

# expert ease

## Existing Structures Cover

### Performance Damage Only or Full Cover?

**Before we explain the differences and when to apply a particular cover, it is appropriate to explain the need for existing structures cover in the first instance.**

Under a contract works policy, the principal (or employer) and the main contractor agree to be treated as one insured entity. This usually happens when they enter into a building contract, NZS3910:2003 being the most common. This building contract outlines the roles and responsibilities of all the parties including the insurance provisions.

An insurance policy, and in particular a contract works policy, will always try to mirror the contractual requirements within the building contract to ensure continuity and compliance with the agreements within it.

Existing structures cover is usually required where the construction project involves an existing building (adding another bedroom to a dwelling for instance) and is outlined in the building contract. As the building contract states that the principal and main contractor are to be treated as one insured entity, a contract works policy, including cover for the existing structures, will normally be accepted. By doing this it will ensure continuity of cover and will avoid any subrogation issues.

The following scenario illustrates this: Principal A wishes to extend a domestic dwelling and organises a contract works policy from ABC Insurance. They do not



include existing structures cover. A claim is made against the domestic home policy still in force (not contract works) for damage caused by the main contractor to the existing home. The policy responds and the damage is repaired. ABC Insurance then pursues subrogation against the negligent party (the main contractor) to recover the cost of the claim. The main contractor refutes the liability citing that under the building contract they have agreed to be treated as one insured entity. Providing existing structures cover under the contract

works policy resolves this potential issue.

It is important to note that not all domestic or material damage policies would respond in the first instance.

#### **So what is the difference between performance damage only cover and full cover?**

Performance cover only provides for damage to the existing structure caused by the insured parties as a result of performing the building work. For instance, the main contractor damages the existing doorway

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with a steel lintel; this damage was due to the main contractor's activities in his capacity as a builder. The contract works policy would respond to any damage done to the contract works and existing structure.

Full cover, as the name suggests, performs in a different way. This provides cover to the contract works and the existing structure from any cause (provided that it is not elsewhere excluded) and is not limited to losses as a result of the performance of the project. For instance, a bus loses control and drives into the project site damaging the contract works and the existing structure. In this case the contract works policy would respond to damage to both the contract works and existing structure even though it is not related to the performance of the contract.

**So why would I only insure for performance damage only? Surely providing full cover is the best solution for my client?**

Not necessarily. A contract works policy is there to provide cover for just that 'contract works' or building work. It is not intended to provide cover for homes or buildings under a normal domestic or material damages cover.

As you will be aware, domestic home cover or material damage policies are extended to include all sorts of additional covers such as:

- Loss of rents
- Chattels
- Legal liability cover
- Alternative accommodation

Contract works policies are not designed to do this, so you would be restricting the cover quite dramatically. In addition most domestic covers have a square meterage basis of settlement clause where a contract works policy is an 'Actual Value' policy not a 'Reinstatement Value' policy.

**So how do I know what cover to put in place? Performance damage only or full cover?**

Performance damage cover only is the most common of covers and can give you the best of both worlds. It provides compliance with the building contract in force and protects the interests of the insured parties. However it is vital that the normal domestic or material damage policy runs concurrently with the contract works to provide cover for non-contract related losses such as the examples outlined earlier in the article.

Full cover existing structures needs to be carefully considered as this is the only cover that will be in place. Full cover doesn't give you the wider capacity of a domestic home or material damage policy and the basis of settlement may be different to your understanding. Full cover existing structures cover is usually applied to homes that have been relocated to a new site and don't have domestic cover in place, or a building which is in a state of disrepair and undergoing substantial building work to make it habitable.

**So what are some of the other 'quirks' to be aware of regarding existing structures?**

Fire Service Levies are also payable on the existing structure component of a contract works policy regardless of the continuation of the original domestic or commercial property cover.

Contract works policies normally have partial occupation restrictions or exclusions. This means that if the principal was to occupy the building or contract site before the works were completed, cover may not apply or would be restricted.

It is also timely to point out that EQC cover may not respond where an existing building is under construction and can't be lived in. In the event of an earthquake would your client's domestic policy respond to the

shortfall normally provided under EQC? Would your client's domestic policy respond in any capacity?

It is important to note that an earthquake or other natural disaster is not related to the performance of the contract works.

A quick 'How To' Guide

- Check the building contract for the requirement to insure existing structures
- Think carefully about which type of cover is appropriate
- A project involving existing structures should be principal controlled
- The same insurer should be used to insure the contract works/existing structures and the ongoing domestic/material damage policies where possible
- Full cover existing structures should only be applied to projects involving buildings where there is no current insurance or no implications of having a more restrictive cover

For more information or advice on existing structures cover please feel free to call one of our Construction & Engineering team on 0800 111 888 or email [engineering@lumley.co.nz](mailto:engineering@lumley.co.nz)

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If you have any questions, please call Lumley Construction and Engineering on 0800 111 888 and ask to discuss this cover with one of our experts.  
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