the project.

Another problem may appear once the developer/client has completed the project. It may cease trading as a limited liability company and the architect, through "*joint and several*" tort liability, becomes a prominent defendant in subsequent litigation.

There is no easy escape route for architects in such situations. If the claim relates to "*leaky buildings*" and the Professional Indemnity policy has an exclusion relating to such events, the architect can become **PERSONALLY LIABLE** for the uninsured loss. It is not good marketing to be named as a defendant in a negligence suit, even if innocent.

Variants on the above may be:

The architect offers to provide site visits on the basis of invitation by the client – perhaps to provide limited additional information on specific items eg colours, or “quality control”. In such cases it becomes very difficult to assert at a later date the limited extent of your involvement: it is easy for the cross- examination to turn in the direction that you must have seen something else when you were on the site.

The client is a developer who does not require (and perhaps does not want) you to attend on the site, so he can do things “his way”. Your involvement is only sought because a potential purchaser requires “the architect” to certify “completion” as a condition of purchase. Maybe the developer is yet to pay your final fee claim.....

DON'T PROVIDE A PCC FOR YOUR DESIGN PROJECT, UNLESS YOU HAVE PROVIDED FULL PROJECT ADMINISTRATION SERVICES.

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