

Pitfalls to be avoided in the arrangement of Civil Works Insurance

Presented by Russell Bell

MIND THE GAP



Agenda




- Indemnity & Insurance Conflicts within NZS3910
- Civil Works Insurance Issues
- Public Liability Insurance Issues
- Professional Indemnity Insurance Issues
- Public Liability Vs Professional Indemnity Insurance



Indemnity & Insurance Conflicts within NZS3910



Indemnity Provisions

- Vigilance required in relation to relevance of 5.6.6. (a) (d) (f) (g) & (h).
 - Clause 7.1.1 (a) (b) & (c) Uncapped indemnity from Contractor to Principal for “any loss” or “liability” suffered by Principal.
 - Clause 7.1.2 (b) Indemnity from Contractor not applicable for loss which the “unavoidable result of carrying out the works.”
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Indemnity & Insurance Conflicts within NZS3910

Indemnity Provisions

- Clause 7.1.2 (c) Indemnity from Contractor not applicable to acts/omissions of Principal/Engineer/ Others.
- Option in 7.1.2(d) to exclude Contractor for specific risks.
- Blurred definition of “Site” (Clause 1.2) in relation to Clause 5.6.4 & roading work.





Indemnity & Insurance Conflicts within NZS3910

Insurance Provisions





- Clause 8.1.4 requires cover “from any cause” but with optional let-out of risks listed in 5.6.6.
- Clause 8.6 just requires the "works" be insured in the joint names of Principal and Contractor. Not the Principal’s existing property as well.





Indemnity & Insurance Conflicts within NZS3910

Insurance Provisions




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- When insurance “Principal” arranged, imperative 8.8.1 (d) be observed (e.g. Hot Work Warranties) if the consequence (declined insurance claim/held harmless Contractor) is to be avoided
 - Differing treatment of deductibles dependant whether cover Contractor or Principal arranged
 - Clause 8.8.2 gives option to transfer deductible from Principal to Contractor.



Indemnity & Insurance Conflicts within NZS3910



“Gap” Summary

- Insurance cannot not cover all Indemnity Risks
 - “Site” definition needs to be specific
 - Principals beware of “excepted” risks in Contractor’s covers.
 - Contractors beware implications of Principal’s existing property risk.
 - Principals/Contractors must agree excluded risks/policy warranties when insurance “Principal” arranged.
 - Principals/Contractors must agree responsibility for deductibles when insurance “Principal” arranged.
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Civil Works Insurance Issues

● *Pitfalls include:*

- **No cover for flow on damage following design/workmanship/failure**
- No Cover for claims and related expenses
- No Cover for expediting costs
- **No Cover for prior commission/ taking into use**
- No Cover for enabling works
- No Cover for destruction of sound or undamaged works
- **No Cover for Principal's existing structures**
- **Need to obtain renewal certificates for annual insurance policies**
- **Need to monitor insurance expiry dates for project specific insurance policies**



Civil Works Insurance Issues



● *Pitfalls include:*

Question to be asked by Engineer or Principal

"Contract Works Insurance cover remains in force in event of partial* use"

Yes/No

*"Partial Use is understood to mean, use by vehicles in accordance with the traffic management plan as required by the Conditions of Contract between the Contractor and the Principal".



Solution - Insurance policy should say:

"This insurance remains in place pending issuance of a practical Completion Certificate notwithstanding that any roadway may be in partial use at any time in accordance with the traffic management plan as required by the Conditions of Contract between the Contractor and the Principal."



SEVENTH SCHEDULE

INFORMATION AS TO CONTRACT WORKS INSURANCE

To Whom It May Concern:

From:
(Name of insurance company)

.....
(Branch)

.....
(Address)

We confirm having effected contract works insurance for:

.....
(The Contractor)

.....
(The Principal)

In respect of:
(Project title)

8.1.2	The sums insured are:		
	(a) Contract price	\$	(Plus GST)
	(b) Costs of demolition	\$	(Plus GST)
	(c) Professional fees	\$	(Plus GST)
	(d) Value of items incorporated or to be incorporated	\$	(Plus GST)
	(e) Increased construction costs	\$	(Plus GST)
	TOTAL SUM INSURED	\$	(Plus GST)

The policy deductibles are:			
	Non earthquake	(GST inclusive)	\$
	Earthquake	(GST inclusive)	\$
	Other (name)	(GST inclusive)	\$

We advise the 'special' terms, copy attached, have been applied to this policy Yes / No

8.5.3, 8.8.4	Policy cover terms included are:	
	(a) Automatic reinstatement	Yes / No
	(b) No cancellation for non-payment without prior notification	Yes / No
	(c) Severally insured	Yes / No
	(d) No settlement delay due to exercise of subrogation	Yes / No

Project specific policy Yes / No

8.1.3	Construction period	
	Defects liability period	
	(both subject to alteration under construction contract)	
	Annual run-off policy	Yes / No

8.1.5	Annual cut-off policy	Yes / No
	Policy expiry date	

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp Date.....
(Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE




(Clause numbers refer to NZS 3910:2003 and are for information only)



Public Liability Insurance Issues



- *Pitfalls include:*

- **Inadequate cover limits where significant third party infrastructure assets (e.g. Ontrack/Telecom) at risk.**
 - **No insurance cover (or only a small sub-limit) for vibration/removal of support liability**
 - **No insurance cover (or only a small sub-limit) for Forest and Rural Fires Act liabilities**
 - **Principal's existing structures not always treated as third party property**
 - **Need to obtain renewal certificates for annual insurance policies**
 - **Need to monitor insurance expiry dates for project specific insurance policies**
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**EIGHTH SCHEDULE
INFORMATION AS TO PUBLIC LIABILITY INSURANCE**

To Whom It May Concern:

From:.....
(Name of insurance company)

.....
(Address)

We confirm having effected public liability insurance for:

.....
(The Contractor)

.....
(The Principal)

In respect of:.....
(Project title)

	Annual policy		Yes / No
	Policy expiry date:		
8.3.1	The limit of indemnity	\$	(Plus GST)
	Sub limit insured for vibration, removal or weakening of support	\$	(Plus GST)
	Deductible is	(GST inclusive) \$	
	Deductible for vibration, removal or weakening of support	(GST inclusive) \$	
	We advise that "additional" terms, copy attached, have been specifically applied to this project		Yes / No
	The policy covers liability arising out of:		
	The ownership / use of construction machinery not required to be registered for road use		Yes / No
	The use of hired plant		Yes / No
	The ownership / use of watercraft up to 8 m		Yes / No
	The ownership / use of aircraft		Yes / No
	The use of explosives		Yes / No
8.5.3, 8.8.4	Policy cover terms included are:		
	(a) Automatic reinstatement		Yes / No
	(b) No cancellation for non-payment without prior notification		Yes / No
	(c) Severally insured		Yes / No
	(d) No settlement delay due to exercise of subrogation		Yes / No

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp
(Or name of insurance broking company confirming cover)

Date.....

SIGNED BY

SIGNATORY TITLE
(Clause numbers refer to NZS 3910:2003 and are for information only)





Professional Indemnity Insurance Issues

- *Pitfalls include:*

- **No reinstatement allowed of Limit Insured.**
- **Need to obtain renewal certificates for annual insurance policies.**
- **Need to monitor insurance expiry dates for project specific insurance policies.**
- **“Claims Made” implications for notification of all incidents which might give rise to a claim under project specific covers.**



ELEVENTH SCHEDULE

INFORMATION AS TO CONTRACTOR'S PROFESSIONAL INDEMNITY INSURANCE

To Whom It May Concern:

.....
(Branch)

.....
(Address)

We confirm having effected professional indemnity insurance for:

.....
(The Contractor)

In respect of:.....
(Project title)

Annual policy Yes / No
Policy expiry date:

8.4.1 The limit of indemnity \$ (Plus GST)

Deductible (GST inclusive) \$

The policy covers:
The number of automatic reinstatements

We advise that additional terms, copy attached, have been specifically Yes / No
applied to this project

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp Date.....
(Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE

(Clause number refers to NZS 3910:2003 and is for information only)





Public Liability Vs Professional Indemnity Insurance

Public Liability

- Covers legal liability arising from damage or injury to third parties
- Occurrence basis claim treatment
- Number of claims unlimited

Professional Indemnity

- Covers civil liability arising from acts, errors omissions committed in a professional capacity
- Claims made basis claim treatment
- Number of claims limited



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