

EPM SUMMER NEWSLETTER

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IS A 'TURNKEY' DELIVERY METHOD RIGHT FOR YOUR BUSINESS?

Reaping the benefits requires careful planning

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'Turnkey' delivery frameworks are being increasingly used in the health property space. Turnkey involves the engagement of the contractor by the principal (owner / operator) to design and deliver the entire completed facility, including plant and equipment, ready for operation on the day the principal takes possession. The method is often promoted by equipment suppliers as an end-to-end solution for the purchaser. This may sound appealing in its simplicity, however there are some potential pitfalls.

It is commonly accepted that turnkey is well suited to situations where the facility is required to provide a physical output (i.e. a manufacturing facility) or to support a process, such as a processing plant as part of a mining operation. Whilst the standards for the performance and design of the facility must be well established, in such situations the Principal is typically more able to accept a finished facility which, whilst it may perform as required, may not resemble the original vision.

Turnkey can also deliver beneficial outcomes for habitable buildings, including health facilities. Where performance and design standards are well articulated, the contractor assumes all risks for the project and must deliver a fit-for-purpose facility

within the agreed timeframes and within the agreed budget.....no ifs or buts. Other benefits include:

- Early commencement as the contractor can commence construction before the detailed design is complete;
- An accurate cost forecast; albeit a potentially inflated cost where the contractor prices in risk and unknowns if the performance and design specifications are unclear or incomplete; and
- The contractor can incorporate innovative solutions to design elements, but only where such innovations meet the design and performance specifications of the Principal.

Unsurprisingly, there is a trade-off. For the contractor to assume all risk, the Principal must relinquish most, if not all of its control or input. This is not a great concern where the design and performance standards are thorough and unlikely to change allowing the contractor to simply 'get on with it'. Or perhaps the Principal does not wish to control the design or determine the design details. If the Principal's requirements cannot be clearly identified or defined, or there are possible latent conditions or other risks, the contractor's pricing may be heavily qualified or include large contingency sums, reducing anticipated cost advantages.

From a Principal's perspective, competitive tension in the establishment of construction contracts is essential to achieving market pricing. We regularly see Turnkey or D&C contracts being negotiated with a single select partner for example an incumbent equipment supplier, thus eliminating a competitive tender process and potentially eroding a Principal's ability to achieve market based pricing. We recommend heading down this path only with a contracting partner that you trust implicitly, and with pre-agreed rates where possible. In these situations, negotiated contracts work.

Selecting the appropriate delivery framework for your next project should not be a fait accompli. This decision should be based on the facts; and the facts can vary from one project to the next. To give your project the best chance of success, and to protect the interests of your business, speak to your internal Property Department or to your Project Manager about the right approach.

Alternatively, make contact with us here at Health by EPM.



**COMBUSTIBLE CLADDING:
CONSIDERATION FOR HOW IT IS
APPLIED TO YOUR BUILDING**

Laurence Shanahan, Senior Project Manager,

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Since the Grenfell fire in 2017, there has been a significant amount of discussion and retroactive works to address external cladding combustibility issues across the building industry. With the discussion rightfully focusing on eliminating combustible material on 'at risk' structures. Special consideration must be taken regarding how the cladding material is documented for installation, specifically where the cladding will be fitted to an existing structure.

Recently, EPM has been involved in several discussions with Fire & Rescue NSW regarding the application of combustible cladding on walls that are classed as external, however abut directly to existing structures, and therefore are wholly enclosed and separated from outside ignition sources. This scenario creates an issue, wherein the combustible material is segregated from sources that may create spreadable fire, however for all intents and purposes is still considered to be at risk of fire spread across the building and therefore non-compliant to recent BCA requirements.

To resolve this issue, several elements of the design would be required to be amended to suit a performance solution accepted by both the Fire Engineer and Principal Certifying Authority, or simply could be resolved by reviewing the classification of the walls with consideration to existing structures or buildings.

Whilst reviewing the wall classification is a simplistic approach, as mentioned in the EPM Winter 2019 Newsletter, combustible cladding may be justified for use on a building following a risk assessment carried out by the Fire Engineer and Building Certifier. In this scenario, whatever cladding material is selected for use, the appropriate testing certificate information that supports the inclusion of the material should be readily available. Care should be taken in this regard, as some designs may specify a product that does not have testing to Australian Standards, which will require an in-depth review from the Fire Engineer in order to be deemed appropriate.

Identifying issues with specified cladding material either during construction, or after completion, obviously poses significant time and cost implications for the building owner. Asking questions during the design phase of a project can assist to avoid costly remediation works and increased stress on the construction programme.

EPM recommends that anyone undertaking developments that include an external metal cladding material, that further discussions with the project team are had and product testing certificates are reviewed. If you have any questions regarding combustible claddings, EPM are always available to assist.



INTERIM OCCUPATION CERTIFICATES - A THING OF THE PAST

**Patrick Holland & Kate Swain, Partner,
McCullough Robertson**

Background

On 1 September 2019, the new Part 6 provisions to the Environmental Planning and Assessment Act 1979 (**EP&A Act**) came into effect, meaning in summary that:

- ‘Interim’ occupation certificates can no longer be obtained and the concept of ‘interim’ and ‘final’ occupation certificates no longer apply;
- An occupation certificate must be issued before a building or ‘part’ of a building can be occupied;
- A new certificate for subdivision works will need to be obtained, as distinct from construction certificates which in the usual way must be obtained for construction works;
- Principal certifiers now have the power to issue directions in order to address non-compliant aspects of a development more quickly.

Implications of new regime with respect to interim occupation certificates

Despite the removal of interim occupation certificates, it is important to note that the ability for developers to stage developments will not be impacted. This is because occupation certificates for part of a building can still be obtained, so long as the relevant parts of the building are fully completed in accordance with the conditions of development consent. This differs to the old regime which

enabled developers to obtain interim occupation certificates in circumstances where some of the works for a development were only partially completed.

There are no grandfathering provisions available which might have otherwise preserved the ability for developers to obtain interim occupation certificates under the old rules in certain circumstances after 1 September 2019. Therefore, if an interim occupation certificate was not issued before 1 September 2019, full completion of the relevant works in accordance with the development consent and for the relevant part of the building will be required before an occupation certificate will be issued authorising the occupation of a building or the specific part of a building. For those development projects currently on foot which have works yet to be fully completed, a significant impact of the amendments to the EP&A Act is to prevent legal occupation of a building until all works have been completed. This is because section 6.10(1) of the EP&A Act provides that an occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent have been complied with.

Given that these legislative changes have only recently come into effect, the implications of these are yet to be fully realised. It is clear however that managing the impacts of these changes will require consideration of the unique facts and relevant

conditions of any development consent that apply to a project. Should any assistance in this regard be required, the team at McCullough Robertson would be pleased to provide advice.

Further information

Please note this article does not provide an exhaustive overview of the amendments to the EP&A Act or the implications of these and is intended for information purposes only, and is not to be regarded as legal advice.

For further information on any of the issues raised in this article, please contact:

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