

# Manchester Liability Society

## 6.5.1 : What is the Exposure

March 2016  
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# Learning Objectives



- Understand the origins of 6.5.1 cover
- Understand the scope of 6.5.1
- Understand the placing and underwriting of 6.5.1
- Understand construction activities that impact on 6.5.1
- Apply knowledge through case studies and claim scenarios

# Origins - Gold V Patman & Fotheringham (1958)



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# Origins – Gold v Patman & Fotheringham



- Gold = Employer; Patman & Fotheringham = Contractor.
- Contract – standard RIBA form
- Damage caused to adjoining neighbour's property due to piling.
- Neighbours bring action against Gold
- Gold sought to recover against P&F
- Contract conditions: Contractor only liable for damage if negligence established
- Court decision: Damage not attributable to contractor's negligence. Gold held liable in nuisance for removing support to neighbours land.
- Therefore Employer liable for costs of damage and with no insurance protection

# Gold – the outcomes



Key outcomes as a result of Gold –

- Public liability insurance will not pay out if negligence cannot be proved
- Injured party/parties can sue the developer or employer that brought the contractor on to site

The Non Negligent Damage clause was born.

## 19 2 a – the first non neg clause

- Initially as 19 2 a within the first JCT Form – which replaced the RIBA form
- Revised in subsequent versions to 21.2.1 and now clause 6.5.1
- An optional clause within the JCT Form – used mainly for building contracts
- Usually requested by the architect, requiring the contractor to arrange insurance for a specified limit of indemnity.

## 6.5.1 – the clause

“Where it is stated in the contract particulars that the insurance to which clause 6.5.1 refers may be required by the Employer the Contractor shall, if so instructed by the Architect, take out a policy of insurance in the names of the Employer and the Contractor for such amount of indemnity as is stated in the contract particulars in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works.....”

## 6.5.1 – the clause

- The Contractor is required to effect the cover – his insurers will be expected to have the underwriting knowledge and background.
- The cover needs to be in the joint names of the Employer and Contractor – but the indemnity is to the Employer.
- The clause relates to property other than the Works – so this will include the Employer's own property (possibly existing structures during refurbishment) as well as adjacent property
- Consequential losses are not excluded – but cover for pure economic loss is not required

# Trigger Conditions – The 6.5.1 Perils

- To trigger a claim, the damage must be caused by one of the following six criteria, arising out of or by reason of the carrying out of the works:

- Collapse;
- Subsidence;
- Heave;
- Vibration;
- Weakening or removal of support;
- Lowering of ground water.



## Clause 6.5.1 – Key Exclusions

- caused by negligent acts by the contractor – Contractors PL
- due to errors or omissions in design – Designers PI
- Which can reasonably be foreseen to be inevitable –  
intending to restrict to accidental damage

More on  
these  
exclusions  
later



## Placing Cover

- Contractor to arrange
- Specific to the contract – not a provisional h/c clause
- Policy wording to match the clause
- Indemnity Limit to comply with Employers requirements
- Non-renewable for the period of contract + 12 month maintenance
- Recommend placing with Contractors PL insurer
- Employer responsible for premium which is added to Contract Sum

# Placing Cover – Underwriting Assessment



- Pro forma questionnaire
- May require site survey, plans, method statements, etc
- Google Earth, Street View, Online Planning portals, etc
- The underwriter needs to identify and understand the activities integral to the carrying out of the works that will trigger any of the 6.5.1 perils.
- Surrounding property exposure – Employers and Third Party identifying proximity, nature, age, schedule of condition
- Contract Price and duration – activity more relevant

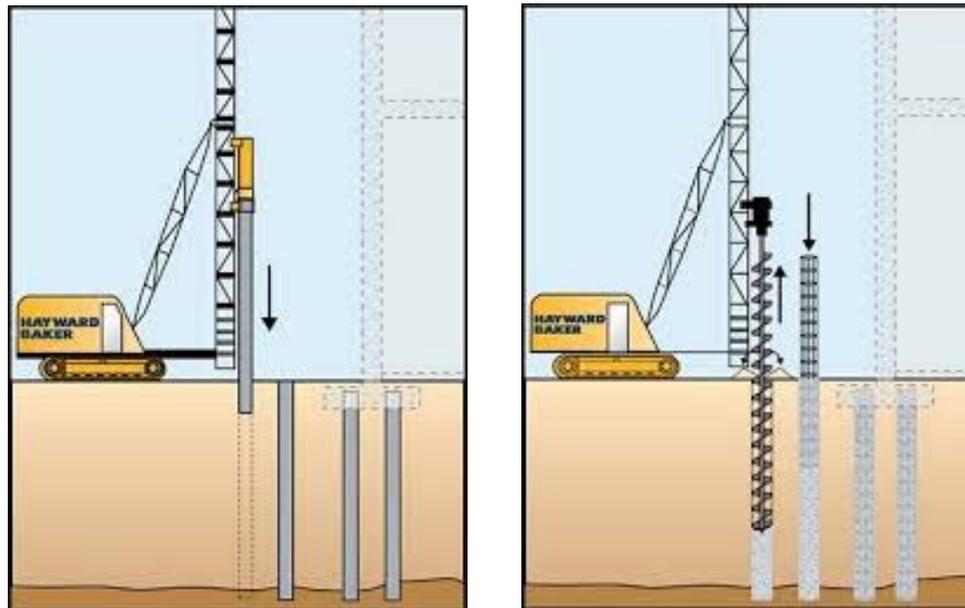
# Demolition

- Method - Hand, Machine, Explosives
- Vibration, Weakening or Removal of Support
- City Centre v remote
- Crushers = vibration



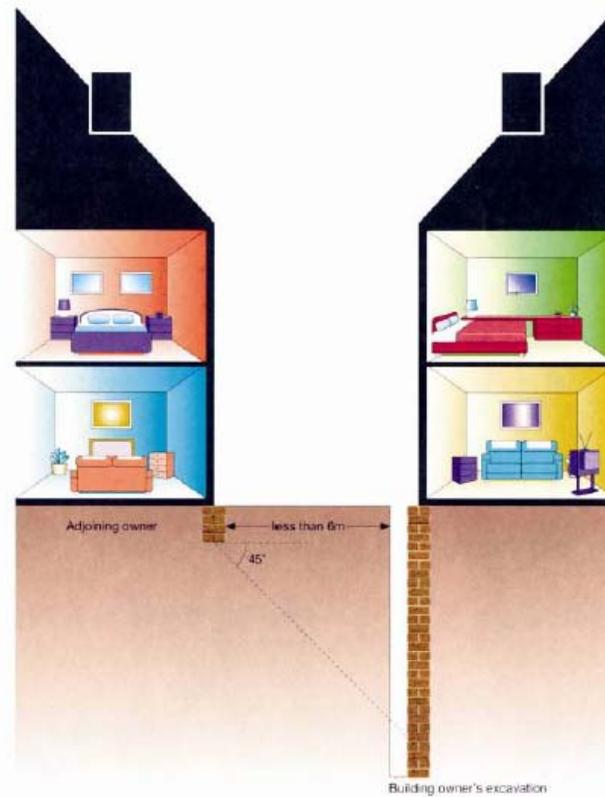
# Piling

- Method – Driven = Vibration
- Continuous Flight Auger = less vibration
- Screw piles = an option
- Number, depth & proximity
- Exclusion of “inevitable” damage is very relevant



# Excavation

- Depth and proximity to other property
- Foundations of surrounding property
- New or additional basement levels
- Removal of support risk



# Excavation - Windsor Park collapse



Tuesday 9 February 2016

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### Windsor Park damage: Did excavation pit cause sinking of West Stand?

Leisure centre work is focus of Windsor crisis

By Adrian Rutherford

PUBLISHED

04/04/2015

5

COMMENTS



SHARE

A giant hole close to the stricken West Stand is understood to be linked to the rebuild of Olympia Leisure Centre.

The vast pit is just feet away from the 5,000-capacity stand - also known as the Kop - which is now facing demolition, just 18 years after it was built.

It is not known if this excavation played any role in the subsidence crisis.

# Excavation - Windsor Park collapse



Cause yet to be established – possibly deep excavation?

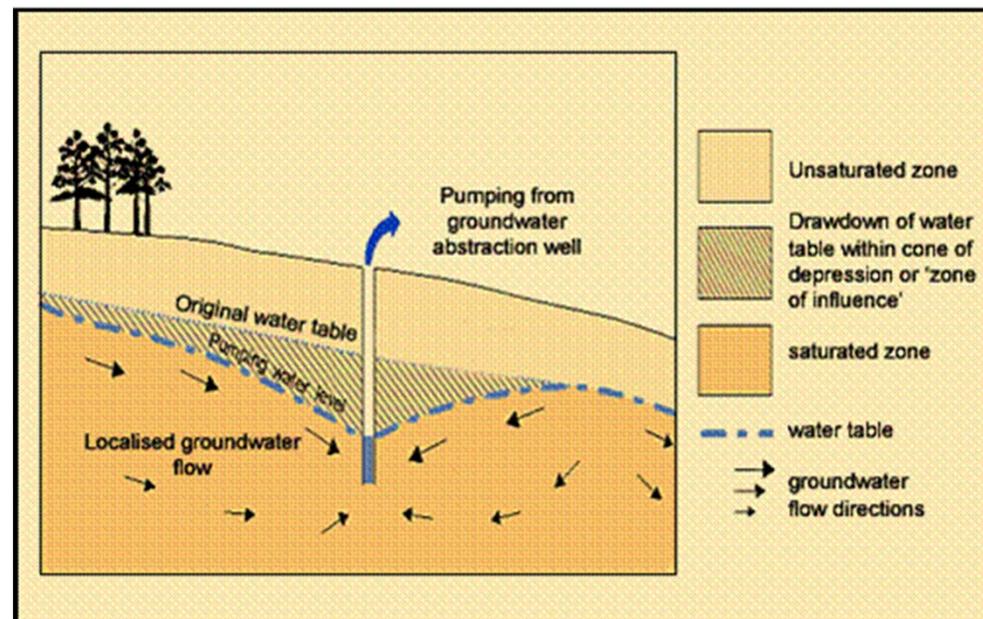
# Underpinning

- Can require excavation under existing building
- Length of underpinning required and maximum length any one bay – not to exceed 1.5M
- Risk of collapse and removal or weakening of support



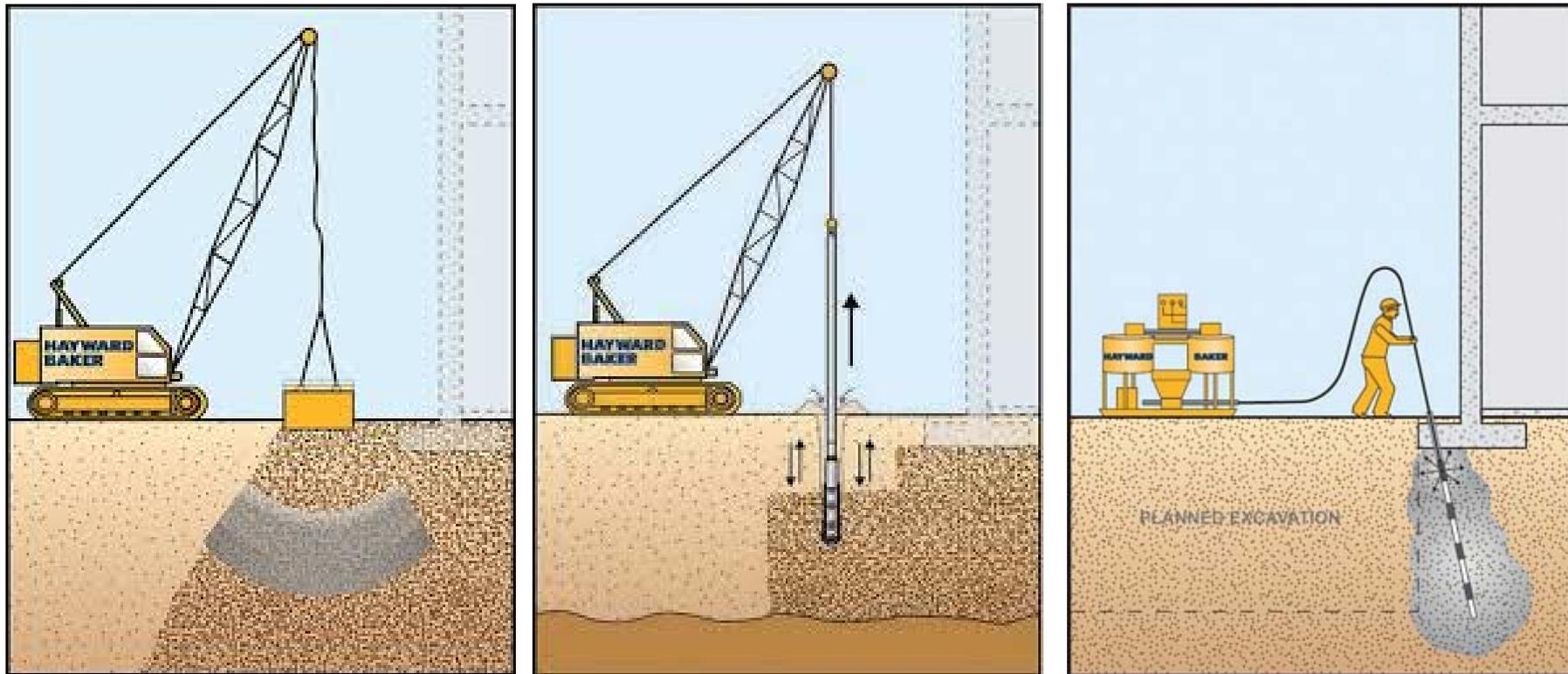
# Dewatering

- Act of removing groundwater or surface water
- Changes in groundwater changes the nature of ground support
- Lowering of ground water = ground settlement and structural movement (Subsidence)



# Ground Compaction/Stabilisation

- Increases the density of soil
- Methods include impact and vibro compaction - vibration
- Grout injection - heave



# Façade Retention



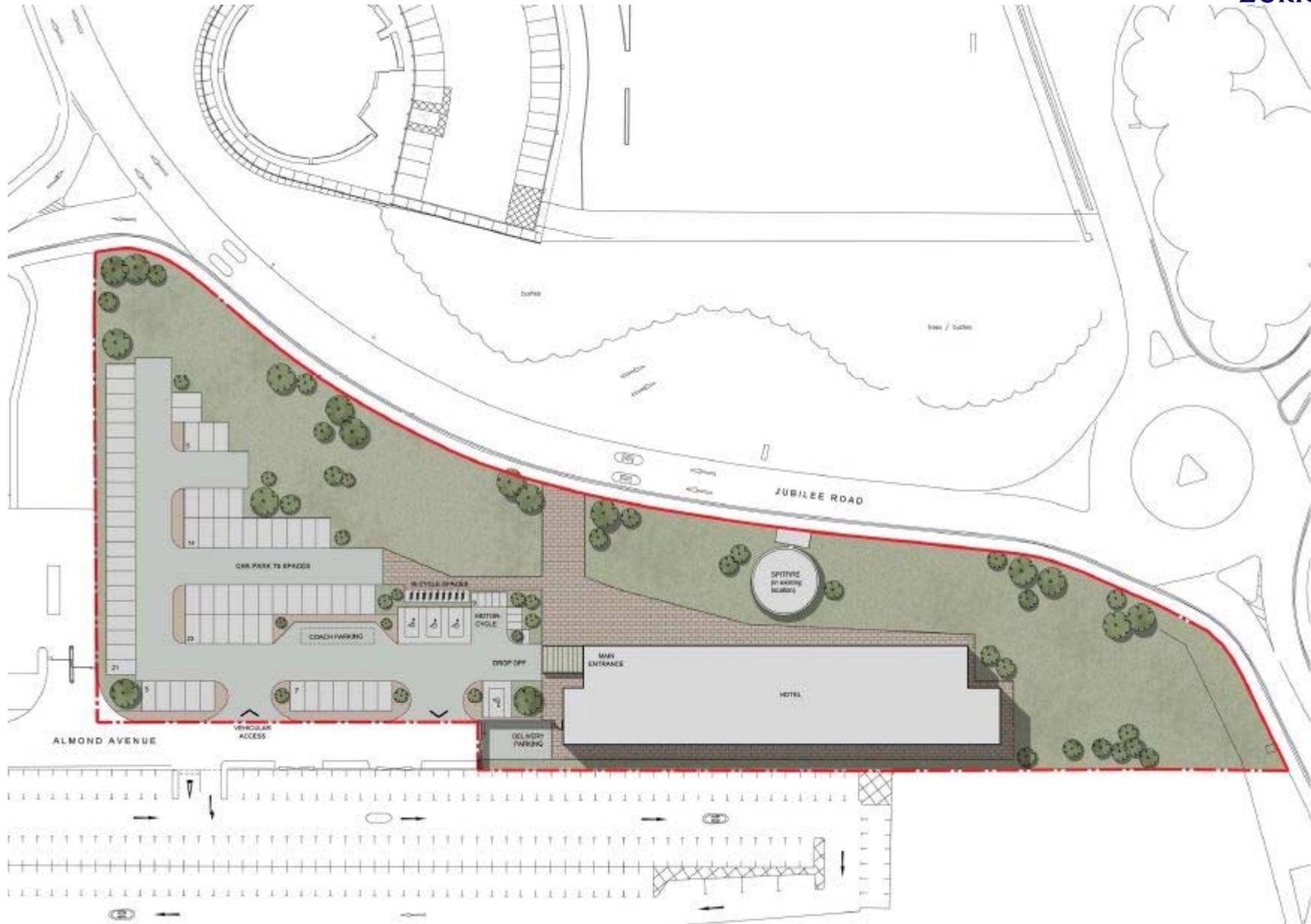
- Collapse/Removal of support risk
- Works/Existing Structure insurer may exclude
- Exclusion of “inevitable” damage and Contractor negligence both relevant

# Shoring and Propping



- May arise separate to façade retention
- Removal of support and Collapse risk
- Indicates that movement is already anticipated

# Typical Contract – New Hilton Hotel, Edinburgh Airport

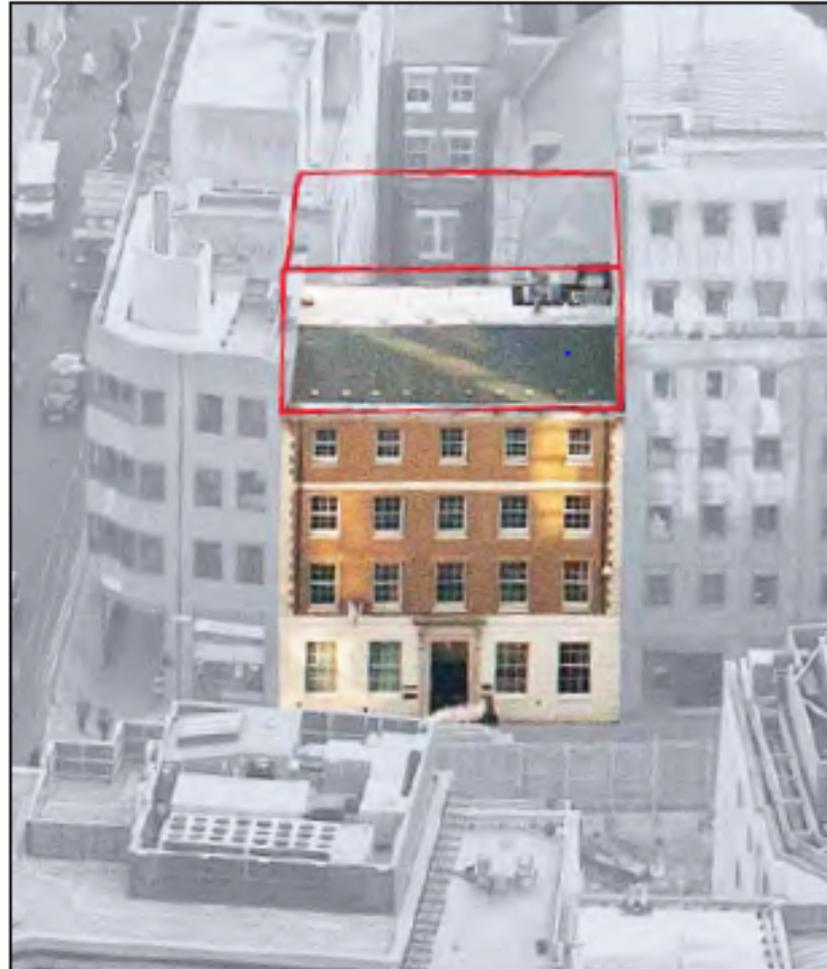


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# Typical Contract – New Hilton Hotel, Edinburgh Airport



# Typical Contract – Bury Street, London, EC3



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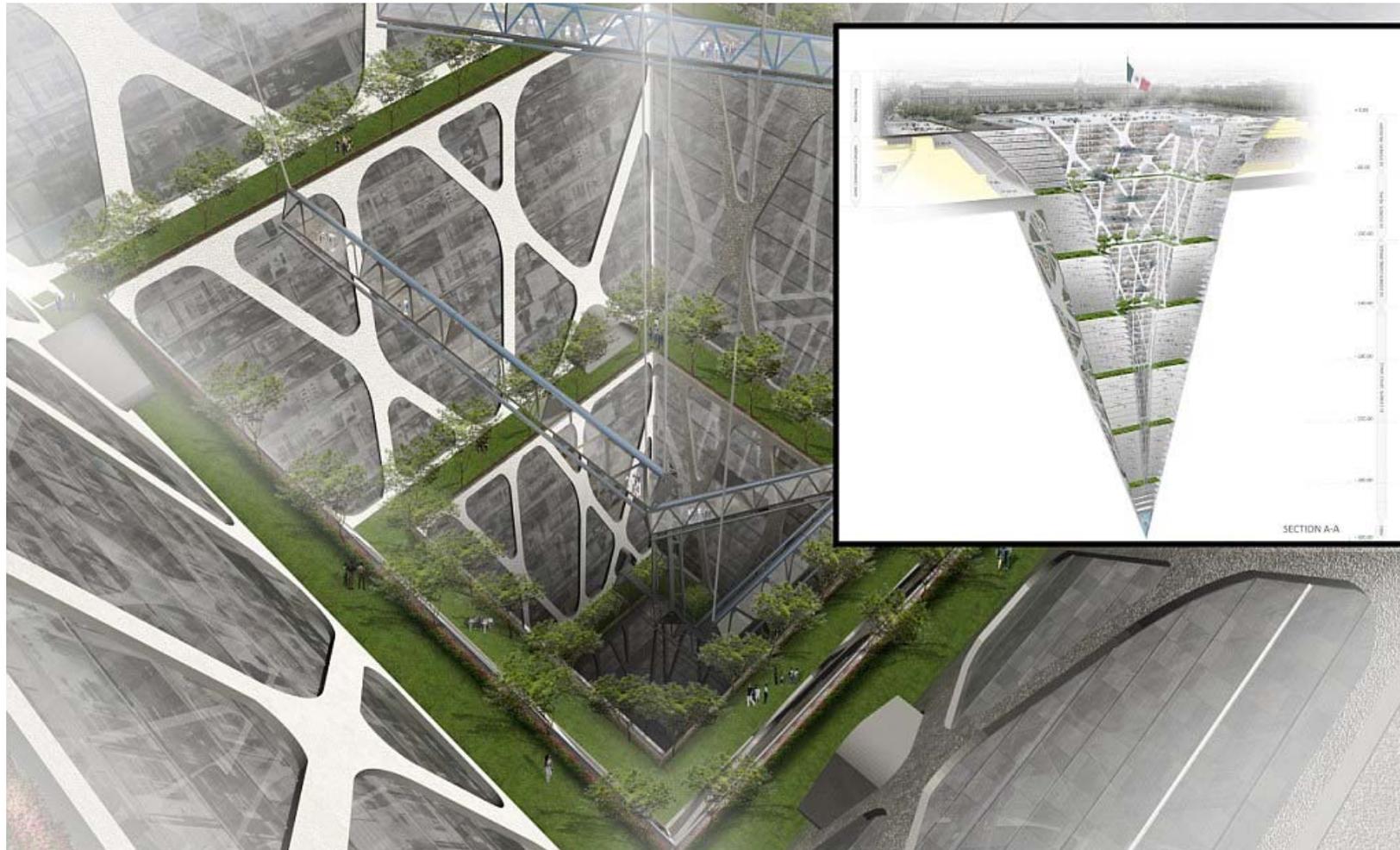


## Contract Price v 6.5.1 Premium



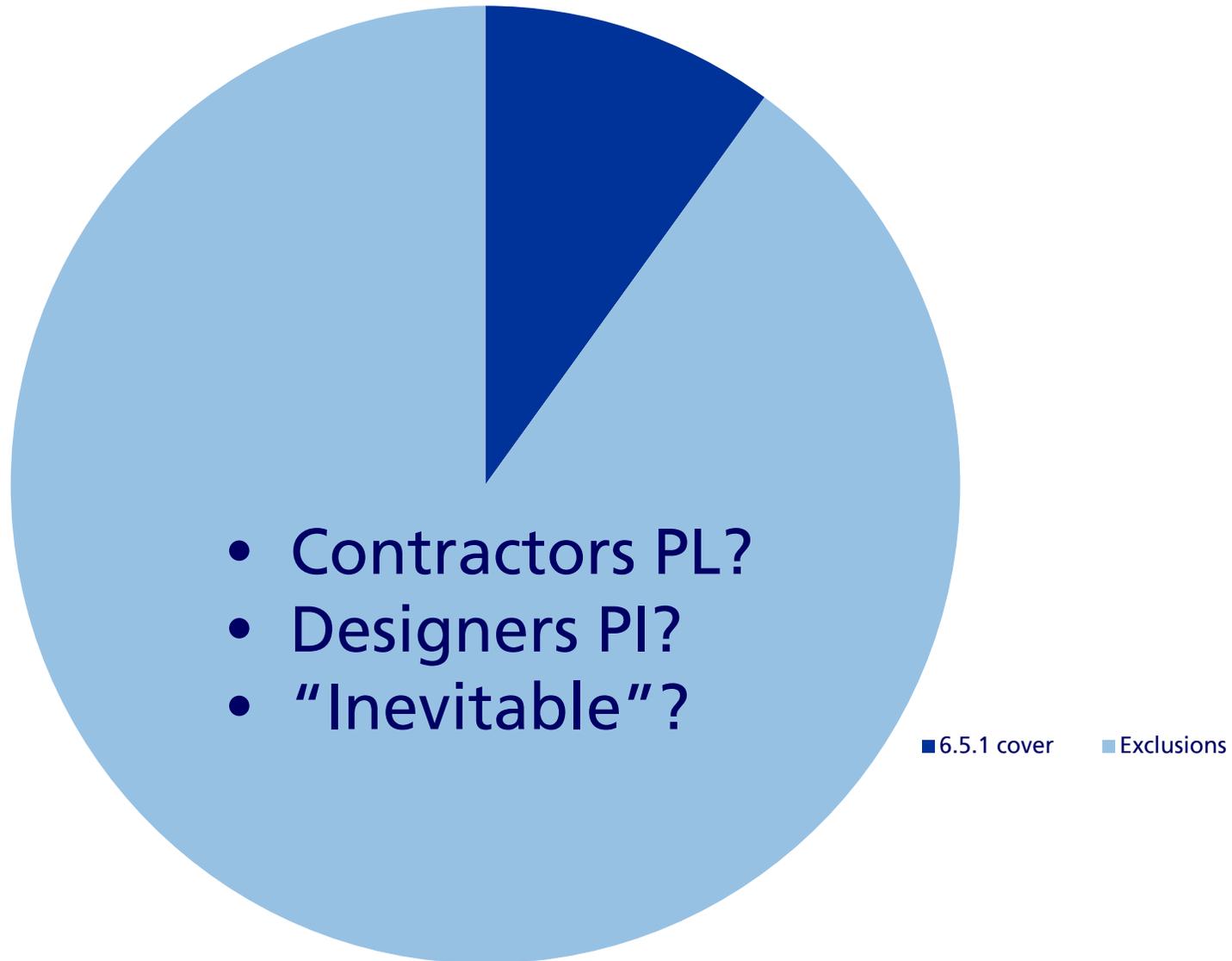
- Contract Price - Airport £££ v London £
- 6.5.1 Premium - Airport £ v London £££
- Excess - Airport £ v London £££

# Typical Contract...in the future?

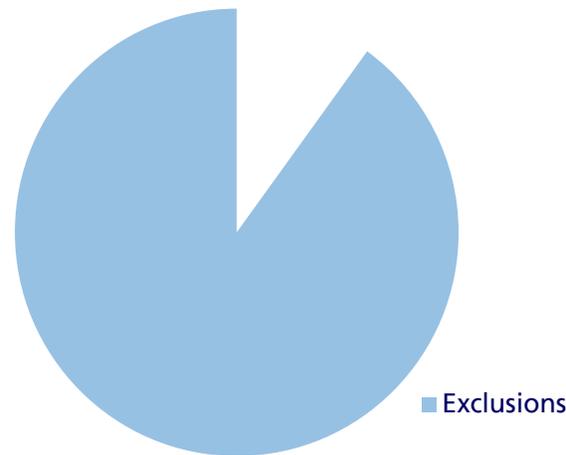


Architects have designed a 65-storey “earth-scraper” which plunges 300M below ground and deals with Mexico’s planning restrictions on the height of buildings in Mexico City

# What is the Exposure?



# What is the Exposure? – Clause Exclusions



1. Removal of support due to deep excavation below the depth of adjoining foundations – contractor’s negligence with Contractors PL to apply
2. Collapse caused by incorrect shoring design – professional negligence with Designers PI to apply.
3. Damage caused by driven piling within a small radius of the piling hammer - this can be “reasonably foreseen to be inevitable” and not within the scope of the clause.

# What is the Exposure? – What may be included



Removal of support resulting from unforeseen ground conditions encountered during excavation – with the claim investigation confirming all technical standards and ground investigation protocols have been complied with



# What is the Exposure? – What may be included



Removal of support due to defective materials within steel piled walls that support a basement excavation – defects not attributable to negligent design or installation



# What is the Exposure? – What may be included



Vibration causes a discharge of chimney soot within the next door property. There was no cracking to the structure. No contractor negligence and the damage is not of a type reasonably foreseen to be inevitable.

# What is the Exposure? – What may be included



Vibration damage to nearby properties by piling. Distance from the piling hammer considered “safe” based on industry standards and guidance - no contractor negligence.



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# Q & A

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