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# building today

Our latest on-line poll asks whether readers are optimistic that the construction industry will pick up before the end of 2009.

RMBF president Brent Mettrick gives examples of the positive undertakings the industry has seen so far this year, and urges the media to report those types of events and provide more of a balanced view of construction in New Zealand.

Jennian Homes says it has doubled its sales in the month of June compared to previous months this year.

The company says activity has increased, especially in the regions around the country, and that, while it is pleasing to see work levels picking up, difficulties the industry is experiencing shouldn't just be forgotten.

Go to [www.buildingtoday.co.nz](http://www.buildingtoday.co.nz) to respond to our poll, and let's see if there is, in fact, a general feeling of positivity in the industry now.

**Andrew Darlington**  
Editor



cover story 20-21



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**See page 31**



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# chief's chat

by ceo warwick quinn

## How to use market segmentation to your advantage

**"Y**ou can have any colour as long as it's black" — those were the famous words spoken by Henry Ford when he offered the Model-T Ford for the first time.

This is mass marketing. Coca-Cola also did this initially when it sold only one kind of Coke in a 6.5 ounce bottle.

The argument for mass marketing is that it creates the largest potential market which leads to the lowest costs which, in turn, can lead to lower prices or higher margins.

However, this approach has its many critics that claim mass marketing is dying. Segmentation of your market is now considered best practice where a "flexible market offering" is required.

This should consist of two parts — a naked solution containing the product or service element that all segment's members value, and discretionary options that only some segment's members value.

You can segment your market in many different ways, and the trick is to identify which way is best. For example, you may have geographic segmentation (ie, by location), or demographic segmentation such as age, gender or income, or perhaps psychological



segmentation which is based on values, lifestyle or personality traits.

If you have developed a business plan you would firstly have identified just what business you are in. Most important!

Once that is established (and this can change, based on market conditions), you need to identify your target market. This is where segmentation is important. Once you have done this you can then develop a marketing plan to seek opportunities to sell your services.

You may be fortunate enough to get through these tough times relying on word of mouth or referrals. If not, it will be essential for you to decide how you will go about generating forward work by marketing yourself to your target market.

For any segmentation to be effective it should meet certain criteria, namely:

- Measurable — the characteristics of the segments

can be measured or defined;

- Substantial — the segments are large enough and profitable to service;
- Accessible — the segments can be effectively reached and served;
- Differentiable — the segments are distinguishable and respond differently to different marketing-mix elements and programmes; and
- Actionable — effective programmes can be formulated for attracting and serving the segments.

At the Federation our business plan recognises very clearly that we are in the business of providing members with benefits.

Traditionally we have always segmented our membership demographically, ie, based on income, but now realise that this alone is insufficient as it does not meet the necessary criteria.

Our naked solutions are not all equally valued by our members, and our ability to develop discretionary options is limited due to our current approach.

### Relevant membership segmentation

Accordingly, we have decided it is necessary to explore changing this and introducing more relevant membership segmentation that accurately reflects our market.

We are fortunate in that we have what are known as "clustered preferences" where natural market segments exist (believe me, many marketers would kill for such a thing).

These natural market segments reflect those that the RMBF is proposing. They meet all the criteria mentioned above, and provide a real opportunity going forward by allowing us to identify members' needs and provide you with the benefits that, in turn, give you a competitive advantage.



**Watch out for RMBF's new look Nailing it Home e-newsletter for members**

For an up-to-date look at what the team in Wellington are working on for our Master Builder members...

**... check your email now and enjoy the read!!**

# Registered Master Builder takes on 'once in a lifetime' project



Above: Cargill Castle.

Right: The original exterior of the nearby house.



Before (above) and after (below) interior shots.



**W**hen Registered Master Builder Stephen Jory of Jory Builders in Dunedin attended a function at his daughter's school back in late 2007, he didn't expect to come away with a new project for his business.

But, thanks to a chance meeting with an architect, Mr Jory landed one of the most challenging projects of his career.

"I met an architect who told me about a project he'd been working on where the owners wanted to convert some old derelict horse stables situated at the back of their already renovated cottage. Their plan was to link the two together to extend their home," Mr Jory says.

"It sounded pretty interesting, not to mention challenging, so I did some research, put together a proposal and they went for it."

The stables are situated in the grounds of Cargill Castle, one of New Zealand's most significant historic ruins and one of only two castles remaining in the country.

"We started the conversion in June 2008 and had it completed in March 2009. As you can imagine, we faced a number of challenges throughout the build, mainly around restoring the structural integrity of the building.

"These challenges included installing a 12 metre-long steel ridge beam, gutting all the walls and reinstating them, boxing up concrete arches, and the hardest jobs of all — laying a whole new concrete slab on the floor and reinstating two concrete columns that had been removed for cars to drive in."

Mr Jory was fortunate to have an experienced subcontractor on the job with him who made the process a lot easier to manage.

"We had about six guys on the job at one time or another. When you're in this game, you have to rely on the subcontractors and work together as a team. They can make it or break it for you.

"We left the original exterior on, so it still looks like the original stables from the outside, but the big old barn door is now a huge window. Everything's double-glazed, and there's a mezzanine floor, which houses the master bedroom that looks down through a glass wall into a living area spanning the full height of the barn.

"It's pretty swish, and it's probably been a once in a lifetime job. I've been self-employed for 25 years and I don't think I'd get the opportunity to do something like this again, so I'm really proud of it."



# Time to start accentuating the positive!

By RMBF president

Brent Mettrick

**R**ecently we've been reporting that we think our industry has reached the bottom of the trough and is showing slight signs of recovery, but there is still too much negativity in the headlines and I, for one, am sick of it.

If I look back with hindsight (and a fair degree of cynicism), while the market was good everyone talked it down. Now, when it is down, everyone laments the fact. What is going on?

The media need to start talking about the real news and the good things that are newsworthy. This will return confidence to the market as that is really the difference between good times and bad.

Confidence is largely driven by the media and the message they peddle. The herd just then follow along — and, unfortunately, the herd mentality is alive and well in New Zealand at the moment.

The message they should be reporting right now is that there has never been a better time to build, resources are available, and pricing is keen.

However, we all know that you won't find a builder for love nor money in 12 months as the next boom, with its associated cost increases, arrives. It is a no-brainer, and all about confidence — or the lack of it. When would you build?

There's been a lot of positive work done in the industry



lately, and it would be great if it got some of that headline space and coverage.

For instance, there's been the Sector Productivity Work Group Report, the Urban Intensification Taskforce Reports and the passing of the Building Amendment Act 2009 to simplify consents to name a few.

This is all good stuff which will result in significant improvements to the industry, with flow-on effects to the consumer.

We should be proud of our achievements in these important areas. However, the media is silent, and the commentators are still bashing the housing market.

Some commentators predict a further 30% drop in property values. We do not agree with this.

Unfortunately, these kinds of headlines tend to get more air time than the positive signs within the industry — for instance, stabilising consent numbers, good commercial build numbers and an increase in customer enquiry across the sector.

I understand that everybody has the right to air their views and, should those views get picked up in the

media, then so be it. But a bit more balance around the positive side of our industry that contributes a great deal to the economy would not go astray.

There are a lot of people relying on the wages supplied by the industry, and even more who have their life's worth tied up in buildings supplied from this industry.

The doomsayers and their reporters should step lighter on an industry that drives the economy. For some reason they miss this.

## Pleasure in the gold awards

This year's House of the Year is well under way. Now in its 19th year, the industry showcase of fine homes just keeps getting better.

I believe many homes entered, say, five years ago that won Gold would now barely make a prize today. The workmanship standard continues to rise.

I have attended six events so far this year, and all were professionally run with delighted entrant's owners and organising committees. The entrants in next year's contest now need to earmark next year's properties.

This contest is one of the best ways to showcase your business. It doesn't happen on the day and, like all success, it is planned for.

Choose your entrants now or before construction, as the judges see more than just cosmetic finish.

And next year will see the RMBF celebrate 20 years — a very special occasion for us, our members and our loyal family of sponsors. We will be sure to recognise this in an appropriate fashion in 2010.

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# Taranaki RMBA initiative pays off



Taranaki Registered Master Builders Association president Andrew Pepper (second left, with the winner's shield) and Bruce Duggan, BCITO (far right) with the winning team, from left, Jared Naumann, Ben MacKintosh, and Rhys Harvey.

Image: Alison Pitman



The winners from Shell Todd Oil Services put their heads together to answer the quiz round of the challenge.

Image: Alison Pitman

## By Jenny Baker

**T**he Taranaki Construction Safety Group recently hosted the first Taranaki Apprentice Safety Challenge day in New Plymouth.

The group is an informal association of safety practitioners involved in the construction industry and supported by the BCITO, Department of Labour, and ACC. The Taranaki RMBA is well represented on, and supports, the group also.

Seven teams with three or four apprentices each participated in the challenge, held in the Taranaki Health, Safety and Environment training centre.

Taranaki RMBA president Andrew Pepper says the purpose of the May event was to raise awareness among trade apprentices of health and safety in the workplace and in other aspects of their lives, such as at home and on the road.

"The apprentices relished the competitive and practical nature of the event. For employers, the skills the apprentices learned or refreshed are an invaluable form of free training relevant to the industry," Mr Pepper says.

"General feedback from contestants, employers and organisers alike was great, and it proved so popular and successful we now plan to do it every year."

Injury Prevention New Plymouth ACC's Alison Pitman says the idea for the challenge day comes from a similar event ACC and relevant industry stakeholders have been arranging for agricultural students in the area in the past 12 years.

Thirteen representatives from 11 safety stakeholders

supervised the day's activities and kept score. They were Karen Lawson, Red Cross; Desiree Paulsen, Civil Defence; Dinah King, Road Safe Taranaki; Gray Bamber and Phil Shaw, Health Protection; Matt Crabtree, New Plymouth Fire Service; Caryn Wetton and Steve Rubick, Department of Labour; Guy Honnor, Sport Taranaki; Ian Morris, Fletchers; Bruce Duggan, BCITO; Lesley Johnson, Clelands Construction Ltd; and Phil Garrett, Greaves Electrical.

Teams from Bell Building Ltd, Clelands Construction Ltd, Dave Fabish Ltd, Fletcher Construction, Carey Johnstone Scaffolding, Pepper Construction Ltd, Street and Cook Construction Ltd, and Shell Todd Oil Services put their skills and knowledge to the test.

Ms Pitman says the organisers challenged the teams to demonstrate their knowledge and expertise in a series of nine practical exercises in areas including first aid, food safety, working at height, dealing with fire, measuring fitness, and planning for safety when working in the home and other situations.

"The organisers ensured the tasks set would challenge the apprentices in different situations and give them the opportunity to learn something new from each activity. The supervisors gave them information, instruction, and hands-on coaching throughout the day as required, adding extra value to the event as refresher training," she says.

Points were awarded for hazard identification, selection of PPE, team work and knowledge. In the final round, the teams chased final and deciding points in a quick-fire quiz based on general safety questions.

PlaceMakers, Mitre 10 Mega and EquipSafety donated prizes, and New Plymouth Injury Safe and ACC provided the catering and venue. The RMBA sponsored

and presented the winning team, from Shell Todd Oil Services, with the Prize Winners' Shield.

Ms Pitman says the participants were good ambassadors for their respective employers, and the fresh focus on safety awareness on the job will benefit their teams.

"I'm sure there are many instances where our young entrants have put to use some new information or understanding. As one of the apprentices said during the event, they may have received all the training, and they may know what to do, but reminding them to put it to good use every day can only be good," she comments.

Those were words that rang true barely a month later, when two apprentices from the Clelands team, who came second, faced an emergency at work.

Working on a project in Oakura, one of their work mates took a fall from a 1.6m-high platform. Clelands company director Martin Stephens says he is proud of the fast and decisive manner Ashley Lynsky and Peter Manning jumped into action.

The pair immediately called for emergency services and applied first aid to their work mate.

Mr Stephens says feedback from the emergency services and bystanders on the calm and confident way Lynsky and Manning handled the stressful situation was very positive.

"The two men say the renewed focus and training, still fresh in their minds from the challenge day, meant they felt no panic but knew exactly what to do to attend to the work mate correctly," he says. The work mate is convalescing.

A DVD of the event is available from Ms Pitman at Injury Prevention New Plymouth ACC. For more information, contact her on [alison.pitman@acc.co.nz](mailto:alison.pitman@acc.co.nz).

# Master Builders — firefighters

**T**he New Zealand Fire Service provides emergency response services to communities across New Zealand thanks to more than 10,000 firefighters, 9000 of whom are volunteers. There are around 1700 career firefighters who work in 24/7 fire stations in metropolitan areas.

Based on these numbers, it's obvious that volunteers are an integral part of the New Zealand Fire Service. In fact, a majority of New Zealand communities rely exclusively on volunteer firefighters to protect them from fire and other emergency incidents.

And there's more than a few Registered Master Builders who make up these volunteer numbers, so we caught up with some of them to talk about what it's like supporting their community through the local fire brigade.

Rod Triplow, manager of Gemco Joinery in Havelock North, has been with the Havelock North Brigade for 35 years.

"My brother got me into it because they were short of people who could be available during the day. I'd just started my apprenticeship locally so I knew I'd be available at a moment's notice," Rod recalls. "And it so happened that the business I was doing my apprenticeship with burnt down back in 1981 and I helped put out the fire!"

Rod has seen some big changes over the years in the training provided to volunteer firefighters.

"When I first started out all those years ago, I turned up at the station, was given my gear and told if the siren went off I'd be expected to hop onto the truck and do my bit," he says.

Nowadays, the Fire Service is a lot more safety conscious. All volunteers must go through the Fire Services' Training and Progression System (TAPs) and complete a seven-day course before they are allowed to respond to any incident.

Every brigade also has a training officer on site to provide ongoing training and education.

"We're out there to preserve life, and the number one person to look after is yourself," Bruce Mouldley, aka "FF Puff" from the Waipukurau Brigade says.

Bruce, who works for Waipukurau Construction, says when he started nine years ago, he had to complete all the training before he could get out there and fight fires.

"I've done heaps of other courses since then, from using a chainsaw to dealing with chemical spills."

## Training in Australia

Darrell Trigg, of Darrell Trigg Builder Ltd, is based in Ruakaka, just south of Whangarei. He's heading off to Australia for a two-week officer course run by the New Zealand Fire Service which focuses on commander control of fire incidents, as well as specialist training on how to deal with different kinds of fires, such as liquid and fuel fires.

"Due to our close proximity to the Marsden Point Refinery, we must be trained to a certain level and deemed competent to deal with liquid and fuel fires," Darrell says.

"Although the refinery has its own fire service, we are here for back-up, along with the police and other emergency response organisations in the area."

Being a volunteer fire fighter has many pluses — even Rod Triplow's boss is reaping the benefits.

## Contribution to the community

"The boss sees my volunteer role as one of his business' many contributions to the community," Rod says.

"They also get a certain amount back through the training we receive, such as the leadership courses and so on."

Peter Blight from the Hokitika Fire Brigade runs his own business, Peter Blight Builders. He's been with the Hokitika Brigade for four years, and is proud to be part of the winning team in the Regional West Coast Provincial Waterways Competition.

The annual competition brings firefighters from across the country together to compete for the national title.

"We ran in nine different events using hoses, ladders, breathing apparatus and other equipment. It's basically all about how to work together as a team, and we beat four teams from our region to take out the regional title," Peter says.

These types of occasions call for lots of family support and activities which play a big part in the life of a volunteer firefighter.

"One of the great things about the Fire Service and being a volunteer is the comradeship and family support," Bruce says.

## Partners often disrupted

"Our partners are often disrupted when we have to take off in the middle of the night, and it's only natural that they worry about you. So, once a year we send all the ladies off for a 'ladies night' to thank them for their support."

"My family has grown up with it," Rod says. "I was in it when I got married, and now my eldest son is a volunteer as well. I was also involved in the Waterways Competition for 20 odd years, and the whole family would make the trip to the competition."



Waipukurau Construction's Bruce Mouldley, aka "FF Puff", from the Waipukurau Brigade.



# in disguise!

"It's no surprise that a lot of kids end up following in their parents' footsteps, and it's common to see father and son in the same brigade."

Darrell can't say enough positive things about the comradeship and lifelong friends he's made through the Fire Service.

"I've made friends up and down the country, and they're friends for life. There's a great deal of mutual respect and support for each other, even at the competitions," he says.

## 'Knocked out cold'

"During the last round one of our team members was knocked out cold and guys from other teams didn't think twice about offering to take his place so we could continue. There's no animosity and it's an awesome thing to be part of."

But it's not all just about competitions. These guys actually fight fires too! Darrell recalls when the Kamo New World caught fire back in the late 1990s.

"A kid had lit fires in a few rubbish bins around the building so we had quite a large area to cover and it spread pretty quickly.

## Training kicked in

"I was following one of my guys into the main store when he was hit by falling debris and knocked unconscious. I had to drag him out to safety. Although



*The Hokitika Brigade, including Westland Registered Master Builder Peter Blight.*

it was certainly scary, my training automatically kicked in and I just did what I had to do."

Rod, Bruce, Peter and Darrell are proud of their roles as volunteer firefighters, and are keen to see more people in the community get involved.

"It's also a great way to give kids something to focus on rather than getting into trouble," Darrell says.

"One of the locals approached me recently and pointed to a lad in our team, saying 'you've no idea what you've done for that kid'.

He'd come from a troubled background and was heading down the wrong path, but getting him into the fire service and instilling some discipline and pride has really turned him around."

As you can see, being a volunteer fireman isn't just about fighting fires and running in competitions. There's so much more to it than that, and this is just a small sample of the great work our volunteer firemen (who also happen to be Registered Master Builders) do for our communities.

# Apprentice of the Year – bigger and better than ever

Entries have closed for the Registered Master Builders Carters 2009 Apprentice of the Year, with entry numbers well up on 2008 boding well for a great competition.

Apprentice of the Year is run by industry leaders Carters, the Building and Construction Industry Training Organisation (BCITO), Registered Master Builders Federation (RMBF) and the Department of Building and Housing.

Staged in 10 regions around New Zealand, regional judging kicks off in the second week of August and the

REGISTERED MASTER BUILDERS



first local event, the Central North Island Apprentice of the Year, will be held on Friday 4 September.

In the coming weeks, entrants in the competition will be interviewed by a judging panel, made up of representatives from Registered Master Builders, the BCITO and Carters.

Up to 10 finalists will be selected from each region and the judging panel will make a visit to each finalist's building site to determine regional winners.

The 10 regional winners will be announced at awards evenings around the country in September and October before gathering in Wellington to compete for the national Apprentice of the Year title in October.

To find out more about the Apprentice of the Year, go to [www.masterbuilder.org.nz](http://www.masterbuilder.org.nz), [www.bcito.org.nz](http://www.bcito.org.nz) or [www.carters.co.nz](http://www.carters.co.nz).

[www.buildingtoday.co.nz](http://www.buildingtoday.co.nz)

## Understanding client needs the key to success

A year after the Waitakere Acute Mental Health Unit was completed, Hawkins Construction was proud to show it off to the RMB Commercial Project Award judges.

Waiatarau, as the facility is known in Maori, went on to win the national Health Project award in the RMB 2008 Commercial Project Awards, in association with PlaceMakers.

The contract for the Waitakere Acute Mental Health Unit was won by Hawkins Construction through a traditional tender situation.

Hawkins Construction manager Steve Richie says previous work the company had done for the Auckland and Manukau District Health Boards was one of the reasons they were shortlisted for the tender, but it was their ability to exceed client expectations that won them the job.

"We were the company that went in saying we could complete the project a month faster than anyone else — and we did," Mr Richie says.

As a specialised health project, the Waitakere Acute Mental Health Unit was inherently complex. The facility needed to be robust and secure, yet had to look good aesthetically and be highly functional.

Matt Fleming was the architect for the project, and his passion for Waiatarau was noted by the Hawkins team.

"Matt produced an excellent design but his total commitment to ensuring all parts of



the design were functional made the project successful," Mr Richie says.

Constant and open communication between all parties involved in the build also ensured defects were kept at a minimum and the project progressed well.

"We had our usual fortnightly meetings, but were in contact with all major players involved in this project — the architect, the consultants and the client — on a daily basis. We were all passionate about making the project a success," Mr Richie says.

At its peak a total of 70 people worked on the project. Mr Richie's role was simply to oversee, rather than be directly involved, which he

credits to the strength of his team.

"The team that worked on the Waitakere Mental Health Unit had just come off a very challenging project, the Auckland Women's Correctional Facility," Mr Richie says.

"As a result of their familiarity with each other, and partly because of the challenges they had faced during the construction of the correctional facility, the team managed this project extremely well."

Mr Richie has spent 25 years working in the construction industry, 10 of which have been with Hawkins. He says the Waitakere Mental Health Unit and the Auckland Women's Correctional Facility are stand-out projects in his career.

"The correctional facility was challenging from a sheer scale point of view, and so the satisfaction we felt after completing it was immense. With the mental health unit I am really proud of the quality of work we produced, and that the project looks good and is incredibly functional," Mr Richie says.

With a large portfolio of projects behind them and plenty of interesting ones in the pipeline, Mr Richie says Hawkins' ability to understand clients' needs is their key to success.

"We work collaboratively to deliver the best results to our clients' briefs. We involve them and we always focus on solutions. I think these are the reasons why we have a reputation of being easy to work with."







# Waikanae home an award winner

A stunning Waikanae property was a noteworthy development for S & J MacKay Builders, especially after it took out the New Homes \$450,000 - \$650,000 category in the Registered Master Builders 2008 House of the Year, in association with PlaceMakers.

Owner and operator of S & J MacKay Builders, Steve MacKay, says winning the award was a great surprise.

"There was some really tough competition so being a small firm we were rapt to be up there with the best. The most important thing to remember is that you can't win an award like this on your own – it's always a team effort," Mr MacKay says.

S & J MacKay Builders were approached by the owners to build the award-winning property, a recommendation Mr MacKay says came from the project's architect.

"When an architect or client recommends your company for a project, that's the best compliment you and your team could receive. We always aim to build the level of quality we would want in our own homes."

The design brief for the Waikanae property called for a completely new house, a final result that not only impressed the owners but also pleased the competition's judges.

"This is a home that has covered all the fundamentals and gone one step further to include sustainable elements. It's great to see that every detail has been executed to a high standard," competition judge Guy Evans says.

Mr MacKay started his building career as an apprentice with Fletcher Construction, a move he says provided him with a good introduction to the industry.

"Building on commercial sites meant I was able to specialise in foundations and concrete finishing. It was quite difficult transitioning from commercial buildings to residential homes, but it definitely enabled me to develop a variety of skills," he says.

S & J MacKay Builders has had a number of successes in the House of the Year competition since entering its first property in 2004.

"We have entered the House of the Year competition three times since the company

opened, winning three gold awards and a national award in 2008. We haven't entered this year but for the 20th year celebrations in 2010 I'm sure we will pull something together," he says.

Mr MacKay has worked with some of his team members for more than 20 years, and believes his company's success largely comes down to strong relationships.

"It's important to have a good rapport with your clients and team members. If everyone works well together you tend to get a much better result," he says.

S & J MacKay Builders' business goals for

2009 are to focus on maintaining a high standard of quality and attracting new clients.

"Price is often a determinant in the current market, but we are optimistic about the next year. Our philosophy is to keep our head above water and do the best we can."





## Potentially Confusing — PC sums discussed

By RMBF in-house counsel  
Leoni Carter

**P**rime Cost (PC) sums are an area of building contracts that can be a minefield of confusion for builders and their clients.

A recent High Court case (*Mullaney v Brown and Power Painters Ltd & Others*) has a useful discussion about the operation of PC sums.

Mullaney entered into a building contract with Brown acting as the project manager. The contract provided a maximum price which included "PC sums" to the value of \$49,000.

The contract clearly stated that should Mullaney upgrade the specs or increase the quantities of the PC items then the maximum price would increase accordingly (and vice versa).

All variations were required to be in writing and to the project manager. The expression "PC sum" was not defined in the contract.



Mullaney then on-sold the dwelling during construction, and allowed the purchasers to make some of the decisions regarding the PC items. Both Mullaney and the purchasers "went around" the project manager and issued instructions directly to the workers.

The PC costs exceeded the allowance. Mullaney refused to pay, saying that the stated maximum price for the contract meant that he was not required to pay any more.

While the expression "PC sum" wasn't defined, it is clear that the words of the contract clearly defined what the actual items were that had been provisionally

costed, and what would happen if the allowance was exceeded.

The judge confirmed that the term was in common use in the industry and well-understood, and a reasonable mechanism for dealing with items where the cost was uncertain at the time of contracting.

Registered Master Builders have certainty in the use of such terms as they are clearly spelled out in the RBC1-2008 (under "monetary allowances").

The term "PC sum" is often used for prime cost and provisional sums; referring to either items of work or materials or fittings where price and/or the decision and/or selection have not been made at the time of signing up.

Prime Cost sums cover the cost of specific items that may not yet have been chosen. A provisional sum is an amount that has been included for work where the extent and, hence, the price of the work can't be defined.

A friendly discussion with your client on how PC sums work can avoid the situation Mr Brown found himself in.

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# Legislation passed for faster consent processes

**L**egislation to speed up the building consent process and reduce costs for builders has been passed by Parliament.

The Building Amendment Act 2009, which came into force on August 1, is a practical first step in the Government's plan to cut red tape.

Building and Construction Minister Maurice Williamson says the Act signals a move to more efficient and practical approaches to building, and could lead to better value for money for consumers.

"The downturn of the economy is continuing and building firms need as much help as they can get. This Act will help boost efficiency and greater productivity at a time when it is most needed.

And if builders pass on the cost savings, then consumers will benefit too," Mr Williamson says.

The Building Amendment Act introduces the following changes:

- **New national multiple-use approvals**

This new type of approval will be available for house designs that will be replicated on a substantial scale. There will be less duplication because builders who intend to build homes at different locations using the same or similar plans will only need one single multiple-use approval.

Multiple-use approvals will be particularly useful for group home builders as it will cut potential costly delays. The Department of Building and Housing has started working on a business model for processing multiple-use approvals, which will be up and running early next year.

- **A streamlined process for making changes to building consents**

Under the Building Amendment Act, minor changes to building consents can be approved on the spot by councils, so builders or home owners no longer have to go back to the beginning of the consent application process to amend plans.

This means minor variations to approved plans can be made quickly and easily by home owners during construction. These amendments to the Act will save applicants time and money.

Regulations need to be made before the streamlined process can be implemented. The Department of Building and Housing expects the new process to be in place early next year.

- **Removal of the mandatory requirement to apply for a project information memorandum (PIM)**

Under the Act, it will no longer be mandatory to apply for a PIM when applying for a building consent. Where the information in the PIM is not considered relevant for a particular building project, building consent applicants can choose not to apply for a PIM.

The change to voluntary PIMs will occur six months from 28 July, 2009, the date the Bill was passed by Parliament.

Work on a wider review of the Building Act 2004 is under way, and Mr Williamson expects to announce further streamlining measures in due course.

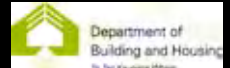
A copy of the Building Amendment Act is available electronically at [www.legislation.govt.nz](http://www.legislation.govt.nz).



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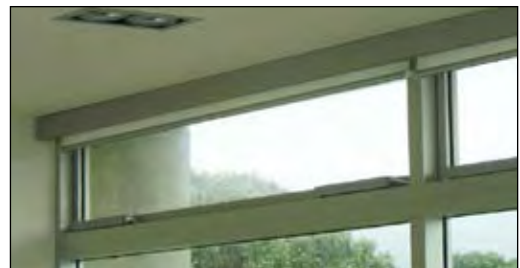
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# Future Leader success for Innes

**S**inclair Knight Merz (SKM) New Zealand buildings and infrastructure manager Tony Innes has been named the Telecom/ACENZ Future Leader 2009, in recognition of his leadership within New Zealand's engineering industry.

Mr Innes, who has been with SKM for seven years, leads the transport planning section, which has grown in numbers under his direction from three to 16.

Following several more promotions and leading roles on a number of high profile projects, Tony was promoted to the role of New Zealand building and infrastructure operations manager.

## \$20 million business unit

In this new role he is responsible for 120 people and a \$20 million business unit.

New Zealand regional manager Dr Michael Shirley says Mr Innes has consistently shown strong



Tony Innes

leadership from a technical aspect as well as leading his team.

Major projects he has been involved in as a team leader and transport planner include the Waitemata Harbour Crossing Study, the Transmission Gully Transportation Model and the Auckland Regional Transportation Model.

He is also the project manager for SKM's Sustainability Committee in New Zealand, which develops initiatives to improve the social, environmental and economic impacts of the SKM business.

Mr Innes has a Bachelor of Engineering from the University of Auckland and Post Graduate Study in Traffic Engineering.

He is a Chartered Professional Engineer, a member of the Institute of Professional Engineers New Zealand (IPENZ) and a member of the IPENZ Transportation Group.

• For more info: Ph Leigh Burnett, SKM,



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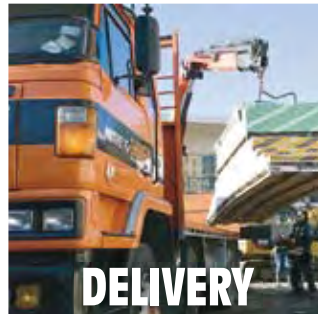
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## Jennian Homes doubles sales in June

**J**ennian Homes has recently seen a significant increase in building activity, with June sales more than doubling from previous months this year.

Business development manager Dave Wilson says building consent figures are starting to stabilise, and that this has been reflected in the level of enquiries and sales at Jennian.

"June has been our best month this calendar year, with more than double the sales we've seen in the previous months," Mr Wilson says.

"Activity has picked up particularly in the regions, with Northland, Waikato, Nelson and Canterbury showing noticeable growth, and the metropolitan areas beginning to follow.

"Now is a good time to consider building a home as interest rates are low and land has become cheaper. We're seeing a noteworthy increase in enquiries from people who have already purchased land at a good price and are now ready to start designing their dream home."

Mr Wilson says job security has been a big factor holding people back from making significant financial

decisions this year, but this seems to have settled and more people are prepared to commit to longer-term plans.

"Our franchisees across the country report that they are seeing less of the wait-and-see attitude of the past few months and more people ready to build now.

"The increase in net migration is also driving activity at Jennian from two perspectives. New Zealanders returning from around the world are increasingly enquiring about building a home in preparation for coming back to settle down.

"In addition, investors are seeing an opportunity to build rental properties to meet the increased demand for housing. This demand comes from immigrants and potential first-home buyers who are delaying getting on to the property ladder as they save to meet the increased deposit requirements.

"While Jennian Homes is pleased to see the increase in building activity, we should not forget the difficulties the industry is still currently experiencing.

"As we start to come out of this downturn, there is much work to be done by the Government and industry to develop solutions to break the destructive and unsustainable boom and bust cycle of the building sector," Mr Wilson says.

## Arrow appoints new director

**L**ale Ileremia has been appointed a director to the Board of Arrow International which is currently completing its 25th year as a project management and construction company.

Mr Ileremia joined the company in 1999, and has managed projects approaching \$1 billion in value.

Arrow founding director Ron Anderson says Mr Ileremia will assume direct control of the \$188 million Forsyth Barr Stadium at the University Plaza construction in Dunedin, and drive the company's entry to future major projects.



## Attention all builders — be in to win!



Winner Richard Lee from K Young Ltd (left) and David Su from Vistalite South Auckland.

**C**ongratulations go to Richard Lee from K Young Ltd, the first lucky winner of Fletcher Aluminium's exciting new fishing competition!

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# Noise pollution — frustrating but easy to deal with

Purpose-designed materials and products now readily available

**O**ne of the most frustrating forms of pollution in the home is also one of the easiest to deal with — noise pollution. Simple steps can greatly increase comfort of living and also the home's future resale value.

Compared to the days of quarter-acre sections, people now tend to live in much closer proximity to each other.

## No longer private!

Whether through cross-leasing or the development of high-density living such as townhouses and apartments, what happens in the home is no longer guaranteed to stay private!

With the increasing prominence and advancement of

video games, home theatre systems and computers, designers need to create individual spaces designed for optimum sound control.

Builders should talk to their clients about the options available to future proof a new or existing home against noise pollution, including purpose-designed materials and products.

## Plenty of options

These include laminated windows or double-glazing systems, specially-designed interior wall linings, fixing systems and sound insulation products which will provide room-to-room or floor-to-ceiling noise control, as well as cutting down on sound from outside the home.

People often make the mistake of focusing on moisture and warmth when specifying building materials, and

cut corners on sound control.

But for a home to maintain its value long term, regardless of what is built nearby, who moves in next door, or what the kids do when they get older, careful planning is required.

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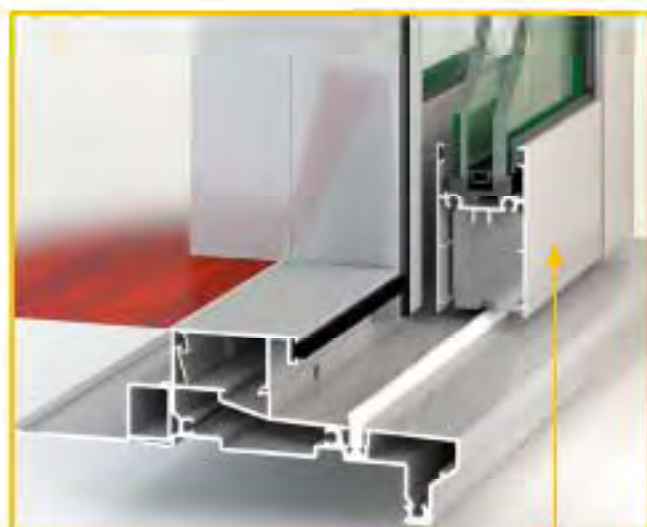


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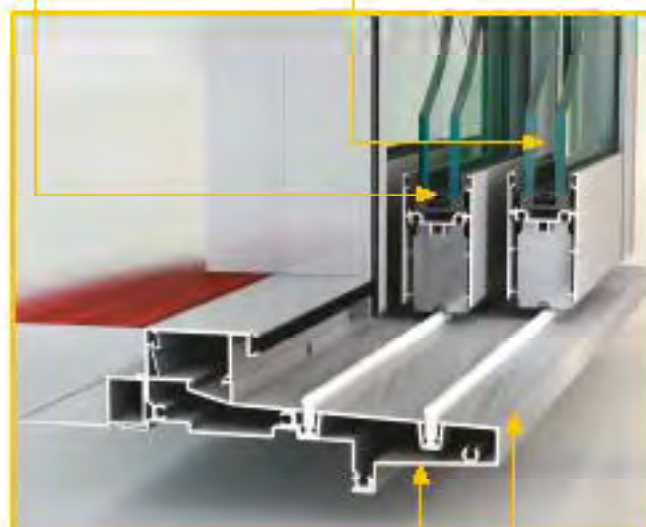
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project

# Crib walls push

**T**he recently completed concrete crib walls at Highbrook Business Park in Auckland are some the largest gravity walls of their kind built in the country in recent years.

Designed, manufactured and built by Gibbons Crib Walls, the two retaining walls run more than 390 metres in length and in places are more than eight metres high.

That's no mean feat, made even more impressive by the fact that the walls had to be completed to a tight programme.

This speed of erection was one of the key reasons why Gibbons Crib Walls were chosen for the project. The owners of the business park, Highbrook Development Ltd, had a critical path that required the careful balancing of infrastructure and construction.

"We built the lower, larger wall first," managing director Ron Williams says.

"That allowed Hurlstone Earthmoving — the main siteworks contractor for the business park — to put in the drainage, roading and car parking which allowed Highbrook Development to get under way with construction of the Ford Building while we built a second, smaller retaining wall above the access road."

With all the links of the chain so dependent on each other, managing resources well and adherence to the programme was essential.

"We had two or three crews on site at any one time, and we stockpiled materials when we needed to," Mr Williams says. "While one crew focused on the footings, another worked on the wall build and the third took care of the back-filling."

The scale of the project required a double shift at Gibbon's Albany factory to produce the 24,000 concrete blocks required for the job.

The walls, which were started in late May 2008, were completed in October of that year. "Weather doesn't concern us too much once we are out of the ground," Mr Williams explains. "Once the foundations are completed our guys will work in all but the worst conditions to get the job done."

The walls are a combination of single-depth, double-depth and triple-depth concrete reinforced block with GAP 65 infill, with the depth of the blocks depending on the soil conditions, height and surcharge requirements for that particular section of the wall.

"It was a big job and we worked closely with Hurlstone and the engineering





# boundaries



consultants, GHD. The design, which was done by our engineering consultant, Brian Wilson, went through a stringent peer review process, particularly in relation to earthquake requirements that have become increasingly demanding over recent years," Mr Williams says.

Cost-effectiveness was also a key consideration in choosing Gibbons Crib Walls. The speed and efficiency of erecting the walls, combined with the cost of the concrete crib blocks, resulted in savings of almost 20% to 30% when compared to other retaining options that were considered.

Of course, looks were important too. "Highbrook Development wanted a clean, structural look," Mr Williams says. "They had used crib walls in other areas around Highbrook so wanted to keep a consistent visual effect."

Highbrook Development Ltd was delighted with the outcome — the fast turnaround, the cost and the final visual result.

"It really is a feature wall," Mr Williams says. "Our team, from Brian Wilson at design stage to Tony Reed and our guys on site building the walls, can be proud of what they achieved."

• For more info: Ph Ron Williams, 09 415 8327

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## National self-regulatory council vital to construction industry

By Building Element Assessment Laboratory (BEAL) chief executive Colin Prouse



It has been needed for many years, but the time has now come for a national building industry council to be established to self-regulate all sectors of the construction industry.

Currently there are organisations representing different sectors of the industry such as the Registered Master Builders Federation, the Institute of Architects and the Roofing Association, but these do not present a united or well researched voice to Government.

### Council to take over responsibility from DBH

The solution is to bring together representatives from each sector to form a self-regulatory industry council. The need for this is becoming widely recognised, and it must be more than a mouthpiece. It must take some or all of the responsibility currently vested in the Department of Building and Housing (DBH), but from a commercial, practical point of view.

Each sector of the industry would have its own association, and the industry council would be made up of representatives from each of these. This group would vote on major changes such as issues surrounding the need for new standards, quality of building and funding for research.

The individual sectors would need support for their own organisations, while money would also be needed for things such as writing up codes of practice and developing new standards.

The areas of the construction industry with the greatest need will be the ones to benefit most from the funding. This will be determined collectively by the representatives sitting on the industry council.

All of these changes would then be fed back into the industry training system so there are established standards and codes of practice for all industries associated with building. The change would mean a new role for the DBH, potentially freeing up funding for the new system.

Before the DBH was established, the Department of Internal Affairs had a small staff devoted to the regulation of the construction industry. But because there was no industry association to self-manage and self-regulate, the DBH was created. Its staff numbers began at about 20 and ballooned out to more than 400.

The evidence from across the industry is that this solution has not provided the results needed so we must look at how it was before, but this time put in place a strong industry association that has the responsibility to manage the standards and risks of building practices.

### Immature approach

I'm sure if such a council was in place six years ago, the leaky building issue wouldn't have become as serious as it has. It may not have prevented it because New Zealand was immature in its approach to building science in those days.

But a self-regulating industry council would have sorted the problem out faster and stopped the use of untreated timber. For years there has been a lack of effective representation of the construction industry. With the Government now signalling changes to the rules and regulations, here is an opportunity the industry should not miss out on.

A new national building industry council to self-regulate all sectors of the construction industry is needed now.

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# All aluminium windows and doors must be supported

## Window manufacturers in a state of confusion as to what is needed

By Flashman Flashing  
Systems Ltd director  
Mike Anticich

**T**o the best of my knowledge, every weathertightness claim I have been involved with has included issues with window and door openings.

At least 50% of leaks in leaky homes occur at window and door openings — and they are still occurring.

It is essential that attention is paid to the detailing and installation of windows and doors. In my opinion this is often not happening, and litigation as a result of the consequential leaks is a natural and expensive result.

Cavity construction, pressure equalisation of the trim cavity and even the most excellent flashing system will not allow for the inevitable leaks at the window or door junction that I want to focus on here.

### New cause of leaks

This article is intended to bring to the attention of builders yet another issue affecting window and door installations which has created a new cause of window and door leaks in aluminium joinery installations.

The new leakage point has been brought about by the extensive use of double glazing to comply with H1 requirements and the need to cantilever windows and doors out beyond the framing line as much as 50mm. This occurs with direct and cavity construction.

What is needed is full window support along the length of the window and door. This requirement, in the main, is not being insisted upon by building consent officers, nor is it being widely enforced on site. As a consequence, builders are not fitting these essential support bars.

This is not entirely an oversight of building inspectors as E2/AS1, the External Moisture clause of the New Zealand Building Code, is not clear on the essential requirement to provide critical support in any of the window drawings.

There is not one drawing in E2/AS1 which shows a support bar under windows or doors, let alone states that it is an essential part of the window installation.

However, there is, in Note 3 attached to all window drawings, regardless of which cladding is used, this statement:

“Make allowance between packer and sills for support brackets for large windows. Such brackets require specific design, and shall be supplied by the window manufacturer.”

This lack of clarity regarding the importance of supplying the window support has raised a potential gold mine for lawyers with future new litigation claims caused by early failure of windows and doors which do not have the required support as stated in Note 3 mentioned above.

Window manufacturers themselves are in a state of confusion as to what is needed. In my discussions with the WANZ technical committee on the issue of support to windows, their answer was clear and adamant. “All windows require full support.”

This is not happening. Where support is being provided it is inadequate or contrary to WANZ's own recommendations to their members.

E2 was produced with great haste to provide some prescriptive solutions to the leaky home epidemic, and the requirement for window support was not fully addressed.

However, the WANZ web site is very clear on the matter.

### Can't fit window support with direct fix construction

Let me ask this question at this point. How is it possible to fit and support bar to a direct fixed installation where there is a sill tray? Answer, it is not possible.

That point alone should put an end to the entire practice of direct fix! The cheapest insurance available is the price of cavity construction at a cost of approximately \$1000 to batten out an average-sized house.

On my independent inspection of window and door

installation, I discovered that often the support bar or brackets did not support anything at all!

A bit like the many huge beams I have seen in roof spaces where load bearing walls have been removed and a beam installed on top of the ceiling joists but not landing on any load bearing walls. In other words, the support bars have added expense for no purpose whatever.

### Never fitted

In many of the remediated leaky homes where existing window and door joinery remains (a practice I do not recommend), the now essential support blocks were never fitted by the window manufacturer because no one had thought of window support.

It is clearly impossible to provide support via a WANZ bar by some other means, if there is nothing to support!

Builders face litigation if windows and doors leak due to sagging and the opening up of mitres and mullion connections which cause leaks well inside the framing line (a cavity won't help).

## BT poll result

**Over the past couple of months  
www.buildingtoday.co.nz asked the  
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**“Have you had to lay staff off so far  
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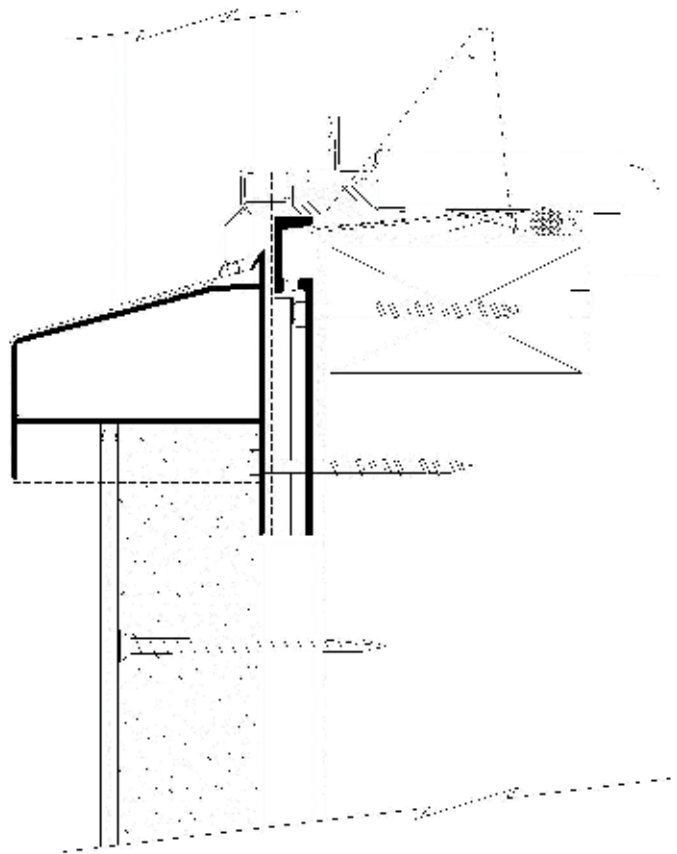
**where our current poll asks:**

**“Are you optimistic that the  
construction industry will pick up  
before the end of 2009?”**

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- Window support always fitted as part of the Flashman Flashing System
- Approved by Wanz Technical committee
- The Flashman Flashing System is Branz Appraised (No 573)
- The Flashing system was tested at 232kph which is rated as Specific Engineered Design. (Very high wind in NZS 3604 is 180kph)
- The Flashman Flashing system solves all window support and weathertightness issues even in extreme conditions
- Fits all cladding types
- Flashman are now also offering a full window installation and flashing service complete with a Producer Statement for the window installation, and offer a 10 year Installation Warranty and 15 year Product Warranty on the installation of the window flashing system
- Flashman has been specified on major leaky home remediation projects throughout NZ
- Member of the Window Association of NZ
- Associate member of the Master Builders Federation
- Associate member of the Certified Builders Association
- Endorsed by all leading NZ cladding manufacturers



BRANZ Appraised  
Appraisal No.573 [2007]



**Flashman Flashing Systems Ltd.**

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**Say No to Leaky Homes**



# Back to school for Carters Christchurch

**A** giant new playhouse stands tall in the grounds of Fendalton Primary School in Christchurch. The 6.8 x 2.6 metre playhouse is a result of the school's new entrant students approaching their teacher Karen Brown with a request to improve their school playground.

Together, the children brainstormed ideas and, with help from an architect, were able to design their dream playhouse which includes a sandpit, cat door, post box, car ramp, deck and even Pink Batts for insulation.



The children raised money through a series of cake stalls and putting on a production. They then approached volunteers and sponsors with letters detailing their plans to improve the outside play environment.

Carters Canterbury branch manager Andrew Walker received the letter and decided to not only donate all the materials for the playhouse but, with the help from local Carters key customer Clive Barrington Construction Ltd, volunteered to build it.

The playhouse was built over three days in June, with frames assembled prior to delivery at the site. Monday 29 June marked the red ribbon opening celebration of the playhouse and was followed by an eagerly anticipated trial run by the junior students.

Mr Walker stated: "It's been a great community-spirited project to be involved in, and Carters were happy to help."



• For more info: Ph Carters 09 272 7200

On the web: [www.carters.co.nz](http://www.carters.co.nz)





By mid 2010 there will be a labour shortage in the building and construction industries – resulting in the need for 8300 new workers each year from 2013\*.

*\*Source: NZIER, forecast exclusively for the BCITO, March 2009*

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**BUILDING APPRENTICESHIPS**

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# Bay of Plenty family builds a bridge

Family members find BCITO programmes a stress-free way to achieve

**W**hile the expression to “build a bridge” is often used in jest among families, it's no joke for Bay of Plenty builder Ray Puhara and sons Logan and Hayden.

In fact, building a bridge is what the Puhara family of Te Puke does for a living, with Ray, Logan and Hayden all currently working on various aspects of the construction of the Harbour Link bridge, a project designed to provide more efficient access between Tauranga and Mount Maunganui.

Ray runs his own residential and light commercial construction business, Build 4 U, and employs two other staff members, including 23-year-old son Logan, who has just completed his National Certificate in Carpentry, through the Building and Construction Industry Training Organisation (BCITO).

When Build 4 U was offered a contract through Fletcher Construction last year to work on the \$255 million Harbour Link project, Ray and the team jumped at the chance to try something different and to work on one of the largest transport projects ever constructed in New Zealand.

One of the reasons Ray's team was able to take advantage of this opportunity is that his talented team of builders is very well trained – all holding qualifications in the construction industry.

## Passion for training

A passion for training has been instilled in Ray ever since he began his own apprenticeship in carpentry and joinery after leaving school, knowing that it was the first step to running his own business in the future.

Back then, this involved going through the old apprenticeship system, which required apprentices to complete 10,000 hours of training.

“It seemed like a long time to be doing an apprenticeship, but knowing the skills learned would set me up for life was what motivated me to get through,” Ray says.

These days, Ray's apprentices, like Logan, complete competency-based BCITO National Certificates.

“Now that construction apprenticeships are competency-based, it's about proving your ability and understanding, which is a much better system. However, you never stop learning — I have just completed an adult assessing course with the BCITO,” Ray says.

Logan began his BCITO National Certificate in Carpentry having previously completed a painting apprenticeship. Having been immersed in the construction industry all his life,





From left: Logan, Raymond and Hayden Puhara, and BCITO training advisor Don Campbell.

Image: Sun Media

Logan was able to prove his skills and abilities very quickly, and he completed his BCITO carpentry apprenticeship in two years.

"While contracting to Fletchers, it has been recognised that Logan is a well trained and very focused young man who will go a long way in the construction industry," Logan's BCITO training advisor Don Campbell says.

### Ideal candidate

"His qualifications and experience make him an ideal candidate for a position as a leading hand."

The youngest of the Puharas, 17-year-old Hayden, has also followed his father Ray and brother Logan into the construction industry. Employed by Fletcher

Construction, he is currently working through two National Certificates in Concrete Construction — Siteworks and Pre-cast.

All three of the Puharas have found BCITO National Certificate programmes to be the stress-free way to achieve internationally-recognised qualifications.

"The BCITO training advisors make it extremely user-friendly to prove the competency required," Ray says.

### Important first step

Both the boys agree, and add that achieving their National Certificates is the important first step in their construction careers.

Completing BCITO qualifications has allowed them to

choose a great career at the same time as enjoying an active lifestyle in the Bay of Plenty, where Logan and Hayden enjoy drifting at Merimeri and Taupo, and surfing at the Mount.

The BCITO is the organisation appointed by the Government to develop and implement industry qualifications for the construction sector.

The BCITO is the standard-setting body for the following sectors within the construction industry: carpentry, cement and concrete, floor and wall tiling, frame and truss manufacturing, interior systems, proprietary plaster cladding systems and solid plastering.

• For more info: Ph 0800 4BCITO (0800 422 486)



On the web:  
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# Wellington's very own Cake Tin

Dr Kerry Rodgers reflects upon a capital structure

Like some latter day philanderer, Wellington seems to have gotten over its long-professed, 103-year love affair with Athletic Park. It did so in quite unseemly haste. In 10 short years The Westpac Stadium, aka The Cake Tin, aka The Ring of Fire, has absolutely positively claimed the capital's heart.

On 3 January 2010, city and stadium will celebrate 10 inseparable years. In many ways the stadium has more than achieved its primary goal of providing a multi-

purpose venue of international quality at a central location.

Ground for the new venue was broken on reclaimed railway land back on 12 March 1998, with the stadium opening on 3 January 2000. The final construction bill came in at \$130 million.

The principal contractor was Fletcher Construction, with the project managed by Beca Carter Hollings & Ferner. The architects were Warren & Mahoney, and the owner and operator is the Wellington Regional Stadium Trust.



The stadium now provides the home for the Air New Zealand Cup Wellington Lions, the Super 14 Hurricanes and the A-League Wellington Phoenix FC.

It acts as New Zealand host for the New Zealand leg of the International Sevens. And today, of course, it is also home to the Ranfurly Shield.

Notable, one-off events have included:

- the first ever Edinburgh Military Tattoo to be conducted outside of Edinburgh, in 2000,
- the conclusion of the Australasian leg of The Rolling Stones' A Bigger Bang World Tour in 2006,

- the memorable greatest-ever loss by the New Zealand rugby league team: 58 zip on 14 October 2007 (we won't even consider mentioning the winners on that day, Ed),
- the largest-ever football crowd in New Zealand of 31,853, when the Wellington Phoenix FC played David Beckham's LA Galaxy on 1 December 2007, and
- Film director Peter Jackson encouraging 30,000 cricket fans to chant in Black Speech in order to obtain the sound bite for the Uruk-hai's war cry during the Battle of Helm's Deep.

All is set fair for 2011.

[www.buildingtoday.co.nz](http://www.buildingtoday.co.nz)



### Some Essential Stadium Stats:

Length end to end	235 metres
Width east-west	185 metres
Bowl site	48,000 sq m
Roof	12,000 sq m
Height, arena to roof	26 metres
Height, light tower	55 metres
Northern replay screen	84 sq m
Southern replay screen	52 sq m
Length, concourse	650 metres
Width, concourse	14 metres
Total number seats	34,500
Covered seats	24,000
Corporate boxes	64
Turnstiles	43
Escalators	2
Food and beverage outlets	24
Toilet pans	383
Urinals	27

### Some Essential Pitch Stats:

Pitch	7930 tonnes sand, 2800 tonnes drainage gravel
	900 kg grass seed
	1200 kg of fertiliser
	56 pop-up sprinklers
Pitch density	1.4-1.5 g per cu cm
Pitch gradient, centre to edge	300 mm elevation
Grass height, rugby	20-25 mm
Grass height, cricket	12-13 mm
Portable wicket	Patumahoe clay
Optimum wicket moisture content	25-28%
Goal post height	15 metres
Pitch is mowed daily and watered every second day.	



Images courtesy Westpac Trust Stadium, Neil McKenzie. Text © KA Rodgers 2009.

# The liability of vendors pursuant to clause 6.2(5) of the standard Agreement for Sale and Purchase

**Tim Bates** of Auckland law firm Legal Vision delves deeper into leaky building claims against vendors based on the standard Agreement for Sale and Purchase.



It is often the case that one of the named respondents in any given leaky building claim will be the party that sold the property (the vendor).

One of the claims usually brought against the vendor is based upon the following clause in the standard agreement for sale and purchase:

Clause 6.2(5) of a Sale and Purchase Agreement states:

(5) Where the vendor has done or caused or permitted to be done on the property any works for which a permit or building consent was required by law:

- The required permit or consent was obtained; and
- The works were completed in compliance with that permit or consent; and
- Where appropriate, a code compliance certificate was issued for those works; and
- All obligations imposed under the Building Act 1991 were fully complied with.

The approach taken by many plaintiffs or claimants has been that if a house is discovered to be a leaky building after sale but within six years from the date of sale, then the vendor is in breach of 6.2(5)(d).

The rationale is that if a house leaks then it is non-compliant with the Building Code, thus there is a provable claim in contract against the vendor.

For this very reason, claimants have always looked fondly towards vendors as respondents where they have arranged for building work to have been carried out while owning the property.

However, there have been two Weathertight Homes Tribunal (WHT) decisions that have thrown considerable doubt upon a claim brought pursuant to this clause.

In particular, the decision of *Brown v Christchurch City Council & Another* Procedural Order No 4 was a decision where the adjudicator had to consider a removal application by a vendor where this contractual provision had been asserted against it.

In deciding on the removal application, the adjudicator considered closely 6.2(5)(d). The following findings were made within this decision:

- 6.2(5)(d) must be read in the context of the preceding sub-clauses 6.2(5) (a)-(c), the intended meaning of "All obligations" is therefore governed by the scope of the preceding sub-clauses.
- It is the obtaining of permits which is the crux of the warranty provision — the purchaser wants to know that the building, or any alterations, have been compliant with the Building Act, and the means of securing that assurance is for the vendor to warrant that the requisite permits have been obtained from the council and the completed structure approved by the council.
- Where there is ambiguity in meaning, an aid to the interpretation of the clause is to cross-check the natural meaning against the factual background.

In the present case, the warranty is to be read in the light of the fact that councils are responsible for oversight of domestic house construction in New Zealand, and the clause is there to ensure that the

subject property has been vetted and approved in accordance with council and building code requirements.

- To give the clause a wide meaning would result in a person who, whilst as owner is protected, but as vendor becomes potentially liable for any building faults. It would expose the vendor to the very risk which the Court of Appeal held is totally inappropriate.

## Decision

In this decision, the adjudicator held that the interpretation that council and the claimants sought to place on 6.2(5)(d) would effectively place the vendor in the position of underwriter to the inspection and certification regime of the council.

This flies in the face of conveyancing reality. It was held that the vendor had no liability in contract, and ought to be removed.

There is further support for this analysis of the warranty in the decision of *Chapman v Western Bay of Plenty District Council & Another* Procedural Order No 3.

## Conclusion

In conclusion then, the ability to claim against vendors based upon this clause looks to be in doubt if these decisions by the WHT adjudicators are correct.

In particular, I am drawn to the logic that a home owner, whilst protected against an errant certification process whilst it owns a house, (ie. it can bring a claim against the local council), on sale becomes the insurer of that same certification process against defects subsequently found in the house.


I am instead drawn to the interpretation that 6.2(5) has a cumulative effect that is, in fact, satisfied if there is a consent, an inspection process and a Code Compliance Certificate issued.

- For more info: **Ph Tim Bates, 09 360 2415**



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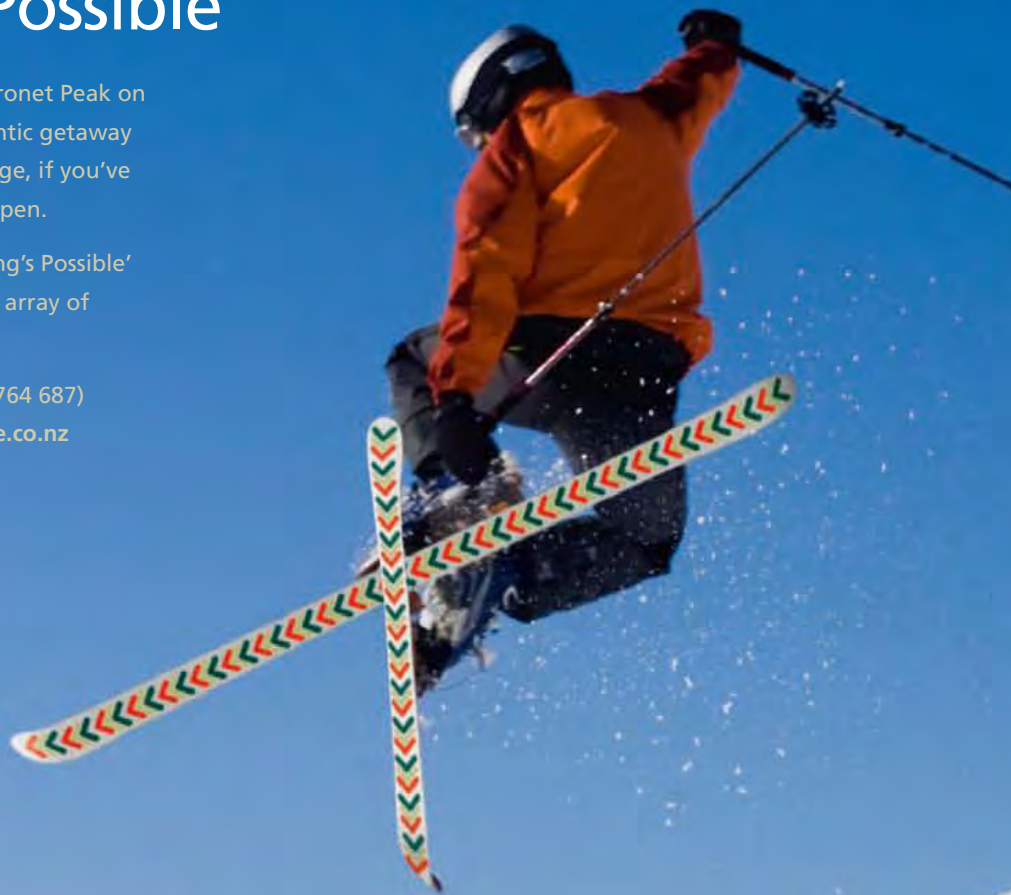


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