



## **BEWARE OF CHANGES TO THE SCOPE OF SERVICES**

Significant risks with expensive consequences have resulted from failure to adequately record variations to the terms and scope for the provision of architect's services.

At the outset of services the Architects Agreement might be well documented and include an intention to provide completed full services including preparation of contract documentation and the provision of contract administration. If the client later decides to reduce the architect's role in contract administration, or reduces the role to one of attending site meetings to clarify construction details and/or monitor quality of finishes in association with a project manager, or to only provide a practical completion certificate, be alerted. A number of issues arise and risk increases.

When the architect is engaged to design, document and administer the contract documents the documents are instruments of service, which may be corrected or modified by the architect when necessary without procedural difficulty, and often without cost to the client. If the architect is unable to review the documentation as the work progresses through construction then design oversights, a missed flashing, or the like can prove costly to correct later on.

If the architect is not available to interpret the documents or to resolve on-site construction matters, the contractor may defend incorrect action taken at the expense of the architect. The client may have a close working relationship with the contractor and develop some empathy with the contractor if the documents are seen to be unclear or ambiguous.

A project manager may, in the architect's absence, enhance status with the client or perhaps explain administrative shortcomings by identifying the cause as the architect's documents.

If the architect knows in advance that he/she will not be providing contract observation service they will have opportunity to provide additional clarifying details to review the tender documentation in that context and include a risk margin – all at additional fee cost. Architects old enough to recall the earlier NZIA Scale of Charges will be aware that the additional cost of documentation and risk was in the order of 20%.

In these circumstances, if there is no record of the architects changed and reduced responsibility, the original contract terms prima facie indicate the architects wider involvement and therefore culpability when say, the developer client is no longer solvent and construction shortcomings become apparent.

A serious and significant lack of judgement occurs when an architect issues a Certificate of Practical Completion for a project, when they have not provided a site

observation role although the certificate attests to the stage reached by the contract. It is difficult to appropriately word a practical completion certificate with adequate qualifications, to remove the legal risks when the construction has not been adequately observed.

With developer clients this certificate is vital, being evidence of finance due, and subsequently, but falsely used as evidence of a satisfactory standard of construction achieved.

Architects should recognise the risks to them of the issue of project certification and the commercial importance of the certificate to the client and ensure it is provided only as part of site observation services for an appropriate fee.

Unless the architect's reduced responsibilities are clearly and unambiguously recorded at the outset they will face difficulty in defending tortuous claims from subsequent building owners.

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