

BuildLaw: In Brief



Auckland University construction project to create 750 new jobs

On 17 August 2020, the Finance Minister Grant Robertson and Infrastructure Minister Shane Jones announced that the Government will invest up to \$200 million in the construction of a new Faculty of Education and Social Work complex at the University of Auckland. The Ministers expect this project to create at least 750 construction jobs and provide confidence to the sector.

The project is being funded from the \$3 billion set aside for infrastructure in the COVID-19 Response and Recovery Fund. With this funding, the

University construction project can advance this year without any delays.

When announcing the funding for the project, the Ministers said:

“The design is complete and a tender process to appoint a contractor for early involvement will occur in the next month or so, with enabling works expected to start before Christmas and onsite construction to follow early in the next year.”

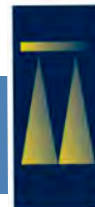
“This project will provide significant employment opportunities through to 2025 with up to 750 construction jobs expected at its peak. It will also allow the university to complete the balance of its building programme in this area, bringing the total construction value to \$336 million.”

“Several tertiary universities made applications to the Infrastructure Reference Group but this project stood out because it was so close to going ahead, the large job creation and retention of the sector’s skill base.”

“We expect this news will be welcomed by the commercial building sectors as well as Auckland’s civic leaders. It further demonstrates our commitment to getting our economy back on track in the wake of an unprecedented health crisis that continues to disrupt economies worldwide.”

News website Stuff reported that Paul Blair, chief executive of Infrastructure NZ and a member of the Construction Sector Accord, said the building would be a confidence booster for the “vertical” building sector, which is usually the first part of the construction industry to suffer in economic downturns.

See the announcement by the Ministers [here](#).



COVID-19 Guidance Memorandum for FIDIC Standard Forms of Works Contracts Users

In April 2020, the International Federation of Consulting Engineers (**FIDIC**) issued the *FIDIC COVID-19 Guidance Memorandum for Users of FIDIC Standard Forms of Work Contract*. FIDIC explains that the main purpose of the Guidance Memorandum is to help parties to a FIDIC contract to consider *mutually satisfactory solutions and avoid disputes arising between them*.

The Guidance Memorandum identifies the provisions in FIDIC's various general conditions of contract for works that may be relevant to the current COVID-19 pandemic situation. Key terms include those relating to health and safety, change in laws, force majeure/exceptional event, unforeseeable shortage in personnel and in the supply chain, variation, delays caused by authorities, extension of time for completion, and claims and disputes.

The Guidance Memorandum then goes on to consider seven possible scenarios, in each case referring to the applicable provisions in the FIDIC contract and providing possible solutions. However, FIDIC is careful to state that the Guidance Memorandum is not specific advice. Parties must assess their circumstances individually and take into account the contract law of their jurisdiction, recommendations from their local government authorities, their social responsibilities and their long-term versus short-term strategies. A copy of the Guidance Memorandum can be found on the FIDIC website here.

Design and Building Practitioners Act 2020 (NSW)

On 11 June 2020, the New South Wales Government enacted the Design and Building Practitioners Act 2020 (NSW) (the **Act**) to address the growing public concern regarding the building defects within the state.

This Act forms part of the NSW Government's response to the Shergold Weir Building Confidence Report released in 2018, which considered the effectiveness of compliance and enforcement systems for the building industry.

The Act aims to promote accountability and transparency within the building and construction industry and to ensure that all key participants are properly regulated.

Key changes of the Act include:

- **Duty of care:** a statutory duty of care is owed to landowners by people carrying out "construction work" to exercise reasonable care to avoid economic loss caused by defects. This duty of care is non-delegable, and can be applied retrospectively to work carried out up to 10 years prior to the commencement of the Act on 11 June 2020.
- **Registration of practitioners:** designers, engineers, and other specialist practitioners (those who carry out "professional engineering services" or "specialist work") must be named on a publicly available register of registered practitioners as part of the mandatory registration regime.
- **Compliance declarations:** design and building practitioners must provide declarations that building works comply with the requirements of the Building Code of Australia before an occupation certificate can be issued.
- **Investigation:** the Secretary of the Department of Customer Service has grounds to take disciplinary action against a registered practitioner, including imposing fines or suspending registration.
- **Enforcement:** authorised officers will be able to undertake investigations and issue stop work orders where appropriate.

The Act is not fully in force yet. The statutory duty of care has come into effect on 11 June 2020, but the remaining provisions will come into effect on 1 July 2021.

You can find a copy of the Act here.