The New Zealand LIFT FAX

The New Zealand Lift Fax is produced bi-monthly for the NZ lift industry. Just send your email address to LEC to subscribe.

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EDITORIAL. Are TA's D2 Accredited?

I'm overseeing the replacement of a Duplex 8 stop lift installation in Christchurch at present, and duly prepared a code PS2 Peer Review of the change in design for the client to submit with their application for Consent.

Now I suppose it wasn't a surprise when my client rang up to say the Consent officer had informed him that **there is no need for a Consent if you are replacing a lift**.

Fair enough, everyone likes to see a more efficient process and thereby less cost, but hang on a minute, who will ensure the replaced installation is suitable for purpose, safe to use or even compliant with the building Act. We are not talking about replacing a plumbing fitting here, this equipment will take thousands of passengers up and down a building in future years, and the TA implies it is not their responsibility to ensure it is installed properly, tested, nor a suitable record kept. No wonder D2 Compliance Schedules are mostly non-existent or irrelevant. And if it's not their responsibility, whose is it?

Prior to 1992 all lift installations, new and replaced required full details and layout drawings to be submitted to the then Ministry of Transport Marine Department for approval of the design, followed by department testing upon installation, before certification was issued and the equipment could be put into service for public use.

Now it seems, someone else does that, in fact since 1992 as an inspector of lifts, this is exactly what I have experienced, a totally uncoordinated, inconsistent Consent certification process for lifts D2 equipment in NZ. No I'm not surprised, just concerned when you encourage property owners to meet the requirements of the Building Act and Acceptable Solutions, and TA officers say, "**forget it**". See article page 3.

WHAT'S GOING UP or DOWN THIS MONTH:

KONE NEW APPOINTMENT, OLD NAME:

The name AMREIN has been associated with the NZ lift industry for many years through father Brian, and now son **Nigel Amrein** is making his own mark in being appointed into the position of Installation Manager for New Zealand. Nigel will be responsible for all installation activity after spending the past two years as Project and Modernisation Manager for KONE.

KONE REPOSITIONS STAFF:

Jeff Smelts who recently joined KONE as their South Island Operations Manager has just been appointed to take on the full responsibility of the South Island as Manager as NZ General Manager Ron Perez strengthens his commitment to the south and particularly Christchurch and Dunedin.

To balance the ship, **Theo Blaauwbroek** with a wealth of experience as installation manager takes over the increasing number of larger projects as Major Projects Manager.

LEC PHOTO UPDATE:

I has been suggested that the photo of yours truly was a bit dated, and so this was the most esteemed I could find taken in 2008 onboard the Saphire Princess, and without extensive touchup.

The eyebrows from a distance still have little sign of grey and the waist still shows a little girth, but generally I think I've still got a few more good years in me.

NEW SALES MANAGER FOR OTIS CHRISTCHURCH:

Although I've enjoyed working with Nitin Gupta from Wellington Branch, it is good to welcome **Paul Buckley** the new Otis local Sales Manager to look after the South & Pacific Islands regions.

Paul who came from Simtech AGV Ltd has a marine and electrical industry background, with time overseas, in Christchurch and in Dunedin that should put him in good stead.

You can contact Paul to say Hi through the office on 03 378 3078, or Mobile 0276 836 233. email: paul.buckley@otis.com

IQP PROSECUTED BY TA:

North Island husband & wife IQP's were used as an example by a TA who instigated proceedings against them after they found out that two separate alarm systems the IQP's had issued 12a's for, should have been connected into the one system.
It is understood that both alarm systems individually operated correctly, and that the IQP's had informed the owners of the need to integrate the system, but this didn't sway the judge who handed down convictions under the Building Act totalling some $80,000 to the IQP's and lesser amount to the building owner.
The fact that Consent for the work was issued was dismissed as irrelevant in this instance by the judge.
The penalty was determined relative to the period covered by the 12a, suggesting the IQP should not have issued the 12a, knowing the systems were not interconnected.
It seems the prosecuting TA felt they relied on the IQP to not issue a 12a to make them aware of such issues and to enable the 'notice to fix' process to begin.

Not knowing whose noses were out of joint or what preempted the prosecution, this seems a reasonably straight forward stance until you consider the role of the IQP. There has been a lot of misunderstanding as to the role of the IQP, as under the 1991 Act in which the role was determined, it specifically identifies an IQP's role as part of the building WOF process.
ie. It is a means of ensuring previously Consented installation work has continued to be maintained, and documented over the past period, and that the test or inspection checks that are determined on the compliance schedule are carried out.
It is simply and specifically that.

Now the *Licensed Building Practitioner* process emerging from the 2004 Act widens inspection to cover both consent and WOF roles, but because the DBH wasn't in the position to implement the LBP structure, and still isn't, the IQP structure was carried over, but not changed.
Admittedly, just of late a change has been made to require IQP's to add any items not complying with the compliance schedule requirements or not meeting the tests carried out to be detailed on the 12a reporting document, and it is this change I suspect the IQP was prosecuted under.

Now if we go back to the Judgment, the IQP was prosecuted for issuing a 12a, not because he didn't carry out the tests as required in the compliance schedule; not because the test failed, but because the system was designed incorrectly, and presumably added to after the Consent process.

And so my proposition is that an IQP is registered as competent to carry out the specific tests and reporting necessary under the applicable building compliance schedule, and is responsible to confirm this through the 12a WOF process. There is nothing in his registration suggesting he is a design engineer or requires skills any more than to complete the compliance schedule task, or for that matter, know if the equipment is compliant with the Building Act.

And so how can he be prosecuted for additional responsibilities? ie. Being expected to confirm the compliant design requirements, that he can only presume were established under the Consent process, or a building owner has had added, of which any change should be clearly detailed on the TA issued Building Compliance Schedule.
If the TA wasn't notified of the change then this was not the requirement of the IQP, as his responsibility is to test what is required on the building compliance schedule.

Now we know the Building Compliance Schedule process has been in place for over 15 years now, and I don't think it unreasonable to presume that councils throughout New Zealand have had sufficient time to achieve a consistent process, but from my experience there is a wide and varied range of processes used throughout New Zealand. In fact it is only lately as far as D2 solutions are concerned, that the WOF process has become in any way consistent, and that was when the 12a was promoted and TA's process began to include followup, and so bad habits and inconsistent process has been the norm over all these past years.

You can therefore imagine how difficult it has been for IQP's to know how to work with their building owners. The editorial and following article this month just touches the surface as to misconceptions and inconsistent practice that has evolved since introduction of the 1991 Act, let alone the added confusion of the 2004 bureaucratic revamp.

Interestingly, in a society that reflectively believes in big sticks and institutional power to attain conformity of process, I have a lot of sympathy for the IQP prosecuted unfairly for what I see as political or institutional expediency.
I also have had to work in this vacuum of inconsistent D2 process, to try and encourage building owner to understand their responsibilities, to encourage contractors to retain consistent process when Consent requirements vary so much throughout the country, from non-existent to minimal.
There are positives emerging in Governance under the Building Act, but expedient prosecution is not one.

DOES REPLACING A LIFT REQUIRE CONSENT?

This client comment, TA follow-up and LEC response, hopefully clarifies the issue. Rather than go through multiple Building Act clauses.
The critical issues are that lifts whether replacement or in a new building are Specified Systems, and installation of specified systems requires Consent approval. Admittedly, as I try to point out, it is whether or not the lift requires testing or retesting under the acceptable solution that determines the need for Consent.

Client Query:

Hi Bob

In regard to Council consents, I have talked to two other local developers who have recently replaced lifts.
Both of those contract developers advise me that there is indeed no need for a consent application for lift replacement. I have also talked to our Architect and he confirms this as well. Their attitude is that if Council do not want a consent then why waste the money applying for same. Apparently the Council has formed their view possibly because the people replacing the lifts are technically competent and possibly because the lifts are actually covered by the Certificate of Compliance, the 12A forms which lift IQPs generally undertake and in most instances, if not all, are the lift companies themselves. Certainly for new lifts a consent is required.

Another factor in this is that many people upgrade lifts by introducing new bells and whistles and that also has no consent requirement. The replacement of the lift is simply seen as an extension of these types of parts upgrades and therefore it does not constitute or warrant separate consent applications.

I have looked at the consent form which I did get from the Council and probably 80% of the form itself is useless. It talks about building areas, buildings, floor plans, fire reports and a host of other issues which relate 99% to substantial refitting of premises where there are changes to partitions, layouts, air conditioning systems fire protection materials etc. We actually did fill out the form when we were making the application and put N/A in over three quarters of the areas. Clearly the consent form is not designed for lift replacement.

I trust the above clarifies the situation but it appears that it is common practice for lifts to be replaced without consents and this certainly was the view of the Council and the experience of companies that have recently completed this work.

Cheers

Client

Hi Greg,

Just to confirm I have checked with John Buchan, Manager of the ChChCC Consent Department to see why a replacement lift should be exempt from requiring Consent Approval. He has confirmed my understanding that full replacement of Specified Systems should go through a Consent process to ensure they are tested and safe for use upon completion of the installation. Tests should be documented and layout drawings and schematics need to be updated, so that the Building Compliance Schedule and any changed WOF processes can be updated as necessary to reflect the new solution is compliant with the Act. TA records.

As you point out, not all part-lift upgrades require Consent, such as replacement of components that don't effect the safe operation of the lift or require retesting. eg. Fixture replacement, car fit out, or maintenance replacements such as re-ropes, trailing cables etc.

Part upgrades that also attract a need for Consent approval similar to full replacement, would be where independent retesting of equipment is necessary before the lift reenters service. eg. machine or controller replacement, extending or reducing the lift travel or load changes. The solution should also be upgraded to a level that disabled acces, earthquake and fire status of the building is addressed.

The role of the TA would be to approve the Consent requiring independent inspection and recording the change the same as for a lift in a new building, so that where necessary, the TA record can be updated and reissued onto a new Building Compliance Schedule.

This process also maintains past industry and approved solutions codes of practice relating to upgrading of lifts..
I understand that the TA Consent department officers will be advised accordingly by John Buchan.

Hope this helps,
Bob.

THYSSENKRUPP ADMITS ATTEMPTED PRICE FIXING:

Media Release
Issued 14 November 2008/no 060
The Commerce Commission has concluded an investigation into anti-competitive conduct in the elevator industry, reaching a settlement with one company.
The settlement is with ThyssenKrupp Elevator New Zealand Limited. (ThyssenKrupp), which has admitted an attempted breach of the Commerce Act by contacting a competitor and attempting to ensure that the prices submitted for a maintenance tender were 'similar'.

Both ThyssenKrupp and one of its former contractors admitted contacting a competitor's employee by telephone and discussing the pricing and other details of an upcoming contract for which both parties had been asked to submit a quote. During this telephone call, the ThyssenKrupp contractor suggested that the prices to be submitted by the parties be 'similar', and also requested that the competitor inform the ThyssenKrupp contractor of the price prior to its submission.

"This behavior amounted to an attempt at price fixing which is prohibited under the Commerce Act. Price fixing is harmful both to consumers and businesses. Such agreements push up prices at the expense of consumers, and also of other businesses," said Commerce Commission Director of Competition Deborah Battell. Ms Battell said that a settlement was the appropriate way to resolve the issue. "The Commission would not normally settle with parties when price fixing attempts are involved. In this instance, however, the attempt appeared to be an isolated incident on the part of one contractor and not part of a more long-standing cartel arrangement."

Under the terms of the settlement the Commission required ThyssenKrupp to admit the conduct and provide details of its Commerce Act compliance programme. ThyssenKrupp has now implemented a training programme to prevent such behavior occurring in future.

Background
The purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers in New Zealand. To this end, the Act prohibits a range of anti-competitive conduct. Of relevance in this instance is section 30 of the Act, which prohibits they supply or acquire. Section 27 deems such competitors from agreeing to fix prices for goods and services behaviour to substantially lessen competition.

The price fixing provisions of the Act prohibit a range of collective behaviour among competitors (including pricing formulae, maximum prices and fee schedules).

Price fixing is considered harmful because it interferes in the competitive determination of prices, resulting in potentially higher prices for consumers.
If the Court finds that a person has breached the Act, substantial penalties may be imposed: up to $10 million for companies, and up to $500,000 for individuals.

LEC Response:
Hi Felicity,

Congratulations, I welcome this progressive step with the detailing of this occurrence which is critical to nip this sort of thing in the bud, although I suspect any advantage would only work for a short period in this small market before consumer knowledge would make the practice commercially unviable. I would be interested to know the duration of this investigation.

On a positive note, all my tenders for new or upgraded lift equipment request ongoing maintenance cost offers in them, and all tenderer's receive tables of all prices offered following the letting of the tender, which provides feedback and encourages ongoing competitive pricing.

It should also understand that the annual cost of the lift maintenance is only half of the equation; the performance of the service provider is also of significance. Lift maintenance is a safety critical procedure and overly tight price control without assessment of provider performance can end up as we have with some players in the industry whose price is less, but the performance provided is close to non-existent. As always, building owners need to show due diligence to discourage individual opportunists in any market, but this is difficult in a market that seems to encourage excessive profit taking as a virtue.

All this aside, I am still awaiting an update on this long drawn out anti-competitive case against Schindler Lift NZ Ltd, that due to its length of time to determine, and from my knowledge of the circumstances, like above, is still looking like a 'McCarthism' instigated by overzealous industry individuals using the Commerce Commissions protective 'dobber in' policy to 'get one up' on a competitor.

In the end, without considering the massive resources allocated by all involved, it has only undermined good faith, encouraged the multinational corporations to suppress important issues of industry technical safety and communication, and encouraged a totally unnecessary suspicious atmosphere to the detriment of the lift industry and building owners in NZ.

On top of this it has pretty well destroyed the health and livelihood of a long serving employee and good community member and his family in their latter years of his career.
Will this ever be acknowledged in any determination?
Will there ever be a determination to resolve this issue, as the damage can never be undone, but maybe a hard lesson will be learnt by the Commerce Commission to also consider the consequences of their actions, before they act indiscriminately in the future.

Please keep me on your email determinations for any future lift industry investigations.
Regards
Bob.