

BULLETIN

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SITE RECORDS

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■ A significant number of contractors have been found liable for building repair or remediation costs because they could not provide proof that they did what they said they did or had contracted to do.

■ Therefore, during the construction process, it is critical that contractors and subcontractors keep comprehensive records of what happens on site.

■ This Bulletin replaces Bulletin 391 of the same name.

1.0 WHY KEEP RECORDS?

1.0.1 Once a contract has been won, the contractor's aim is to construct the works in accordance with the contract documents. At some future date, it may also be necessary to prove this has been done – just saying it has been done isn't usually enough – so maintaining good records is essential.

1.0.2 To remain in business, contractors must also complete the work profitably. Site records can be added to other business information to enable the profitability of the contract to be assessed and to provide comparative data for business decisions in the future. For example, scrutinising well documented time and activity records can highlight areas of inefficiency and enable more streamlined work practices and/or more accurate assessments of the time required on future projects.

1.0.3 The benefits of maintaining good site records include:

- reducing the risk of future claims as a result of not being able to prove work was done and the standard it was done to and to show that the documentation provided was followed (or, if documentation or details were amended, that the amendment was properly authorised)
- providing an accurate and comprehensive record of all communications between parties to the contract, subcontractors, suppliers, designers, the owner and the building consent authority (BCA)
- recording deliveries (materials and equipment), who was on site and what they were doing
- showing compliance with regulatory requirements such as the booking and carrying out of BCA inspections
- recording and measuring contract variations – not carrying out work as a result of a verbal instruction
- proving that work has been done to specification
- recording original and ongoing site conditions, weather conditions, soil conditions and so on
- assessing progress against the work programme
- monitoring performance with respect to quality control, site management, profit, and health and safety
- identifying information needs (for example, additional details).

1.0.4 The Income Tax Act and the Companies Act also require that financial records and records of fringe benefit tax, goods and services tax, and wages and salary payments are retained for a period of 7 years.

2.0 PROOF OF WORK

2.0.1 Fundamental work practices that should be adopted on all contracts are:

- maintaining a daily site diary
- organising correspondence files that are specific to the main contract, including the designer, the owner, the BCA, individual subcontractors and material suppliers
- keeping visual records such as photographs and videos.

2.1 SITE DIARY

2.1.1 A site diary must be maintained by anyone having responsibility for some aspect of the work and should be filled in daily as a record of the progress of the work. Although this can be time-consuming, it is invaluable when used as justifying evidence for:

- cost variations
- proof that work has been carried out as it should have been
- defence of future claims of any kind.

2.1.2 Keeping daily records is essential for the main contractor and subcontractors on the site. The method and type of diary used will vary – for larger sites, a pocket notebook or audio recorder can be useful, and the site diary can be written up at the end of each day.

2.1.3 Information recorded should include:

- daily weather conditions
- progress achieved and resources used
- causes of stoppages or disruptions
- stop and start times of activities
- material deliveries and their quantity and condition – were the materials delivered to specification?
- daily hazard records, including any safety incidents
- details of photos taken and where they have been stored
- information required from the designer or client to resolve an issue that has become evident on site
- inspections carried out – when and by whom
- critical discussions and verbal instructions
- written instructions received whether by mail or email
- identification of possible future claim situations
- details of visitors to the site
- emails, texts and telephone calls (including mobile) made/received
- moisture content checks carried out for timber and concrete to ensure materials are dry enough before subsequent activities are carried out
- site meetings (with the BCA, the designer/client or subcontractors), whether informal or formal.

2.2 CORRESPONDENCE FILES

2.2.1 Individuals responsible for the site should be aware of all incoming and outgoing correspondence, which should be managed using a suitable filing system.

2.2.2 All incoming correspondence should be date stamped and circulated to appropriate personnel.

2.2.3 Email communications should be printed and held as hard copies, irrespective of the use of computer files. Filing on disk may be considered, but having hard copies in the same format as other correspondence allows for easy reference and filing.

2.2.4 Because of the complexity of many projects, copies of correspondence can be held under a number of headings. The categories are not always mutually exclusive, which means that some records may require duplicating or cross-referencing under two or more headings.

2.3 VISUAL RECORDS

2.3.1 A simple camera or video recorder is very useful for recording:

- the original condition of the site
- daily progress of the work
- work that is to be covered in, such as bracing panel hold-down fixings
- deliveries to site, especially any damaged items
- site conditions
- weather and weather damage
- damage caused on site, for example, to a finished element by another contractor
- unusual procedures or construction practices
- positions of in-wall services or in-ground service trenches
- site milestones for general interest, marketing or site morale.

2.3.2 Cameras should have a date-setting facility that can be automated to imprint the time and date the image was taken.

3.0 VARIATIONS AND INSTRUCTIONS

3.0.1 As the contract progresses, changes may occur that will test the contractor's ability to perform efficiently and may affect the conditions and terms of the original contract agreement, for example:

- details may be changed by the client or client's agent
- an original detail may not be able to be achieved on site and needs to be redesigned

- material supplies may become unavailable
- labour conditions may change
- environmental factors may be at variance with seasonal expectations.

3.0.2 Most contracts allow for written instructions to the contractor to clarify or amend the contract. Some of these changes may be adjustable against costs and time in the contract, while other changes may be solely at the contractor's risk. On rare occasions, changes may significantly affect the original conditions of the tender and require renegotiation of aspects of the contract.

3.0.3 Any amendment is a change to the original agreement, so it is likely this will have a cost implication and necessitate some negotiation. Comprehensive site records are fundamental to this.

3.0.4 In practice, procedures for handling variations may vary, but they should always include:

- a clear, written instruction of the required amendment from a person having authority under the contract or the contractor's written confirmation of oral instructions
- the contractor's itemised claim stating the appropriate section of the specification or schedule of quantities under which the claim is being made
- a dated record of discussions or negotiations to agree the contract variation
- a record of agreements reached and any payments made
- a summary of the adjustment against the original contract sum.



3.0.5 It is also essential to retain copies of the make-up of tenders and subcontract agreements as references. Information on the compilation of prices provides proof of allowances or omissions in the tender price.

4.0 SITE CONDITIONS

4.0.1 Before any work on site, commences:

- take photographs of existing features, including areas of the site and structures that will be affected by the works – remember to include the footpath and verge
- record spot levels, datum points and, where appropriate, a grid of levels defining original surfaces
- take photographs to record the existing condition of neighbouring properties – this could provide defence against any alleged damage to those properties as a result of construction work.

4.0.2 Recording the site in this way establishes a permanent record or benchmark of the site at the start of the contract. This can be used as a reference for any reason in the future, once the new work has obliterated all signs of the original site conditions.

4.0.3 It is also important to record any aspects that are discovered as development of the site proceeds and that may affect the contract work, for example, soft ground or the discovery of groundwater.

5.0 CONTRACT DOCUMENTS

5.0.1 A working copy of the contract documents should be kept on site in one place. These show:

- the extent of the contract work for all contractors and subcontractors
- amendments made during tender stage including BCA consent requirements that need to be incorporated into construction
- variations authorised during construction.

5.0.2 These documents should be used daily to check the construction details, and any relevant comments and changes can be recorded in hand-written notes.

5.0.3 On major contracts, monitoring systems are required to log revisions and to ensure that only up-to-date documents are used and distributed to those affected.

5.0.4 All superseded documents should be removed from the work area. They should be marked 'superseded' and retained as a permanent record for any future reference.

6.0 QUALITY CONTROL

6.0.1 Contractors must build to the standards required in the contract and comply with the performance requirements of the New Zealand Building Code. Proof of the quality levels attained should be kept in written form, at least until statute limitation periods expire (see 8.0).

6.0.2 Proof of quality control measures may include the recording or retention of:

- delivery dockets of materials, showing quantities and gradings, cross-referenced to where the materials are used on site
- delivery and receipt of additional or modified construction drawings or specification
- test data of raw materials and manufactured products
- labour records (date and hours worked), including skills employed
- set-out levels and line measurements against datum and grid references
- check measurements of tolerances and standards of finish
- moisture content checks
- details of plant hire agreements and payments
- details of subcontract agreements, attendances and payments
- establishment of health and safety provisions, and any monitoring and recording
- quality checks.

6.0.3 Particularly for work likely to be out of sight on completion, evidence of proper care in construction will provide essential evidence in defence of any subsequent claims against a contractor for remedial work or negligence.

7.0 HEALTH AND SAFETY

7.0.1 Building is recognised as a potentially dangerous industry. The owner, through the contractor, is responsible for ensuring as far as possible that neither the workforce nor the general public are injured as a result of the works.

7.0.2 Maintaining good records of the safety procedures adopted, such as workplace safety briefings and updating hazard notification panels, is important in defending any claims for injury compensation.

7.0.3 The contractor is legally required to draw up and maintain a site safety plan, including:

- appointing someone responsible for site safety
- identifying and notifying potential hazards on site via a hazard notification panel
- posting notices and warnings of potential hazards
- restricting site access to authorised persons only
- taking every effort to ensure a safe working environment
- providing instruction in safe methods and practices
- arranging safety meetings and seminars
- carrying out safety audits on plant and procedures
- recording all accidents that occur, investigating their cause and amending any procedures where appropriate.

8.0 LEGAL PROTECTION

8.0.1 A statute of limitations is a piece of law that prescribes the time available to file a lawsuit or claim after the cause of an action (for example, someone doesn't follow their contract obligations).

In New Zealand, this is called the Limitation Act – the Limitation Act 1950 has been reviewed, and the revised Act (the Limitation Act 2010) came into force on 1 January 2011.

8.0.2 An action is said to be ‘statute barred’ when it can no longer be the subject of a legal action because the time limit imposed by the Limitation Act has been exceeded. The timeframe depends on the type of lawsuit, the circumstances of the lawsuit and claim and where the claim is filed. Under the revised Limitation Act, the limitation period for common law monetary claims is 6 years. Changes to the Act include the addition of a provision that allows a claimant a period of 3 years from when they discover the claim to bring proceedings plus the addition of a long-stop limitation defence of 15 years after the date of the act or omission on which the claim is based.

8.0.3 A contractor’s central involvement in a project makes them the first to be named in any legal action or claim brought by an aggrieved party. Common claims faced by builders and subcontractors are:

- actions under the Building Act – these are statute barred 10 years after the date of the action
- a claim under the Weathertight Homes Resolution Service Act relating to a leaky building
- actions in contract – these are statute barred 6 years after the breach or its discovery
- actions in tort – these will be valid from the date of the tortious act.

8.0.4 As the nature of any late claim that may arise from latent damage is very difficult to predict, contractors should consider keeping records for an indefinite period (but not less than 10 years).

9.0 AT COMPLETION

9.0.1 At the end of a building project, the contractor should provide the owner with the following documentation:

- Product warranties and guarantees obtained from materials and systems suppliers along with the maintenance requirements to validate the warranties.
- Manuals for appliances supplied as part of the contract.
- The Code Compliance Certificate, if it is a requirement in their contract to organise this with the BCA. (Under law, it is the owner’s ultimate responsibility to obtain the certificate.)
- The consented documents for their records. (The contractor should also retain a copy for their records.)

9.0.2 The contractor is typically responsible for supplying the BCA with:

- as-built drawings of services and so on
- any installation producer statements (usually before the CCC is issued).

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