

BuildLaw: In Brief

Building slows

Stats NZ reports that total building activity, in seasonally adjusted volume terms, fell 0.5 percent in the June 2017 quarter. Non-residential building activity was down 0.7 percent and residential building activity was down 0.4 percent, compared with the March 2017 quarter.

"This is the second quarter in a row that building activity has fallen, as the post-earthquake residential rebuild in Canterbury winds down," prices and construction senior manager Jason Attewell said. "In unadjusted terms, building activity in Canterbury slipped to just under \$1 billion a quarter for the first time in almost three years."

In Auckland, overall building activity was almost \$2 billion in the June 2017 quarter, including \$1.3 billion on residential buildings. Non-residential building activity rose a seasonally adjusted 18 percent, following an 18 percent fall in the March 2017 quarter. The actual value in the June quarter was \$671 million, near the December 2016 quarter high-point of \$703 million.

Nationally, the actual value of building work on new homes was \$2.8 billion in the June 2017 quarter, making a total of \$3.4 billion of residential work including alterations and additions. There was also \$1.8 billion of work on non-residential buildings.

Building consents for new homes continued to fall in July. The seasonally adjusted number of new homes consented fell 0.7 percent in July 2017, following a 1.3 percent fall in June 2017.

"July's fall was driven by the number of consented apartments, townhouses, and retirement units, which fluctuates from month to month," construction statistics manager Melissa McKenzie said. "The fall for multi-unit dwellings was partly offset by an increase for stand-alone houses."

The seasonally adjusted number of stand-alone houses consented rose 8.5 percent in July 2017, more than reversing a 4.0 percent fall in June.

The actual number of new homes consented was 2,762 in July 2017 (down 1.7 percent from July 2016), comprising:

- 1,900 houses (up 7.9 percent from July 2016)
- 367 apartments (down 14 percent)
- 350 townhouses, flats, and units (down 20 percent)
- 145 retirement village units (down 23 percent).

Auckland region had the largest fall in July 2017, with 313 fewer new homes consented compared with July 2016 (down 29 percent to 774 new homes consented). The fall was driven by decreases in the volatile apartment and townhouse categories. Auckland's numbers are quite volatile because almost half the homes consented are in multi-unit projects. On average, the region currently consents over 800 new homes a month.

Otago region had the largest rise from July 2016, with 114 more homes consented – up 68 percent to 282 in July 2017, driven by a spike for apartments in Queenstown.

In the year ended July 2017, 30,404 new homes were consented across New Zealand, including 10,051 in Auckland.

The value of building work put in place estimates the dollar value and volume of construction work on residential and non-residential buildings each quarter, also known as building activity. The monthly data in building consents issued reflects an intention to build, while building activity starts after the consent is issued.



Senate inquiry into cladding in Australia following Grenfell disaster

Following the Grenfell disaster in London, the Australian Government has recently announced an inquiry into the use of cladding. Following the Grenfell fire which killed nearly 60 people, the focus of blame has been on the building's non-compliant and flammable cladding. There are concerns that a high number of buildings around Australia are also suspected of having cladding which does not comply with Australian Standards. The Government had already initiated an existing inquiry into non-conforming building products, which has been expanded to cover the use of cladding.

The Senate's inquiry into non-conforming building products has been ongoing since June 2015. A copy of the interim report on aluminium composite cladding can be [found here](#). The deadline for the final report has been extended to 30 April 2018.

First sentence under new Health and Safety at Work Act 2015

The first sentencing decision under the new Health and Safety at Work Act (**HSWA**) was handed down recently and confirmed that the Courts will apply much higher penalties than under the previous regime.

The outcome of the case has been keenly awaited because it was the first successful prosecution under the new Act and people were looking for guidance on what to expect from the Courts.

A worker at Budget Plastics (**New Zealand**) Limited (**Budget**) was loading waste plastic into an unguarded plastic extrusion machine, when his left hand was dragged into the machine, which partially severed his hand.

Budget had pleaded guilty to failing in its duty as a PCBU (person conducting a business or enterprise) to ensure the health and safety of its workers "so far as was reasonably practicable".



The Palmerston North District Court found that Budget had failed to fit the machine with appropriate guards and emergency stops or have adequate hazard identification systems, operating procedures and safety processes in place for worker training.

WorkSafe sought a starting point of \$900,000, arguing that the culpability of Budget was high/medium. Budget sought a starting point of \$200,000. The Judge fixed reparation for emotional harm at \$37,500. Unusually, there was no discussion whatsoever about the consequences to the victim which the Judge took into account in reaching this figure.

In setting the fine, the Court specifically declined "to make sentencing guidelines". The Judge observed that the available starting point under the new Act was between \$400,000 and \$600,000 with its six fold increase in fines, but did not fix a starting point. Instead he reduced the fine by giving credit for mitigating factors and then said "the end sentence will therefore be between \$210,000 and \$315,000, depending on the starting point adopted". He then considered the ability of Budget to pay, taking into account submissions that a fine of over \$100,000 would mean that Budget would be put out of business and reduced the penalty to \$100,000 – this being, in his assessment "the maximum Budget can realistically pay namely the sum of \$100,000".

Under the previous legislation, moderate culpability would have had a starting point for a fine of between \$50,000 to \$100,000.

The sentencing decision confirms the new HSWA has teeth.

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MBIE publishes Practice Note for supervision by LBPs



MBIE has published a licensed building practitioner (LBP) Supervision Practice Note outlining what LBPs need to know about supervising unlicensed people.

Supervision in the building and construction sector has become increasingly important as the amount of building work across New Zealand has increased. Supervision is a key feature of the LBP scheme where LBPs oversee unlicensed people undertaking restricted building work in different contexts.

The Practice Note provides practical guidelines for LBPs working with builders with varying skill levels, as well as varying difficulty levels of work. It also outlines the value and importance of LBPs' responsibility when it comes to supervision. It's important that all LBPs read and understand the Supervision Practice Note.

Practice Notes are administered by regulators and set out expectations for licensed people on key subject matters.

If you have any questions about the Practice Note, please feel free to contact the LBP team at licensing@lbp.govt.nz

[LBP Practice Note](#) – Supervision is available on MBIE's LBP website.

Single payment schedule can respond to more than one payment claim

In a recent decision in *Lot 8 Investments Limited v RPS Construction Limited* [2017] NZHC 1400, the High Court has adopted a flexible approach to the payment claim/payment schedule regime under the Construction Contracts Act 2002 (Act) and what will be regarded as a complying document.

Lot 8 Investments Ltd (**Lot 8**) contracted with RPS Construction Ltd (**RPS**), to undertake certain building work. RPS issued two separate payment claims to Lot 8 for work done during different periods. Lot 8 disputed both payment claims in a single payment schedule. RPS argued that Lot 8 failed to comply with the payment regime under the CCA and made a statutory demand for the claimed amounts.



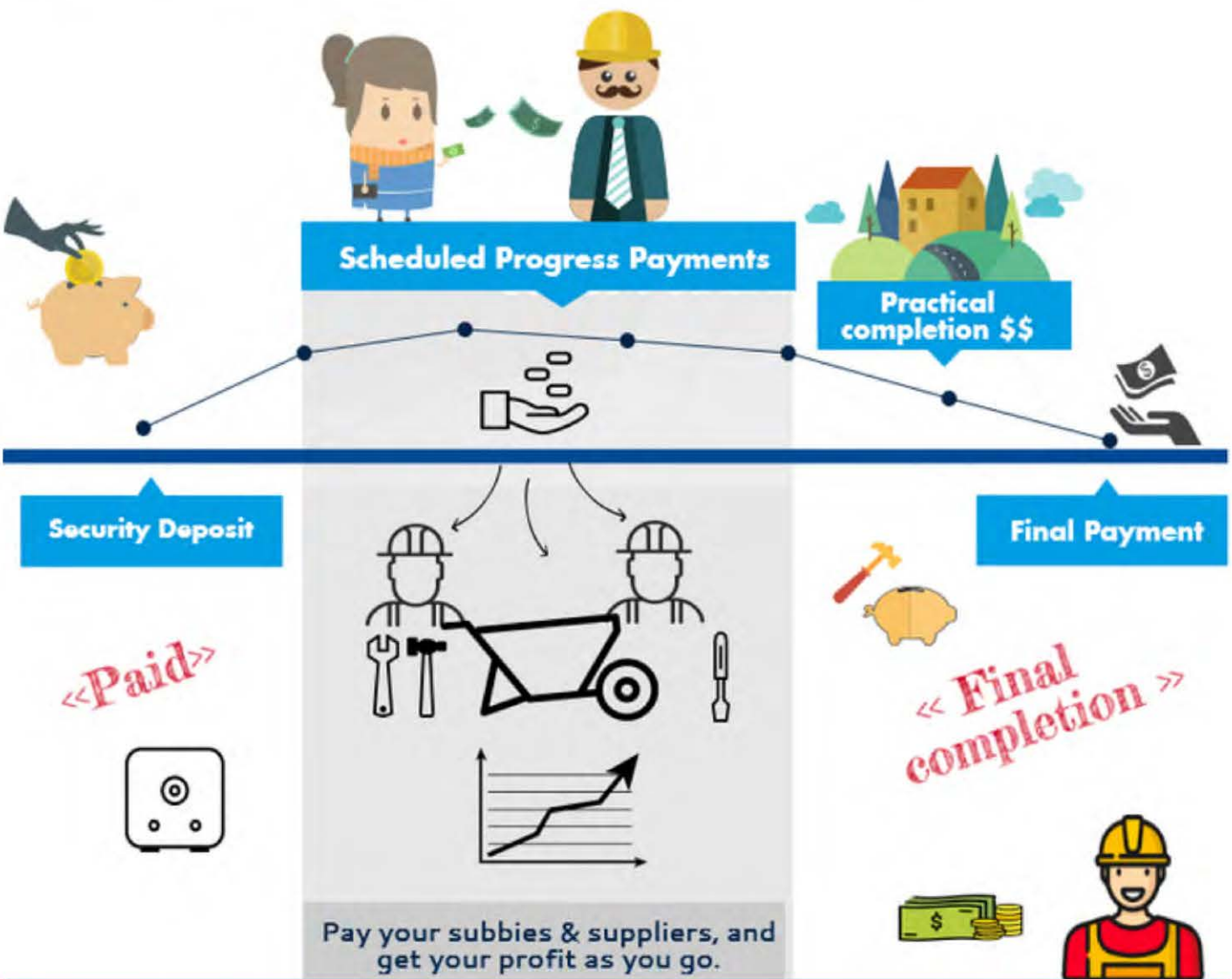
The question for the Court was whether Lot 8's approach in providing only a single payment schedule in response to more than one payment claim came within the requirements of the Act. Ultimately, the Court held that it could. However, the other requirements must be complied with.

In reaching this conclusion, the Court considered the case of *Loveridge Ltd v Watts & Hughes Construction Ltd* which emphasised the reference in the Act to "the" payment claim in the singular. However, the Court was satisfied that *Loveridge* concerned the question of payment claims rather than payment schedules and distinguished it on that basis.

How could your project look?



Finances



- Fill out and sign BuildRight contract with client
- Apply for BuildSafe online
- Start work upon client's payment of deposit into BuildSafe trust account
- Run your project with progress payments directly from client
- Get your final payment released immediately upon Final Completion