

Cautionary Note No 10: Checking certificates of title and providing services in accord with the agreement for services

The Board has held two hearings over the last six months and there are some learnings from these hearings that the profession could find helpful to reflect on. In both cases the architects did not provided services with skill, care, and diligence.

A hearing in December 2019 dealt with professional shortcomings in an architect who failed to obtain and assess a cross-lease title with covenants and easements detailed, that impacted on a town house alterations project. There is often important information on certificates of title and cross-lease titles that needs to be examined and advice sought if necessary. The title for this project clearly required that neighbour's consent would be required for the proposed alterations to the town house. Problems resulted for the client because the cross-lease title was not checked by the architect. NZRAB expects that architects check the legal status of the project site and seek professional advice on any aspects that they do not understand.

A hearing in June 2020 dealt with shortcomings in the delivery of services under an agreement for services. The shortcomings included, but were not limited to:

- Not creating a written brief
- Not updating the briefs at each stage of the project
- Not making detailed notes or minutes with clients
- Not tendering the building works
- Not exercising unprejudiced and unbiased judgement in the engagement of the builder
- Not undertaking regular site observations
- Not recording site observation visits
- Not undertaking site administration
- Not checking progress payment claims
- Not obtaining guarantees specified in the construction contract

Lay people are very disadvantaged in the design and build process, particularly if they have not used the services of an architect before. Architects are the professionals with the design skills and process knowledge, and this is a powerful position. The agreement for services is critical to the relationship between the client and the architect. It is the foundation for trust.

NZRAB expectations are that what was agreed should be delivered. However, it needs to be noted that the reality of changing circumstances often forces changes to the services. This can be managed by written communication with the client, seeking an acknowledgement of changed circumstances and obtaining written agreement to changes.