

## **PRESENTERS**

### **Stephen Quinn, Phillips Fox Lawyers, Wellington**

Stephen is a partner in the Wellington office of Phillips Fox. He has experience in many aspects of commercial litigation, but more particularly in building, resource management and environmental law. Stephen represents a number of local authorities on building matters and appears in front of many forums, including the Weathertight Homes Resolution Service, Council hearings, Environment Court, High Court and the Court of Appeal.

### **Grant Wilson, Russell McVeagh, Wellington**

Grant specialises in the areas of construction projects and corporate “deal doing” and is a convener of the Construction Technical Committee of the NZLS Property Law Section.

*The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>1. INTRODUCTION .....</b>	<b>1</b>
SEMINAR PURPOSE.....	1
<i>This seminar has a two pronged focus:.....</i>	<i>1</i>
<i>The new Building Act.....</i>	<i>1</i>
<i>The stated aim of the 2004 Act is to get: .....</i>	<i>1</i>
<i>Key features.....</i>	<i>1</i>
<i>Legal aspects of the building process .....</i>	<i>4</i>
<b>2. HYPOTHETICAL EXAMPLES FOR DISCUSSION.....</b>	<b>5</b>
DESIGN-BUILD-LEASE PROCESS FLOWCHART.....	6
DEVELOPMENT AGREEMENT, CONSULTANTS AGREEMENTS, BONDS ETC .....	6
CONSTRUCTION CONTRACTS.....	6
<i>Purchasing off plans .....</i>	<i>6</i>
AGREEMENT FOR SALE AND PURCHASE TABLE .....	7
<b>3. BUILDING CONSENT.....</b>	<b>9</b>
INTRODUCTION .....	9
ROLE OF THE BUILDING CODE.....	10
<i>What is the building code?.....</i>	<i>10</i>
<i>The purpose and place of the building code within the performance based system.....</i>	<i>10</i>
<i>Fundamental principle – all building work to comply with the building code.....</i>	<i>11</i>
<i>What is/isn't “building work” .....</i>	<i>12</i>
<i>Methods of showing compliance with the building code – compliance documents.....</i>	<i>15</i>
<i>Warnings/bans of building methods/products.....</i>	<i>18</i>
<i>Waivers/modification of building code .....</i>	<i>19</i>
<i>Summary – role of the building code .....</i>	<i>19</i>
STRUCTURING CONSENTS .....	20
<i>When consent is/isn't required.....</i>	<i>21</i>
APPLYING FOR BUILDING CONSENT .....	22
<i>Prescribed content/form of application.....</i>	<i>22</i>
<i>Project information memoranda .....</i>	<i>23</i>
<i>Building consent application process .....</i>	<i>23</i>
<i>Lapse of building consent .....</i>	<i>25</i>
STAGING PERMITTED .....	25
<i>Considerations when staging consents .....</i>	<i>26</i>
<i>Other factors affecting building consents .....</i>	<i>27</i>
ROLE OF THE LAWYER IN THE BUILDING CONSENT PROCESS .....	28
<i>Drafting/reviewing construction contracts .....</i>	<i>28</i>
<i>Review of building consent applications and ensuring regulatory compliance .....</i>	<i>28</i>
<i>Facilitating the process.....</i>	<i>29</i>
SUMMARY – BUILDING CONSENT .....	29
<b>4. PRACTICAL COMPLETION.....</b>	<b>31</b>
INTRODUCTION .....	31
INSPECTIONS.....	31
<i>Powers of inspection.....</i>	<i>31</i>
<i>Notices to fix and territorial authorities' powers of inspection.....</i>	<i>34</i>
<i>Compliance schedules and territorial authorities' powers of inspection .....</i>	<i>35</i>
<i>Liability for negligent inspection – the standard of care required.....</i>	<i>36</i>
CODE COMPLIANCE .....	37
<i>Applications for CCCs .....</i>	<i>38</i>
<i>Interim CCCs no longer available – effect on design/construction programming.....</i>	<i>39</i>
<i>Certificates of acceptance.....</i>	<i>39</i>
<i>Changing the use of a building .....</i>	<i>40</i>
COMPLIANCE SCHEDULES AND BUILDING WARRANTS OF FITNESS .....	41
<i>Ongoing compliance obligations .....</i>	<i>43</i>

<i>Implications of non-compliance</i> .....	43
SUMMARY – PRACTICAL COMPLETION .....	44
<b>5. POST-CONSTRUCTION DEFECTS</b> .....	<b>45</b>
INTRODUCTION .....	45
FORMAL REMEDIES .....	45
<i>Statutory offences</i> .....	45
<i>Infringement offences</i> .....	49
<i>Civil proceedings</i> .....	50
<i>Warranties</i> .....	51
<i>Statutorily implied warranties – the Consumer Guarantees Act 1993</i> .....	52
<i>Statutorily implied warranties – Sale of Goods Act 1908</i> .....	54
<i>Statutorily implied warranties – 2004 Act</i> .....	54
<i>Liability in tort to third parties</i> .....	56
INFORMAL REMEDIES – ALTERNATIVES TO LITIGATION.....	56
<i>Weathertight Homes Resolution Service</i> .....	57
<i>Summary: the WHRS claim process</i> .....	61
<i>Department of Building and Housing determinations</i> .....	62
<i>Contractual provisions</i> .....	63
<b>6. MISCELLANEOUS</b> .....	<b>65</b>
INTRODUCTION .....	65
STATUTORY BODIES AND PERSONS UNDER THE 2004 ACT .....	65
<i>The Chief Executive</i> .....	65
<i>The Building Advisory Panel</i> .....	66
<i>The Building Practitioners’ Board</i> .....	66
<i>Building consent authorities</i> .....	66
<i>Territorial authorities that are also building consent authorities</i> .....	67
<i>Regional authorities</i> .....	68
<i>Product certification bodies</i> .....	68
<i>Dam owners</i> .....	69
<i>Accreditation bodies</i> .....	69
<i>Statutory bodies and persons under the Building Act 2004</i> .....	70
<i>Dealing with territorial/regional authorities and BCAs</i> .....	70
THE LICENSED BUILDING PRACTITIONER REGIME.....	71
<i>Licensed building practitioners: Involvement in the building process</i> .....	71
<i>Licensed building practitioners: Registration and discipline</i> .....	73

## APPENDICES

<b>1. COMPARATIVE OVERVIEW – BUILDING ACT 2004 AND BUILDING ACT 1991</b> .....	<b>77</b>
<b>2. OFFENCES PROSECUTABLE SUMMARILY UNDER THE BUILDING ACT 2004</b> .....	<b>96</b>
<b>3. DESIGN, BUILD LEASE – PROCESS</b> .....	<b>100</b>
<b>4. DESIGN, BUILD LEASE RELATED DOCUMENTATION – SUMMARY</b> .....	<b>103</b>
<b>5. CONSTRUCTION CONTRACT – COMPARATIVE SUMMARY</b> .....	<b>117</b>
<b>6. AGREEMENT FOR SALE AND PURCHASE – ISSUES LIST</b> .....	<b>143</b>