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# COMMUNIQUÉ

Newsletter of the  
New Zealand Architects Co-operative Society Ltd

June 2008

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## PRACTICE ALERT

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### PRACTICAL COMPLETION and DEFECTS LIABILITY PERIOD CERTIFICATES

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#### ADDITIONAL CLAUSE RECOMMENDED

NZACS, having taken legal advice, recommends that for each and every such certificate issued under the *NZIA Contract SSC 2007*, Members insert the following paragraph to the wording of each certificate they issue.

*“The Architect has used all reasonable care and skill in the preparation of this certificate and it is provided in accordance with, and subject to, the Architect’s professional services agreement with the Principal. It is given solely for the benefit of the Principal (acting impartially between the Principal and the Contractor) and cannot be relied upon by any other party.”*

This wording makes it absolutely clear the certificate is solely for the use by the Principal alone. The issue surrounding this additional wording is to do with the liability of the Architect in issuing these certificates in their role as agent of the client and acting impartially between the Principal and Contractor when engaged to administer the contract.

The intent of the wording is to avoid any connection that may suggest there is an implied contract or duty of care between the Contractor and the Architect when the Architect is acting in this role, for if there was, it would not have the protection of “*limited liability in time and quantum*” that is established by the contract between the Architect and the Client under AAS.

As an example, should the Contractor suffer loss as a consequence of there being an error in the Architect’s certificate the Contractor would seek damages under the construction contract with the Principal. The Principal would then seek redress from the Architect under the contract with the Architect with all of the limitations that exist under their contract, as opposed to the Contractor seeking direct redress from the Architect in tort, with out that protection.

This recommended added clause is important as Members will also be aware that often banks and project managers, to name but two, often rely on signed off Practical Completion Certificates for the release of funds. It is quite possible that certificates, incorporating this recommended wording, could give rise to pressures being put on Architects to change the wording to make these parties beneficiaries.

**Any such pressure exerted must be resisted.**

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As a reminder to Members Practical Completion is defined in *NZIA SCC Rule 12.1* as when:

- (a) *Information and warranties, listed in the Specific Conditions, which are essential for the Principal's use of the completed Contract Works have been supplied: and*
- (b) *everything has been done except for minor omissions and minor defects the Architect and Contractor agree which:*
  - (i) *the Contractor has reasonable grounds for not promptly correcting; and*
  - (ii) *do not prevent the Contract Works, or a Separate Section of them, from being used for their intended purpose; and*
  - (iii) *can be corrected without prejudicing the convenient use of the Contract Works or any Separate Section of them; and*
- (c) *everything has been done except for work which the Architect and the Contractor have agreed to defer.*

As a result of this legal advice to *NZACS* it is possible that *NZIA* may issue some amended wording to *SCC 2007* and/or the Practice Notes supporting the contract document.

**Watch out for these.**

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## **ANNUAL MEETING AND SEMINAR – DUNEDIN 27 JUNE 2008**

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The Annual General Meeting of *NZACS* will be held in the Chester's Lounge, 2<sup>nd</sup> Floor, The Dunedin Centre, 1 Harrop Street, Dunedin on **Friday 27 June 2008** commencing at **1.00pm**.

The meeting will be preceded by a lunch for Members at **12.30pm**.

Following the *AGM* Barry Dacombe will present the *CPD* Seminar entitled "***Practice Survival – Managed or Mitigated.***" The seminar, which offers sound practice advice, risk management strategies and outlines possible business structures for all practitioners operating a business, was fully reported in April Communiqué.

This is a great opportunity for members, not only resident in Dunedin, but those resident in Timaru, Wanaka, Arrowtown, Queenstown and Invercargill to car pool (*given the cost of petrol*) and come to Dunedin to listen and learn valuable practice information. *CPD* points will also be awarded.

Of course, this is also the opportunity to meeting with the *NZACS* Directors who are always interested in hearing from you, our Members.

So make it by **12.30pm** for lunch and we will see you all then.

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# Practical Completion Certificate

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Contract:

Location:

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Number of pages including  
this page:

Please contact the sender if you do not receive all of the pages.

This is to certify that in accordance with NZIA SCC 2007 Section 12 / NZIA SCC – SF 2007 Section 11 (*delete one*), the above named Contract Works were inspected and qualified for a Practical Completion certificate on (*insert date*)

Defects Liability obligations as detailed in NZIA SCC 2007 Section 13 / NZIA SCC – SF 2007 Section 11 (*delete one*) commenced on this date and continue until (*insert date*)

From the date of this certificate the Contractor is no longer responsible for maintaining the Contract Works Insurance and accordingly the Principal must now arrange the appropriate property insurances associated with occupation of the property.

In accordance with Rule 12.1 of the Conditions of Contract, attached to this certificate, is an Architects Direction listing minor omissions, minor defects and work which the Architect and the Contractor have agreed to defer for later action but within the time set by the Architect and without prejudicing the Principal's / occupier's convenient use of the Contract Works.

Note : Practical Completion is defined in NZIA SCC 2007 Rule 12.1 as when :

*(a) Information and warranties listed in the Specific Conditions which are essential for the Principal's use of the completed Contract Works have been supplied; and*

*(b) everything has been done except for minor omissions and minor defects the Architect and the Contractor agree which:*

*(i) the contractor has reasonable grounds for not promptly correcting; and*

*(ii) do not prevent the Contract Works, or a Separate Section of them, from being used for their intended purpose; and*

*(iii) can be corrected without prejudicing the convenient use of the Contract Works or any Separate Section of them, and*

*(c) everything has been done except for work which the Architect and the Contractor have agreed to defer.*

The Architect has used all reasonable care and skill in the preparation of this certificate and it is provided in accordance with and subject to the Architect's professional services agreement with the Principal. It is given solely for the benefit of the Principal (acting impartially between the Principal and the Contractor) and cannot be relied upon by any other party.

Signed by:

Date:

Architect to the Contract

Distribution

Contractor

Principal

Consultant

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# Defects Liability Period Certificate

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**Contract:**

**Location:**

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Number of pages including  
this page:

Please contact the sender if you do not receive all of the pages.

END OF DEFECTS LIABILITY PERIOD

**This is to certify that in accordance with NZIA SCC 2007 Rule 13.1.8 / NZIA SCC – SF 2007 Rule 11.4.2 (*delete one*) :**

- a) **the defects liability period has ended; and**
- b) **the contractor has completed all minor omissions and corrected all minor defects noted at practical completion; and**
- c) **the contractor has corrected the defects under NZIA SCC 2007 Section 13 / NZIA SCC – SF 2007 Section 11 (*delete one*)**

**The issue of this Defects Liability Period Certificate does not affect the Contractor's liability to fulfil any obligation in the contract, which remains unperformed or has not been properly performed.**

**The Architect has used all reasonable care and skill in the preparation of this certificate and it is provided in accordance with and subject to the Architect's professional services agreement with the Principal. It is given solely for the benefit of the Principal (acting impartially between the Principal and the Contractor) and cannot be relied upon by any other party.**

**Signed by:**

**Architect to the Contract**

**Date:**

**Distribution**

- Contractor
- Principal
- Consultant

## **COMMUNIQUÉ**

*The Official Newsletter of the  
New Zealand Architects Cooperative Society Ltd*

**Editor:** Alan Purdie

***NZACS***

177 Barnard Street  
Wadestown, Wellington 6012

Phone (04) 472 5150

Email: [akp-on-barnard@clear.net.nz](mailto:akp-on-barnard@clear.net.nz)

Website: [www.nzacs.co.nz](http://www.nzacs.co.nz)

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