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NEWSLETTER

WINTER 2011

This Edition

- 'Designing to a Cost' or 'Costing a Design'.
- Successful Contract Documentation.
- Increase Certainty, Reduce Risk.
- Keeping Records.
- Exercise Care When Preparing Your Environmental Assessment
- Access to Premises Standards.

green building council australia
MEMBER 2010-2011

‘DESIGNING TO A COST’ OR ‘COSTING A DESIGN’

At what stage should you engage the Cost Planner?

mda AUSTRALIA

Many clients, particularly on small to mid-sized projects, engage the Quantity Surveyor (QS) too late in the procurement process to effectively control the project costs, often when the design fundamentals of the building envelope and construction materials have been formalised and up to 80% of the cost determined. The opportunity for the QS to control costs and add value for the client is then diminished and the QS becomes an estimator who is ‘Costing a Design’. If the resultant ‘cost’ exceeds the client budget, changes in the design’s concept may require significant re-documentation and delay the procurement process.

Elemental cost planning is where project costs are analysed on a common format across standard elements throughout all stages of the design process which enables the client to achieve the benefits of ‘Designing to a Cost’. With a known budget, the client brief and design parameters, the QS in consultation with other members of the design team, can reference historical elemental cost data from similar projects to achieve a design solution within the client’s budget. Updated cost plans at 30%, 60% and 90% design development stages, provide a monitoring tool to manage the site and project specific issues as they arise.

Data collection is a pre-requisite of elemental cost planning and requires project costs to be dissected into their standard elements (substructure, structure, finishes, fitments, services etc) and sub-elements (columns, upper floors, roof, external walls, windows etc) with the costs benchmarked on a dollar per square metre, cost per elemental unit and percentage of total building cost basis. The project is also classified in accordance with its project specific variables such as function, location, size, shape, number of storeys and construction date.

From an analysis of the elemental data, the client and design team can identify where the money is being spent in comparison with other similar projects and make informed design decisions that maximise the ‘bang for the buck’. Elemental costs that vary significantly from historical benchmarks can be reviewed and action taken if they do not reflect the client’s or design team’s intent.

The earlier the client appoints the QS, the greater the opportunity for the QS to implement cost planning techniques, amongst other cost control tools, in order to satisfy the client brief.

David Noble
Director

SUCCESSFUL CONTRACT DOCUMENTATION

The best design documentation in a construction contract will be prepared with an understanding of the purpose of the contract.

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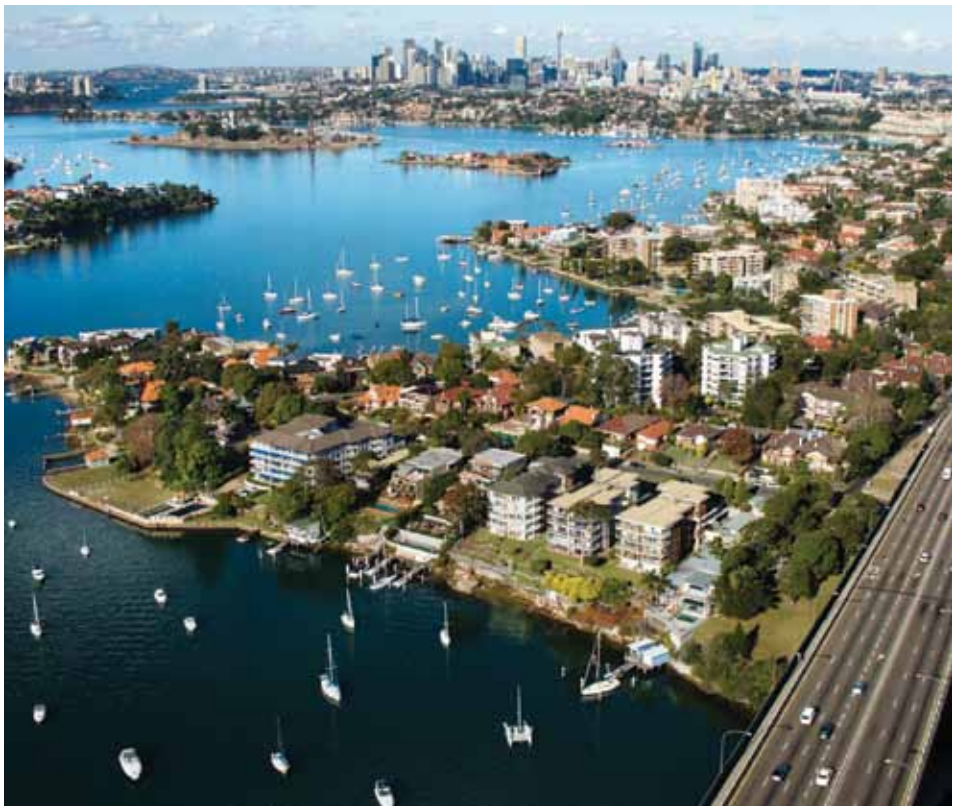
Design documents have different purposes, at different stages of a project. After establishing client requirements and budget, and obtaining development approvals, attention turns to the set of documents that will set out the details of what is to be constructed. Often, professionals focus on preparing documents that represent 'good design' or meet compliance criteria, but forget that documents must also serve as a record of the contactor's obligations.

- A single set of documents. Ideally, the set of documentation prepared for tender should be the same set of documentation included in the contract, and used for construction.
- A co-ordinated set of documents, with a single point of responsibility. A lead design consultant should ensure that documents prepared by different disciplines align.
- A clear set of rules for discrepancies. Your team should understand how contracts set an order of 'precedence' for design documents, which may prioritise specifications and smaller scale drawings.
- Documents that rigorously refer to 'the Principal' and 'the Contractor'. References to work 'by others', or sub-trades, or work that does not refer to who will complete it, creates ambiguity.

INCREASE CERTAINTY, REDUCE RISK

DFP outlines how the success of a project can improve significantly by increasing certainty and reducing risk throughout all stages of the approval process.

planning consultants



DFP recommends that a detailed and thorough preliminary town planning feasibility assessment be considered as a fundamental investment for any project from the outset. This important stage is often overlooked but it is often the most critical stage as it sets the framework for how (or if) the project will transpire and it also has the potential to arrest any potential problems at an early stage.

Knowing the applicable environmental planning controls, site constraints and other matters (such as the style and method of lodgement together with proper identification of the consent authority and any other relevant government authorities) could potentially influence the outcome of a project. With this information in hand the project is much more likely to proceed in an efficient manner as the project team can adopt a consistent and informed approach.

Contrary to common myth, full numerical compliance with prescriptive requirements when preparing a development application (DA) does not necessarily constitute nil risk. Likewise, exclusive reliance upon a merit-based (performance) assessment does not necessarily need to be associated with an absence of certainty. Each project is different of course, but usually there are appropriate ways of dealing with each challenge irrespective of whether the consent authority is a local Council, a Joint Regional Planning Panel, a Planning Assessment Commission, the Minister for Planning or the NSW Land and Environment Court.

Even when development consent is obtained, it is imperative that the certainty and risk associated with the project be properly managed. This should involve carefully reviewing the conditions of consent to determine their relevance and accuracy together with ensuring that the proposal is built in accordance with the stamped-approved plans as minor changes could otherwise result in the need for modifications pursuant to Section 96 of the Environmental Planning and Assessment Act 1979.

To improve the success of your next project, adopt the following approach:

- Engage a town planner to investigate the applicable environmental planning controls, site constraints and intended lodgement mechanism/consent authority and/or any other relevant government authorities from the outset as part of a preliminary town planning feasibility assessment;
- Attend a pre-DA lodgement meeting with the local Council to review the proposal;
- When preparing a DA, ensure that the town planning assessment is not ambiguous with respect to any numerical or merit based assessment; and
- Constantly monitor the assessment of the DA and review the proposal both pre and post development consent to ensure that certainty and risk can be appropriately managed.

For assistance with town planning matters, contact DFP to ensure that your next project proceeds as efficiently as possible with increased certainty and reduced risk.

John McFadden
Senior Town Planner

KEEPING RECORDS

There's no magic in the "7 Year" rule

Kennedys

Legal advice in black and white

With almost universal use of electronic forms of communication increasingly our commercial (and even personal) dealings are recorded in a detailed manner. It is also easier than it once was to maintain vast quantities of records.

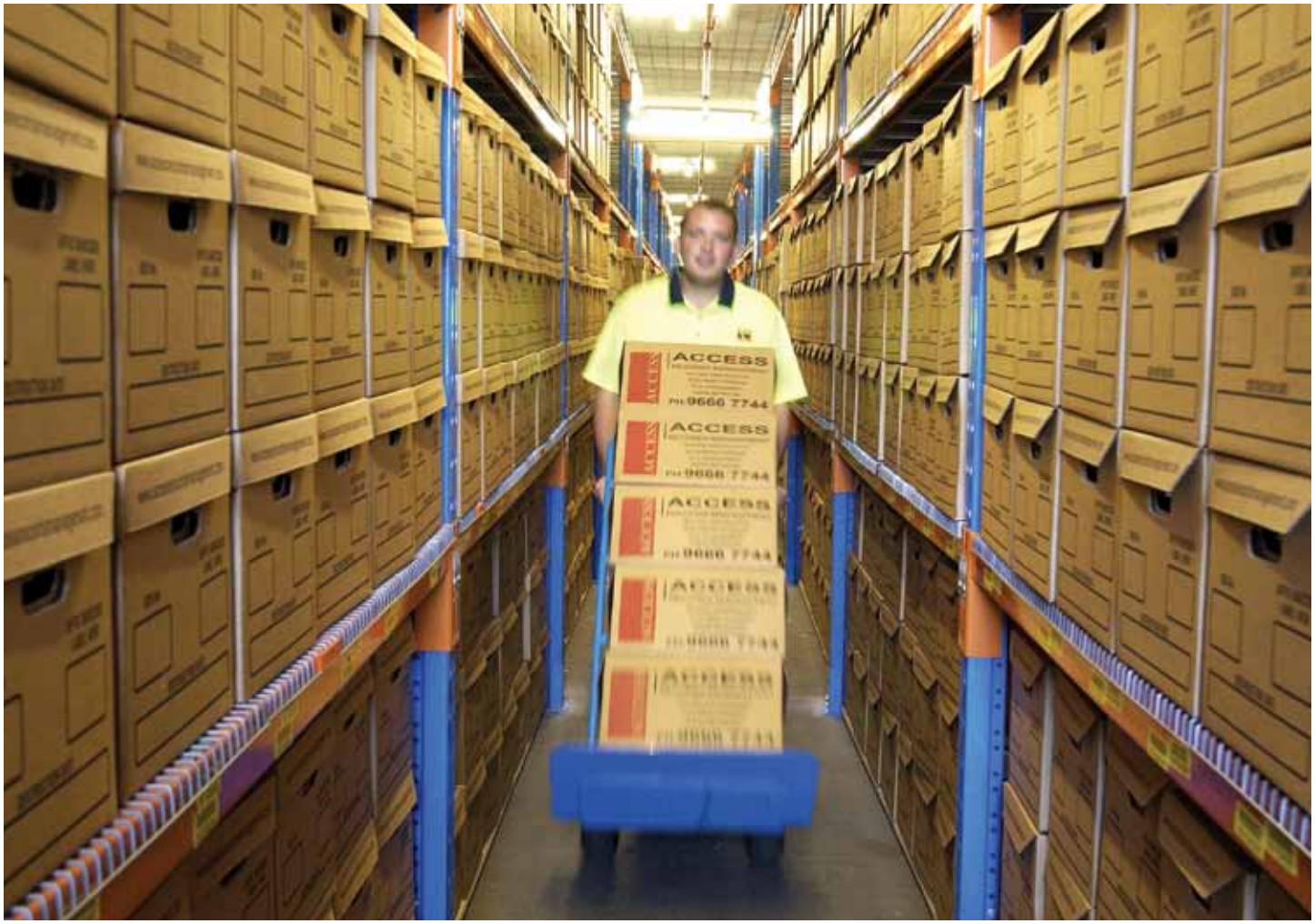
It is unsurprising that written records can be determinative in the circumstances of a dispute. A contemporaneous file note of say a telephone conversation gives far better credibility to the recollection of the conversation by the author of the note than that of a participant who has no records. Of course quality of the records is important for this to hold true.

Putting aside obligations with respect to taxation and financial record keeping, there is a widespread misconception that records (whether hard copy or electronic) can be safely destroyed after 7 years. This is wrong.

The "7 year rule" is often justified on the basis that the limitation period within which a cause of action must be brought is 6 years for the common types of claims such as negligence and breach of contract. However it is not a straightforward matter of 6 years from the time of the project. Generally a claim arising from negligence causing a defect may be brought within 6 years of a defect becoming manifest. In the case of latent defects in buildings this can take a considerable period of time – even decades.

My advice to all building industry participants is: keep everything (safely – electronic records are just as vulnerable to being lost and damaged as hard copy records). Ultimately, those with the most and best records will win.

Helena Golavanoff
Partner



EXERCISE CARE WHEN PREPARING YOUR ENVIRONMENTAL ASSESSMENT

As many EPM clients would know preparation of development applications and project applications can be a demanding, time consuming and sometimes costly and frustrating process.

Lawyers | McCullough Robertson

In recent years the matters which a proponent must consider in their environmental assessments have increased significantly and have gone well beyond the scope of section 79C of the Environmental Planning and Assessment Act 1979 (Act). For example, development in certain bushfire prone land requires the preparation of a comprehensive report prepared in accordance with Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department of Planning. (see section 79B of the Act).

Recent experience in Class 1 Merit Appeal proceedings in the Land and Environment Court has shown that there is a need to keep a 'close eye' on the preparation of the supporting documentation for a development application particularly the environmental assessment. With a broad range of technical disciplines required to provide input into the preparation of environmental assessments, the need to ensure a comprehensive briefing of the various technical disciplines (e.g. flora and fauna, bushfire and town planning) arises at a very early stages of the preparation of a development application.

We strongly recommend that it is in the proponent's interest to prepare a formal brief to each expert which addresses at least the following:

1. Provide sufficient detail about the project with particular emphasis on key aspects and issues associated with the project;
2. Identify precisely and in detail the matters the expert is required to address;
3. Identify precisely why the expert is required to address these matters;
4. Identify other 'disciplines' which are also being addressed in the environmental assessment which may be relevant to the expert (for example: the flora and fauna expert may need to consult the vegetation expert);
5. State clearly when the expert is to provide their draft report to the Project Manager for review;

Based on our recent experience in the Land and Environment Court simply asking a technical expert to prepare a report on flora and fauna for example without providing context or specific detail can cause delay, unexpected costs, frustration and ultimately refusal of a development application. The cost of properly briefing an expert will prove to be a wise investment.

Patrick Holland
Partner

ACCESS TO PREMISES STANDARDS

The Access to Premises Standards commenced on 1 May 2011 with the introduction of BCA2011. The Standards have significant implications for new and existing buildings including additional and 'retrospective' accessibility requirements.

BLACKETT MAGUIRE+ GOLDSMITH

The Standards set out administrative provisions and a technical Access Code (Part D3 of BCA2011). The principal objective of the Standards is to close the gap between BCA and the DDA and provide certainty in relation to what levels of access to buildings would satisfy the general non-discrimination requirements of the DDA.

The Standards relate to all building classes (except Class 1a private dwellings) and are triggered with an application for building works.

The Premise Standards apply to:

- A new building
- Additions and alterations to an existing building
- The 'affected part' of an existing building, being possible upgrade of the building entrance and facilities and upgrade of continuous accessible paths of travel.

Mandatory upgrade work to the 'affected part' of a building is triggered when works are proposed by the building owner or lessee whom occupies the entire building.

The Standards outline various other exemptions and concessions to compliance including 'unjustifiable hardship'.

The Standards will make it necessary for a person making an application to carry out any works to ensure prior obtainment of appropriate advice on satisfying the minimum non-discrimination requirements of the DDA.

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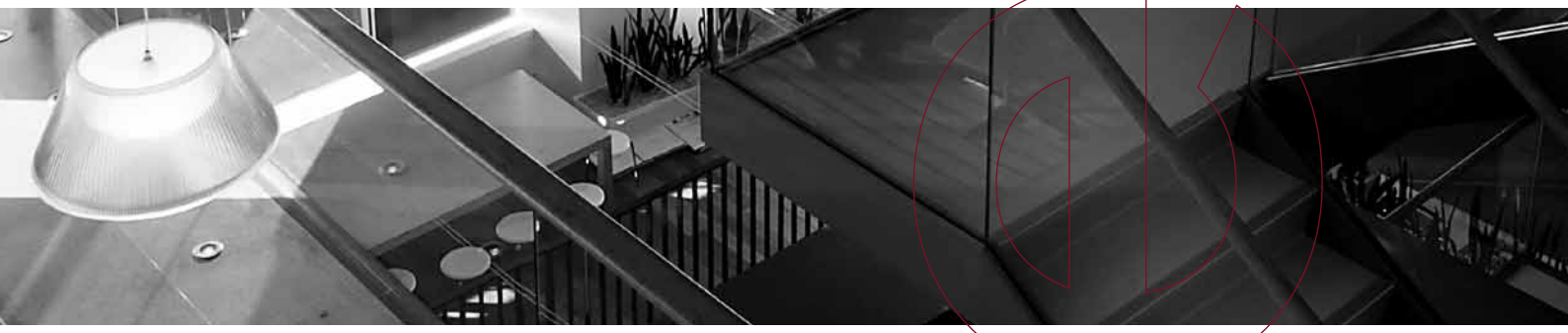

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