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Market Update

NSW COVID-19 Construction Pause

Cost Considerations; NSW COVID-19 Pause on Construction and Non-Urgent Maintenance

The NSW Government announced on Saturday that from 12.01am, Monday 19th July, that all construction and non-urgent maintenance works will be paused, and a mandated shutdown of all building sites will be implemented for 2 weeks to contain the spread of the recent COVID-19 outbreak. There are some minor exemptions such as safety and security, environmental issues and maintaining critical equipment and government infrastructure operations.

The shutdown is forecast to effect over a quarter of a million workers and hit the economy by between \$800m and \$1b a week. A blow to builders and subcontractors who have started to recover from the last major lockdown and are beginning to see an increase in demand.

The building and construction industry was considered an "essential-service" with building sites remaining open and largely unaffected by the recent lockdown. The government shared the belief that the shutdown of the construction industry would have a devastating economic impact. However, to stem the current COVID-19 outbreak, this is no longer the case with builders now focused on locking up and securing their sites, re-scheduling material deliveries and re-coordinating subcontractor attendance.

What clients need to consider:

Construction Contract

- Australian construction contracts typically have clauses that enable contractors to claim time and dependent on the contract, costs for these delays.
- Australian construction contracts typically include liquidated damages costs if the contractor is late completing the project. I.e. the Contractor pays for the \$ loss to client as lost revenue and additional management time etc. This is often capped at 5% of the contract sum.
- Government contracts generally include epidemic or pandemic as part of definition of Force Majeure. Whereas commercial contracts prior to 2020 generally did not include epidemic or pandemic and therefore the force majeure definition could be contested. More recent contracts have addressed this issue. The current stop work order will likely trigger a claim due to change in law or an unforeseeable legislative or authority event.
- If a contract provides time and/or cost for restrictions due to COVID-19 implications, then clients may be exposed to delay costs due to their building taking longer to construct and the cost of paying the contractor to stay on site longer or accelerate to meet the contract completion date.

- Seek legal advice to understand your contractual position in relation to the Head Contractors ability to claim time and possibly cost, most likely through a force majeure event, change in law, or an unforeseeable legislative or authority event.

Cashflow

- Progress claim dates are typically set towards the end of the month; therefore this month's site inspections and reports will need to be completed remotely. Ideally, the contractor has taken extensive photos or video so when preparing their claim, they can justify the percentage amounts complete. If not this may affect the payment recommendation compared to the amount claimed which could adversely affect the Contractor's cashflow.
- If extensive photos are not available and the claimed amount cannot be demonstrated, then the contractor and client may consider extending the claim date until the site has reopened on 2 August 2021. Consider timing and likely reopening date.
- The 2-week site shutdown may affect cashflow considerably. Contractors and subcontractors will continue to have running costs with reduced income. You may consider undertaking a financial health check on your Head Contractor to ensure they are equipped to continue working through the current shutdown / ongoing climate.



Cost Implications

- Contractor running costs – with sites shut down and projects being delayed, the Contractor will incur considerable ongoing expenses during the delay period including employee salaries, hire costs for cranes, site sheds, etc. These costs are significant and will vary depending on the project size. For example, weekly delay costs on a \$10M project may be upwards of \$25,000 per week, whereas on a \$150M project they may be up to \$250,000 per week.
- Remobilisation costs – A site shut down, will likely have costs associated with remobilisation a site including removing temporary works, safety inspections, re-inducting workers, etc. We do not anticipate these costs to be significant, possibly in the order of \$50,000 to \$100,000 on a \$100M project.
- Loss of Productivity and extension to program - If construction sites can reopen as planned on 2 August, we anticipate a more restrictive site environment and stringent covid plan will be implemented. This may result in a loss of productivity and extension to program.
- Acceleration costs – Should a delay occur, and the Client require that the original practical completion date must be met, they may direct acceleration of the works under the contract. Acceleration costs will vary depending on the project value and works being undertaken and are only achievable to a point.
- Client costs – Whilst the above costs relate to the Head Contractors site costs, the Client will be subject to similar ongoing expenses associated with the project including staff costs, consultant fees, office expenses, bank interest and financing costs, etc.
- Financial Support – The Property Council of Australia has confirmed that the NSW Treasurer advised the industry that he was willing to look at financial support to ensure it was capable of assisting the construction industry as long as organisations kept their workforces whole. The Property Council working group has been examining the existing support packages and what options might be available

Takeaways

It is paramount that Clients fully understand their financial exposure when a project is delayed. Informed decision making now will save both time and money in the long run.

During a crisis, successful projects rely on positivity, a sense of calm and good sound advice from your QS.

Please contact **Mark Pickerill**, Slattery Director on 0418 948 319 if you have any questions.

Stay safe and take care.



Mark Pickerill, Director

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