



### Guy Body's view



### TOP 10



1. Trump imposes tariffs on US\$200b in Chinese goods
2. World media reactions to All Blacks' loss to South Africa
3. Complaints on taste and decency rise for Seven Sharp
4. Kiwis speak about yoga leader Swami Vivekananda
5. Saraswati at Thai retreat
6. Fans clash with Wallabies stars in post-match tussle
7. Plane mad South Auckland cranes old Air NZ passenger
8. Owens' missed call killed the All Blacks
9. Rattue: All Blacks discarding monkey of Steve Hansen
10. Rugby: Springboks stun All Blacks for famous win

# Construction bust in boom times needs rethink

**D**ire predictions are being made from all quarters about the future of the construction industry in New Zealand but there may yet be a happy ending.

According to one recent survey reported in the *Herald*, more than half of the industry leaders think the industry's in about as good shape as a leaky home. And yet, at the same time, the sector has more bustle and activity to it than ever before.

As Michael Weatherall, the Simpson Grierson lawyer who heads his firm's construction law team, rhetorically asks, how can it be that these boom times bring boom losses?

Right now, of course, the construction industry is indeed booming – not just in housing, but also in commercial and infrastructure development. But companies are continuing to fail. Why? The answer lies in the construction process and a misunderstanding of the

Owners (including, alas, the government) use the tender process to transfer greater risk to contractors.

That uncertainty is exacerbated by an incomplete understanding of other project risks (ground conditions and supply chain issues like subcontractor and supplier pricing and availability) and

unrealistic expectations on the part of owners, particularly that they can fill in the gaps in the design and instruct changes at their whim without cost consequences. The tender process encourages this opportunistic behaviour by forcing contractors to compete on incomplete, or simply unrealistic or unfair contract terms.

Contractors try to introduce some balance by excluding risks from their bids. They must then rely on the claims process to protect their margins.

This can turn the pricing process into something of a lottery. Typically, the cheapest price wins, which all too often is submitted by the contractor with the greatest appetite for risk, coupled with the most optimistic expectations for making claims under the contract.

Following contract award, managing design development, construction and capricious owner changes to the design becomes a considerable headache for

contractors who need to be able to meet construction costs, pay subcontractors and protect their already slim margins.

In return, owners (including, alas, the government) use the tender process to transfer greater risk to contractors by limiting opportunities for claiming additional payment and time.

Thus the lines for battle are drawn for what is now being reported as the winter of our construction discontent.

The industry has a choice. Either it accepts that designs and prices will change and pay contractors accordingly, or take the time to remove contract uncertainties before fixing the price and instructing work to commence.

Experience here and overseas would suggest that a combination of the two works best.

**John Walton** is the immediate past president of the Arbitrators' and Mediators Institute of New Zealand.



John Walton

## Mondayitis

Poor Serena Williams!

All those years slogging it out...

To become No 1 and now only famous...

As the subject of a questionable cartoon.

Thank heavens we're only weekend players.



## Bromhead

### Submission guidelines

Letters to the editor should be sent to Private Bag 92198, Victoria St West, Auckland CBD.

Email: letters@nzherald.co.nz

Letters should not exceed 200 words and must carry the author's signature, name and residential address. Emailed letters must include a full returnable address and phone number, allowing in cases of typos. All comments will not be accepted. Names of people and organisations mentioned are withheld only in special circumstances at the discretion of the editor. Letters are