

# NEWSLETTER

## SUMMER

# 2011

Cover image: Northern Beaches Christian School Community Sports Centre (Recently completed project, managed by EPM). Photo by Simon Wood Photography



### This Edition

- ESD – 'Prescriptive or Performance'.
- That 'Sinking' Feeling.
- Notices of Delay.
- No Secret to Success.
- Who do you think you are dealing with?
- Planning Law Review.



green building council australia  
MEMBER 2010-2011

# ESD – ‘PRESCRIPTIVE OR PERFORMANCE’.

The BCA offers two options to achieve compliance with Section J (Energy Efficiency) for Class 3-9 buildings:

- (1) DTS Provisions, or
- (2) Performance Requirement JV3



There are several reasons why a JV3 Alternative Solution might be proposed instead of a DTS solution under the BCA. DTS provisions are generally prescriptive and inflexible requirements which do not necessarily take into account individual project design objectives or innovative design approaches and, in many situations, prevents architects and clients from achieving their intended design both aesthetically and technically.

When a BCA Section J Alternative Solution is proposed the designer has many options to trade-off between various energy efficiency provisions and building elements to alleviate the requirements of a preferred design area by substituting its performance with other design elements which can contribute to the overall energy efficiency of the building.

BCA Section J Alternative Verification Method JV3 ('Verification Using a Reference Building'), permits the use of building energy simulation software to estimate the energy consumption of a building design. This is the most appropriate method to use if a development proposes

innovative design or the use of renewable, on-site energy production facilities like solar, wind and geothermal energy generators to satisfy the performance requirements of the BCA.

The underlining objective of JV3 is to demonstrate that an alternative solution is equivalent to, or better than, the DTS provisions of the BCA, for a building design that is 'outside-the-square' of the BCA DTS parameters.

The process of performing a BCA Section J Alternative Solution (JV3) using building energy modelling software is summarised below:

1. An appropriate building energy analysis software must be selected for the BCA Section J Alternative Solution JV3 using a 'Reference Building' method.
2. Determine the annual energy consumption allowance by modelling the Reference Building, i.e. a DTS complying building based on the criteria in JV3(b).
3. Calculate the theoretical annual energy consumption of the proposed alternative

solution, using the criteria in Specification JV.

4. Calculate the theoretical annual energy consumption of the proposed Alternative Solution, using the operational criteria in Specification JV, with the services modelled as if they were the same as the reference building.
5. Compare the theoretical annual energy consumption calculated in steps 3 & 4 above to the annual energy consumption allowance calculated in step 2 to ensure that in both cases, the annual energy consumption is not more than that allowed.

The results of the above process are then introduced as a BCA Section J Alternative Solution Report to demonstrate compliance with the performance requirements of the BCA Section J.

*David Blakett*  
Company Director





# THAT 'SINKING' FEELING

A properly managed sinking fund for strata properties with multiple owners is essential for maintaining a property and controlling costs.



The establishment and management of a sinking fund is a legislated requirement for strata scheme properties that comprise of more than two individual lots.

The purpose of a sinking fund is to ensure that areas of common property under the control of the Owners Corporation have sufficient funds put aside for short and long term capital expense items.

All strata schemes are required by law to have a 10 year sinking fund plan in place. The sinking fund needs to be administered as follows:

- No minimum balance required
- Funds can be transferred from the administration fund only as a loan

Owners Corporations can self-manage a plan or engage an expert such as a Quantity Surveyor. Subject to the number of strata lots, property age and level of detail required, a sinking fund can be a simple spreadsheet or a detailed computer generated table that utilises formulas and data to determine future costs.

- Reviewed every year
- Updated every 5 years
- Replaced every 10 years
- Contributions determined by the owners

David Noble  
Director

## Sinking Fund

Ref	Description	Life Years	Last Time Replaced	Years till Replacement	Year of Replacement	Cost Last Time Replaced	Forecast Replacement Cost @ 3.5%	Account Balance (2009)	2010	2011	2012	2013	2014
<b>1.00</b>	<b>Internal Elements</b>												
1.01	Carpet (L1)	13	1999	2	2012	\$5,284 F	\$7,500	\$2,400	\$1,498	\$1,498	\$1,498	\$661	\$661
1.02	Carpet (Balance)	13	1999	2	2012	\$42,277 F	\$59,600	\$19,100	\$11,892	\$11,892	\$11,892	\$5,262	\$5,262
1.03	Tiling (foyer, terrace, balconies)	30	1999	19	2029	\$110,000 F	\$278,500	\$23,800	\$6,513	\$6,513	\$6,513	\$6,513	\$6,513
1.04	Doors	20	1999	9	2019	\$79,000 F	\$141,800	\$24,340	\$8,122	\$8,122	\$8,122	\$8,122	\$8,122
1.05	Painting	13	1999	2	2012	\$55,614 F	\$78,400	\$25,130	\$15,641	\$15,641	\$15,641	\$6,921	\$6,921
1.06	Entrance Mats	13	1999	2	2012	\$2,500 F	\$3,500	\$1,120	\$699	\$699	\$699	\$311	\$311
1.07	Timber Dado Rails	20	1999	9	2019	\$17,500 F	\$31,400	\$5,390	\$1,798	\$1,798	\$1,798	\$1,798	\$1,798
1.08	Lift Surrounds	20	1999	9	2019	\$5,000 F	\$9,000	\$1,550	\$515	\$515	\$515	\$515	\$515
1.09	Handrails and Balustrades	30	1999	19	2029	\$18,000 F	\$45,600	\$3,900	\$1,066	\$1,066	\$1,066	\$1,066	\$1,066
1.10	Car Park Line Marking	4	2006	0	2010	\$2,168 F	\$2,900	\$960	\$1,892	\$766	\$766	\$766	\$766
<b>1.11</b>	<b>Total - Internal Elements</b>							<b>\$107,690</b>	<b>\$49,636</b>	<b>\$48,509</b>	<b>\$48,509</b>	<b>\$31,934</b>	<b>\$31,934</b>
<b>2.00</b>	<b>External Elements</b>												
2.01	Colourbond Roofing	25	1999	14	2024	\$111,000 F	\$236,600	\$28,140	\$8,254	\$8,254	\$8,254	\$8,254	\$8,254
2.02	Roof Membrane	15	1999	4	2014	\$103,000 F	\$155,600	\$40,940	\$18,704	\$18,704	\$18,704	\$18,704	\$18,704
2.03	Guttering and Downpipes	15	1999	4	2014	\$21,700 F	\$32,800	\$8,630	\$3,943	\$3,943	\$3,943	\$3,943	\$3,943
2.04	Awning Soffits	15	1999	4	2014	\$11,340 F	\$17,100	\$4,500	\$2,055	\$2,055	\$2,055	\$2,055	\$2,055
2.05	Painting (East)	13	1999	2	2012	\$92,857 F	\$131,000	\$41,980	\$26,139	\$26,139	\$26,139	\$11,568	\$11,568
2.06	Painting (North)	13	1999	3	2013	\$92,857 F	\$131,000	\$36,810	\$20,013	\$20,013	\$20,013	\$20,013	\$11,568
2.07	Painting (West)	13	1999	4	2014	\$92,857 F	\$131,000	\$31,870	\$16,347	\$16,347	\$16,347	\$16,347	\$16,347
2.08	Painting (South)	13	1999	5	2015	\$46,429 F	\$65,500	\$13,590	\$6,952	\$6,952	\$6,952	\$6,952	\$6,952
2.09	Windows	25	1999	14	2024	\$412,000 F	\$878,200	\$104,460	\$30,634	\$30,634	\$30,634	\$30,634	\$30,634
2.10	Aluminium Louvre Panels	15	1999	4	2014	\$24,992 F	\$37,800	\$9,940	\$4,545	\$4,545	\$4,545	\$4,545	\$4,545
2.11	Roller Grilles	15	1999	4	2014	\$13,500 F	\$20,400	\$5,370	\$2,452	\$2,452	\$2,452	\$2,452	\$2,452
2.12	Motors to Garage Doors	15	1999	4	2014	\$1,650 F	\$2,500	\$660	\$300	\$300	\$300	\$300	\$300
2.13	Balcony Railings	25	1999	14	2024	\$120,000 F	\$255,800	\$30,430	\$8,923	\$8,923	\$8,923	\$8,923	\$8,923
2.14	Façade Mouldings	20	2003	13	2023	\$192,000 F	\$395,400	\$36,710	\$16,466	\$16,466	\$16,466	\$16,466	\$16,466

# NOTICES OF DELAY

Why receiving a notice from your contractor isn't always a bad thing.



Construction projects are more often than not, delayed. Construction contracts will typically require a Contractor to formally notify the Principal as soon as reasonably possible if delays occur, and to advise of the implications.

A contractor is also typically required to issue this 'Notice of Delay' to the Principal in order to maintain an entitlement to make a claim for an 'Extension of Time', or for costs.

It is not uncommon to find that Contractor's choose not to issue a Notice of Delay from concern the Principal will perceive this as adversarial. Similarly, most Principals tend not to welcome receipt of a notice - they presume that

the Contractor is trying to 'wriggle their way out' of completing the project in time.

However, the delay notice is in fact the primary means by which the Principal is kept informed of obstacles that will impede progress. Contractor's do not have control of every aspect of a project (far from it), and by advising of an issue as soon as possible, the Principal may find ways to address the issue, and mitigate delay.

*Johan O'Brien*  
*Associate Director*



Northern Beaches Christian School Community Sports Centre (Recently completed project, managed by EPM). Photo by Simon Wood Photography

# NO SECRET TO SUCCESS

From concept to completion, projects require careful planning in order to ensure that they become a success rather than a failure.



## The basics:

Whilst often overlooked or given insufficient attention, it is important to get the basics right from the outset of a proposal, particularly having regard to the evolving nature of planning legislation. This involves answering questions as part of a preliminary planning feasibility such as:

What does the proposal involve? Is development consent required? What legislation applies? Is the proposal permissible or prohibited? Is rezoning appropriate? What are the associated benefits of pursuing complying development over a development application? Is the proposal exempt? Is the proposal Integrated or Designated Development or does it fall under State Significant Development/Infrastructure provisions contained within the Environmental Planning and Assessment Act (EP&A Act) 1979?

## Detailed analysis:

Once the basics are established, a solid platform is created from which to launch the detailed planning analysis of a project. This involves answering questions such as:

Does the proposal comply with the objectives of the zone and relevant prescriptive standards? Can numerical variations be supported and if so, what are the prospects of success? What are the constraints and impacts? What are the prospects for success through the NSW Land and Environment Court if the project is refused by the relevant determining authority? How long is the assessment likely to take? What information is required to accompany lodgement of the proposal? How will post-lodgement tasks be monitored to achieve the best outcome? What other specialist consultants will need



planning consultants

to contribute? This list of questions is not exhaustive, but simply indicates that detailed analysis is essential.

It is widely recognised that planning instruments cannot purport to be a perfect fit for each and every site, hence the need for a merit based approach and in some instances, rezoning. Detailed analysis should reveal these opportunities. If a project is unique or located on a site with potential that extends over and beyond the current zoning, it is important to get the basics right and undertake a detailed site and local context analysis.

## Implementation

The implementation of a project can involve both strategic and statutory planning and it is well known that 'a plan is worthless unless it is implemented'. Most projects can be thought of as assisting with the implementation of plans (eg LEPs, DCPS) that have been adopted by a consent authority, yet plans are meant to be a reflection of community values and therefore, they can and do change over time. Determine how the proposal is able to satisfy the Objects contained within Section 5 of the EP&A Act 1979 as well as the aims and objectives of the zone and the environmental planning instruments that apply to the development site. Community consultation is also an important aspect of achieving a successful outcome with a project.

The pre-requisites for a successful project may not necessarily be a secret, but by asking pertinent questions and seeking prudent answers, the result is likely to be an improved outcome from every perspective.

*John McFadden*  
Partner



# WHO DO YOU THINK YOU ARE DEALING WITH?

Simple errors when entering a contract can be costly

It is not much fun having to tell a client who has suffered loss at the hands of another that the “other” the client thought they had contracted with doesn’t exist, never existed and/or does not match the entity covered by the insurance policy it was thought may offer some cover. This happens more than you might think.

The little details about who or what you are contracting with are easily overlooked. However the consequences of getting this wrong (be it your details or those of the other side), can be a total inability to recover any damages or unpaid fees should things turn bad.

It is necessary to properly identify the legal entity through which the other party conducts its business for the purposes of your contract. There is a variety of different legal arrangements through which people conduct business including:

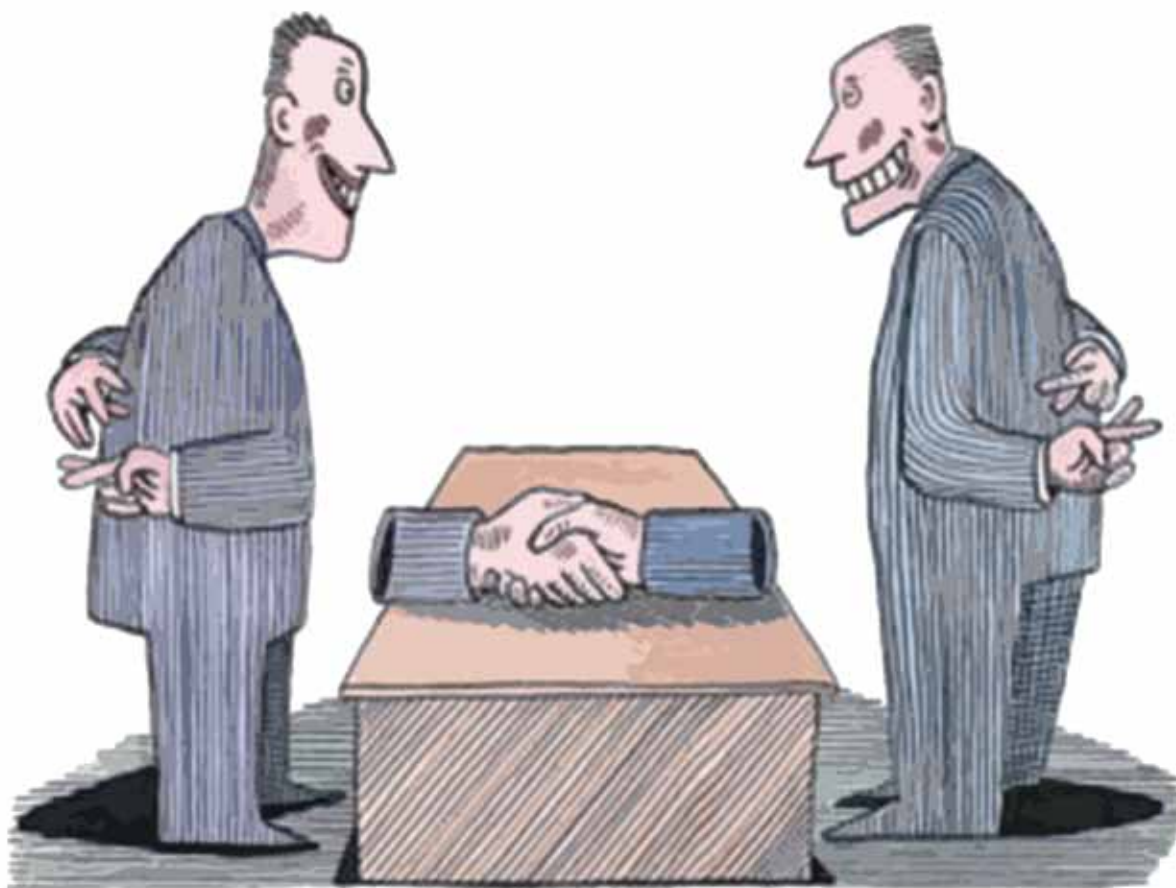
1. an individual trading in their own name or under a registered business name;
2. a company, which can take a variety of forms ranging from a sole director/shareholder arrangement up to a large publicly listed company; and
3. two or more individuals or companies conducting business as a partnership.

It is worth taking the time to understand the entity you are contracting with and checking that the details recorded in the contract for both sides are correct and correlate with important secondary documents such as certificates of insurance.

*Helena Golovanoff*  
*Partner*

## Kennedys

Legal advice in black and white



# PLANNING LAW REVIEW

We cannot stress the importance of ‘keeping a close eye’ on the review of the State’s Planning Laws currently being overseen by the Hon Tim Moore and the Hon Ron Dyer.

Lawyers | **McCullough  
Robertson**



Over the past few months the Review Team led by Messrs Moore and Dyer have toured the State participating in a series of forums designed to hear from as many stakeholders as possible and to also inform everyone about the review process. One of the principal aims of this first phase of the review process was to encourage anyone to make submissions in relation to what has been referred to as the Listening & Scoping phase of the Review. The due date for submissions closed on 4 November 2011.

If you have not made a submission we strongly urge you to visit the Review Team website [www.planningreview.nsw.gov.au](http://www.planningreview.nsw.gov.au) to review all submissions which have been made. Whilst a number of submissions have been made one very detailed submission which we strongly recommend EPM’s clients review has been made by the Urban Taskforce.

The entire review process is expected to continue for at least another 18 months which

presents a great opportunity for anyone interested in improving the planning system in NSW.

On a separate but related matter the notorious Part 3A of the Environmental Planning and Assessment Act 1979 was repealed on 1 October 2011. The new system provides for State Significant Development which may be approved by the Minister for Planning and Infrastructure. In effect little has changed. However as we predicted in a previous newsletter it is likely the Minister may determine that many State Significant Projects will either be approved or reviewed by the Planning and Assessment Commission (PAC). It is too early to predict whether the PAC approval process will be a more efficient process than approval by the Minister following recommendations from the Department of Planning and Infrastructure.

*Patrick Holland  
Partner*



# Contact us

**WEBSITE** [www.epmprojects.com.au](http://www.epmprojects.com.au)

## SYDNEY OFFICE

PO Box 124  
Suite 2, Level 5, 655 Pacific Highway  
ST LEONARDS NSW 2065  
Phone: (612) 9452 8300  
Facsimile: (612) 9452 8388

## MELBOURNE OFFICE

68 - 72 York Street  
SOUTH MELBOURNE VIC 3205  
Phone: (613) 9694 4418  
Facsimile: (613) 9699 7249

## KEY CONTACTS

### Andrew Graham

Managing Director  
Mobile: 0419 732 021  
Email: [agraham@epmprojects.com.au](mailto:agraham@epmprojects.com.au)

### Mark Blizard

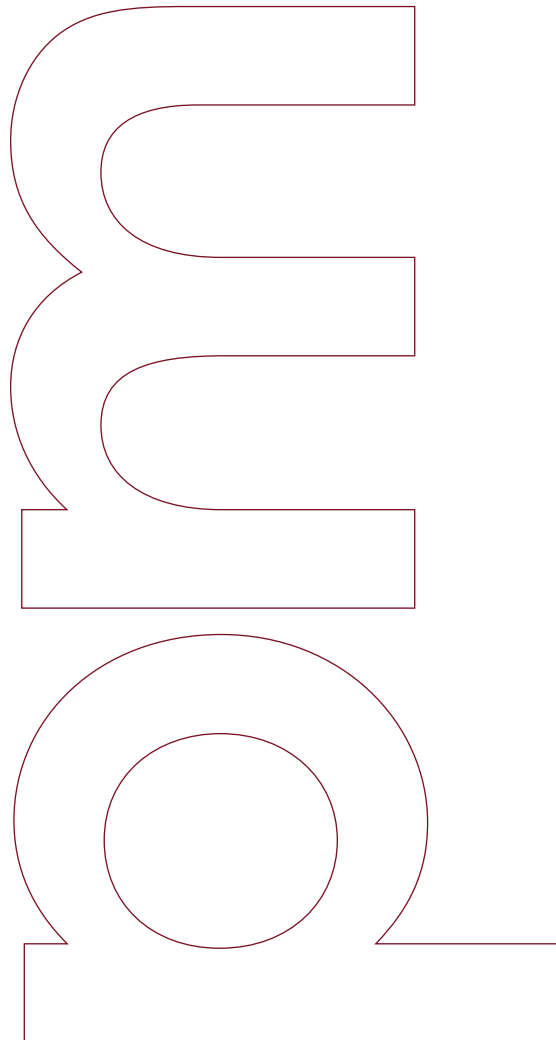
Director, Client Services  
Mobile: 0438 126 778  
Email: [mbizard@epmprojects.com.au](mailto:mbizard@epmprojects.com.au)

### Stephen Welsh

Director, Operations  
Mobile: 0417 307 860  
Email: [swelsh@epmprojects.com.au](mailto:swelsh@epmprojects.com.au)

### Johan O'Brien

Associate Director  
Mobile: 0414 917 904  
Email: [jobrien@epmprojects.com.au](mailto:jobrien@epmprojects.com.au)



## Acknowledgements

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



Patrick Holland  
Partner

### Environmental Planning Law

McCulloch Robertson  
Level 11, 6-10, O'Connell Street  
Sydney NSW 2000  
Ph: (02) 9270 8610  
Fax: (02) 9270 8699  
Email: [PHolland@mccullough.com.au](mailto:PHolland@mccullough.com.au)  
Web: [www.mccullough.com.au](http://www.mccullough.com.au)



John McFadden  
Partner

### Urban & Town Planning

Don Fox Planning  
11 Dartford Road  
Thornleigh NSW 2120  
Ph: (02) 9980 6933  
Fax: (02) 9980 627  
Email: [jmcfadden@donfoxplanning.com.au](mailto:jmcfadden@donfoxplanning.com.au)  
Web: [www.donfoxplanning.com.au](http://www.donfoxplanning.com.au)



David Blackett  
Company Director

### BCA & Certification

Blackett Maguire + Goldsmith  
Suite 2.01, 22-36 Mountain Street, Ultimo  
NSW 2007  
Ph: (02) 9211 7777  
Fax: (02) 9211 7774  
Email: [david@bmplusg.com.au](mailto:david@bmplusg.com.au)  
Web: [www.bmplusg.com.au](http://www.bmplusg.com.au)



Helena Golovanoff  
Partner

### Construction Law

Kennedys  
Level 31, 2 Park Street  
Sydney NSW 1235  
Ph: (02) 8215 5999  
Fax: (02) 8215 5988  
Email: [h.golovanoff@kennedys-law.com.au](mailto:h.golovanoff@kennedys-law.com.au)  
Web: [www.kennedys-law.com.au](http://www.kennedys-law.com.au)



David Noble  
Director

### Cost Management & Control

MDA Australia  
Level 3, 160 Pacific Hwy  
North Sydney NSW 2060  
Ph: (02) 9929 8000  
Fax: (02) 9929 8363  
Email: [david@mda-aust.com.au](mailto:david@mda-aust.com.au)  
Web: [www.mda-aust.com.au/](http://www.mda-aust.com.au/)