epm projects pty ltd

NEWSLETTER

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green building council australia
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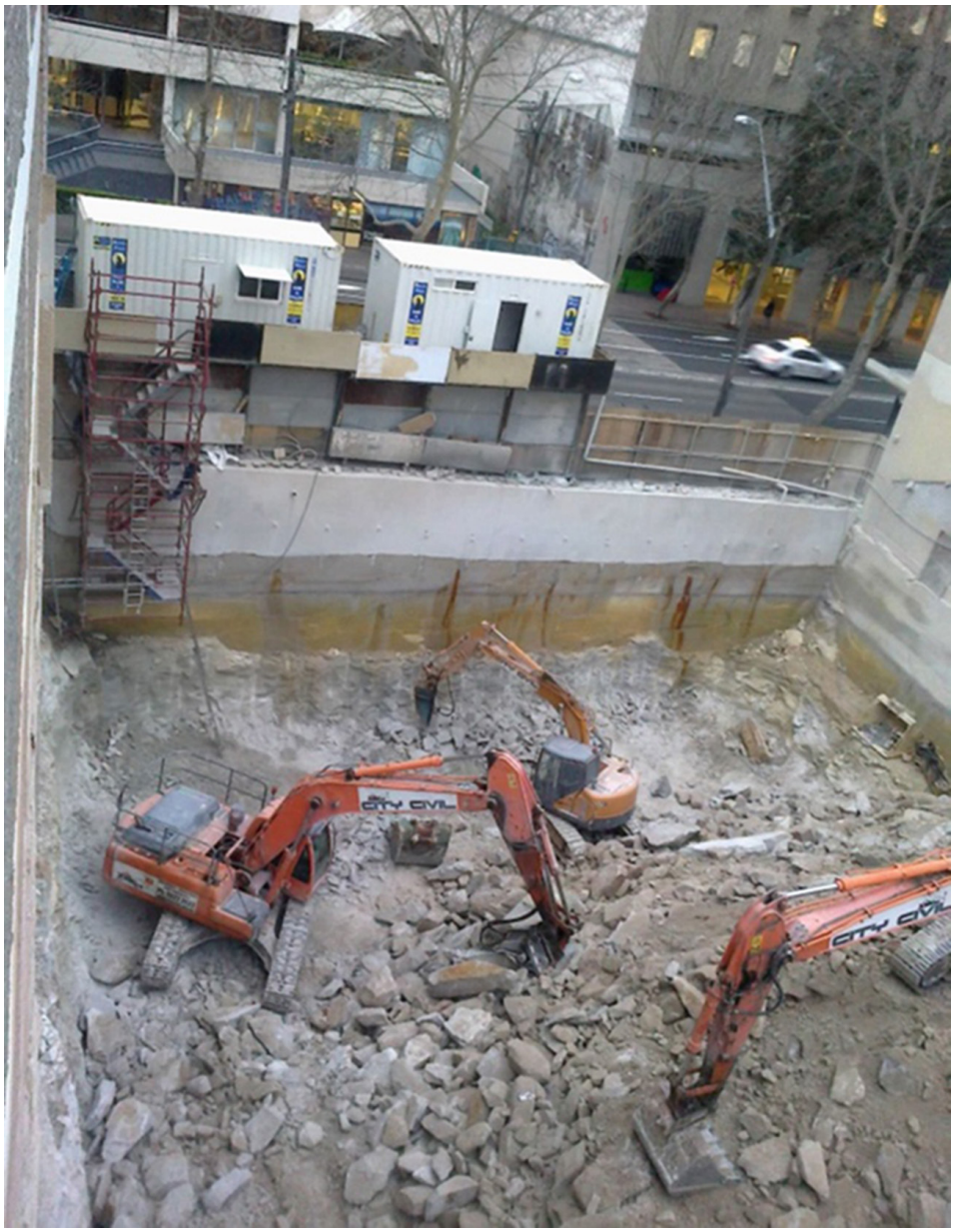
“ON BAD GROUND”

The management and method of disposing of excavated material has become a significant factor in the design and cost of some building projects



Due to the tightening of the regulations and legislations in regard to the disposal of excavated material the project team and Client must be mindful that the most cost effective method of managing this material is determined in the early stages of the design phase as a means to control overall project costs.

The classification, removal and disposal of excavated materials on building sites is regulated by the Environment Protection Authority (EPA) who are part of the Department of Environment, Climate Change and Water governing body. The EPA has classified wastes into the following groups that pose risks to the environment and human health:-

- Special waste
- Liquid waste
- Hazardous waste
- Restricted solid waste
- General solid waste (putrescible)
- General solid waste (non-putrescible)

Except for Virgin Excavated Natural Material (VENM) which is classified as a non-putrescible general solid waste all other wastes identified in the above categories require varying degrees of management and handling that in all instances attract varying cost penalties, which in some cases can be extremely high, regardless of whether the materials are removed or retained on site. Prior to the latest regulations coming into force the cost of excavation and disposal of materials did not have an imbalanced impact on overall cost as currently seen in the industry (ie; the building was designed to suit the site conditions and specific Client requirements, excavated material was managed / disposed of in the most economical and practical way under the less stringent regulations by the building contractor and the building was completed with little consideration given to the status and quality of any excavated material that was retained on site or removed from site).

As we all know the protection of our environment and the health of the general community has significant cost implications to all industries and the building sector has certainly not been spared. In recent years the serious problem of asbestos and known hazardous materials in the construction industry has fortunately been addressed and simple initiatives such as recycling waste generated on building sites has been become a formality, however, the management of such undertakings is generally seen as a separate exercise that does not greatly impact the overall design of a building or ongoing running costs. The cost implications of a building project can now be far more outreaching and complicated when unfavourable site conditions are encountered.

It is now a priority to obtain as much information as possible in regards to existing ground conditions prior to a design commencing as the outcome of any investigation may greatly affect the overall design and what a Client is prepared to pay for preferred, or compromised design, due to the cost implications and design restraints imposed by unfavourable ground conditions.

In summary “On Bad Ground” results in cost and / or design compromises for any building project regardless of size

David Noble
Director

PLANS OF MANAGEMENT SHOULD BE 'HANDLED WITH CARE'

DFP examines why insufficient consideration of the consequences of either including, or not including various important aspects of a proposal when preparing a Plan of Management can prove to be disastrous for a project.

planning consultants

A Plan of Management (also known as a Management Plan) is developed to address the unique characteristics of a site or a development proposal and is often associated with site constraints (such as ecological, site contamination, archaeological, bushfire, heritage etc), or the need for ongoing management of a sensitive operation (such as traffic management, noise or odour generation) that extends beyond the issue of a development consent.

A Plan of Management will attempt to identify, address, mitigate and ameliorate the potential for any ongoing adverse environmental impacts associated with a development proposal and it is not uncommon for a range of specialists such as town planners, project managers, architects, lawyers, environmental and engineering consultants and community representatives to provide input into this process.

Plans of Management usually gain significance through a condition as part of a development consent issued by a consent authority, but regardless of whether the proposal is being determined by a Council, Joint Regional Planning Panel, or the Minister for Planning and Infrastructure, it is important to ensure the inclusion of appropriate detail in the Plan of Management, so that future problems do not arise during subsequent construction and operational stages of a project.

DFP recently provided town planning advice to a well respected client who was in the process of purchasing a site that had a State Significant Development Consent and which included conditions based on a Plan of Management. The Plan of Management had been prepared without full consideration into whether or not the ecological and archaeological constraints that were the subject of the Plan of Management actually warranted ongoing conservation.

In this particular case, independent specialist consultant ecologists and archaeologists investigated the matter and established that there was no reasonable basis for the ongoing conservation of ecological and archaeological characteristics of the site.

Consequently, this prompted the need for consideration of extensive modifications to the conditions of the development consent and reconsideration of encumbrances on title including instruments registered under Section 88B of the Conveyancing Act 1919, not to mention significant time and cost delays to the project. This situation could have been easily avoided had the Plan of Management been evaluated prior to the consent being issued.

Please contact DFP if you require town planning advice regarding preparation of a Plan of Management as part of your next project.

John McFadden
Partner

EXEMPT AND COMPLYING DEVELOPMENT

Lawyers | McCullough Robertson

On 22 February 2014 significant changes to exempt and complying development in NSW will come into effect. These changes will be affected through amendments to the State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP) and the Environmental Planning and Assessment Regulation 2000.

Changes to the Codes SEPP

Amendments to the Codes SEPP will introduce new complying development codes for commercial and industrial development, a new fire safety code and two new exempt development codes. There will also be significant amendments to existing development standards for exempt and complying development. Key changes introduced through the Codes SEPP amendment include:

- the introduction of a complying development code for new industrial buildings and additions to existing commercial and industrial buildings. The existing code for alterations to commercial and industrial buildings has also been replaced;
- a new fire safety code which enables some alterations to fire systems to be approved as complying development without the need for a fire safety schedule;
- significant changes to the general and rural housing codes as well as some changes to the housing alterations code. These changes include improved privacy protection though privacy screens on balcony edges and other areas close to boundaries and amendments to maximum floor space area standards to include detached studios or basements on the lot;
- the introduction of more residential complying development for apartments. For example, internal alterations to the common areas of residential buildings such a foyers can now be carried out as complying development;
- a new advertising and signage exempt development code which will enable building identification signs and five types of common building and business identification signs to be erected without approval;
- a new temporary uses and structures exempt development code as well as significant changes to the general exempt development code by adding more development types such as outdoor dining on footpaths and mobile food and drink outlets; and
- changes to where exempt and complying development can be carried out so that exempt and complying development can take place on lots affected by certain zoning and other restrictions as long as the development is not on part of the lot affected by the exemption. For example, development may now be carried out on a heritage site where the heritage item does not encompass the whole site. The SEPP will also contain new provisions prevent buildings and some other development types being erected over registered easements. Furthermore, covenants imposed by a council that require compliance with a standard more stringent than that in the Codes SEPP will not apply to development approved under the Codes SEPP.

Changes to the EP&A Regulation

The EP&A Regulation has also been amended to support the changes to the Codes SEPP. The amendments make changes to the lodgement and determination of applications for a complying development certificate (**CDC**). There is now a requirement to provide advice and notification of a complying development to neighbours 14 days prior to approval of a CDC for houses, alterations to houses, demolition of buildings and group homes. There are also new requirements for additional information to be lodged with an application for a CDC and for conditions to be imposed on a new CDC approval. Other significant changes include new requirements for s149 certificates, the introduction of development contributions for complying development in certain circumstances as well as new security bonds/damage deposits for works carried out under a CDC. Another notable change is the requirement for a site contamination statement to accompany a CDC application for a new industrial building or for additions to an existing commercial or industrial building.

Clare Collett, Senior Associate
and Samantha Daly, Partner

MANAGING AND CONTROLLING VARIATIONS

Whether we like it or not, variations to a project scope of work lurk in the zone known as "the inevitable".

The common sources of variations are:

- Client directed changes
- Documentation errors and/or omissions
- Latent conditions

Whatever the source of the variation, it is important to maintain a close and progressive administration of the variations. It is the progressive value of variations, and how they add to the original contract value that will ultimately lead to decisions being made about the remaining scope of contract work. If the progressive value of variations is resulting in pressure on the available project budget, then decisions will need to be made about reducing contract scope or obtaining additional funding. Conversely, if the progressive value of variations is resulting in surplus project budget, then decisions can be made along the way about increasing project scope to better align with a Client Brief.

One of the most common frustrations for Clients is being confronted with a large claim for variations at the end of the project when the Contractor undertakes pricing of all the variations that have occurred during the course of the project. The ensuing period of administration and resolution of the variations is typically cumbersome and confrontational. To avoid this outcome, the provisions of the contract need to clearly address the incidence of variations and how they should be administered.

Elemental contract provisions should include:

- No variation work is to be undertaken by the Contractor without a written direction to proceed
- A direction to proceed is conditioned by the need to submit a detailed price for the variation within a designated time frame. This allows critical work to proceed and avoids the variation being "forgotten about" in terms of its pricing and subsequent valuation until the end of the project
- A designated time frame for assessment of the variation by the Client. This allows for a progressive administration of the variations and avoids the administration of the variations being left until the end of the project where "nasty" surprises for both parties to the contract may surface
- A direction to price the variation before proceeding with the work can be issued and this again avoids Contractors proceeding with work that is potentially non critical and price sensitive

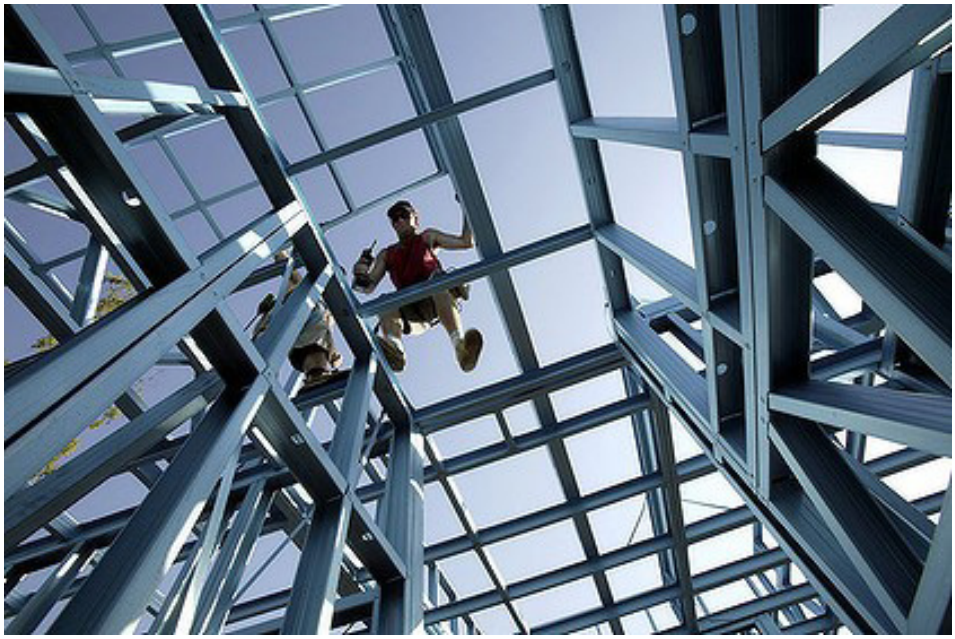
In complement with the above, a diligent and regular tracking of variations by way of meetings and production of schedules and registers by the Contractor and the Client will also aid in the management of variations. So, although variations may be inevitable, the value of the variations and the commensurate effect they have on projects can indeed be managed and controlled.

Mark Blizard
Director

‘EXPANSION OF COMPLYING DEVELOPMENT’

The introduction of the amending SEPP (Exempt & Complying Development Codes) has paved the way for more opportunity for building works and change-in-use proposals to be done without the need for prior DA consent from NSW Councils.

BLACKETT MAGUIRE+ GOLDSMITH



Amendments to the State Environmental Planning Policy (Exempt and Complying Development Codes) have come into effect from the 22nd February 2014. The new legislation only applies to applications for CDC that are made after the 22nd February 2014

Governed by a statutory determination time period of 10 or 20 days (depending on the type of development), the amending SEPP has introduced new complying development codes for commercial and industrial development, a new Fire Safety Code and two new Exempt Development codes.

The amending SEPP will repeal the existing exempt and complying development SEPP.

The amendments include:

- New Commercial & Industrial Alterations Code – This Code introduces the opportunity for internal alterations to most existing commercial and industrial buildings including clubs, hotels, residential aged care facilities and hospitals.
- New Commercial & Industrial (New Buildings & Additions) Code – This Code allows significant flexibility for development without DA consent including erection of new industrial buildings up to 20,000m2 in area and additions to existing industrial buildings up to 5,000m2.

The new change-of-use provisions allow for new uses that are of similar or lesser intensity to the original use. First-use of a new building can now also be done as complying development and hence by-pass the traditional first-use DA requirement.

The amending SEPP has also introduced more flexibility with site constraint circumstances, including opportunity to still undertake complying development on sites that are affected by heritage items, located in an environmentally sensitive area or land affected by easements.

Conditions for approval for complying developments have been revised and standardised so as to minimise impacts on the environment and prevent damage to adjoining areas during construction.

The introduction of the amending SEPP does also include a few additional red-tape hurdles that need to be addressed, including:-

- Introduction of a more stringent neighbour notification process
- Statutory triggers to require minor and major BCA compliance upgrades to existing buildings erected before 1993.

Not unlike most new legislation, the amending SEPP for Complying Development incorporates ‘fine-print’ provisions and requirements that need to be clearly understood by property owners, tenants and developers to ensure the issue of any CDC is permissible. For this reason businesses should consult the services of a suitably experienced building certifier or town planner to provide advice on restrictions imposed under the new Codes and the requirements of the relevant LEP in order to be sure that a development will be categorised as complying development before proceeding.

David Blackett
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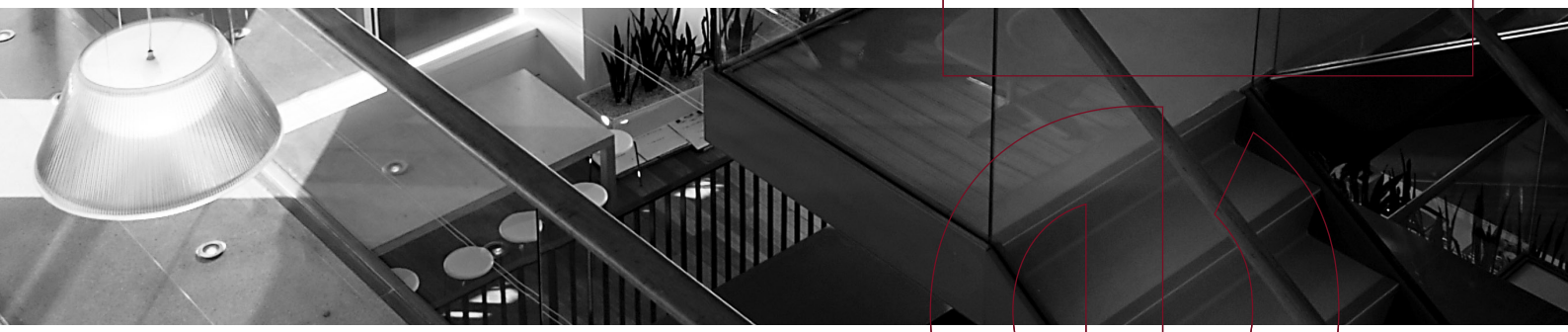

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