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NEWSLETTER

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This Edition

- Joint Regional Planning Panels
- Subcontractors obtain additional option for recovering payment
- On the mark!
- Time, cost, scope - set priorities early
- Timing for submission of your application to Council or the Dept. of Planning
- Understanding fire engineering

green building council australia
MEMBER 2010-2011

JOINT REGIONAL PLANNING PANELS

DFP examines the issues with a development application for a project where a Joint Regional Planning Panel (JRPP) is the determining authority rather than Council.

Since 1 July 2009, the following development applications have been referred to a JRPP for determination:

- Development with a capital investment value (CIV) over $10 million but less than $100 million
- The following development with a CIV over $5 million but less than $100 million:
  - Crown development
  - Ecotourism
  - Certain public and private infrastructure
  - Development where Council is the proponent or has a conflict of interest
- Certain coastal development
- Designated development
- Subdivision of land into more than 250 lots.

The assessment for such projects is undertaken by Council staff but the determination is then made by the JRPP and not Council. An exception to this is in the City of Sydney LGA where major development over $50 million is determined by the Central Sydney Planning Committee.

It could be argued that the JRPP process is yet another layer of unwanted complexity but in most cases, assessment times have improved. DFP has also found that particularly with projects involving complex issues, the JRPP process has assisted with keeping assessment times in check with Council staff often being placed under greater pressure to make difficult decisions much more quickly .

The JRPP process largely removes the political bias that would otherwise be a factor if matters were to be determined by a local Council. Whilst this is advantageous in most cases, it could also be a disadvantage as there is no opportunity to consult directly with JRPP members in the same way that an applicant can contact elected Council representatives. It is important for the proponent to maintain regular consultation with the JRPP Secretariat as well as Council's planning staff who are responsible for preparing the DA assessment report and briefing the JRPP members on issues in the project.

It is imperative with any project that is to be determined by a JRPP to ensure that the DA submission is comprehensive, accurate and supported by a concise executive summary that the JRPP members can review. Similarly, if you are invited to address the JRPP, ensure that you have your consultant team fully prepared to make a concise explanation of the issues in the project and to respond to any questions.

March 2011 and beyond is likely to be an interesting period as it is not known at this stage whether JRPP's will suffer a similar fate that is expected to occur with Part 3A of the Environmental Planning and Assessment Act 1979 should the incumbent State Labor Government not be re-elected.

In the interim, if your project will be assessed by a JRPP, keep in mind:

- ensure your DA is thorough and comprehensive;
- include a concise and clear executive summary;
- maintain regular consultation with Council planning staff and the JRPP Secretariat; and
- be well prepared if you are invited to address the JRPP.

For assistance with JRPP projects or other town planning matters, contact DFP to ensure that the best approach is adopted for your next project.

John McFadden
Senior Town planner

SUBCONTRACTORS OBTAIN ADDITIONAL OPTION FOR RECOVERING PAYMENT

With effect from 28 February 2011 subcontractors will be able to recover adjudicated amounts under the Building and Construction Industry Security of Payment Act directly from the principal.

Kennedys

Legal advice in black and white

New amendments to the Security of Payment Act mean that if a subcontractor has made an adjudication application they can "reserve" money to cover the claim from monies owed (or that become owing) by the principal to the contractor by way of a "payment withholding request". That money must be held by the principal until it has been notified that either the adjudication has been withdrawn, the money has been paid, the claimant adopts the Contractor's Debts Act option or a period of 20 business days elapses after the adjudication determination is served on the parties.

Failing to withhold the money will lead to the principal being jointly and severally liable with the contractor to the claimant leading to the possibility that the principal may find itself out of pocket.

There are some protections available for the principal in the new section 26D. However, note that the 'payment statutory declaration' often required from contractors, declaring that all monies due and owing have been paid to subcontractors, does not rate amongst those protections.

Principals can protect themselves by drafting appropriate provisions into the payment mechanisms in their contracts (remembering that "contracting out" of the Security of Payment Act is not permitted). That said, the new provisions apply to all contracts to which the Security of Payment Act applies that are on foot at the time of commencement of the amendments. For those contracts the best protection will be achieved through vigilant administration.

Helena Golavanoff
Partner

ON THE MARK!

Benchmarking is not only a useful tool for the Quantity Surveyor but for the Design Team as a whole.

Benchmarking is the analysis of historical data for future reference and can be used at a macro (building cost) or a micro (item cost) level.

The most common cost related benchmark in the building industry is the cost per square metre ($/m2) relative to the building's function and is often used to determine the feasibility of future projects and to establish initial project budgets. The most useful form of benchmarking, from a cost control and design perspective, is Elemental Cost Planning where costs can be compared on a common format across standard elements. (Cost Planning will be discussed in more detail in the next feature issue of the newsletter)

Whilst benchmarking can be a useful cost control tool, consideration must be given to unique project or site specific drivers such as building function, shape, number of floors, locality and workpoint density etc which may have a significant impact on the analysis.

Consequently, a standard benchmark analysis should only use filtered data which best matches the building's function and locality and should be supplemented with secondary benchmarks (such as m2/workpoint or the external wall to floor area ratio) to better understand the cost drivers of the project.

David Noble
Director

TIME, COST, SCOPE - SET PRIORITIES EARLY

There are three primary variables in every project – time, cost, scope. Two will be maximised at the expense of the third. Decide your priorities early.

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I once read of a sign over a shop counter that said 'Time, Cost, Quality… choose any two'. The message holds a simple truth that also applies to building projects [although the word 'quality' is substituted with 'scope']. For example, a new building may be able to be constructed within one year for a cost of $1.0 million. If however the owner wanted to reduce the cost while maintaining the same scope, he would need more time in which to investigate alternative building materials and source alternative quotes, thereby **trading off time for cost and scope**. On the other hand, if the owner wanted to bring forward the completion date while maintaining the same scope, he would incur cost for overtime labour, in this case **trading off cost for time and scope**. Then again if the owner wanted to bring forward the completion date without increasing cost, he would need to reduce the scope of the project thereby **trading off scope for cost and tme**.

Don't be afraid to communicate priorities early. This will align the focus and efforts of a project team with the objectives of the project owner and enhance the overall quality of the project.

Andrew Graham
Managing Director

START THINKING ABOUT THE TIMING FOR SUBMISSION OF YOUR APPLICATION TO COUNCIL OR THE DEPARTMENT OF PLANNING

Better the law you know than the law you don't know!

Lawyers McCullough Robertson

Proposed changes to the NSW Planning Laws should encourage people to think seriously about the timing of the preparation and submission of their development applications to Council and Part 3A Project Approval Applications to the Department of Planning.

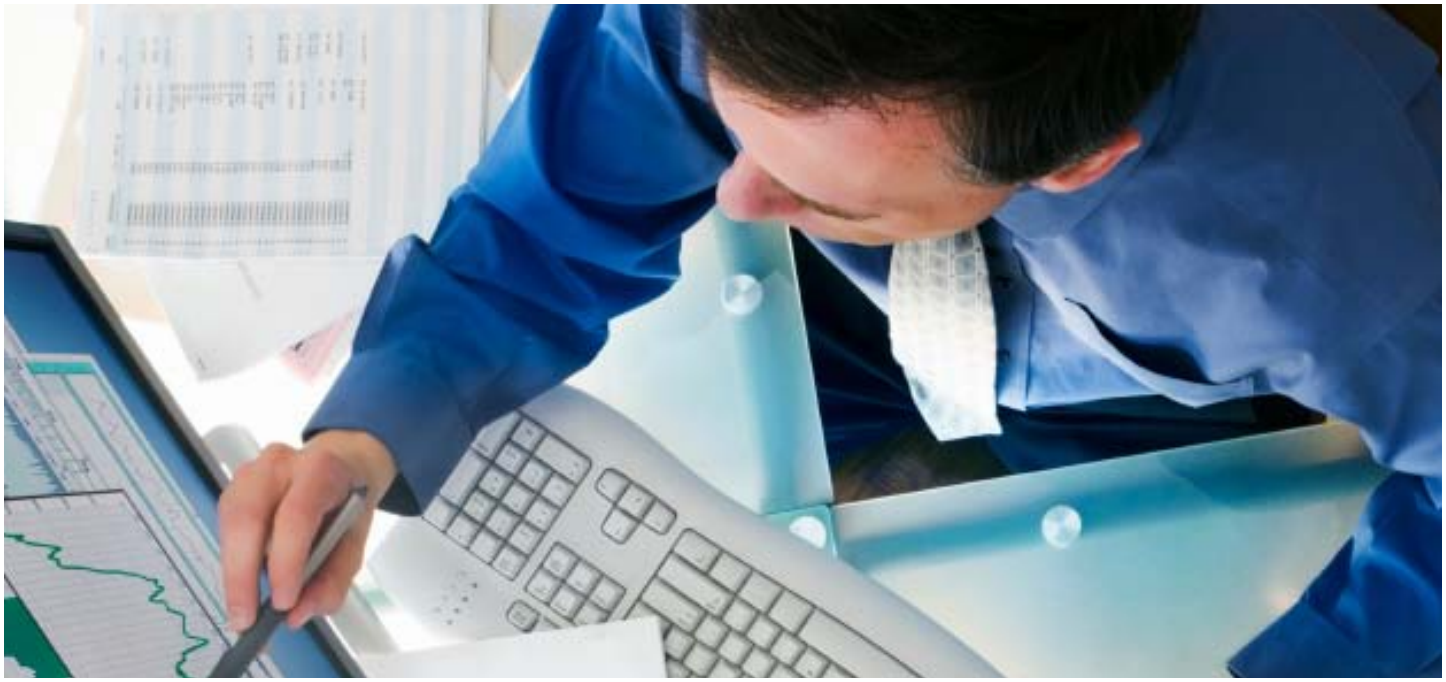
With the State Election looming the Coalition has stated publicly that it will "scrap Part 3A.. and commence an overhaul of the planning system soon after March 2011 " . While this may be appealing to many who constantly work with the planning laws an issue of concern to many would be what will the revamped Environmental Planning and Assessment Act look like? It has not yet been spelt out in any detail.

With Part 3A destined for the scrap heap what could the incoming Government do to replace Part 3A? My view is that the Planning and Assessment Commission (PAC) and the Joint Region Planning Panels (JRPP) will assume a far greater role in determining applications than they currently do. The enhanced role of both the PAC and the JRPPs was strongly recommended in the Independent Commission Against Corruption Report titled 'The Exercise of Discretion under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Development) 2005' released in December 2010. This Report should be read by anyone involved in the development industry.

How the Coaliton will "revamp" the Act is as yet unknown. No doubt significant changes will take time, particularly with extensive consultation with all stakeholders most likely to occur before the law is possibly rewritten to 'modernise" it.

As with most changes to the planning laws applications which are submitted but not determined before the changes come into effect are usually considered under the 'old' law. In this regard it may be worth considering 'fast tracking' preparation because it could be a case of the law you know is better than the law you don't know.

Patrick Holland
Partner



UNDERSTANDING FIRE ENGINEERING

Fire engineering is prevalent in contemporary design and construction. It is important for industry stakeholders to understand the process and potential implications of fire engineering.

BLACKETT MAGUIRE+ GOLDSMITH

The Building Code of Australia is, first and foremost, a performance-based document.

Fire engineering, when properly and effectively implemented, is an important instrument in achieving innovative, time and or cost efficient design options. This may include opportunity for extended travel distances; reduced FRLs; modification of specific fire services or justifying use of materials, building systems and forms of construction that may not otherwise be considered compliant with the DTS provisions of BCA.

Implementation of a fire engineered solution(s) can however include unforeseen adverse time and or cost implications with respect to design and construction programs; increased capital expense on additional building & fire systems and ongoing maintenance & certification costs.

Incorrect implementation or incorrect maintenance of a respective facet or requirement of fire engineering can result in the fire engineering analysis for a building being deemed null-and-void in the event of a fire and thus leaving the property owner with potential insurance and legal implications.

Consequently it is critical for all relevant stakeholders to understand the positives and negatives of any fire engineering process in each individual instance.

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