



NEWSLETTER

SPRING

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Cover image: Knox Grammar School Great Hall and Aquatic Centre (Recently completed project, managed by EPM). Photo by Pixelmod Productions.



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green building council australia
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NSW PLANNING REFORM - SHOULD I BE INVOLVED?

The short answer is YES. As many readers of this Newsletter would be aware the NSW Government has commenced a comprehensive review of the State's planning system which will no doubt have as its focus a review of the *Environmental Planning and Assessment Act 1979*.

Lawyers | **McCullough
Robertson**



In late July a forum was convened at a convention centre at Sydney Olympic Park chaired by the Hon Tim Moore and the Hon Ron Dyer. Both Mr Moore and Mr Dyer will co-chair the review of the planning system which is expected to take place over the next 18 months. The forum was addressed by the current Minister for planning the Hon Brad Hazzard who amongst other things said that *'the review will create a planning system that protects local communities from overdevelopment and conserves our environment.'*

Mr Hazzard has also stated publicly that the 18 month review period will consist of three discrete stages which are:

1. A 4 month listening and scoping stage.
2. Preparation of a Green Paper that is expected to, amongst other things, outline the basis of (presumably) the new legislative scheme. This is expected to take 6 months.

3. Preparation of a White Paper which the State Government expects will set out (hopefully in some detail!!) the draft legislation.

Apart from the stated aim of making the 'new planning system' more transparent presumably by making development applications and State Significant project applications subject to more detailed scrutiny by Council's, the Planning Assessment Commission and the Department of Planning and Infrastructure it is not clear what is likely to happen with local environmental plans, section 94 contributions and applications currently the subject of assessment under part 5 of the Act. It is absolutely essential that such matters must be addressed in the proposed Green Paper.

The Feedback Report produced by the Department of Planning notes that 41% of those who attended the Forum were from local councils and only 16% represented 'Industry

Groups'. Given the possible impacts, possible significant changes to the planning system could have on many of EPM's clients we strongly urge you to be participate in the review process or make sure your specific industry group keeps you informed of the progress of the review to ensure that you are aware of the *'principles and concepts which should form part of the new planning system'* otherwise it could be too late.

Patrick Holland
Partner

THE COST OF “COUNCILING”

Development Approval submissions are becoming more costly and time consuming with Councils requiring the cost of a development to be certified by a Quantity Surveyor.



Gone are the days where the applicant of a Development Approval submission determines the cost of the development. Fees for DA applications are based on the value of a development and Councils were concerned that applicants were understating total development costs in an attempt to reduce fees which in turn reduced the Council's revenue.

Subject to a nominated minimum value, most Councils in NSW now require a practicing Quantity Surveyor to validate the cost of developments being submitted for approval. This requirement is not only relevant to major commercial, industrial and residential applications but also relatively low value submissions.

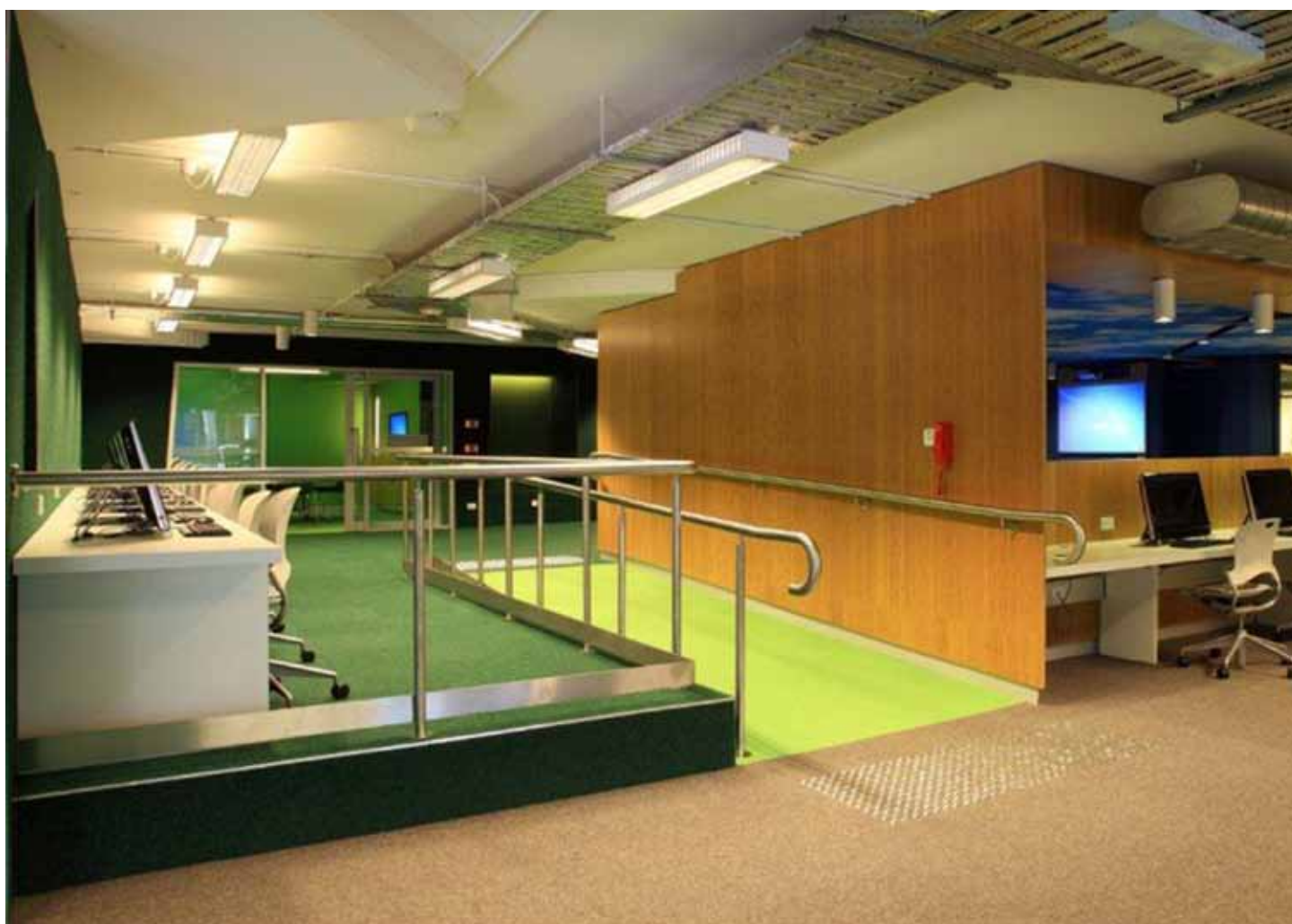
Quantity Surveyors are now finding an

increasing demand from residential owner/builders and small developers to provide a certified valuation. Previously a quote from a builder or an assessment from the Council would suffice but now professional advice is required.

Currently each Council has their own specific requirements which can be confusing for applicants. Some Councils only require a signed statement, others provide a form which asks for basic information whilst some require more detail. The Quantity Surveyor can guide the client appropriately.

David Noble

Director



OWNER BUILDER VS BUILDER

The decision to engage a Builder or to be the Builder is a complex debate – or is it?



Whether at a domestic or commercial level, this decision invariably confronts us at least once in our working lives.

The temptation to take on the role of the Builder for a project is typically driven by time and cost parameters. Consideration that the project will not take much time, and that there will be a cost saving by not paying for a Builder must be carefully evaluated.

Consider the following tick boxes when evaluating the decision to be the “Owner Builder”:

- Technical experience and ability
- Requirements for site establishment
- Equipment and tools required
- Insurance required
- Subcontractor network and availability
- Experience negotiating subcontract inclusions
- OH&S experience and obligations

- Environmental Management experience and obligations
- Subcontract administration and payment management
- Subcontract coordination
- Building Work required in connection with trades
- Coordination of As Built documentation
- Compilation of Operating and Maintenance Manuals
- Requirements for gaining of Occupation Certificate

All projects will absorb an inordinate amount of your time if the role of Owner Builder is assumed. Time has a value to us all and this must be valued against a project. Perhaps the debate is not as complex as it seems!!

Mark Blizzard
Director, Client Services.



A HARD ACT TO FOLLOW

DFP examines the challenges faced by the NSW Minister for Planning and Infrastructure in the review of NSW environmental planning legislation.



planning consultants

Over the next 18 months, the NSW State Government proposes to overhaul the current planning system inclusive of the Environmental Planning and Assessment Act 1979 (the Act) and associated environmental planning instruments. The proposal is the first significant review in 31 years and will involve the following 3 stages:

1. Listening and scoping stage – to identify the key outcomes and principles for a new planning system (expected to take 4 months);
2. Preparation of a Green Paper – outlining options in regard to the future planning system and the basis of a legislative scheme (expected to take 8 months);
3. Preparation of a White Paper – setting out the Government’s new framework for the NSW Planning System, including the draft legislation (expected to take 8 months).

The Department of Planning and Infrastructure acknowledges that the Act was originally designed to “better integrate

environmental concerns into land use planning and development control, more clearly define the role of State and local government, and increase community involvement in planning and assessment matters”.

Why is the review important? Primarily because industry participants have an opportunity to voice concerns, recommend change and improve the current prescriptive and cumbersome environmental planning legislation that is arguably more concerned about processes than outcomes.

The consultation process will allow for wide ranging discussion. Below are some initial ideas to generate thought:

- Consider if the aims for which the Act was originally designed are still relevant and if not, ensure that any new Objects clearly reflect stakeholder’s aspirations for effective environmental planning in NSW;
- Develop a whole new Act and supporting environmental planning instruments rather than just try to fix up what exists with an aim to simplify the process of achieving

appropriate development without the complex web of interacting Acts and SEPPs;

- Identify and focus on the key areas that require inclusion so that the Act can be less complicated. For example, by retaining an effective mechanism for development assessment (equivalent to Section 79C), and reducing the number of different classifications of development;
- Ensure that new LEP’s are standardised in accordance with the Standard Template LEP to avoid a range of amendments and/or additions that defeat the purpose of the standard instrument; and
- Ensure that strategic planning at local, regional and State levels is implemented in environmental planning instruments. DFP encourages invigorative input into the planning reform process because the outcome will affect all stakeholders and future projects in NSW.

John McFadden
Partner

WHEN TO ACT ON DEFECTS

NSW Court of Appeal indicates that no time can be wasted when making a claim for defects

Having finally completed a construction project, contemplating legal proceedings in respect of a defect or latent defect that emerges it's, no doubt, the last thing a building owner feels like doing. However it is a fundamental principle of civil litigation that once the cause of action arises "time begins to run", meaning that any legal proceedings must be brought within a specified period. How long that period is and when it starts depends on a number of different factors. Using the example of a claim for negligence causing a defect, a building owner has six years from when the damage arises to bring a claim. But when does damage "arise"?

The effect of the recent decision of the New South Wales Court of Appeal in *Cyril Smith & Associates Pty Limited v The Owners – Strata Plan No. 64970* [2011] NSWCA 181, is that having noticed something directly indicative of a defect, a building owner should not waste any time in investigating the defect, and if necessary, commencing proceedings.

The Cyril Smith & Associates case concerned water ingress. The Court held that where the caretaker of the Owners' Corporation

had observed water entering the building during storm events, that was sufficient to commence the statutory limitation period of six years running. It did not matter whether he or the Owners' Corporation understood the mechanism via which the water was entering (deficiently selected windows, amongst other things) all that was necessary was that the evidence of the defect, clearly linked to the defect itself, was manifest and observable. The Court sought to differentiate this factual scenario from something such as cracking caused by deficient footings, because such cracking could be caused by a number of different things not only deficient footings, i.e. the "direct link" to the defect is not clear enough to put the building owner on notice.

While a complex area of law, the case does highlight the importance of acting as soon as possible and seeking proper legal and building expert advice in respect of any suspected defects.

Helena Golovanoff
Partner

Kennedys

Legal advice in black and white



UPGRADE OF EXISTING EXITS

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) was introduced to facilitate consistency with Exempt and Complying Development throughout the State.

Codes SEPP requires internal alterations to comply with the Performance Requirements DP2-DP5 of the Building Code of Australia (BCA). These BCA provisions relate to safe movement within buildings, the provision of balustrades to prevent people falling, travel distances, provision and distribution of exits and the fire isolation of exits.

This requirement applies when the area of the subject works is greater than 500m² to bulky goods premises or commercial premises, or greater than 1000m² to light industry, warehouse or distribution centres.

The potential implications of the CDC application in this instance is that an existing exit system in a building that serves the area of the proposed new

works may need to be upgraded to comply with current BCA requirements.

For example, a fitout within the upper floors of an existing high-rise commercial building and involving an aggregate floor area greater than 500m², will potentially trigger the need for the CDC applicant to upgrade the entire exit system(s) throughout the high-rise building.

If the existing exits do not meet the current BCA Performance Requirements (outlined above), a CDC cannot legally be issued.

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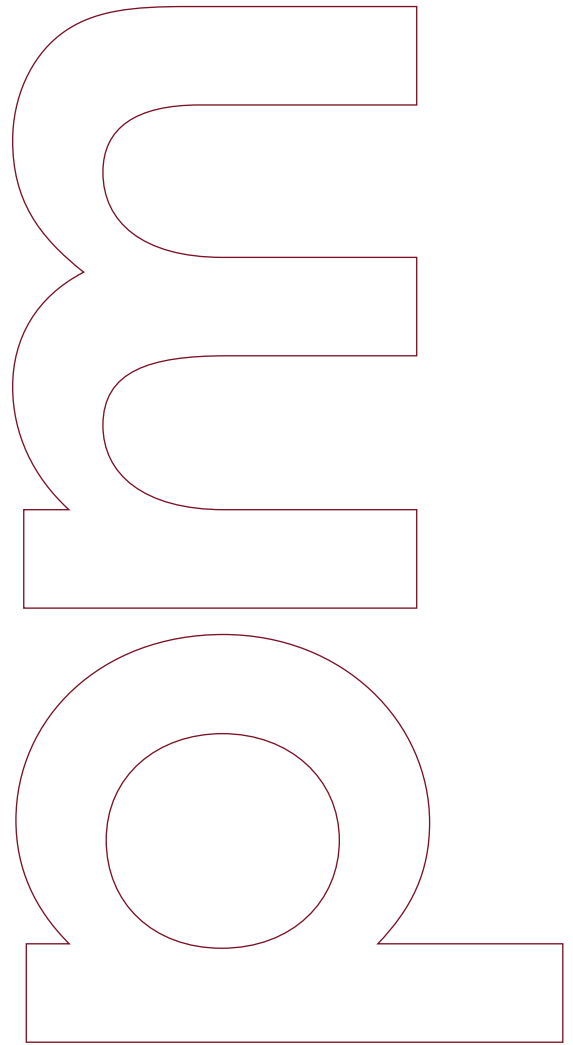
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