

### Earthquake shakes dust off Lease Clauses

Article by **Simon Kember**, a Partner at Glaistor Ennor Law Firm



Odds on that the Christchurch earthquake will have had lawyers, landlords and tenants scurrying back to examine in depth (possibly for the first time) lease clauses which one would never have expected to come into play.

Taking the ADLS Lease (5<sup>th</sup> Edition 2008) as example:

- Both parties will be reading the extent and fine print of their insurance policies.
- Clause 11.1 requires a landlord to keep a building in good order of repair, and any structural repairs will be at the landlord's cost.
- No doubt the parties will work together, but under Clause 15.1 the consequences of the earthquake give a landlord a fairly liberal right of access.
- Where a landlord is required to carry out improvements or upgrading relating to the earthquake, and the cost may not have been covered by insurance, the tenant may have to pay an improvements rent under Clause 21.2, a provision almost never invoked.

Then come the "crunchy" provisions relating to **total destruction** and **partial destruction**:

- Under Clause 26.1, if damage is such that the premises become un-tenantable, then the lease terminates.
- "Un-tenantable" is not decided by either party, nor is it defined, it is a matter of fact or could be a matter in dispute.
- Partial destruction is damage which doesn't cause the premises to be un-tenantable. No doubt landlords will be wishing to retain their tenants. Some tenants may see the event as an opportunity to exit or relocate.
- One would hope that in the light of the disaster, goodwill and good sense between the parties will prevail, but many will no doubt see the event as an opportunity to bargain or exert leverage on the other and this will put the destruction clauses to the test.
- If in doubt, landlords and tenants should consult their lawyers before taking any position in the matter.

*Footnote: - Claims resulting from the Canterbury earthquake to the Earthquake Commission totalled 103,259 as at 26 October 2010.*

### Web Based Access to ComplianceManager

Building Compliance information relating to our client's buildings held in our ComplianceManager programme can now be accessed via our website.

Compliance schedule details, BWoF progress, the current BWoF, building and fire system details and trial evacuation status can all be viewed and printed online.

This service is convenient and a time saver for our clients and ourselves.

Contact Savanna Swan directly on 09 520 9593 or [savanna.swan@covekinloch.co.nz](mailto:savanna.swan@covekinloch.co.nz) to secure online access.

### What actually happens when your fire alarm is activated?

Article by **Campbell Sheffield** at Guardian Alarms

When a fire alarm system is activated its main purpose is to alert the building occupants to evacuate. However the activated alarm in a complex building will be interfaced with a range of other systems that must also react to assist to protect the occupants and the building itself.

The most common interfaces are air conditioning, where shutting down the supply of oxygen to a fire is crucial. Returning the lifts and occupants to the ground floor and disabling the lift from further use should also occur. Triggering the closing of smoke and fire stop doors while releasing normally locked access control doors is critical so as not to impede safe egress.

Interfaces to gas shut-off valves are important for obvious reasons while fire dampers, which operate either by fusible link in the duct work or are motorised will require a signal from the fire alarm panel to close and slow the spread of flame.

The Building Code is not concerned with property protection, only life safety hence the low threshold code requirements for alarms.

Some building owners may not know if their fire alarm system is monitored. Landlords and tenants may be surprised when they discover that in the event of a fire the Fire Service are not automatically called. Alarm monitoring will resolve this issue.

Fire alarm systems are generally installed to the minimum Building Code requirements. It can be a relatively inexpensive exercise to have a system connected to the Fire Service.

Fire alarm systems can be monitored via a building's existing monitored security system. It is simple to interface the two systems and will not cost any more in monitoring fees.

Fire alarm companies will test that the interfaces are operating upon activation during the annual survey however, it is important to have the other building systems checked for correct operation.

### Five CoveKinloch Staff on DBH Technical Panel



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

Five of CoveKinloch's senior staff have been accepted onto the Department of Building and Housing's panel to provide technical support services for a three year duration.

Ted Armitage, Jim Morrison, Nick Batchelor, Kevin McLeod and Johnny Aitken will be called upon to support the DBH as Building Forensic and Technical Specialists.

The roles will include both on site assessments and document based assessments supporting the Department's Determinations Group, Weathertightness Group and assisting with Building Standards issues as they arise.

Acceptance onto this panel was only achieved after a national request for interest and evaluation process was concluded by the DBH. Our congratulations go to Ted, Jim, Nick, Kevin and Johnny.

<b>AUCKLAND</b> Level 3, 25 Broadway Newmarket  <b>Ted Armitage:</b> 09 522 4416	<b>HAMILTON</b> Level 3, 169 London St Hamilton City  <b>Duane Darling:</b> 07 839 6127	<b>WELLINGTON</b> Level 3, Harbour City Centre 29 Brandon St  <b>Barry McDermott:</b> 04 473 3001
----------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------

### IQP Update

An update from **Rosemary Killip** of Building Networks

After years of fragmentation, Councils and the IQP Industry are now working together to form a National IQP Register.

A project group comprised of IQP industry representation, council regional registrars and senior managers has been working on the formation of the national register of IQPs. This is due to the fact that IQPs will NOT now transition to become LBPs.

Those involved agreed that a national procedure, one stop shop is necessary and that it should not be left up to individual councils or regions to continue to administer duplicated schemes.

The group has been working through the issues to present the Department of Building and Housing with a way forward. A NZ IQP Registration Board Inc has been formed, with Ian Godfrey from Auckland as its first chair.

This group is mindful not to bring the industry to a halt nor add unnecessary compliance costs for building owners or IQPs.

Many decisions need to be made before 30 November 2010 including a change to the Building Act. If you wish to be kept informed directly with progress or for more information contact:

Rosemary Killip, [rosie@bnets.co.nz](mailto:rosie@bnets.co.nz), 04 472 1702 or; Ian Godfrey, [ian.godfrey@acc.govt.nz](mailto:ian.godfrey@acc.govt.nz), 09 379 2021

### Housing New Zealand Tamaki Transformation Programme A Community Project



A new approach to the upgrading of HNZC properties is successfully continuing in the Tamaki area of Auckland. Upgrading work to a further 40 bungalow style houses has recently been tendered. The work includes interior redecoration, upgrading of kitchens and bathrooms together with insulation of the ceilings and under the floors.

Kevin McLeod, CoveKinloch's project manager, and HNZC staff are including the occupiers in the decision making process. Their involvement includes colour selection, landscaping approvals and input into specific requirements relating to occupant health and disabilities.

This community involvement is having positive results in terms of occupier satisfaction. CoveKinloch is providing both architectural documentation and project management services to HNZC.

### New Staff Strengthen CoveKinloch

**Tom Lynch** has recently joined our Auckland office as a Property Consultant. Tom was educated in Ireland and has a Royal Institute of Chartered Surveyors Accredited Degree in Property Economics. He is carrying out schedules of condition and dilapidation together with other building surveying duties.

**Savanna Swan** has joined our building compliance team in the role of Building Warrant of Fitness Administrator. She joins us after 5 years with the North Shore City Council co-ordinating their building warrant of fitness regime.

**Matt Nelson**, Senior Property Officer with Environment Waikato, will join our Auckland building surveying team in January 2011. Matt is an associate of the Royal Institute of Chartered Surveyors and wishes to advance his career as a building surveyor.

**Warren Taylor**, building compliance inspector has deservedly retired and has been replaced at CoveKinloch by his younger brother! Yes **Evan Taylor** has joined us and he strengthens our compliance services given that he is a trained, experienced NZ Fire Service Officer and has had 24 years as a volunteer fire brigade member. Evan is currently and will remain a senior station officer for the Titirangi Volunteer Fire Brigade.

For five years **Duane Darling** has been running his own successful business consultancy to local authorities in the Waikato and Bay of Plenty area. He will join our Hamilton office in a Team Leader role from early November. Duane is a member of the Building Officials of New Zealand and has significant experience and expertise with the NZ Building Code and with Building Consent Authorities.

### CoveKinloch Anniversary

We celebrated our 8<sup>th</sup> Birthday on Friday 1<sup>st</sup> October 2010. From modest beginnings in 2002 we now have successful offices in Wellington, Hamilton and Auckland along with 33 enthusiastic staff.



Our building compliance team has recently tendered for and been successful with two key organisations. Bay of Plenty Hospital Board and Westfield New Zealand have moved their building compliance service provision and management over to CoveKinloch Hamilton and Auckland offices respectively. Congratulations to all those involved!

### Updated Property Council Deed of Lease



The Property Council New Zealand has recently updated its standard office lease document. The original Building Owners and Managers (BOMA) lease dated back to 1988 and was reprinted in 1996 – making it out of date with the Property Law Act 2007. The lease has been completely overhauled to become more relevant to the current market situation and legal environment. A team of members, lawyers, building owners, managers and tenants contributed to the new lease which is available from the end of October 2010. The lease retains favourable clauses for landlords.

If you wish to receive this or later newsletters electronically then please email [reception@covekinloch.co.nz](mailto:reception@covekinloch.co.nz)