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NEWSLETTER

SUMMER 2012

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This Edition

- "Know Your Zone"
- The Hidden Costs (and Savings) of Building Projects
- Letting the air out of overblown development control plans
- Managing Subcontractor Selection
- Mandated Legislation - Sprinklers in Aged Care...
- Insolvency Quick Tips - Part 1

green building council australia
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“KNOW YOUR ZONE”

DFP outlines the reasons why it is important to establish the key facts from the outset of a project particularly when investigating the relevant zoning and constraints of a site:

Financial Planners have been known to advise their clients that it is important to “know your numbers”, but in the world of Town Planning, it is far more important to “know your zone”. After all, it is the zoning controls which create the areas in which we live, work and play and contrary to the misguided belief of some people, they extend far beyond the notion of simply applying random colours to a map.

Next time you are verbally informed about the zoning of land, think carefully about the consequences of relying upon that information without first checking its accuracy and source. Usually it is good practice to establish a minimum of three references to confirm important information such as zoning and/or site constraints, which could ultimately influence the success of a project. These could include:

1. Viewing the land use zoning of the site on the current Local Environmental Plan or other environmental planning instrument either at Council or the Department of Planning and Infrastructure;

2. Applying for, and obtaining an up-to-date Section 149(2)&(5) Certificate from the local Council; and

3. Cross checking the zoning plan and Section 149 Certificate information with the relevant written instrument such as a State Environmental Planning Policy or Local Environmental Plan.

Furthermore, in order to avoid getting caught out, consider the following:

(a) Clearly distinguish between the “Fifty Shades of Pink” and other colours which indicate the various land use zones on the plan;

(b) Obtain individual Section 149 Certificates for each allotment rather than one certificate for the entire site comprising various allotments, particularly if the site is affected by multiple land use zones;

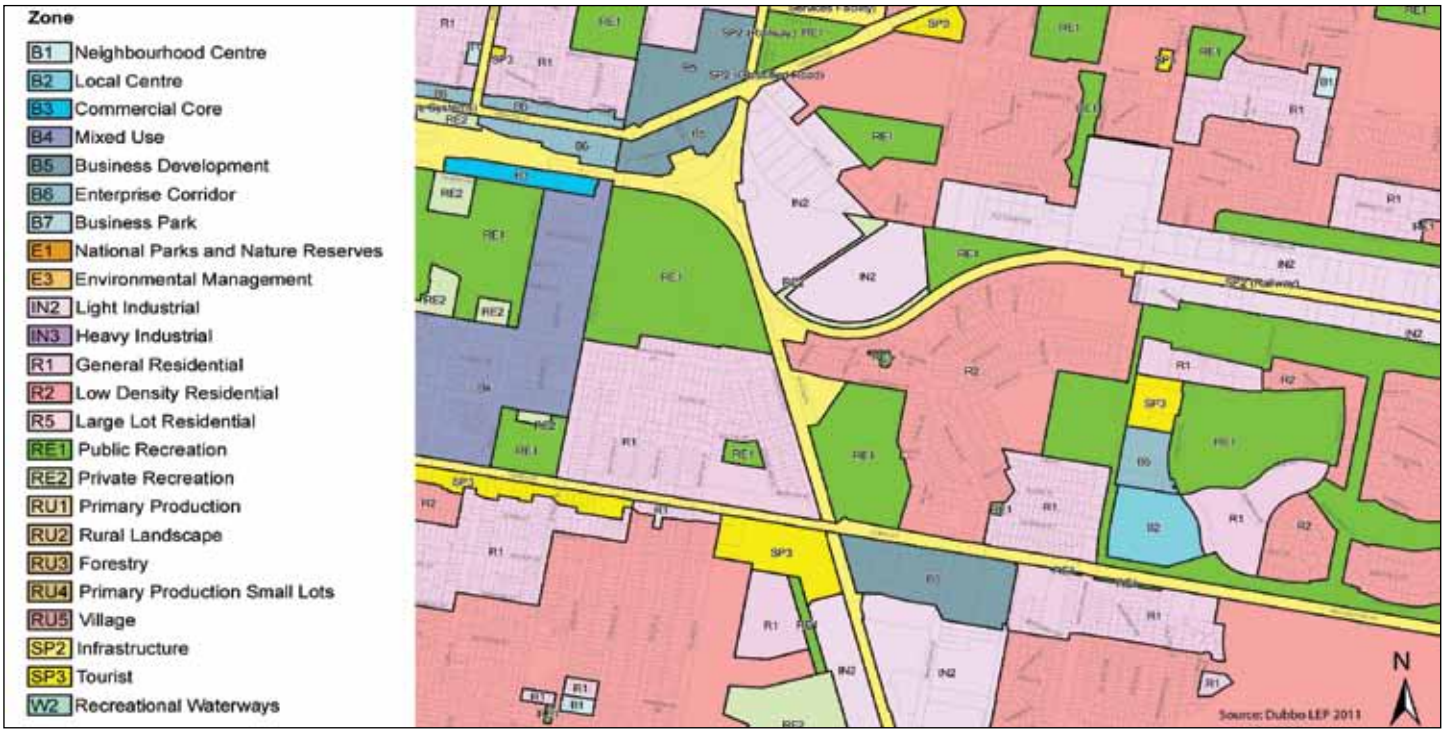
(c) Check the accuracy of the Section 149 Certificate as it is not uncommon for this information to be either inaccurate or incomplete particularly if heritage or threatened species issues are involved;

(d) Ensure that you are familiar with the objectives of the land use zone rather than just the permissible uses as these could amount to a limitation or even a quasi-prohibition on the type or scale of development which is intended for the site; and

(e) Investigate if any proposed draft environmental planning instruments are either certain or imminent.

For your next project, contact DFP in order to ensure that you have a thorough understanding of the relevant zoning controls and environmental constraints that apply to your site.

John McFadden
Partner



THE HIDDEN COSTS (AND SAVINGS) OF BUILDING PROJECTS

Whilst we have previously addressed how the Quantity Surveying profession has changed due to advances in technology, it is interesting to note how these same advances can affect the cost of a building project.

Generally speaking, technology has allowed the building profession to be much more streamlined in its delivery of information and product to clients. For instance CAD plans can be provided much more quickly than hand drawn plans ever could. This means that quite often companies can take on more projects than in the past simply because of the speed at which they are now able to work. This same technology can also mean that a company does not require as many staff to fulfil its obligations to its clients.

However, the technology that allows this to happen does not come cheaply to the provider.

Not only does the provider need to purchase the computer programme but they also need to spend time in training staff to use these programmes which comes at a cost (down time from work the staff member and trainer would normally do as well as the 'learning curve' time frame which needs to be taken into consideration).

Increases in the cost of wages, the ever increasing superannuation contributions required to be made to staff, office rental, upgraded equipment purchases and a myriad of other entities all need to be considered when the provider looks at the real cost of providing a service to the consumer.

On the other hand even the removal of a tree can now cost much more than previously due to increased costs to contractors for insurances and upgraded safety equipment. WH&S standards have changed so much that just the cost of administering these changes, including workers undergoing the appropriate and mandatory training for working on a building site for instance, also needs to be passed on to the consumer. Environmental factors also play a part with more streamlined and conscientious disposal of waste products now a major factor.

So, although advancement in technology is a wonderful thing, like everything else it comes at a cost.

David Noble
Director

LETTING THE AIR OUT OF OVERBLOWN DEVELOPMENT CONTROL PLANS

Lawyers | McCullough Robertson

On 24 October 2012, the NSW government introduced into parliament some important amendments to the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act). The most significant of these amendments address the concern that development control plans have grown too prescriptive and have been given too much weight in determining development applications. As the Minister for Planning and Infrastructure Brad Hazzard apointed out, a result of court decisions that have given greater weight to development control plans that are consistently applied has been that '... development control plans have gone from guiding development to being given the same weight, and sometimes seemingly more weight, than the relevant local environmental plans.' Add to this the fact that development control plans have been growing in size and complexity as well, and it is obvious that applicants have been facing a needless and costly impediment to development that the parliament never intended.

These reforms to the EP&A Act specifically and explicitly state that the purpose of a development control plan is to provide guidance. Moreover, there will be provisions inserted in the EP&A Act that say, among other things, that provisions of development control plans will have no effect to the extent that they:

a) substantially replicate any provision of an environmental planning instrument;

b) are inconsistent or incompatible with any provision of an environmental planning instrument; or

c) have the practical effect of preventing or unreasonably restricting development that is otherwise permissible under an environmental planning instrument.

While the government is in the process of putting together new planning legislation, these interim measures are consistent with the policy direction set out in the planning reform green paper. Minister Hazzard has conceded that this current suite of reforms doesn't require councils to redraft their development control plans, but that more comprehensive reform in this area is intended in the soon to be released planning reform white paper.

The timing of these amendments is still unclear. The amending bill (the Environmental Planning and Assessment Bill 2012) passed the Legislative Assembly on 24 October 2012 and is currently under consideration by the Legislative Council. What is clear, however, is that once these reforms to the weight of development control plans commence, they will only apply to development applications made after the commencement of the reforms.

Patrick Holland
Partner

MANAGING SUBCONTRACTOR SELECTION

There are several mechanisms through which particular elements of a project scope may be assigned to specialist Subcontractors. This allows Clients to maintain a level of control over certain aspects of a construction project with regard to the selection of, or continuing engagement of, Specialist Subcontractors.

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These mechanisms range from describing a Subcontractor as being:

- novated,
- preferred,
- separate,
- nominated.

These mechanisms provide Clients with varying levels of control over the selection and management of Subcontractors.

Novated:

The Subcontractor is currently engaged in some form of agreement with the Client and this agreement will be taken up by the Principal Contractor for a project so that continuity of supply and/or service is maintained in contract between the Principal Contractor and the Subcontractor.

Preferred:

The Client takes opportunity to list one or more Subcontractors that are to be given the opportunity of tendering the works, however the engagement of these Subcontractors by the Principal Contractor is not mandatory.

Separate:

The Subcontractor is currently, or will be, engaged by the Client and will remain in a contract agreement with the Client throughout the duration of the project. The Principal Contractor will be required to manage and coordinate activities of the Separate Contract as described in the head contract but will not be required to administer the contract between the Client and the Subcontractor.

Nominated:

The Client has a specific requirement for the Principal Contractor to enter agreement with a nominated Subcontractor. The Principal Contractor will only seek submissions from the Nominated Subcontractor and alternatives will generally not be sought.

The primary reasons for a Client selecting one, or a combination of the above mechanisms for procurement and delivery of aspects of a project include.

- Existing service agreements on specialist or proprietary installations will be maintained
- Existing business relationships will be maintained and level of certainty around delivery and after sales service can be relied upon
- Competitive advantage can be achieved through the maintenance of ongoing agreements
- Programme of works will dictate that orders need to be placed prior to the Main Contractor being engaged
- Control over the financial administration of the agreement can be retained by the Client or alternately released to the main Contractor
- Landlord requirements dictate that particular Subcontractors are to be engaged for the works

It may be argued that selecting these mechanisms reduces the competitive advantage that a Client may enjoy, however this must be balanced against the benefit of certainty that comes with engaging those Specialist Subcontractors that are known to the Client.

It should be noted that the principles of the mechanisms described above can also be assigned to supply only arrangements or Consultant provided services that Clients may currently enjoy or be seeking.

Mark Blizard
Director

MANDATED LEGISLATION SPRINKLERS IN AGED CARE...

As a direct result of tragic events in late 2011, the NSW Govt has mandated the requirement for sprinkler system installations in aged care facilities across NSW.

BLACKETT MAGUIRE+ GOLDSMITH

Across NSW, over 60,000 people live in Commonwealth Government accredited residential aged care facilities. These facilities provide a wide range of services to aged people.

According to a survey of Commonwealth accredited facilities in NSW completed earlier this year, nearly 600 buildings containing 24,000 beds do not have sprinklers installed.

This represents an estimated 55 per cent of existing residential aged care buildings in NSW.

The NSW Government proposes to improve fire safety in new and existing residential aged care facilities by setting requirements for fire sprinkler systems.

All affected facilities will be required to be provided with a fire sprinkler system that complies with a new Fire Sprinkler Standard, effective from 1 January 2013.

The following types of new or existing facilities will be required to have sprinkler systems:-

- Existing 'residential care facilities' subject to the Commonwealth Aged Care Act 1997
- New 'residential care facilities for seniors' under State Environmental Planning Policy (Seniors and People with a Disability) 2004.

In preparation for the mandatory legislation that will apply to both new and existing aged care facilities, the Dept. of Planning proposed changes to current planning legislation and also proposes for implementation of new legislation to enable fast-track opportunities for approval procedures relating to installation of sprinkler systems in aged care buildings. The legislation will aim to facilitate provision for a 10-day approval system for retrofit code-based approvals.

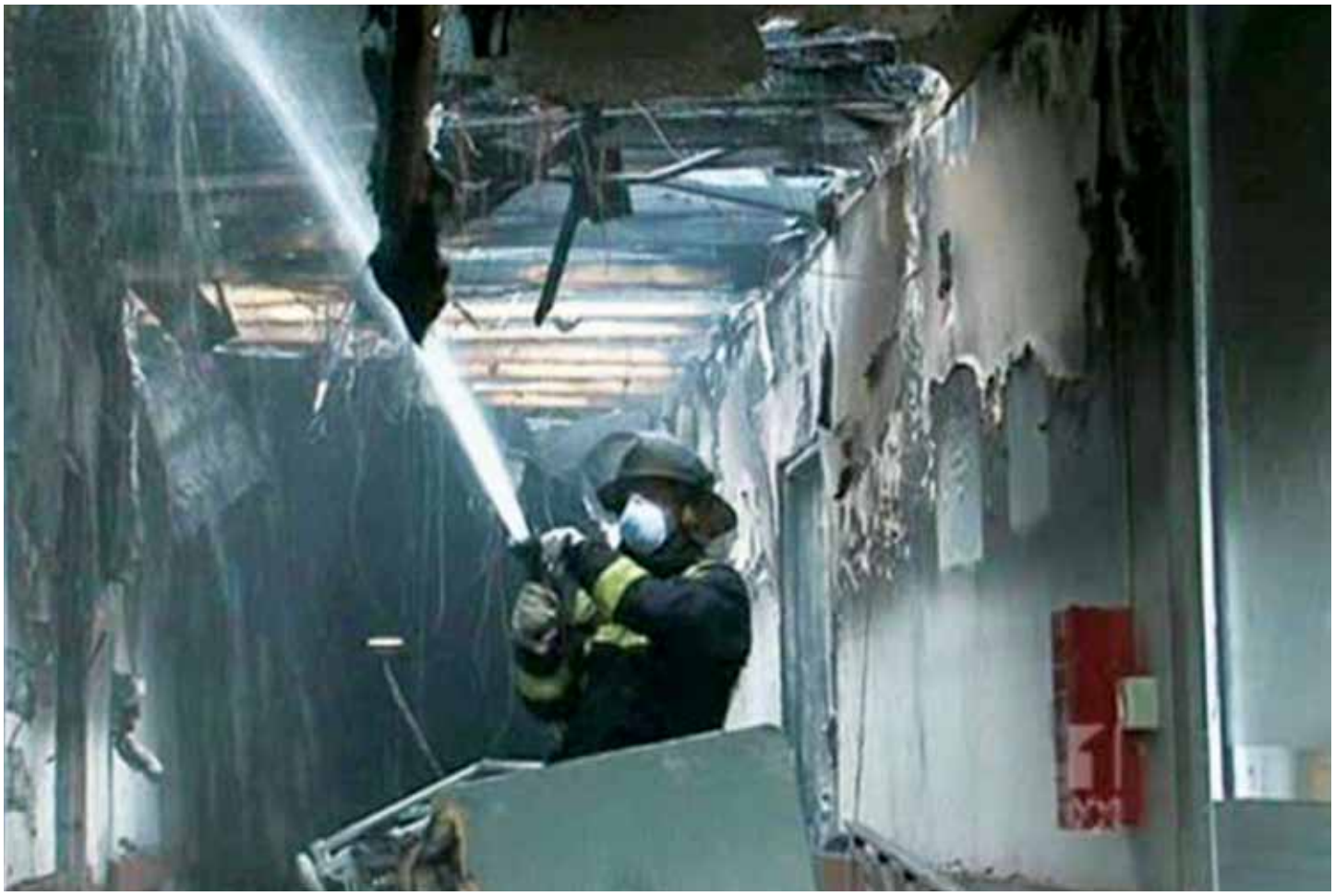
One principal focus of the new legislation will be to by-pass traditional Local Govt red-tape and DA processes.

Approved Providers will have a choice of retrofitting sprinkler systems within 18 months or 3 years. Penalties will apply to aged care Providers who fail to complete the upgrade works within the nominated time frames.

Providers who choose to retrofit within 3 years will be subject to strict reporting requirements.

At this stage the Government, albeit Federal or State level will not be providing monetary assistance to aged care Providers for the mandated sprinkler upgrade program.

David Blackett
Company Director

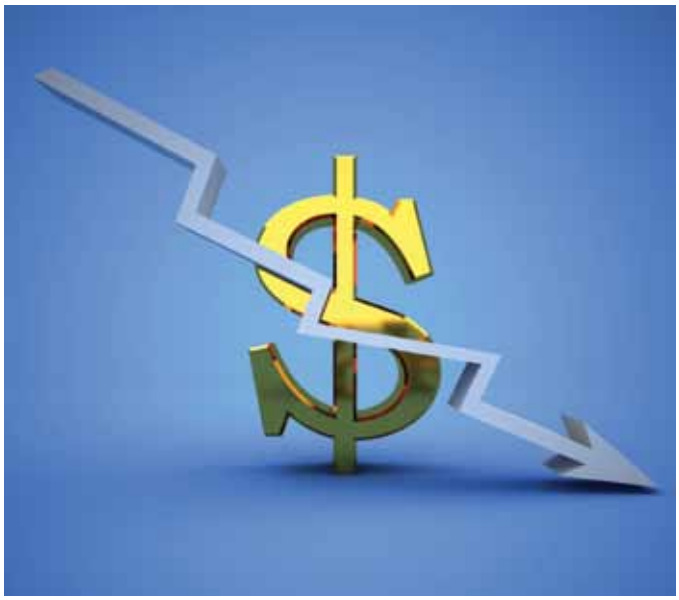


INSOLVENCY QUICK TIPS PART 1

They say that Corporate Undertaker might be new hip profession, so we decided to explain some basics about insolvency…

Kennedys

Legal advice in black and white



The construction industry has witnessed quite a few high-profile insolvencies in recent times. Of course, this is not really new news for an industry in which it has long been the case that one bad job can spell the end of a company without the capital to see out difficult periods.

It is nearly impossible for companies to quarantine all insolvency risk, but there are steps that can be taken to mitigate the losses that flow from insolvency matters regardless of your role in a project.

In this and the next issue (or two), we will highlight some key points about insolvency.

Who are you contracting with?

Prevention is better than cure so they say. To this end, there is a remarkable amount of information available which might assist you to gauge the solvency of an entity you are proposing to do business with.

The Australian Securities and Investments Commission (ASIC) has a company search feature that can be accessed free of charge on its website. Search the company name of the party you are contracting with and pay particular attention to the company's "status" and the list of documents at the bottom of the search. If the status of the company reads "external administration" or "deregistered" then you should not (and in the case of the latter can not) contract with the organisation. Likewise, if the list of documents discloses multiple charges (listed as "Notification of Details of a Charge") or a current or past winding-up application (listed as "Notification Of Filing Of Application For Winding Up Order") can be a sign that a company is or has been in trouble.

If you are concerned, for a fee you can obtain a credit report of the company. Additionally, if your business obtains trade credit/debtor insurance, your insurer's credit limit decision in a particular instance may point to the company's financial health.

Next issue we will look at the signs of impending insolvency and what you can do to protect yourself.

Helena Golovanoff & Tamara Helm
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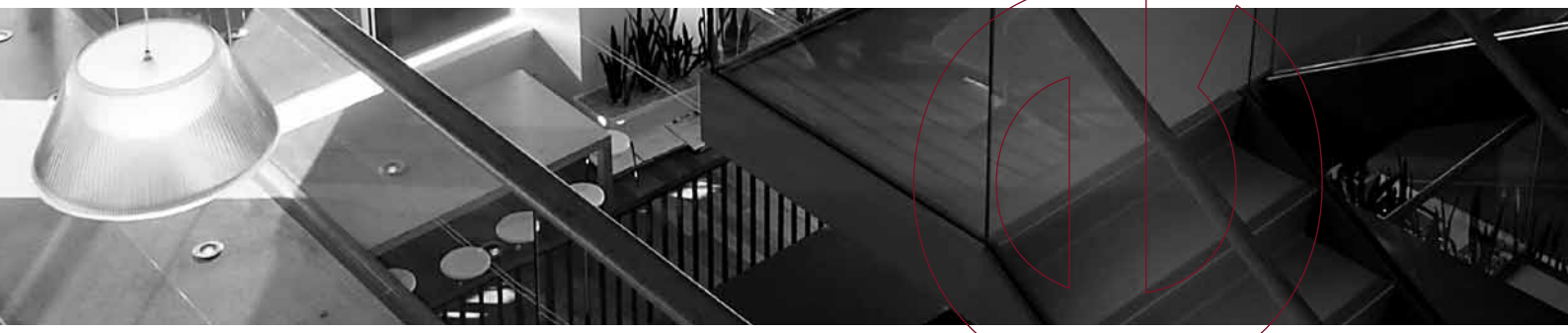

Acknowledgements

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