

Construction and development surviving the recession

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This afternoon's speakers and topics

- Richard Wade - industry overview
- Theo Anderton - insolvency and recovery
- Peter Wilson - investigations

Overview

- Forecast/Outlook (CPA)
- Lessons from the last recession
- Changes to the Construction Act
- What parts do the public sector and the funders have to play in assisting the industry in the current climate?

Forecasts for construction

- Continuing prospect of economic deterioration
- Slower private housing and commercial property markets
- Government's investment plans (Comprehensive Spending Review)
- Public sector output to grow
- Improved prospects for infrastructure sector
- General housing market slowing down significantly
- Office construction prospects deteriorating
- Vulnerable to protracted problems in financial markets

CPA Report – autumn 2008

- Construction output to decline by 7% in next 3 years – return to growth in 2011 at earliest
- Housing starts in 2012 will be below 2007 levels
- Fewest private housing starts in 60 years
- “dramatic fall” in industrial buildings; future prospects for commercial development “exceedingly poor”

CPA Report – autumn 2008

- Follows unprecedented growth (32% from 1994 to 2007)
- Public sector spending continues to increase
- Immediate future for education, health facilities and transport infrastructure continues to be positive but ...
- With weak public finances, position after 2010 expected to worsen

“These forecasts are without doubt the gloomiest we have produced since compiling this information and have been downgraded from just three months ago to show the sharpest downturn since 1991. The prospects for the industry over the next few years are very precarious. Therefore it is critically important that the government maintains its spending plans in order to deliver the much needed investment in our schools, hospitals, infrastructure and other public sector investment.”

- Michael Ankers, Chief Executive, CPA

A short history lesson ...

- Sir Michael Latham *Constructing the Team* (1994)
- 30 recommendations made; 2 so far adopted (adjudication and payment)
- Implementation of Housing Grants (Construction and Regeneration) Act 1996
- Review of 1996 Act by BERR; amendments likely to be implemented in 2009
- Some limited adoption of other recommendations (such as project bank accounts)

A short history lesson (Part 2)

- Sir John Egan; *Re-thinking Construction* (1998)
- Emphasis on collaborative working
- Prompted change and emphasis in procurement especially on public sector projects (approach of OGC in using NEC as a contract of choice)

Key recommendations

- The Government (and public sector clients) should take the lead in terms of being a model of client best practice
- Highlighted by Latham as being inherent requirement but one which is accentuated in times of economic difficulty

The Construction Act 1996

- 2 key recommendations of Latham
- Introduction of mandatory provisions for payment and dispute resolution via adjudication
- 2 perceived effects:-
 - Improved cashflow (including outlawing of “pay when paid” clauses)
 - Quicker and cheaper means of resolving disputes
 - But
- Never ‘recession tested’

The Construction Act 2009 ...?

- Proposals to amend the 1996 Act
- Included in Queen's Speech, December 2008
- Provisions contained in Part 8 (Construction Contracts) of the LDED
- Possibly significant amendments to provisions for payment and adjudication

Proposed Construction Act amendments (1)

Payment

- Prohibition of “pay when certified” (section 110)
- Introduction of “payee notice” (section 110A/B)
- Overhaul of withholding notices – requirement to pay “notified sum” (section 111)

Proposed Construction Act amendments (2)

Adjudication

- Removal of section 107 (requirement for contract to be in writing) but ...
- New requirement for adjudication provisions to be in writing (section 108)
- Stipulations about costs and fees - including outlawing of “*Tolent*” clauses (sections 108A/B/C)

The funders

- Public sector funders
- Private sector funders
- Attitude to risk
- A funding gap?

The funders' approach (1)

- Banks still lending in the construction/development sector (although with greater caution)
- CBI exhorting banks to step up lending given large numbers of businesses requiring refinancing
- Existing loan agreements being honoured but little evidence of fresh lending
- Signs of banks making losses on commercial property loans

The funders' approach (2)

- Public sector spending pressing ahead
- Limiting of 'loan to value'
 - 50%-60% (commercial)
 - 50%-65% (residential)
- Commercial developments must have benefit of agreement (to lease or purchase) at the time of development
- No funding of speculative development if no tenant/purchaser
- Loans based on LIBOR only; no base rate loans
- Increased margins due to less liquidity/more regulation

A summary of the landscape

- Have lessons been learnt?
- Remember Latham; will public sector provide clients exhibiting 'best practice'?
- Landscape of procurement has changed but ...
- ... will this translate to more collaboration (and fewer disputes) in a downturn?
- The role of 'ADR' could be key

Surviving the recession

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