



COMMUNIQUÉ

Newsletter of the
New Zealand Architects Co-operative Society Ltd

October 2005

Chairman's Report

Hamish Wixon, Chairman NZACS:

I am writing this article for *Communiqué* as the new Chairman of the **NZACS** having taken over from Barry Dacombe at the September Board Meeting. Firstly, on behalf of the **NZACS** Directors, I would like to acknowledge the huge input Barry has had in the affairs of **NZACS** as Chairman for the past 20 years. When you reflect that the Society has been going for 33 years this has been an impressive record.

The Members of **NZACS** have been fortunate to have someone of the caliber of Barry as a Board Member and as Chairman. He possesses a wealth of knowledge about the practice of architecture both in New Zealand and overseas. He combines this with a passion and enthusiasm for architecture and the profession generally.

The Board Members have appreciated and benefited from Barry's wise counsel and guidance while he has been chairing the meetings. Fortunately for us he will remain on the Board – long may his involvement continue. Having taken over as Chairman it is an opportune time to reflect on the reason the Society was set up in 1972 – that is to provide architects with a vehicle for the management of liabilities and group purchasing of quality insurance.

Having sat on the Board for the last four or so years I feel more and more reassured that architects are dealing with architect's liability issues. Given that we have limited control over negligence claims against us I see that dealing through a Society like **NZACS** where the Claim Directors are also architects is invaluable.

I have always been impressed by the focus on risk management through *Communiqué* and **NZACS** Seminars. I strongly believe that professional indemnity insurance through the Society has huge benefits to all Members.

I look forward to my time as Chairman.

Practical Completion Certificates – A Repeat Caution

Graham Strez, NZACS Claims Director writes:

The Claims Committee consistently sees Professional Indemnity claims relating to commissions where the architectural firm has not been commissioned to undertake contract administration services, nor construction observation. – *e.g. to provide sufficient documentation for building consent application purposes only.*

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.

For the purposes of subsequent litigation, the architect's name is on all plans and documentation; the architect has provided the Practical Completion Certificate and it is established that there is a causal link between the architect's documentation and project inspection and associated construction defects and damages.

The legal inference is, that the architect prepared the plans, construction details and specifications: that the architect 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 maybe evidence of negligence.

The substantial time-cost and emotional-cost to the architect in defending their position are significant; the legal costs are not inconsequential, and the litigation risk to the architect (*and their Insurer*) is substantial.

We have 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, but at enormous risk. Why accept this risk for so little financial reward?

If it is to preserve the professional relationship with the client, it is surely better to clearly explain why you cannot undertake such commission, and politely recommend another architect to provide the service. In this instance, the new architect is clearly disassociated from the design, documentation and contract administration. Any liability attaching to the alternative architect will be measured against the conduct of an experienced architect providing a simple visual inspection; not against an additional background of detailed professional knowledge for the project.

OK, so the developer/client has completed the project. They 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.

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

COMMUNIQUÉ

The Official Newsletter of the New Zealand Architects Cooperative Society Ltd

Editor: Alan Purdie, NZACS

177 Barnard Street, Wadestown, Wellington

Phone: (04) 472 1772 **Email:** akp-on-barnard@clear.net.nz **Website:** www.nzacs.co.nz

We welcome contributions from readers, on how they manage risk.