

An update from within CoveKinloch and from our wider industry

Weathertightness Risk & Insurance

by Mark Koschak, Aon

As a follow up to our Winter Newsletter article on weathertightness risk and insurance, we invited commentary from the insurance industry.

Mark Koschak is an associate director of Aon New Zealand and specialises in the arrangement of professional indemnity insurance for architects, consultants and other professionals. Mark's views are those derived from his own practical experience and observation and are not presented on behalf of Aon or insurers.

"Since the building weathertightness phenomenon raised its head, insurers have tried different strategies in a genuine attempt to provide building industry professionals with cover. However, as the enormity of this latent problem has still to be realised, insurers have concluded that they are unable to obtain sufficient premium for the risk. Liability incurred by a professional for weathertightness is for the most part, now uninsurable.

Typically, claims are made against everyone associated with the construction of a building to the extent that each may have contributed to or have overlooked the defects, whether they be design or workmanship defects. This then requires a defence by each of the parties meaning legal costs are being incurred that could otherwise be used to fix the problem. Insurers have contributed to those legal costs. In addition, not all of the parties exist, are solvent or have the resources to satisfy a claim. This means an unfair proportion of damages are being allocated to those parties still standing, perhaps with the least culpability but who have insurance and therefore the ability to pay. This has placed an unfair burden for this problem on insurers (and Territorial Authorities). This process also takes time, all the while allowing the underlying problem (and cost) to escalate. Any settlement will invariably be inadequate especially after the legal costs are taken into account.

Insurance is not a panacea for this problem. Insurers are actively seeking to substantially limit their exposure and even quit it.

This is a very real concern for professionals who are losing cover for claims made against them at a later date arising out of the provision of their services at a time when cover in some form was available and around which their contracts were framed.

Professionals will now be faced with difficult decisions and strategies in continuing to service the weathertightness requirements of clients with severely reduced or no weathertightness insurance cover".

How many people can occupy a building?

There are limitations on the maximum occupancy numbers allowable in all classes of buildings.

We recently encountered a situation where a building had a maximum occupancy number of 286 entered on the Building Warrant of Fitness. However, there were approaching 400 people occupying the building.

This is an extreme example; however it serves to highlight the situations that do exist along with the liability complexities should an incident occur.

The compliance document for the New Zealand Building Code, Clauses C1, C2, C3, and C4 – Fire Safety and Acceptable Solution Part 2: Occupant Numbers and Purpose Groups determine occupant densities and occupant loading.

The maximum occupant load is determined by a calculation of the area of the building for each purpose group multiplied by the occupant density allowed. The width of escape routes available also become part of the calculation.

The DBH Building Warrant of Fitness form allows for occupancy numbers to be stated. However the reality is most BWOF's sighted in buildings do not identify the occupancy number, particularly those in older buildings.

Our advice to building owners is to check the average daily occupant numbers against the numbers on your Building Warrant of Fitness/Compliance Schedule. If there are sizable discrepancies or there is no number identified and you have concerns then you should address the issue.

Contact either Mark Hill or Brian Lucas in our Auckland and Hamilton offices respectively.



Fire Evacuation by Boat – Yeah Right!!

True – CoveKinloch has recently had a fire evacuation plan approved by the Fire Service for the Orams

Marine Village and Function suite. Due to the location, design and content of the boat park, evacuation procedures were designed that include transport from two of the assembly points by a 6 person Orams Marine vessel and by Reubens Ferry Services. This certainly is a first for us and possibly a first in NZ.

We are also coordinating consent for a secondary egress and finalising other regulatory issues that will enable the Orams Marine Function Suite, with spectacular views, to cater for up to 117 guests. If you are interested in booking the facility, contact Murray Dixon on 09 308 4806.

If you wish to receive this or later newsletters electronically then please email reception@covekinloch.co.nz

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Building Due Diligence Reports - These are carried out for potential owners of commercial property.

The intent of the report can include all or part of the following:

- Understand the risks with the condition of the property.
- Understand the potential maintenance costs.
- Understand the Dead of Lease liabilities as they relate to the building.
- Understand the potential retrospective cost consequences of applying for a building consent for relatively minor work.

With this information, the purchaser will have knowledge to strengthen their negotiation position; help determine the value of the investment they are making and to plan for maximising their return on the investment.

CoveKinloch has inspected and reported on hundreds of commercial buildings and can tailor the scope and content of a report to suit.

Condition Report - This provides a detailed analysis of the structure, roof, walls, floors, windows, doors, mechanical plant, electrical, lifts etc...

Maintenance Report - Planned and deferred maintenance items are identified together with cost estimates for these items.

Capital Expenditure - Replacement costs are determined for major items such as lifts, mechanical plant, windows, roofing etc...

Lease liabilities - The deed of lease is analysed to determine building maintenance and making good liabilities for both the lessor and lessee.

Future Development - Consideration is given to any restrictions of future development to the footprint of the building, height of the building and consequences to fire systems, disabled access, lifts, car parking etc.

To discuss all aspects of property acquisition, the parties to be involved and the timeline to which the information is required, please contact Ted Armitage, DDI 09 520 9594.

Sacramento - Update

Tenders for the recladding of all 153 units at the Sacramento complex in Dannemora have closed. Canam Construction has been awarded the contract and work on site will commence in January 2010. The project is expected to take 18 months to complete with occupants progressively vacating their units to allow the work to be carried out. A 'Clerk of Works' has been engaged by the Body Corporate for the duration of this project.

Ignoring advice from Council officers to comply with Building Warrant of Fitness requirements, has cost a North Shore garage owner and his company over \$15,000

Article courtesy of Rosemary Hazelwood of Building Networks

North Shore City Council vs. Anthony Paul Cardwell and Tony Cardwell Motors.

The facts of the case:

- Started with an overdue BWOFF.
- Issued Notice to Fix instructing him to obtain a BWOFF.
- Ignored the Notice to Fix.
- Prosecuted under the charge of failing to comply with a Notice to Fix under s168 of the Building Act, (which required him to obtain a current warrant of fitness for the building).
- Also charged under s108 of failing to display a current warrant of fitness.

The defendant's belligerent attitude was his undoing, according to North Shore Senior Advisor Compliance and Monitoring, Chris Randall. It was simply a matter of paperwork, but paperwork that had to be done and not altered along the way. Council officers spoke to the garage owner several times but in the end used up their patience and energy.

"We hand out a few yellow cards, and rarely a red card, but when we do they tend to count," said Chris. "It is important the paperwork is done. It gives surety to the tenants and protects the owner."

The defendant's application for a s106 discharge without conviction was declined.

Staff at CoveKinloch

Keith Small, registered architect in our Hamilton office has, after a planned transition, taken over the reins from **Johnny Aitken** as Manager – CoveKinloch Waikato. Johnny will remain fulltime in the Hamilton office as a building consultant.

We welcome **Nick Dinan** to our Waikato team who comes to us with property and facility management experience. Nick will be responsible for facility management roles with existing and new clients.

CoveKinloch Building Compliance are very pleased to welcome **Brian Lucas** to their team. Brian is a member of the Institution of Fire Engineers and joined us after a career in the NZ Fire Service and more recently with the building services team at Aurecon (Connell Wagner)

Mark Hill has moved from our Consulting team to become Team Leader of CoveKinloch Building Compliance. The move is a promotion for Mark who has an electrical and facility management career background. His skills will greatly enhance the delivery of our building compliance, fire engineering and fire evacuation services.