

NEWSLETTER

SPRING

2012

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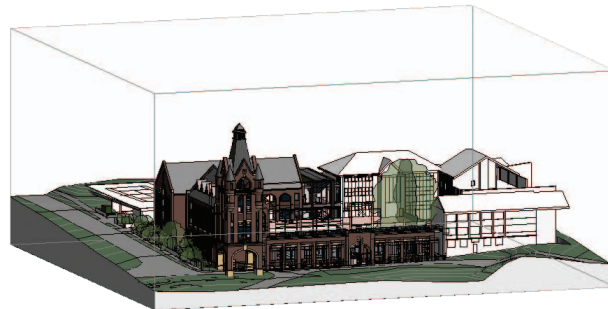
green building council australia
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GOING FORWARD WITH BIM

MDA's previous contribution to the epm newsletter overviewed how, through technology, quantity surveying has changed. We now look to the future with Building Information Modelling.



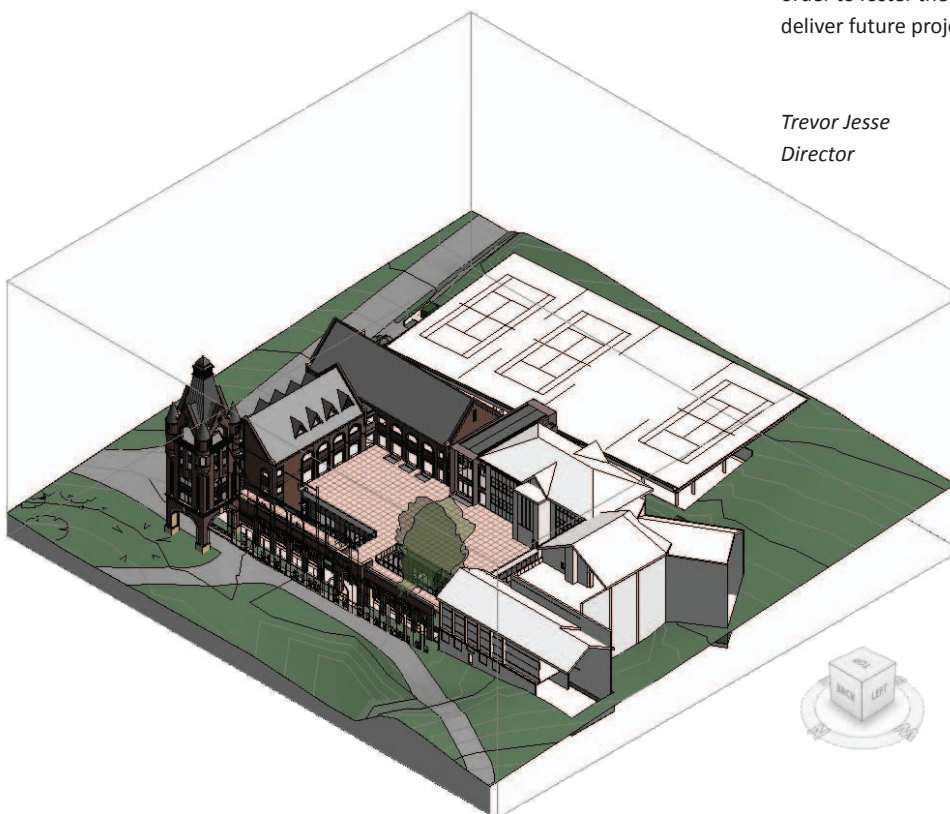
Building Information Modelling (BIM) offers a potentially transformational technology through its capability to provide a shared digital resource for all stakeholders in a building's life cycle and is particularly useful to the quantity surveyor during the design & construction phases. For the quantity surveyor it can provide a visual database of building components which can be used to provide accurate and automated quantification. However, BIM applications are still evolving and standard formats to organise and share building information are far from being fully established. Estimating for building projects traditionally starts with quantification; historically a labour intensive process of measuring components of a proposed building from plans and documentation which can require a significant amount of a quantity surveyor's time on a project. However, a quantity surveyor's value to the project is in their construction experience and knowledge rather than their ability to count or measure. With recent developments in BIM, the potential to reduce the time required to measure a building design is evident enabling the quantity surveyor to focus their time on higher value, project specific factors, such as generating pricing, value engineering and factoring risk etc.



During the design development of a project, objects in a BIM model need to be populated with sufficient data in a format that enables a BIM based estimating system to accurately classify the materials in accordance with the quantity surveyor's requirements. Populating the database is an inherent task of the design team as the model is developed. However, the design team is skilled in design and does not necessarily appreciate the requirements of the quantity surveyor. Consequently, the wealth of data made available by BIM does not easily translate into automated quantification often requiring some level of manipulation prior to being utilised in an estimate.

To reduce the extent of manipulation, there is a need for companies to develop 'BIM partners'; companies with whom they can build upon an already good working relationship and extend them through the BIM process. Where the design team builds up an understanding of the quantity surveyor's requirements in regards to the classification of data, they receive the benefit of more accurate and efficient estimates, thus accelerating the decision making process and reducing the extent of unproductive design. 'BIM partnering' will raise the knowledge of all participants by increasing the level of trust, sharing BIM findings and by identifying better ways to share the BIM's potential benefits in order to foster the team's ability to cost effectively deliver future projects using BIM.

*Trevor Jesse
Director*



Models by: Jones Sonter Architects.

THE NSW GOVERNMENT GREEN PAPER – BEWARE THE DEVIL IS IN THE DETAIL

On 14 July 2012, the NSW Minister for Planning, the Hon Brad Hazzard MP placed the long awaited Green Paper for the 'New Planning System for NSW' on public exhibition. The NSW Government is now seeking community and industry feedback on the Green Paper.

Lawyers | **McCullough
Robertson**

The Green Paper provides a broad policy outline for reforms to the current planning and development approval system in NSW by proposing comprehensive changes to the State's planning laws. In effect it is likely that the Environmental Planning and Assessment Act 1979 (**EP&A Act**) will be repealed and replaced by the Sustainable Planning Act which, according to the Green Paper will promote a far more streamlined and efficient planning and development approval process.

According to the Green Paper the existing EP&A Act focuses heavily on the process rather than outcomes that users of the planning system are seeking to achieve. The Green Paper proposes a significant shift to a more strategic and flexible performance based system that facilitates economic growth and upfront community participation.

The reforms proposed in the Green Paper will be based around five fundamental areas: community participation, strategic focus, streamlined approvals, provision for infrastructure and delivery culture.

Overview of implications for property developers

Key aspects of the proposed reforms for property development in NSW include:

(a) The planning system will be underpinned by four levels of strategic plans being NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans, Local Land Use Plans as well as uniform zoning and land use definitions across the State. 152 Local Land Use Plans will replace the current 300+ Local Environmental Plans and thousands of Development Control Plans, and are intended to ensure that local planning is consistent with the agreed direction set at the regional and subregional levels. Environmental groups, stakeholders and industry will be consulted in the preparation of strategic plans at all levels;

(b) 10-12 *NSW Planning Policies* will replace the multitude of existing *State Environmental Planning Policies* and *Section 117 Directions*. These Planning Policies will articulate the NSW Government's policy direction and position on major planning issues including housing supply and affordability, employment, retail development, regional development and infrastructure;

(c) Community participation will be encouraged at the strategic planning stage with the aim of streamlining developments at the development application stage;

(d) The Green Paper proposes the establishment of a *Public Participation Charter* to set standards of

community participation depending upon the planning issue under consideration, including benchmark minimal requirements that encourage best practice, transparency and innovation;

(e) No concurrence or referrals will be required at the development application stage as agency requirements will be incorporated at the strategic planning stage;

(f) Three new land use zones are proposed to be included in Local Land Use Plans including a 'suburban character zone', an 'enterprise zone' and a 'future urban release area' zone;

(g) Any matter or aspect of a project that has been adequately dealt with at another stage of the approval process will not be reassessed;

(h) It is proposed that each Council publish 'standard' development consent conditions on their website to give applicants more certainty as to the types of conditions that are likely to be included in any approval;

(i) A new process is proposed to be introduced for 'partially complying development' so that any aspects of a proposed development that comply with the controls in the Local Land Use Plans will be approved by the accredited certifier as 'code assessable development' (similar to the current complying development regime) while any non-complying aspects of the same development will be assessed as merit assessable development (with no requirement for community consultation). Non-compliance with the controls in Local Land Use Plans will not be construed as a prohibition to development;

(j) Current provisions in relation to State Significant Development and State Significant Infrastructure will be retained, however two new categories of development have been recommended to be added to the categories of state significant development being '*Projects of a retail and/or commercial nature of a project value of \$75 million and over*' and '*Residential developments with a planned yield of 500 dwellings or more (including staged development underpinned by concept plans or master planning to such an anticipated yield)*';

(k) Targets will be set for timeframes for different types of assessment and the achievement of these targets will be monitored and reported;

(l) Development applications will continue to be

A NEW PLANNING
SYSTEM FOR NSW
GREEN PAPER

Have your say ►

determined by Councils, except those with regional significance which will continue to be determined by Joint Regional Planning Panels. Councils will be encouraged to establish independent expert panels to decide on the development applications currently determined by elected local politicians (councillors);

(m) The Green Paper recommends the phasing out of *Voluntary Planning Agreements* or that they be significantly modernised and simplified. A new system for infrastructure contributions has also been proposed which will aim to make the system fairer, more affordable and less complex, and have greater accountability on how the contributions are spent; and

(n) All current review and appeal provisions in the EP&A Act will be retained.

Making a Submission

The Green Paper has been released for community and industry feedback for a period of two months. The closing date for submissions is **Friday 14 September 2012**.

Once the Government has received and considered the feedback from the community, a White Paper and Exposure Bill will be released, providing much more detail on how the new system will be implemented. The Government encourages feedback on the Green Paper through online forums, written submissions and face-to-face workshops.

Please contact Patrick Holland, Samantha Daly or Danielle LeBreton at McCullough Robertson if you would like assistance in preparing a written submission in response to the Green Paper.

Patrick Holland
Partner

MAKING AN INFORMED CHOICE

Choosing a financially sound Contractor is not always easy!



There is much attention in the Market currently on the competitive nature of Principal Contractors. The Market is trying to support a high number of Contractors yet is only supplying a relatively low number of projects. While this is allowing for very competitive pricing, it is also putting pressure on the successful financial outcome for the Contractor.

In the last financial year, there were a number of reputable and long standing Principal Contractors that are no longer trading due to current market forces. As a consequence, the selection criteria for clients to apply on a Principal Contractor will necessarily require a focus on its short and long term financial position.

Amongst other criteria, the evaluation of a Principal Contractor has always included an

assessment of its financial position. This would generally encompass an overview of its current financial position which would include financial statements, current and future work load, and client mix. This assessment now requires further evaluation in order to best understand its financial capacity and stability.

To this end, the engagement of professional organisations that specialise in the financial assessment of businesses is now considered a necessary part of the evaluation process. These organisations undertake an assessment that provides a view on key aspects of financial operations including:

- Financial Statements
- Working Capital
- Current Ratio

- Current and Future Sales
- Assets and Liabilities
- Debtors list
- Creditor Management
- Legal Actions

Although this additional level of screening may not remove all financial risk associated with engaging a Principal Contractor, it will provide a more in depth understanding of its financial position. Thereby, a more informed decision on the financial capacity of the Principal Contractor to deliver a Project is likely.

Mark Blizard
Director

Balance Sheet

	as at 30-Jun-2008	as at 30-Sep-2008
Sources of Funds :		
Capital Account	55,00,000.00	55,00,000.00
Balasubramanian's Share Capital A/c	7,13,000.00	7,13,000.00
Kavitha's Share Capital A/c	2,76,500.00	2,76,500.00
Mohan's Share Capital A/c	15,00,000.00	15,00,000.00
Priya Ganesh's Share Capital A/c	5,65,500.00	5,65,500.00
Sathish's Share Capital A/c	14,00,000.00	14,00,000.00
Suresh's Share Capital A/c	4,75,500.00	4,75,500.00
Vijayakumar's Share Capital A/c	5,69,500.00	5,69,500.00
Loans (Liability)	5,57,277.46	4,93,643.65
Unsecured Loans	5,42,407.46	4,89,543.65
HDFC Silver Credit Card	14,870.00	4,100.00
Current Liabilities	52,26,280.47	67,07,388.50
Duties & Taxes	(3,84,388.63)	(3,21,038.83)
Provisions		
Sundry Creditors	54,36,342.00	67,60,047.50
ESI Payable	210.00	210.00
Interest on Car Loan A/c	1,74,117.10	1,68,169.93
Salary Payable		
Profit & Loss A/c	8,92,288.48	16,66,069.42
Opening Balance		8,92,288.48
Current Period	8,92,288.48	7,73,780.94
Unadjusted Forex Gain/Loss		
Total	1,21,75,846.41	1,43,67,101.67
Application of Funds :		
Fixed Assets	25,21,191.88	40,46,191.88
Accumulated Depreciation on Fixed Assets		
Land & Building	4,00,000.00	14,00,000.00
Plant & Machinery	10,00,000.00	15,25,000.00
Airconditioner		
Computers & Peripherals	90,460.00	90,460.00
Furniture & Fixtures	1,25,000.00	1,25,000.00
Motor Car - Hyundai GLX	9,05,731.88	9,05,731.88
Investments		5,00,000.00
Investments		5,00,000.00
Current Assets	96,54,654.53	98,20,909.79
Closing Stock	31,57,971.91	24,22,573.41
Loans & Advances (Asset)	7,00,000.00	16,00,000.00
Sundry Debtors	26,46,643.75	30,30,023.75
Cash-in-hand	3,44,758.00	6,73,990.00
Bank Accounts	28,05,080.87	20,94,322.63
Advance Tax		
Total	1,21,75,846.41	1,43,67,101.67

	YEAR 1	YEAR 2	YEAR 3
REVENUE			
Total Sales	426,000	821,000	1,215,000
GROSS REVENUE	426,000	821,000	1,215,000
COST OF GOODS SOLD			
Cost of Goods Sold	85,200	164,200	243,000
Total Cost of Goods Sold	85,200	164,200	243,000
GROSS MARGIN	340,800	656,800	972,000
% of Net Revenue	80%	80%	80%
SALES, GENERAL & ADMIN EXPENSES			
MARKETING			
Sales and Marketing	50,000	50,000	50,000
Total Sales & Marketing	50,000	50,000	50,000
% of Net Sales	12%	6%	4%
OTHER S.G&A EXPENSE			
Administration	225,180	407,585	639,760
Total Other Expenses	225,180	407,585	639,760
TOTAL S,G&A EXPENSES	275,180	457,585	689,760
% of Net Revenue	64.60%	55.74%	56.77%
EBITDA	65,620	199,215	282,240
	15.4%	24.3%	23.2%
Depreciation	33,000	66,000	99,000
Interest	5,000	10,000	15,000
Total Depreciation & Interest	38,000	76,000	114,000
NET PROFIT (LOSS)	27,620	123,215	168,240
	6.5%	15.0%	13.8%

“DEVELOPMENT AIN’T DEVELOPMENT”

Despite being one of the most important definitions guiding town planning in New South Wales, “Development” is still very much open to interpretation. DFP outlines the reasons why:

A prudent check that should be undertaken prior to proceeding with any due diligence investigation or the preparation of a development application (DA) for submission to a consent authority is to ensure that a development proposal constitutes “development” as per Section 4 of the Environmental Planning and Assessment Act (EP&A Act) 1979.

According to Section 4 of the EP&A Act 1979, “development” means:

- “(a) the use of land, and*
- (b) the subdivision of land, and*

(c) the erection of a building, and
(d) the carrying out of a work, and
(e) the demolition of a building or work, and
(f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument, but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.”

If Section 4 of the EP&A Act 1979 is to be strictly interpreted, there would be a possibility that not many proposals would constitute “development” as each category (a)-(f) (inclusive) would need



planning consultants

to be relevant. Irrespective of any case law or established practice to the contrary, there is no mistaking how the current definition of “development” within the EP&A Act 1979 actually reads.

For example, a DA may only relate to subdivision and not the erection of any buildings. Alternatively for example, a DA may pertain to the demolition of an existing building, but not the use of the land. They are each forms of development *per se*, yet when having regard to the current definition, there is too much ambiguity that could easily be avoided.

To overcome this problem, the definition of “development” in Section 4 of the EP&A Act 1979, could be amended by replacing the word “and” with “or” at the end of each category as follows:

- (a) the use of land, or*
 - (b) the subdivision of land, or*
 - (c) the erection of a building, or*
 - (d) the carrying out of a work, or*
 - (e) the demolition of a building or work, or*
 - (f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument, or*
 - (g) any combination of (a) to (f),*
- but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.*

The NSW Planning System is currently under review as noted from the well publicised “Green Paper” (refer to website: www.planning.nsw.gov.au/a-new-planning-system-for-nsw) and therefore, suggestions such as those considered above together with a whole range of other amendments are likely to be considered in the new planning legislation being introduced by the NSW Government.

John McFadden
Partner



SOLE OCCUPANCY UNIT...OR NOT?

A 'sole occupancy unit' relates to an area within a building for the exclusive use of the occupier. Specific requirements of the BCA often relate to individual SOUs. For Class 3 developments in particular hotel complexes and student accommodation facilities, it is important to ensure the actual boundaries of an SOU are determined.



The BCA defines a SOU to mean:-

"a room or other part of a building for occupation by one or joint owner, lessee, tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier and includes:

- a) a dwelling; or*
- b) a room or suite of rooms in a Class 3 building which includes sleeping facilities; or*
- c) a room or suite of associated rooms in a Class 5, 6, 7, 8 or 9 building; or*
- d) a room or suite of associated rooms in a Class 9c aged care building, which includes sleeping facilities and any area for the exclusive use of a resident"*

In Class 3 hotel buildings, the design of the

SOU can often include dual-key rooms. In Class 3 student accommodation buildings, the SOUs may consist of any number of separate student bedrooms within an apartment.

Both these design scenarios may be considered in conflict with the definition of a SOU for the purposes of BCA and hence can result in significant compliance implications with respect to fire & life safety, accessibility, acoustics, health & amenity and energy efficiency.

In this regard the definition of a SOU, in particular that part pertaining to *the exclusion of any other*, must be clearly understood. To consider a *suite of associated rooms* for example, as a single SOU, as is often the case in a multiple-bedroom

apartment of a Class 3 student accommodation facility, it may necessary for each and every part of the apartment, including each bedroom, to be available for exclusive access of each occupant. Otherwise it may be necessary to consider each bedroom as the SOU which can have significant compliance implications for other BCA matters.

To obviate any adverse design and or compliance implications in this regard for a Class 3 development, it is recommended that advice from an appropriate BCA consultant be obtained in the early design stages.

David Blakett
Company Director



The Broomgrove Apartments
6 Bedroom Flats



THE WHOLE CONTRACT

Construction industry contracts typically incorporate many different documents. Neglect while preparing any one of these can be costly.

Kennedys

Legal advice in black and white

I'm sure that when I say to my clients "this contract is only as good as the specification you stick on the back of it" they think that I am engaging in one of those well known lawyer-type-derriere-covering exercises. The reality is that the most robust and well drafted terms and conditions aren't going to get you very far if the description of the subject matter of the contract is wanting.

A fundamental principle of contract law is that the contract or agreement must be certain. With this in mind, if there is conflict in the documents that describe the project or ambiguity as to what is to be done, then this fundamental principle can be shaken with negative consequences for all involved.

In most contracts connected with construction projects the documents forming the specification are numerous and complex. Even a small fit-out project can involve documents produced by a number of different people or organisations. For example, installation of a proprietary wall paneling system may involve the input of the architect/interior designer, structural engineer and manufacturer.

Most contract terms require that the works are constructed in accordance with the contract documents – one part of which may be the specification. If the specification is internally inconsistent or in the case of our wall paneling example, fails to call up the manufacturer's requirements or conflicts with

other specifications it can be difficult and costly to resolve (and in this case leave the principal without a manufacturer's warranty).

While provision is usually made in contracts to resolve conflicts between the documents, application of these clauses can yield a result different from that the principal wants and be costly to more than one party.

The necessity for certainty in contracts is one of the many reasons why thorough well co-ordinated design documentation is just as important as clear and appropriate contract terms.

Helena Golovanoff
Partner



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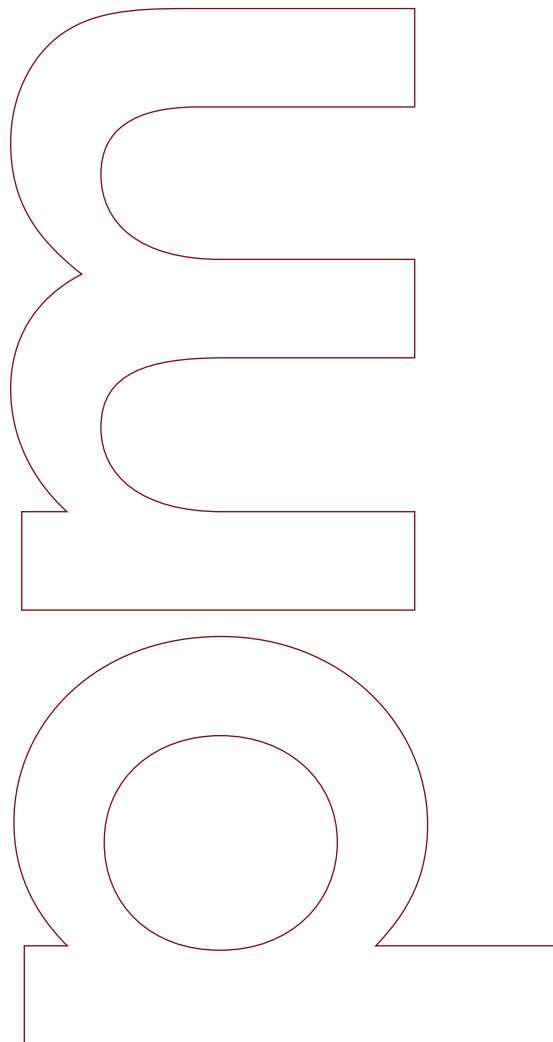
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