

Consequences of change to construction project teams – can you avoid them?

By Janine Stewart, Gillian Service and Shukti M Sharma

Change in project teams, movement of key individuals between projects, turnover of employees and loss of institutional knowledge – these are issues that affect all industries and a common theme in infrastructure and construction projects.

Changes can include those in the governance team of principals on major projects and/or the design or contractor's core teams. The long-term nature of projects means that this can have a significant impact on the project and subsequent disputes.

In this article, we discuss the broad implications for a project when the core project teams change. We then consider how to address these issues via contractual arrangements and by businesses individually in their employment agreements.

WHAT HAPPENS WHEN PEOPLE LEAVE?

The Lawson Williams 2018 New Zealand Staff Turnover Survey reported that the property and construction sector in New Zealand witnessed a voluntary staff turnover of approximately 23.8% in 2018. Based on feedback from the construction industry, stress and skill shortages are also key contributors to material changes in construction project teams.

We focus below on the consequences of change, using the specific example of changes in the core design and construction teams.

Loss of institutional project knowledge

We usually see issues where there are changes in the consultant's design team that occur between the concept, tender and detailed design phases of a project. The impact is particularly exacerbated when the contractor's lead design team also changes between the tender and construction phases of a project.

This presents challenges because a project's design and construction teams usually develop the design philosophy for a project at the tender and concept design stages of a project. This design philosophy anchors the design decisions on the project and informs why particular solutions are adopted. When a project's key personnel change, this project institutional knowledge is often lost and the new players are left grappling with decisions they do not necessarily agree with or understand.

For example, the design philosophy agreed between the design and contracting team may be to develop a 'cost-effective' solution, following which a particular design solution may be chosen. Changes in the design team, or the contractor's design manager, during the detailed design phase for the project can mean that the original expertise and institutional project knowledge are lost, leaving new members of the project team struggling to reconcile previous design decisions on the project with the current pace of construction. It also means that the projects become heavily reliant on the cooperation of ex-employees and existing employees who have moved onto different projects to fill in the institutional project background gap.

Breakdown in relationships

Strong relationships between project participants are also necessary to generate the goodwill to 'get the job done' and avoid unnecessary disputes. Goodwill (or the lack thereof) affects the relationships between the design and contracting team in two ways.

The first is how the design and contractor teams work together with a solution-focused attitude. Individuals are less likely to work cooperatively and be open to fresh ideas when there is no goodwill and trust between the project participants.

The second aspect is the extent to which members of a design team are willing to prioritise one project over another to meet a particular project's deadlines. Designers

are more willing to go the extra mile and put in longer hours to see a project to completion if there are strong working relationships between the design and contracting teams.

A new member joining the design team and replacing a previous key role disrupts the existing relationships between the project teams, making individuals less likely to put in extra time, energy and resources into a project. This can hamper project progress and put pressure on the contractor, who is the party ultimately facing liability for late project completion in the form of liquidated damages.

This issue can also lead to subsequent disputes, because a lack of consistency can trigger design changes, which results in the design consultant claiming a variation and the contractor, in turn, claiming damages against the consultant for late design delivery.

RETENTION STRATEGIES

The industry has mixed views as to whether consistency in construction project teams is a desirable and/or realistic goal. However, there is certainly support for the benefits that consistency can bring to project outcomes.

While there is no 'silver bullet' to retain the same project team throughout the lifecycle of a project, businesses can take steps to protect themselves from this issue. One way to achieve this is to draft your consultancy agreements to promote consistency in project teams and preserve project knowledge. Businesses can also structure their employment arrangements so as to promote the retention of staff on a project.

Project agreements

1. Include robust 'key personnel' clauses

One option is to include a type of liquidated damages

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provision to promote consistency of project teams. These provisions require the listed key personnel to be available for the project at specified periods and times. Failure of these individuals to remain committed to a project and produce the project deliverables makes the consultancy firm liable for amounts specified in the contract (liquidated damages), unless there is a justifiable reason. These clauses are also useful for consultants because they set the parameters for when a contractor can and cannot refuse a change in key personnel. For example, they can provide that a consultancy firm is not liable for liquidated damages if an employee leaves the firm.

2. Develop an explicit strategy to preserve project background and institutional knowledge

Most businesses only consider the problems associated with losing project background and institutional knowledge once key personnel depart from a project. However, it is important to tackle this issue upfront by agreeing upon the use of a specific information sharing and storage platform for the project in the consultancy agreement itself. Individuals tend to use personal storage drives to store project-related information (such as draft drawings, file notes, internal and external decision-making directives, and communications between project participants). This approach can be deeply problematic if the information is company or project related. An agreed information sharing and storage platform becomes an invaluable tool, both when a project design team changes, or when a dispute arises from a project. The central repository of information allows the documents to tell a clear and comprehensive story, rather than relying upon the memory and cooperation of existing, exiting or previous employees.

Employment arrangements

If your business supports consistency in project teams (and certainly if you have contracted for the same), it is important that you structure your employment arrangements in a way that promotes this objective.

1. Setting expectations

The risk of key personnel leaving can be mitigated by setting internal expectations that project teams will remain consistent

(and your business will not cause its own breach). Methods of doing this include:

- Ensuring your internal policies and procedures reflect an expectation at the management level that individuals will not be moved internally between projects
- Using onboarding and engagement procedures to set individuals' expectations from the outset of a project
- Tailoring job descriptions in your employment agreements to particular construction projects, to set the expectation that the individual is committed to one project until it is completed (at which point the individual will be moved to a new project).

2. Project retention bonus arrangements

Another option is to implement a project retention bonus for key personnel, with the ability to claw back the bonus if the employee leaves the company before project completion. Bonuses can be staged to be paid at the completion of different project stages. This motivates employees to complete the project. A well-drafted retention bonus scheme can also make progress to the next stage of a project (and therefore the next retention bonus) contingent upon meeting certain KPIs during each project phase to manage employee performance.

3. Controlling what you can't control

Mechanisms in the employment agreement should also be considered to mitigate the effects on a project if an individual resigns. For example, longer notice periods can be included in the employment agreement to ensure adequate handover takes place. In addition, post-employment restraints can be a useful tool to prevent key personnel from leaving and going to competitors.

CONCLUSION

Most businesses do not fully appreciate the flow-on effects of changes in key personnel in project teams until they are confronted with inconsistent design decisions, variation claims or disputes on the project. However, it is important that parties consider this issue upfront and take steps to protect the project from the consequences of changes in project teams.



Janine Stewart is a partner, Gillian Service a partner, and Shukti M Sharma a senior solicitor at MinterEllisonRuddWatts, a leading New Zealand full-service law firm with offices in Auckland and Wellington minterellison.co.nz