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**Overview**

- What influence does the project's delivery model have on the design process?
- Different perspectives of owners / contractors / design consultants
- Why is a consultancy agreement needed?
- Dealing with contentious issues in consultancy agreements
- Legal implications of building information modelling

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**Project delivery methods**

- Construct only
- Design & construct
- Relationship contracting

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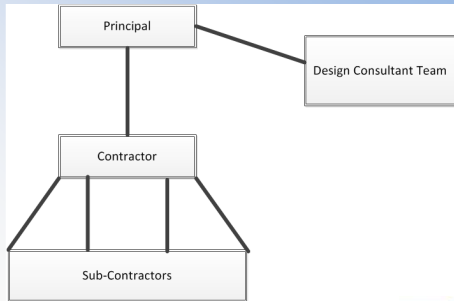
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### Construct only



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### Construct only (Cont'd)

- Direct engagement of design team by owner
- More control for owner - but also more risk
- Risk of inconsistencies / clashes between disciplines
- Is design "buildable"?



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### Construct only (Cont'd)

- Risks can be mitigated by:
  - Appointing a lead consultant with responsibility for ensuring design is integrated and consistent
  - Novation of design team
  - Use of BIM
  - Contractor to carry out buildability review
  - Concept design prepared by owner

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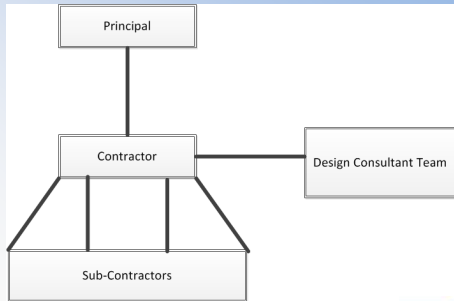
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### Design & construct



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### Design & construct (Cont'd)

- Single point of accountability for owner
- Design consultants engaged by contractor
- Less control for owner over design process



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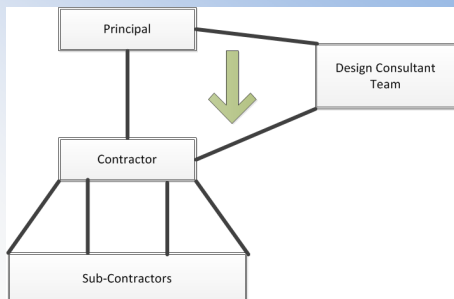
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### Novation - best of both worlds?



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### Novation (Cont'd)

- Designers initially work for owner - then agreement is transferred to D&C contractor
- Engagement by owner means the brief, initial design and final outcomes more likely to reflect owner's needs
- Contractor "wraps" design risk
- Design consultant's role shift might mean consultant must come to terms with significant practical and liability changes

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### Relationship contracting

- Managing contractor
- Early contractor involvement
- Alliancing
- May involve more integrated design process e.g. designers may be part of the alliance
- Early involvement of design team in project



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### Consultancy agreements - why do we need them?

- Agreement sets out responsibilities of client and designer
  - Services and deliverables to be provided
  - Payment - lump sum? rates? fee caps? disbursements?
  - Key personnel
  - Where services are to be provided - client's office? designer's office?
  - Insurance

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### Consultancy agreements - why do we need them? (Cont'd)

- Ownership of documents/materials prepared by consultant
- Limitation of liability
- Dispute resolution provisions
- Termination rights
- Important to sign agreement before starting work - reduce risk of disputes
- Standard form agreements (e.g. AS4122) vs bespoke agreements

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### Consultancy agreements - most contentious issues

- Fitness for purpose
- Limitation of liability
- Intellectual property



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### Fitness for purpose

- What is it and what does it mean?
- Understanding the client's requirements
- Finding a middle ground

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### Limitation of liability

- Caps on liability
- Liability for consequential loss
- Relationship with insurance cover

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### Intellectual property

- Who should own the design?
- What rights do the client and the consultant need?
- Ownership of existing materials
- Moral rights

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### Collaborative design processes

- Building Information Modelling (BIM)



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### Legal issues surrounding BIM

- Use of BIM can be driven by contractual framework - collaborative vs traditional approach?
- BIM in a traditional environment - "3D as-built model" vs collaborative development of a model
- Collaborative use of BIM more suited to risk sharing delivery models eg. alliance

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### Legal issues surrounding BIM (Cont'd)

- Legal issues include:
  - Obligation to contribute to BIM
  - Fitness for purpose
  - Authorisation of content
  - Intellectual property issues
  - Responsibility / liability
  - Insurance
  - Confidentiality/security issues

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### Final observations

- Need to strike fine balance between rights and obligations of owner, contractor and design consultant
- Important to choose appropriate delivery model and ensure contractual arrangements set up to integrate with chosen model
- Challenges of new technologies and models - changing face of design process

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## Questions



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