

Contract Works Terms & Conditions

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Agenda

Why have Contract Works Insurance

Contractual Requirements

Do we need Contract Works Insurance

When do you put it in place

In Summary

Why have Contract Works Insurance

- Protects what is being built should there be an “incident” that causes a loss to the project

- Insurance
 - Transfer of the financial consequences of insurable project risk to an insurer
 - Construction Contract Conditions set out which party to the contract is responsible to arrange respective insurances
 - Covers unintended and unforeseen physical loss or damage to project works at project site and anywhere in NZ.
 - Think - Inside the Fence

Construction Contract

- NZS3910 or 15 or 16 or 17

8. INSURANCES	
8.1 General	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:
8.3 or 8.8 Construction	<i>(select Contractor or Principal)</i>
8.8 Existing structure(s) and contents	<i>(select Principal if insurance is required)</i>
8.4 Plant	<i>(select Contractor if insurance is required)</i>
8.5 or 8.9 Public liability	<i>(select Contractor or Principal)</i>
8.5.2 Motor vehicle liability	<i>(select Contractor if insurance is required)</i>
8.6 Professional indemnity	<i>(select Contractor if insurance is required)</i>

Construction Contract

- Benefits for Council to arrange Contract Works insurance

Financial	Commercial	Claims
Control of insurer security	Bespoke coverage reflecting the contractual requirements and fully under the control of the owner	Common coverage and deductibles put project partners on equal footing
Streamlines and reduces project administration	Non-cancellable policy for the duration of project	Automatic subrogation waivers
Known and fixed insurance cost at outset	Reduced gaps in cover between the insurance policies of the various contracting parties	Promotes handling and settlement efficiencies
Premium savings through bulk purchase and vested interest	Adaptable to changes in the project	Eliminates claims between parties
Satisfies financiers' requirements	Protects potential issues between project and operational insurances	Eliminates disputes between parties
Allows alignment with owner's existing insurance portfolio	Maximizes leverage over insurance market and capacity	Single pre-agreed loss adjuster
	Promotes a non-adversarial partnership approach	Claims monies are paid direct to owner
	Facilitates the purchase of delay in start-up coverage	Owner can maximise legal input better
	Reduces risk of continuity of insurances if contractor defaults	

Construction Contract

- Be aware of insurance Excess Requirements under 3910 etc.
- Clause 8.1.4
 - (b) Where the insurance(s) are arranged by the Principal, the Principal shall bear the full amount of any insurance policy deductible or excess, except where the loss, damage, or liability arises out of an act or omission of the Contractor in which event the Contractor shall bear the amount stated in the Special Conditions as the Nominal Deductible under 8.8.1, 8.8.2, and 8.9.1 as applicable. The Nominal Deductible shall in each case be an amount which is equal to or less than the actual insurance policy deductible or excess; and
- Means Council is responsible for Natural Disaster excess.
 - VARTOL = 2.5%. \$5m of works Completed. ND excess = \$125,000

Construction Contract

- Existing Structures/ Other Structures in the Vicinity/ Contents insurance

8.8.2(a)	The existing structures are:	
	• The replacement value to be insured is:	(\$)
	• The lead insurer is:	
	• Address of lead insurer:	
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	
	• For other claims:	
	• For natural perils:	

- Contracts require existing structures to be defined
- If defined, contract requires Council to provide waiver (contact Broker)
- Contractor becomes an Insured
- Existing Structures defined under contract need to be narrow and specific to property directly exposed or forms part of works
- Covered via Council Material Damage policy

Construction Contract

- Aon has some suggested standard amendments to the NZS construction contracts.
- Contact your Aon contact and they can provide you with the current version of these.

Clause	Action
7.1.1 (a)	Delete sub clause and replace with: Any loss suffered by the Principal which may arise out of or in consequence of the design (by the Contractor), construction or remedying of defects in the Contract Works in accordance with the Contract Documents.
7.1.2 (b)	Delete sub clause and replace with: Injuries to Persons or damage to property or interference with the rights of other Persons which is the unavoidable result of the design arising out of or in consequence of the design (by the Contractor), construction or remedying of defects in the Contract Works in accordance with the Contract Documents.
8.1.2	Delete this clause and replace with the following: Any costs associated with a failure of one party to notify the other insured parties of any material policy change are to be the responsibility of the party that has arranged the insurances.
8.1.3	Add the following to the end of this provision: provided that a copy of the policy has been provided to all insured parties prior to the works commencing.

Do we need Contract Works Insurance?



Project Example:

- Scope: Repair access holes to 30 vertical manhole access pipes. Includes
 - sealing off 3 access manholes.
 - remediation to the immediate surrounding concrete slab and the top section of the vertical pipe that “holds” the manhole cover.
- Contract: Value: \$10m
- Duration: 3 months

One other note around contracts

Consultants (particularly Engineers) cap the amount of liability they can be held liable for.

If the consultants advice to Council is incorrect – is 5 x the fee adequate to cover the subsequent losses?

6.2 Limitation of Liability*

[The maximum amount payable shall be five times the fee with a minimum limit of \$500,000 and a maximum limit of \$2,000,000]

[OR]

[The maximum amount payable shall be \$.....
(Delete one as appropriate)]

When do you put it in place

- Before the construction starts!
- Aon needs a minimum of 1 week for project specific
- Consider an Annual Contract Works program if doing lots of smaller projects
 - Speak to your Aon Insurance broker

In Summary

Need to be careful in how the insurance clauses in construction contracts are completed – before they go out to tender

Who will arrange the insurance? Council v Contractor

Who pays the Natural Disaster Excess

Contractor becomes an Insured under the existing structures insurance

Contract Works insurance may not always be appropriate

Needs to be put in place before the start of any works

Project specific v Annual Contract work insurance