

NEWSLETTER

AUTUMN

2012

Cover image: Knox Great Hall & Aquatic Centre (Recently completed project, managed by EPM). Photo by Simon Wood Photography.



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green building council australia
MEMBER 2010-2011

EPM AND DEXUS

Leading the charge for Sustainability in the Commercial Sector.



The NABERS rating system is a method for evaluating the performance of a variety of buildings, including offices. The system rates the efficiency and environmental impact of the operation of a building against a number of criteria, including energy and water consumption.

Since November 2010, the Commonwealth Building Energy Efficiency Disclosure Act 2010 has required most lessors of commercial office space leases over 2,000m² to advertise the NABERS energy rating of the building to prospective tenants, in order to assist tenants with their selection of an office.

This change in legislation, combined with the increased price of electricity has resulted in owners placing a new level of consideration on the operational performance of existing buildings, particularly the efficiency of building services such as ventilation, air conditioning, lighting, and hot water.

DEXUS Property Group, a client of epm Projects, hold a portfolio of over \$6.6bn in office property in Australia and was among the first to respond to this new environment. DEXUS have embarked upon a significant program of capital works, aiming to achieve a portfolio average of 4.5 star NABERS energy rating, by 2012. In late 2010, EPM was engaged by DEXUS to provide project management services for tendering and construction on a number of these projects, involving the upgrade and retrofit of the services and systems in existing buildings.

The projects have included works such as:

- Replacement of central plant including building chillers, cooling towers and pumps.
- Installation of modern, energy efficient light fixtures with motion control.
- Wholesale replacement of Building Management Control Systems (BMCS), and provision of improved control strategies.
- Replacement of electric hot water systems, often with modern 'heat pump' hot water units.
- Installation of centralised energy monitoring for each DEXUS property, via a networked metering system.

Upgrade projects commence with the preparation of a Strategic Improvement Plan, commissioned by DEXUS, which considers the NABERS impacts of a variety of possible upgrade options. EPM has worked with DEXUS on investigating the feasibilities of each option within the constraints of the existing sites, and on the delivery of the selected options, including developing packages of work and procurement methods.

The upgrade projects differ from conventional construction, in that there is a significant focus on post-completion performance data, which is used to guide "re-commissioning" and "building tuning" after completion, and so maximise outcomes for energy efficiency. However the projects have often resulted in a significant improvement in energy efficiency prior to the completion of works.

A considerable amount of work is completed in and around occupied tenancies during the projects, requiring EPM to carefully manage the co-ordination between tenants, building managers, and multiple contractors.

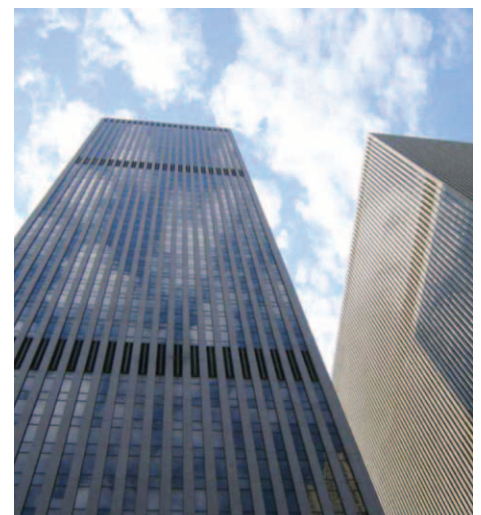
EPM's work for DEXUS has included projects at the following sites:

- Zenith Centre, Chatswood
- 112 Talavera Rd, North Ryde
- 11 Talavera Rd, North Ryde
- 44 Market St, Sydney
- 60 Miller St, Sydney
- 130 George St, Parramatta
- Gateway Building, 1 Macquarie Place, Sydney

"This program demonstrates the new era in services upgrades with measurable results in terms of both comfort levels and energy performance. Skilled project management of multiple stakeholders including consultants and contractors, from the inception of the project through to the NABERS Energy rating 12 months after completion, is critical in achieving the intended results".

Paul Wall

Engineering Manager at DEXUS Property Group



TURNING GREEN

Environmentally sustainable developments are now being viewed differently by building owners, developers and tenants.



From a cost management perspective it has been noticed over the past couple of years that a far greater number of projects being either new developments, refurbishments or fit-outs have been, or are being, delivered to a high level of environmental sustainability. Previously, with the occasional exception, building works projects have progressed through the design and development phases with the intention of providing a base building or fit-out with a high green star rating and being environmentally sustainable. However, due to higher initial capital costs these options have not proceeded, or have been scaled down, and a building of more conventional design has been delivered without taking long term savings into consideration.

Currently the trend appears to be changing

as the longer term environmental initiatives verses the long and short term commercial objectives are considered. There are numerous reasons for this trend but foremost it appears that a new sustainability literate generation is now prepared to promote the long term environmental and commercial advantages especially when beneficial cost effective rebates and savings are on offer in addition to comprehensive data and historical information now being provided by specialist ESD consultants.

As cost consultants it is interesting observing the differing objectives and priorities that are raised by clients and consultants during the design development phase. Environmentally sustainable solutions that can be very important to some parties may not be as

important to others, for example, a fully air conditioned office space compared to space that relies on natural ventilation and sun shading delivers vastly different outcomes on both a personal and project cost level.

Achieving a balanced outcome that all parties are comfortable with now forms a very important element of the design process, but not surprisingly, cost still dictates many decisions on a final outcome.

*David Noble
Director*



SPRINKLERS IN RESIDENTIAL AGED CARE BUILDINGS

As a result of the tragic Quakers Hill Nursing Home fire in November 2011, there has been an industry and community focus on the need for mandatory installation of sprinklers in residential aged care facilities.



At present the BCA requires installation of an automatic sprinkler system in aged care facilities as follows:-

- Class 3 Low Care Hostel – optional installation
- Class 9a High Care Facility – optional installation
- Class 9c RACF – mandatory installation

The primary objective of a sprinkler system in aged care buildings is to control the size and spread of a fire. A smaller and controlled fire will minimise the generation of smoke and other toxic gases which are a main factor with fatalities in aged care buildings.

Most new aged care facilities erected throughout Australia since 2003 have incorporated sprinkler systems.

The majority of existing aged care facilities throughout NSW however (more than 70%), do not have a sprinkler system installed.

The BCA imposes a variety of fire safety requirements in aged care buildings, depending upon the size of the facility.

The Quakers Hill Nursing Home, being a low rise facility which was originally erected approximately 30 years ago, incorporated a level of fire safety that is generally consistent with the requirements of current-day BCA.

There are four primary fire safety systems that are essential in any aged care facility, namely:

- Smoke detection system
- Compartmentation
- Staff intervention
- Sprinkler system

To afford residents maximum level of fire and life safety in an aged care facility, it is necessary that all four of these fire safety systems be incorporated.

Victoria and Queensland Governments have both initiated upgrade programs to require sprinkler systems to be retrospectively installed in existing aged care facilities. NSW presently has not adopted same or similar legislation.

It is acknowledged that the retrofitting of sprinklers in aged care facilities throughout Australia would be a significant capital investment to the aged care industry and would be almost impossible for many aged care providers to achieve without government assistance.

David Blackett
Company Director



WHEN PUSH COMES TO SHOVE

The appropriate time to anticipate preparation for an Appeal is at the beginning of a project, not the end. Ironically, this can often circumvent the need for an actual Appeal to proceed for most if not all projects.

What is an Appeal and when can it be lodged?

Most Appeals allow a Court to adopt the role of a consent authority in order to determine a proposal under Section 97 of the Environmental Planning and Assessment Act 1979 (the Act).

However, perhaps the most basic form of Appeal is a review of determination under Section 82A of the Act which involves a proposal being reassessed by another planning officer, usually a person not involved with the original assessment. This option is particularly effective where a delegated authority determination has been issued without due consideration to pertinent issues.

Appeals can involve Courts other than the NSW Land and Environment Court depending on the nature of the dispute, the location of the site, or the parties involved. Furthermore, Appeals are not exclusively associated with refusals and can also include a challenge against a specific decision (or decisions) where conditions may be obscure or lack appropriate justification or relevance.

Appeals to the NSW Land and Environment Court usually occur either as a deemed refusal (prior to determination) or in response to a Notice of Determination where consent has been refused or conditions are unsatisfactory. Consequently, there are options to lodge an

appeal both before and after a determination has been made within prescribed timeframes.

Why are Appeal options necessary?

Appeal options provide an opportunity for an impasse to be resolved so that hopefully some degree of common sense can prevail. An added benefit is that this process is able to occur without political interference.

Should an Appeal be treated as a default mechanism for an unsuccessful project?

Without proper due diligence and appropriate support for a proposal, an appeal should not be regarded as a default mechanism for an unsuccessful project. This type of 'reactive' approach is fraught with risk and ultimately a significant waste of time and money for all parties concerned.

What is necessary to ensure a successful Appeal?

Regardless of the scale or complexity of a proposal, key elements to ensuring the success of an Appeal include the integrity of information and the way in which it is presented, together with having a clear strategy. Without a defined strategy or a high level of integrity coupled with



planning consultants

a high standard of presentation, the chances of a successful Appeal are reduced.

Despite the subjective nature of expert opinion and legal interpretation, plans and supporting documentation need to be both accurate and consistent. Expert witnesses need to be both knowledgeable and experienced in order to assist in an impartial manner without being an advocate.

Furthermore, impacts need to be properly mitigated and demonstrably acceptable having regard to both Section 5 and Section 79C of the Act particularly if a proposal relies exclusively on a non-prescriptive merit based assessment.

Contact DFP for town planning assistance with Appeal options for your next project.

*John McFadden
Partner*



CONTRACTS CLASS: “LUMP SUM” MEANS...

Why “lump sum” doesn’t mean that’s all you pay.

It is a common misunderstanding that “lump sum” means “fixed price” except for principal-ordered variations. It does not. This is not due to any great problem with the contracts used (assuming of course the parties use a properly prepared agreement!). Instead it reflects the commercial reality of construction procurement.

A principal wants price certainty – making a fixed price contract, on its face, an appealing prospect. However this may not be a good idea for a combination of reasons.

A variety of factors can necessitate the performance of additional work by the contractor. As a result, it does not make commercial sense for a contractor to agree to, or guarantee, a fixed price (sometimes called a Guaranteed Maximum Price or GMP) without allowing a contingency in the contract price. While there are some accepted industry practices when calculating contingencies, the reality is no-one has a crystal ball.

So a principal can get its fixed price – with the contingency being the cost of certainty. However,

few principals have the spare funds to buy that sort of certainty and in any event, the competitive tendering process causes elements such as contingency to be squeezed out of tender prices. Whether it is the contractors’ behaviour or the tendering process that is the cause of that – the reality for a project is that no contractor wants to build something for free and therefore forcing them to do so via draconian contract terms makes costly disputes all the more likely.

It is beyond the scope of this article to traverse all the arguments on both sides of the price certainty and risk allocation debate. The purpose here is to highlight that when entering a lump sum contract the parties are accepting that things may change. This makes it very important to have clear mechanisms in the contract setting out how those situations are to be managed.

Helena Golovanoff
Partner

Kennedys

Legal advice in black and white



CONTRACT STAFF

ARE CONTRACT STAFF COVERED UNDER A PROFESSIONAL INDEMNITY INSURANCE POLICY?

Simple question, however, the answer is complicated! Unfortunately due to a myriad of State and Federal legislation governing matters such as workers compensation, superannuation, pay-roll tax and the like, and many Court decisions that interpret each area of law separately, there are no universally accepted definitions of an "Employee" or "Contract Staff".

In order to answer the above question from an insurance perspective, a closer examination of your policy wording is required.

Most professional indemnity insurance policies provide cover for the "Insured Entity" which is generally defined to include:

any former or current principals, partners, directors or Employees of any person or entity referred to in the Schedule.

Most policies go on to define what constitutes an "Employee", however, some do not. In the absence of any definition of "Employee" in the policy then only traditional common law employees would generally be covered under the policy (i.e. those people who work under a contract of employment for whom you pay superannuation and workers compensation).

Some policies provide a definition of "Employee" which clarifies whether the cover is extended to certain contract staff as well. For example:

Employee ... includes contractors and sub-contractors who earn more than 80% of their annual total income from fees received from the Insured.

If your policy does not provide cover for contract staff then you should ensure that your contract staff have their own insurance. Alternatively you can speak to your broker about approaching your insurer to seek extended cover for contract staff, which your insurer will consider on a case by case basis.

Depending on the level of control you have over your contract staff and the number of other practices they work for you will need to consider whether you wish to cover them or whether you prefer that they have their own insurance.

*Simon Gray
State Manager*



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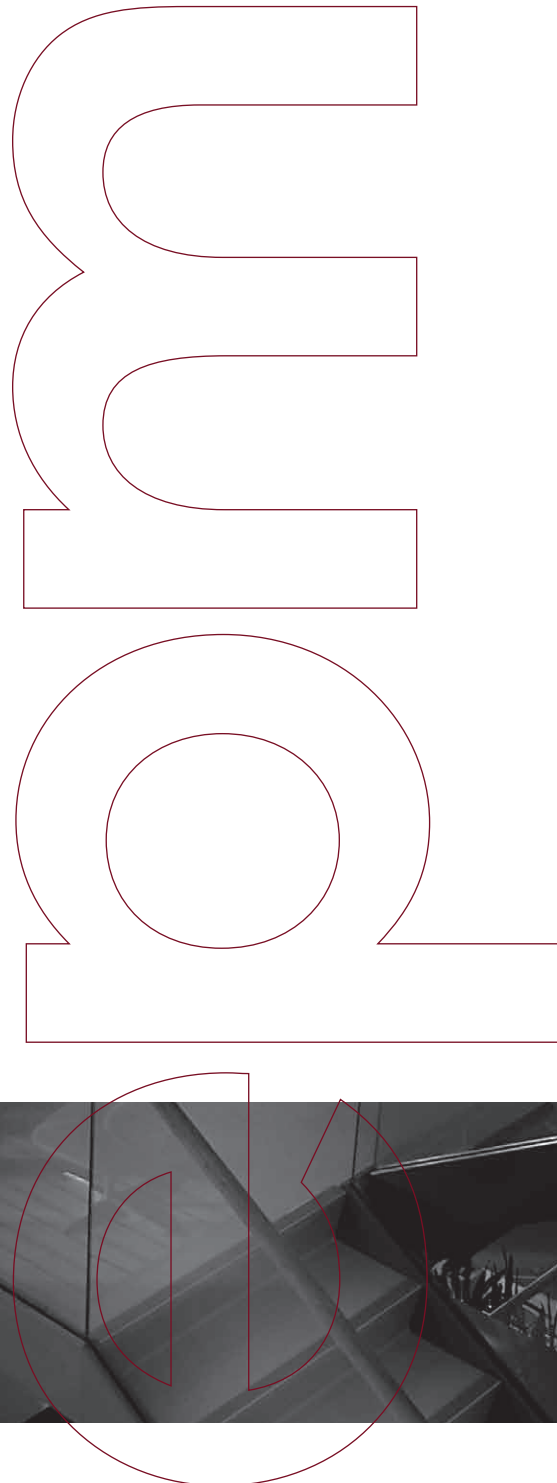
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Acknowledgements

The following organisations regularly partner with EPM and contributed to the content of this newsletter.



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