

Risk management in construction

How to avoid things going wrong



KENT PERRY, ASSOCIATE, HEANEY & PARTNERS

THOUSANDS OF PROJECTS involving thousands of contractors are ‘on the go’ in New Zealand every day. These projects range from small, relatively simple and inexpensive construction jobs through to complex, labour-intensive and costly projects that sometimes take years to complete.

However, whether your construction project is large or small, expensive or inexpensive, time-consuming or not, the considerations about how to manage risk in construction should remain the same.

As litigators, we often get involved when something goes wrong, or has gone wrong, during a construction project. The types of issues can be simple fee disputes during the course of construction or claims alleging widespread, systemic failure of building elements, years after the construction has completed.

Therefore, it is important for those involved in the industry to ensure they take steps early in construction projects to manage any risk but also protect themselves from any future issues that may arise.

What are risks?

The construction industry, compared to other industries, is probably subject to more risks given the often complex contractual arrangements between contractors, the length of construction projects and the potentially unpredictable environment.

What is considered to be a ‘risk’ is open to interpretation and has many meanings from many different sources. It is probably best that ‘risk’ is defined broadly so that there is a wider appreciation of issues that may arise during construction. A broad definition of ‘risk’ has been adopted by the European Commission which suggests a “risk is any factor, event or influence that threatens the successful completion of a project in terms of time, cost of quality”. A ‘risk’ in the construction context could be any or all or a combination of the following:

1. Performance risks: for example, contractor productivity, suitability of equipment and staff and defective workmanship;



2. Construction risks: for example, changes in the scope of work, site access, workplace accidents, availability of resources (labour and materials) and delay in completion of work;
3. Legal risks: for example, solvency of contractors/subcontractors, dispute resolution or delayed payment to contractors;
4. Financial risks: for example, project funding;
5. Physical risks: for example, natural disasters, changes to the geology and topography of the site.

How to manage risks?

Some of the identified risks above (eg, physical risks) are difficult to plan for given their unpredictable and unforeseen nature. However, in most cases, the other identified risks can be avoided or mitigated if proper risk management tools are put in place early during a construction project.

One way in which you can manage risk, and limit any potential future issues that might occur, is ensuring that you have the right contractors for the right jobs. This could be anything from the most skilled subcontractors for discrete pieces of work to experienced project managers to adequate site foremen to registered builders. For example, to avoid any risks regarding project delays, ensure that all contractors engaged are properly solvent and experienced in their respective area and ensure that clear contractual terms are agreed confirming timelines for completion of work and in return, the payment of fees.

Once the right people are appointed on site for the right jobs, it will then be easier to allocate any potential foreseeable project risks to the person/contractor that is best placed to control and manage that particular risk. For example, to minimise potential defective workmanship, it would be helpful to ensure that fully qualified and experienced contractors are hired or where inexperienced contractors are engaged, ensuring that these contractors are being properly managed and supervised by experienced senior staff with their work quality tested.

Another way to prevent potential risks is to ensure that you are adequately protected in the event that things do go wrong. Arranging adequate insurance cover is important not only for issues that may arise during the construction project but also after the project has ended (in some circumstances up to 10 to 15 years after project completion). It is important to remember that just because your involvement may have ended on a particular construction project the liability you have for the work you undertook on the construction site will be ongoing and adequate run-off insurance should be put in place. 