BUSINESSNEWS

Construction
SPECIAL REPORT

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David Dodds says BGC Construction has focused on apartments.
Photos: David Henry

Surge in activity stretc

How will the state's construction industry navigate the growing pains prompted by a surge in building activity?

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CONSTRUCTION companies are playing catch-up, and struggling with skills shortages and supply chain disruptions, as the sector bounces back from a period of stagnation due to COVID-19 lockdowns and border closures.

And the current uptick in activity is showing no signs of slowing, at least in the short term.

The Australian Construction Industry Forum revised its 2021 forecasts, off the back of the country's strong economic performance through COVID, projecting growth of 2.7 per cent for the sector nationally, bringing the anticipated level of building and construction work up to $243 billion in 2021.

A selection of WA's largest projects under construction

Project name
Location
Owner/developer
Head contractor
Architect
Project value/construction cost
Project scope
Expected completion

Karrinyup Shopping Centre
Karrinyup
AMP Capital
Multiplex Constructions
Taylor Robinson Chaney Broderick, Hames Sharley
$800m
Shopping centre redevelopment
Late 2021

Civic Heart
South Perth
Finbar Group
Hanssen
SS Chang Architects
$365m ($178m construction cost)
Two towers (22 and 39 levels), 309 apartments and commercial and retail tenancies
Mid 2023

EQ West
Elizabeth Quay
CA &Associates
D&C Built Pty Ltd
Kerry Hill Architects
$300m
Two-towers (52 and 25 levels), 456 apartments, 190 hotel rooms
Mid 2022

One Subiaco
Subiaco
Blackburne
Multiplex Constructions
Hames Sharley
$280m
242 apartments across three towers, largest 24 levels
Late 2022

Murdoch Health and Knowledge Precinct (stage 1)
Murdoch
DevelopmentWA, Hesperia, Aegis Aged Care Group
Multiplex Constructions
Hassell
$200m
27 apartments, 182 bed aged care facility, commercial and medical suites, day hospital, 140 bed health facility
(Stage 1) Early 2023

Perth Hub
Perth City Link
Far East Consortium
Doric
Cottee Parker Architects
$158m
A 32-storey tower with 314 apartments and a 23-storey Dorsett Hotel tower, with 250 hotel rooms
2023

hes resources

In Western Australia, while the construction work is diverse in its spread of property markets, the bulk of the work has been awarded to multinational Multiplex Constructions, solidifying its position as the state's largest construction company for the seventh consecutive year, according to *Business News*'s Data & insights (see page 43).

Key Multiplex projects include the $800 million Karrinyup Shopping Centre redevelopment, Chevron's new headquarters at One the Esplanade in Elizabeth Quay, and Blackburne's two major apartment projects, One Subiaco and The Grove.

> "A market upturn is sometimes more difficult to navigate than a downturn - David Dodds

All projects have broken ground in the past 12 months.

The residential apartment market is contributing to the bulk of WA's construction order book.

According to the RLB Crane Index, the residential sector represented 50 per cent of all major works (15 cranes) across Perth, a segment Multiplex has strategically targeted in recent years.

"The market has evolved and we're just evolving with it," Multiplex regional managing director Chris Palandri told *Business News*.

"There's a wave of apartment projects evolving from … middle-of-the-road apartment projects as opposed to bigger, more complicated higher-end projects, which really suit our skills."

Projects in the health and education sectors have also provided significant construction work during the past 12 months, led by stage one of the Murdoch Health and Knowledge Precinct, which is also contracted to Multiplex.

In addition to medical and commercial suites, retail tenancies and apartments, the precinct involves aged care provider Aegis delivering 80 private and public mental health beds as part of a new 330-bed health complex.

Other significant health projects include stage two of the state

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One the Esplanade
Elizabeth Quay
Brookfield
Multiplex Constructions
Hassell
$360m
30-storey commercial building, Chevron headquarters
Mid 2023

The Grove
Claremont
Blackburne
Multiplex Constructions
MJA Studio
$350m
245-apartment development along Stirling Highway at the intersection of Airlie Street.
2023

Capital Square–Towers 2 and 3
Perth CBD
AAIG
D&C Built
Cox Architects
$140 million
Two towers (18 and 32 levels), office, hotel and restaurant
Started construction in 2020

Waterfront Cottesloe, Marine Views
Cottesloe
Curtin Heritage Living
Built (stage one)
Hames Sharley
$130m
Residential aged care facility, 128 suites, 75 retirement living apartments (Stage 1) 2021


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BGC Cement consolidates position as industry leader

Kalgoorlie

BGC Cement is a major supplier of Western Australia's cement, providing the 'glue' upon which many residential, commercial, mining and engineering projects are built.

They are currently in the final stages of upgrading their Kwinana – Naval Base facilities in order to boost operational efficiency and increase capacity, which will see its consolidation from two manufacturing sites into a single site in Naval Base from July. These upgrades are in addition to their new Kalgoorlie distribution depot, which are both supporting the company's existing client base and wider expansion into the Goldfields.

The 75,000m^2 site at 32 Beard Street Naval Base was purchased by Len Buckeridge in 2003, specifically to increase cement supply capacity and grow market share in WA. It has a storage capacity of more than 350,000 tonnes of raw material and almost 50,000 tonnes of finished product.

The site has since been developed into a fully operational manufacturing and distribution facility, with large capacity cement grinding mills and extensive silo storage to provide an efficient, integrated cement production operation.

The recent upgrades include new facilities such as a blending plant that will enable the production, storage and despatch of a range of blended cement products, two weighbridges, a High-Early cement storage and dispatch facility, a bagging plant capable of blending and bagging a range of cement products, as well as the ability to produce Ultra Crème white cement.

Not only will these upgraded facilities reduce downtime, but the new blender in Naval Base also has the capacity to mix three times more than the existing aged blender in Canning Vale. These upgrades have also allowed the one-site model to capture efficiencies to lower utility and raw material cartage costs, whilst increasing milling effectiveness and product quality.

Since its establishment in 1987, BGC Cement has grown to become one of Western Australia's largest cement operations, with the capacity to produce more than 1.2 million tonnes of cement annually. More than 30 years on, it boasts a proud record of reliability and quality backed by the state's only fully accredited NATA cement testing laboratory.

BGC Cement General Manager Derek Houareau accredits this growth to the organisation's loyal client base and the expansion of operations into the Goldfields mining region, where BGC Cement has successfully secured large projects working with major mining and mining services companies.

"One reason why we closed our Canning Vale manufacturing site was to prioritise and improve our presence and business development in the Goldfields. The Kalgoorlie depot's central location within the Goldfields ensures regional customers experience faster dispatch and turnaround times, which mitigates risk as well as providing first-class customer service," said Mr Houareau.

Naval Base

The Kalgoorlie facility was opened in 2020 to expand BGC Cement's mining-related capability, providing distribution of cement and lime products to the Goldfields region.

The 20,000m^2 depot has a 5000-tonne combined storage capacity for its finished products, the majority of which are being used at mine sites for paste fill, shotcrete and construction. Large concrete pours and intensive mining campaigns can be easily accommodated with their extensive fleet of specialised pneumatic road tankers.

Since July 2020, BGC Cement has been utilising rail for efficient supply of stock to replenish Kalgoorlie silo levels. This has reduced the company's carbon footprint, improved safety outcomes and enabled faster turnarounds for their customers.

The Kalgoorlie depot is also proud to support the community and local businesses. The site which was constructed by local businesses, is also being managed and staffed by Kalgoorlie residents, making use of local trucks and employing local drivers.

The consolidation of sites and expansion into the Goldfields has everyone across the BGC Group excited. BGC Cement is looking forward to new innovations, enhancing teamwork and further improving ISO9001 and ISO45001 quality and HSE systems, to ensure the business continues to provide their customers with quality products delivered safely and on time.

Multiplex is progressing works at One the Esplanade, Elizabeth Quay.

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government's Joondalup Health Campus Development, a $256.7 million expansion project, with Multiplex winning the early contractor involvement tender in January.

And last week, Multiplex started works on a new academic building at Murdoch University's South Street campus.

Mr Palandri said Multiplex was now seeking to win building work (not infrastructure or submarines) in the defence sector.

"A lot of the defence work is done by a very small number of contractors," he said.

"And considering the amount of money defence is spending, and in terms of diversifying our workbook or dealing with the highs and lows of the commercial building sector, it just makes sense for us to be having a look at that segment of the market."

Mr Palandri expects most upcoming, larger construction contracts to come from the private sector.

"I'm a bit concerned about what's going to happen in the second half of 2022-23," he said.

"The state government, while they're [spending] significantly in Metronet and the like, and in infrastructure works … you're not really seeing the government spending a lot of money in the commercial sector.

"The housing market will start to come off a bit now the stimulus is

> "One of our advantages is diversification - Jon Stone

starting to unwind, and the housing industry starts to deliver out its pipeline.

"That's a challenge and an opportunity."

While the scope of Multiplex's projects had helped attract labour and offered more stability to subcontractors with longer delivery times, Mr Palandri said securing trades remained a challenge.

"When this happened in 2010, we were getting a lot of labour from the eastern states and the UK," he said.

"Now neither of those options is available."

Finding workers

Master Builders Association WA executive director John Gelavis said trade availability was the biggest concern of its members.

State and federal government housing stimulus grants and stamp duty concessions for off-the-plan apartments, along with infrastructure works that had been brought forward to boost economic recovery, had created the perfect storm, he said.

Earlier uncertainty prompted by lockdowns, as well as ongoing border closures and migration restrictions, had compounded labour problems, with employment in building and construction activities falling by 2.6 per cent by the end of 2020, according to ABS employment statistics.

"We recently had a catch-up with the premier; what we're saying is that, as much as we support local trade ability and supply, local jobs are important," Mr Gelavis said.

"We have to start to consider how to access the international global employment market.

"Overseas migration is very important for that, so we need to start considering things like quarantine facilities."

Looking at the future talent pool, a top-up of overseas workers will likely be needed.

Data from the Construction Training Fund shows there were 548 WA-based trainees as of June 30 2020, with apprentice commencements in construction up 5.6 per cent compared to numbers from the previous financial year.

However, the civil construction industry accounted for more than 70 per cent of those in training (about 397 trainees), with just 151 trainees focused on entering the building and construction industry.

The lack of WA-based skilled workers had also put pressure on project pricing, Mr Gelavis said.

Shortages in structural timber and steel had pushed up prices, with Wesfarmers reporting a 20 per cent increase in local lumber prices.

"We've seen double digit increases for material supply pricing and that's consistent right across the country because of the impacts on global supply chains," Mr Gelavis said.

Supply-chain woes

For Multiplex, bringing forward procurement has helped mitigate most material shortage issues.

Mr Palandri pointed to One the Esplanade as an example, with more than half of the building's 4,000 façade panels, of which there is a national shortage, already in WA due to the business pre-purchasing stock during the pandemic's early stages.

Builders without that ability to pre-purchase materials have taken a different approach.

That includes national business Built, which is ranked 10th on the Data & Insights list of WA's largest construction companies.

Built director Jon Stone said rather than halt projects due to material delays, such as façades and glass balustrades, the group had resequenced projects to satisfy delivery timeframes.

Typically, he said, those elements would be installed prior to building access. However, the group had put temporary measures in place to make projects water-tight and continue with work such as internal fitouts.

"With COVID, there are a lot of businesses that have suffered," Mr Stone said.

"But those that have looked to react to COVID in a way that's reshaping the way they think [have done well].

"One of our advantages is diversification.

"We can't just pigeonhole ourselves into one specific sector."

Active projects for Built include Curtin Heritage Living's $130 million aged care and retirement living development in Cottesloe, and the $100 million Kardinya Park Shopping Centre redevelopment, which broke ground last month.

Built has also been involved with apartment, health, and education projects, tendering for a range of works including new builds, internal fitouts, and heritage restorations, including upgrade works at His Majesty's Theatre, now under way.

"In WA you have to be nimble, because from a sector point of view, those sectors have a lifespan which sometimes comes to an end depending on the economic climate," Mr Stone said.

"What's important is that we are only as good as our supply chain, our

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Using contracts to weather the construction storm

By Murray Thornhill, Director and Daniel Morris, Special Counsel, HHG Legal Group

IN last month's feature on WA's civil construction industry, Jesinta Burton identified a "perfect storm" of challenges facing civil and construction contractors, including border closures, record-high material costs (including steel and timber), skills shortages and billions of dollars in pipeline works.

As labour shortages continue to intensify and profit margins become tighter, there has never been a better time, in our view, for civil and construction contractors to return to the fundamentals.

These include:

- proper and efficient contract administration with particular attention to contractual time-bars;
- excellent communication flow, internally and up and down the contracting chain; and
- informed negotiation of contract terms by contractors who have the confidence and experience not to buy into these longstanding myths:

"Everyone else is signing up to the same thing and they all seem to get by."

"If I don't take what I'm given, there are 100 other people lining up for the same job."

As for the "100 other people", we are consistently and pleasantly surprised by how often contractors who are skilled and in demand come away from negotiating unfair contract terms saying how easy it was for them to secure substantial concessions. Indeed, it is fairly typical for a head contractor confronted with such terms to comment that they did not even know the offending clauses were in their contracts and they were only there because their lawyers had put them there.

Such well-informed and careful negotiations can help contractors avoid the feeding-frenzy that often occurs in times like these where there is more work to be done than there are those with the skills to do it. This almost inevitably results in the dreaded "race to the bottom", driving increasingly less profitable bids and ultimately, contractor insolvencies.

Equally damaging to the commercial interests of subcontractors are ill-informed or misdirected demands that are sometimes made of head contractors or governments, which can often undermine a subcontractor's credibility and hasten their financial distress.

Yet the industry seems to be no stranger to irresponsible representation. It was disappointing, for example, to see that at the recent Pindan creditors' meeting, there were those who purported to represent the interests of civil and construction contractors, blaming poor payment recovery on liquidators for paying out employees first and on the McGowan government for not rushing through security of payment reforms.

The truth of the matter is: employees were paid first because the Corporations Act 2001 required it; and the Security of Payment Bill, whilst important to the industry, does not specifically deal with the consequences of civil and construction contractor insolvency, beyond requiring retention monies to be held in separate trust accounts.

Specific insolvency protections such as cascading statutory trust accounts were ultimately scrapped in favour of laws focused on improving rapid pay dispute determination and avenues for subcontractors to recover payment against solvent head contractors and principals. Even if these new laws had been in place before Pindan's collapse, they would have meant little to Pindan's subcontractors.

Civil and construction contractors looking to survive need to develop contract negotiation and management skills in order to look after themselves.

So, where do they start? Start by taking advice from a trusted legal advisor whose approach is practical, commercially-minded and grounded in the present-day realities of civil and construction contracting.

Ideally, that advice should help subcontractors distinguish between:

- contract clauses that can be managed through improved contract administration or margins (e.g. where exposure to liability is increased, but still manageable);
- contract clauses that are ill-suited to the project as a whole and therefore, in everyone's best interests to renegotiate (such as those that would increase the likelihood or complexity of disputes); and
- deal-breakers that have no commercial solution at all (e.g. time-bars that start running from the date of a trigger-event, rather than when the subcontractor should reasonably have found out about that event, or final payment claims under subcontracts that cannot be made until a trigger event under the head contract that is unknowable to the subcontractor).

HHG Legal Group has consistently delivered these and many other practical, commercially-minded services to Western Australia's civil and construction industries, with resounding success, over many years.

If you need advice in this area, or would like to receive information about making civil and construction contracts work for you, please contact Murray Thornhill or Daniel Morris directly.

Chris Palandri said tax was a major roadblock to delivering more housing. Photo: Gabriel Oliveira

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subcontractors. It's about ensuring we have a good outlook of work and we're giving the subcontractors enough time to also pre-plan their workload and workforce."

Mr Stone said the Perth market was facing a flight to quality, with developers increasingly seeking contractors that had a strong balance sheet and good subcontractor relations.

For BGC Australia, repeat business and the group's materials businesses have proved particularly worthwhile in navigating the past 12 months.

BGC Construction general manager David Dodds said having divisions dedicated to manufacturing concrete, cement, plasterboard, and bricks, had made it easier for the business to predict and manage shortages effectively.

BGC Construction has focused mainly on apartment contracts, recently completing construction on Edge Visionary Living's Eden West, as well as Norup and Wilson's The Precinct in Applecross.

Current projects include two Iris Residential apartment projects and a residential facility in Applecross for Opal Aged Care.

BGC Construction was also recently awarded the contract for Blackburne's East Village apartment development in Karrinyup.

"We've identified apartments as a key market sector for BGC in our strategic planning process," Mr Dodds told *Business News*.

> "When this happened in 2010, we were getting a lot of labour from the eastern states and the UK - Chris Palandri

"The main reason for that is that it aligns with our vertically integrated business. A lot of big apartment projects have a lot of materials that go into them … concrete, cement, plasterboard, and BGC is involved in the manufacturing of all of those.

"It's definitely forecast as a growth sector … we've developed really strong relations with all major developers; we like that repeat business model.

"It's a tough industry, so it's nice when you win a project based on relationships as opposed to being the cheapest builder out there, which is often the case."

A race to the bottom to win tenders, as well as unexpected price increases, are believed to have contributed to the collapse of Pindan, which was until recently the state's second largest builder.

Pindan's demise has since accelerated legislation aimed at improving the security of payments in the industry (see page 46).

Mr Dodds said price volatility would remain an ongoing concern for the year ahead.

"Our immediate focus is projects with a short lead-in time," he said.

"For us to be committing to a price on a project that's only going to be going to construction in three or six months' time is very difficult.

"Some tenders are valid for 14 days for our subbies and we're expected to hold our price for six months or whatever [it might be], so it's very challenging.

"We can build-in some factors in terms of price escalation, but it's difficult to know exactly what is going to be happening; it goes back to those relationships.

"From a client's perspective, that early engagement process is so important because apartment developers now need to be getting their feasibility uplift correct.

"While they might be able to sell their apartments for more, construction costs are increasing so they've got to manage that process well."

The housing stimulus measures had also reduced the pool of commercial subcontractors, Mr Dodds said, with many involved in smaller commercial projects now shifting into the residential space.

"That's leaving a glut in the small-to-medium market of commercial," he said.

"It's exciting times, we just need to manage things very closely.

"A market upturn is sometimes more difficult to navigate than a downturn, so builders have just got to go in eyes wide open."

Future work

Edith Cowan University's city campus is one of the largest commercial contracts coming to market.

Another big CBD project yet to appoint a builder is GDI Property's $1 billion Mill Green Complex redevelopment, which received planning approval earlier this year.

Mixed-use residential developments driven by the private sector will likely continue to provide the bulk of building work in the long term off the back of several municipalities having reviewed planning frameworks to accommodate more density, as part of the state government's push for infill projects.

That includes new precinct plans for Leederville, Subiaco, and Nedlands, where Grange Development Consulting and Costa Property Group's $320 million apartment development at 97-105 Stirling Highway was given the green light in February and is yet to appoint a builder.

Long term, Perron Group's $1 billion, 20-year plan to develop a new town centre for Cockburn, involving the redevelopment of the Cockburn Gateway Shopping City centre, as well as the construction of several new residential and commercial buildings, presents another opportunity for contractors.

The development is expected to be assessed for planning approval in the coming months.

Large retail projects could also provide a boost to the construction workforce, although uncertainty hangs over delivery timeframes.

Westfield has deferred its major centre redevelopments, including Innaloo, and plans to redevelop Carillon City into a retail and commercial precinct in the CBD were put on pause last year.

Property Council of Australia WA executive director Sandra Brewer said a healthy supply of work was a future challenge for the sector, to ensure the labour force had the confidence to grow to meet current demand but also be sustained long term.

"There is an opportunity for government to consider slowing the timetable of non-essential state government projects currently being considered to relieve labour market pressures for the private sector," Ms Brewer told *Business News*.

"As is the case with all industries, future demand is still subject to many significant unknowns, and creating a stable pipeline of construction projects will be crucial to WA's success as the world recovers from the impacts of COVID-19."

Data & Insights

WA'S LARGEST CONSTRUCTION COMPANIES

Ranked by total combined value of WA projects

Rank	Change from previous year	Company name	Senior executive and title	Year est. in WA	Total staff in WA	a) Offices in WA b) Offices interstate	Total combined value of current WA projects ($)	Number of WA current projects	Current WA major projects
1	—	Multiplex Constructions	Mr Chris Palandri Regional managing director	1962	NFP	a) 1 b) 4	NFP	6	Karrinyup Shopping Centre Expansion, 1 The Esplanade, ONE Subiaco, Murdoch New Academic Building, Murdoch Health and Knowledge Precinct, Joondalup Health Campus Development Stage 2
2	↑	Probuild	Mr Adam Barker Managing director, WA	2006	70	a) 1 b) 3	NFP	1	Exchange (Greater Curtin)
3	↑	Georgiou Group	Mr Rob Monaci Chief executive	1977	520	a) 3 b) 2	$800m	35	Tonkin Gap Alliance, Leach Welshpool Alliance, Mitchell Freeway Extension, Hollywood Hospital Upgrade
4	↑	Pyramid Group Aust	Mr Jerry Masaryk Director	1999	NFP	a) 1	NFP	6	Argyle Apartments, The Groves Attadale, Revue on Waratah
5	↓	Lendlease Group	Mr Chris Learmonth General manager, building, WA	1964	350	a) 1 b) 7	NFP	12	Curtin University, Forrest Chase Redevelopment, HMAS Stirling, Waterbank Infrastructure, Works for NAB and ANZ
6	↓	Perkins Builders	Mr Dan Perkins Managing director	1965	105	a) 2	$495m	18	Piara Waters Secondary College Stage 1, DFES Collie, Armstrong Village, Armadale Courthouse & Police Complex, Albemarle NPI Buildings, Bushfire Centre of Excellence, IGUP Perth Airport, PPP Schools
7	↑	BGC Australia	Mr Daniel Cooper Chief executive	1974	NFP	a) 2 b) 0	NFP	15	Shenton Quarter, Applecross Shorecare, Amara City Gardens, East Village
8	↓	Doric	Mr Justin Taylor General manager	1989	55	a) 1	$375m	2	Irwin Barracks Redevelopment and Leeuwin Barracks Consolidation Project, HMAS Stirling Redevelopment Stage 3A
9	↑	Hanssen	Mr Gerry Hanssen Managing director	1994	30	a) 1	$274m	3	Dianella, AT238, Civic Heart
10	↓	Built	Mr Jon Stone Director	1998	NFP	a) 1 b) 5	NFP	10	Piccadilly Arcade, Mirvac Compass Apartments, Kardinya Shopping Centre ECI, Wearne Aged Care, Synergy, RPH Multiple Projects, Murdoch Oncology, Ord Street Redevelopment, Mt Lawley TAFE
11	—	ADCO Constructions	Mr James Prattent State manager, WA	2013	60	a) 1 b) 5	$200m	9	Swancare Bentley, Osborne Park Hospital, Toodyay Sport and Recreation, Parmelia Hilton Refurbishment, Port Hedland Airport, Bunnings Midland, Fremantle North Campus Fitout
12	↑	Jaxon	Mr Russell Perkins General manager	1958	55	a) 1	NFP	7	Forrest Hall Stage 2, Valencia Aged Care, Dean St Apartments, Edgecumbe St Apartments, Henley Rise Apartments, Minderoo Fitout
13	—	EMCO Building	Mr Ron Keogh Chief executive	1986	58	a) 1	$194m	13	Treehouse Apartments, Glyde Street Aparmtnets, Cockburn Fire Station, Curtin University Arts Precinct, Aegis Aged Care North Coogee, St Vincents Aged Care Facility, South Regional TAFE (Esperance)...
14	↑	FIRM Construction	Mr Simon Linklater Director	2003	50	a) 1	$140m	14	Rottnest Hotel, PTA Assembly Facility Bellvue, Element 47 Apartments, Guildford Grammar Boarding Facility
15	↓	Icon Construction	Mr Luke Young QLD/WA/NT director	1932	45	a) 1 b) 7	$130m	3	Equinix Shenton Park, Wellington Street Student Accommodation, Little Lane Apartments
16	—	MGroup	Mr Michael Read Director, M/ Construction	2001	41	a) 1	$115m	12	Programmed, M26, Quest Hotel Ascot, M31 Terraces, M32 Terraces, Bunnings Albany, M/27, State Govt Works, Chester Pass Mall Works, Geraldton, M/31 Apartments, Jerramungup Swimming Pool
17	↓	Broad Construction	Mr Cyril Cahill General manager, WA	1991	65	a) 1 b) 1	$105m	3	CPNU, Woolworths Highgate, BCC
18	↓	PACT Construction	Mr Jason Thomson General manager	2004	47	a) 1	NFP	3	Leederville Office Development & Integrated Fit-out, Eden East Apartments, One Mabel Apartments

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All information compiled using surveys, publicly available data and contact with industry sources. Other companies may be eligible for inclusion. If you believe your company is eligible, please email: claire.byl@businessnews.com.au

WND: Would Not Disclose, NFP: Not For Publication, N/A: Not Applicable or Not Available.

New tenure.
New opportunities.

Available in Western Australia from 30 June 2021.

Community schemes are set to generate exciting new opportunities for future mixed-use developments in Western Australia.

WA's newest land tenure will support contemporary developments which can more seamlessly integrate and manage a range of uses, such as shops, cafes, offices, residential properties and recreational facilities.

The unique multi-tier structure of community schemes unlocks new possibilities for what can be achieved on a single site by introducing additional options and flexibility within the management and staging of new mixed-use developments.

Offering distinct capabilities across shared infrastructure, governance arrangements and common property ownership, community schemes present clear benefits for property developers and investors, as well as future owners and tenants.

Images supplied by GKA in association with SPH architecture + interiors

WA's newest land tenure

5 distinctive features

1 **The defining feature of a community scheme is that it allows a single parcel of freehold land to be subdivided into up to three tiers of schemes, called community titles schemes.**

This multi-tiered structure will support unparalleled flexibility and customisation in the planning and management of new mixed-use developments in Western Australia.

It allows for a diverse range of development outcomes to be successfully met within one overarching scheme, overcoming some common limitations within strata titles.

2 **Unlike strata, community schemes allow both building and land schemes to exist within a single development.**

This unique feature delivers additional flexibility and strategic opportunity within the management and staging of new developments.

For example, building scheme lots could be sold as apartments, while land scheme lots could be sold as vacant land.

3 **A fair and targeted approach to common property, where people only contribute to the aspects of the development they use.**

Some common property can belong to all the owners of the community scheme, while other common property can be solely owned by the lot owners of the subsidiary schemes (the community titles schemes).

This is an appealing feature of community schemes for future owners and tenants, as it enables common property to be more clearly allocated through a 'user-pays model'.

4 **Smart scheme governance happens when the right people are making the right decisions – community schemes have been designed with this in mind.**

They support smart governance arrangements by providing for the most efficient, appropriate decision-making to occur across the multiple tiers of a community scheme.

The community scheme and each of its subsidiary schemes (the community titles schemes) has its own community corporation (much like a strata company) and by-laws.

5 **Tailored for mixed-use developments in Western Australia, community schemes offer a clear, contemporary alternative to other land tenures.**

A community scheme could come in the form of a multi-storey building, a large-scale land development or a wide range of developments in between.

The scale of opportunity presented by this new tenure holds considerable promise for those ready to explore its potential.

Support and resources

Visit strata.wa.gov.au and dplh.wa.gov.au.

Contact Landgate customer service on (08) 9273 7373.

New online resources will include a brochure introducing community schemes to WA's property sector.

New tenure // New opportunities will be available at strata.wa.gov.au from 30 June 2021. This online brochure will feature a series of theoretical scenarios depicting potential applications of community schemes.

GOVERNMENT OF WESTERN AUSTRALIA

Landgate

> “Pindan is not the first building company to go under and it won’t be the last
>
> - Vince Catania

Vince Catania addresses protestors gathered outside Parliament House.
Photos: David Henry

Getting paid, building certainty

New legislation aims to provide better protection for payments to subcontractors, but some say it misses the mark.

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WESTERN Australia’s peak building union has expressed disappointment at legislation passed by state parliament last week aimed at providing better safeguards to protect payments to subcontractors.

Even in the final moments before the legislation passed, the efficacy of the state’s Building and Construction Industry Bill (Security of Payment) 2021 and the degree to which it would serve its intended purpose was still being debated.

Much of the concern related to the Bill’s failure to include protection for cascading statutory trusts.

The reforms were touted as a means of delivering better protections for subcontractors in the event of an upstream insolvency, with mandatory retention schemes, provisions for monthly progress payments, and a rapid dispute resolution process.

The state government said the legislation would also equip the Building Services Board with extensive new powers to rid the industry of companies with a history of exploiting subcontractors.

Historical cases of builders going under, and leaving subcontractors millions of dollars in debt, prompted several industry-wide reviews across Australia in recent years.

The WA draft legislation was thrust back onto the agenda as a matter of urgency in May after construction works on projects across the state were brought to a standstill by the shock collapse of multi-disciplinary construction company Pindan.

Previously the state’s second largest construction company, Pindan’s demise left its 80 active projects, 280 staff, 500 subcontractors and 400 trade suppliers in limbo, with initial estimates indicating the losses could reach more than $80 million.

In the weeks after the collapse, the CFMEU (Construction, Forestry, Maritime, Mining and Energy Union) and members of the state’s opposition took to the steps of Parliament House to voice their concerns about the Bill’s shortcomings, along with subcontractors affected by Pindan’s demise.

Finance Minister Tony Buti and Commerce Minister Amber-Jade Sanderson defended the decision not to include cascading trusts, which they argued could place a financial and administrative burden on all parties in the supply chain. This could risk pushing struggling businesses into financial difficulty.

Outside parliament, opposition commerce spokesperson Vince Catania criticised the state government’s justification and questioned its sudden change of position on the matter.

“Pindan is not the first building company to go under and it won’t be the last,” Mr Catania said.

“We have people here who have lost tens of thousands of dollars and, in some cases, hundreds of thousands of dollars, because of the inaction of the McGowan Labor government.

“Now we need the government to act and do so by ensuring the legislation is adequate to protect subcontractors.

“The defence of not putting cascading statutory trusts into the Bill was that these companies need to have cash flow.

“What about the cash flow of these subcontractors? They’ve become the bank. They’ve become the line of credit for these companies.”

But the calls fell on deaf ears and the Bill was passed without the inclusion of cascading statutory trusts.

Ms Sanderson said the state government had consulted extensively with industry on the Bill and was confident the reforms struck the right balance but didn’t rule out considering other measures once industry had time to adapt to the new reforms.

Payment problems

Speculation grew about Pindan's future amid reports subcontractors had walked off several construction sites after company directors told them they could not be paid.

Days later, it was announced that professional services firm EY had been appointed administrator of three Pindan entities and liquidator to a further nine.

The administration process is anticipated to be lengthy and painstaking for the subcontractors left out of pocket, as EY trawls through the company's assets in the hope of securing capital for creditors.

Industry sources and the CFMEU rejected claims Pindan's collapse had blindsided those working in the sector, instead citing rising project costs in the wake of COVID-19 and a culture of a race to the bottom respectively.

CFMEU WA state secretary Mick Buchan warned of a cascade of foreclosures and receiverships of subcontractors in the wake of the collapse.

He said the issues leading to insolvency and nonpayment of subcontractors were not exclusive to one business or its operations but were reflective of years of behavioural flaws embedded in the industry.

That included price gouging, under-delivery, exploitation, unfair contract terms and underbidding, among other practices.

Mr Buchan said developers were having a field day, making margins in the 20 per cent range or more, while builders and some subcontractors were taking jobs at a loss.

"This is what we refer to the race to the bottom," he said.

"It's just not sustainable, and the whole industry has a responsibility to fix it. If we don't, then it's a matter of when, not if, the next major builder will go under."

Mr Buchan said builders had reduced margins to remain competitive and win work in WA, operating at a level of risk beyond a point that made financial sense.

Companies were chronically undercapitalised, he said, and it was only a matter of time before more construction companies suffered Pindan's fate.

A subdued market was one factor that had led to price wars.

"In the last two decades, the building and construction industry has undergone a major restructuring, with the role of construction companies in that market also changing," Mr Buchan said.

"This change has seen many of the major corporations move away from the traditional model of domestic constructor supplying and managing the supply of construction services, to major corporations with strong links to the capital markets and a diverse role in financing developing and managing projects.

"Some commentators have described this transformation as construction companies today being as much about investment banking and risk trading as putting up buildings.

"This has had significant implications for the contracting process, in particular in the reallocation of financial risk to smaller players within the industry."

This behaviour had potentially further exposed subcontractors, increasing the likelihood of payments or leakages from the project payment cycle, according to a 2012 NSW independent inquiry.

While Mr Buchan said some of the new legislation measures were good pieces of the overall puzzle to solving payment problems, there were still inadequacies.

The system of retention money, he said, had been vulnerable to abuse, as builders were able to use that money to put into other projects, essentially risking money that wasn't theirs.

As a result, if there were any issues with subsequent projects that had caused insolvency, that money owned to subcontractors was lost.

The current legislation had addressed problems of retention money being misspent, he said.

But those retention funds typically represented just 5 per cent of the total contract.

Mr Buchan said the new legislation provided piecemeal measures that helped ameliorate or reduce total exposure, but improvements were marginal.

"They don't actually provide proper security of payment," he said.

"Only cascading trusts will do that; a proper system where money is put aside in trust accounts to make sure subcontractors are paid on time and in full in the case of insolvency up the contract chain."

Mr Buchan said the union was committed to fighting for cascading trusts and would continue to work with and lobby government and industry.

The legislation

The Building and Construction Industry (Security of Payments) Bill

Continued on page 48

SPONSORED CONTENT

Cedar Woods continues to release new residential stages to meet trend-defying demand

In many parts of the country the booming property market can be attributed to various state and federal government stimuli including the national HomeBuilder grant that was introduced in June 2020.

However new purchasers who no longer qualify for these grants do not seem disheartened. With record-low interest rates, forecast price growth and increasing rental yields, the current market landscape and conditions are favourable, and purchasers remain keen to capitalise on these conditions.

Cedar Woods Managing Director Nathan Blackburne said the demand landscape across the nation was bucking typical trends.

"Traditionally when one market is firing, another market will be lagging but right now we are experiencing moderate or strong conditions across all the states we operate in", Mr Blackburne said.

"It is pleasing to see that the desire to enter the property market has outlived the stimulus and buyers across the country can see buying conditions are still very favourable."

Across the Cedar Woods national portfolio construction of new stages is ramping up to meet demand.

Patrick Archer, Cedar Woods' Chief Operating Officer said that the South Australian projects are currently the best performers in the Company's portfolio.


Fletcher's Slip Townhomes, SA

"Our two active projects in SA have been going gangbusters. There's Fletcher's Slip, a harborside community of townhouses and apartments in Port Adelaide; and Glenside, where we have just sold out of the Botanica apartments." Mr Archer said.

Mr Archer said the outlook in Queensland looks good.

"The Queensland market had been fairly flat over the last four or five years, but enquiries at our projects are really strong, and we expect our Ellendale and Greville projects that are currently under construction, to continue performing well," Mr Archer said.

Victoria's recent two-week lockdown did nothing to slow down sales with buyers committing to their purchase despite COVID-19 uncertainties.

"Mason Quarter, our project in Wollert, is seeing lots of demand. We have both land and townhouse offerings, in a great location with lots of amenities that are appealing to many purchasers," Mr Archer said.

Cedar Woods' Western Australian projects benefited most from the government stimulus. Ben Rosser, WA State Manager said that Western Australia has now naturally experienced a slowdown, but not a stop in growth since the grants ended.

"Construction has just commenced on Bushmead South, the highly anticipated southern extension of our hugely popular Bushmead estate with over 50% of the first release selling in only a few weeks and 500 registrations of interest being received for the 450 lots."

Cedar Woods' diversified product mix and geographic spread positions the Company well to ride the property and construction boom with customers continuing to seek the high-quality products that Cedar Woods offers.

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From page 47

2021 (SOP Bill) will supersede the Construction Contracts Act 2004 (WA).

Lavan partner, construction and infrastructure, Shane Pentony said while the 2004 Act had its own security of payment regime, the new provisions would more closely represent regimes in place in other states across Australia.

Mr Pentony said the new legislation would likely require higher cost of administration, which could work its way into contract tender prices.

Another significant change for industry practices includes the broadening of the definition of construction contracts under the new legislation, to include mining contracts.

"The SOP Bill does not exclude fabricating or assembling items of plant used for extracting or processing oil, natural gas, any derivative of natural gas or any mineral bearing or other substance," Mr Pentony said.

"This means that many more oil and gas-mining contracts will be captured in the legislation, along with those owner operators responsible for them."

Mr Pentony said the new legislation aimed to promote payment of genuine contractor claims by placing more of the burden on project owners and larger contractors, but did not prevent them from mounting 'back charge' claims (e.g. for defective work), which frequently allowed for cash retention monies to be used up.

"Whilst the retention trust scheme is obviously a valuable safeguard for subcontractors who enter into construction contracts with head contractors who fall into financial difficulty, it will usually represent at most five per cent of the contract sum value," he said.

Mr Pentony said many contractors, as a result, could still find that the cash retention was taken away from them.

He said the retention trust scheme would not help subcontractors better secure progress payments – representing between 90 and 100 per cent of contract sum payments – which was the real crux of the issue for subcontractors.

"Other than protection for cash retention, the SOP Bill does not provide any assurances that in those circumstances a contractor will be paid what it is owed," he said.

Alternative solutions

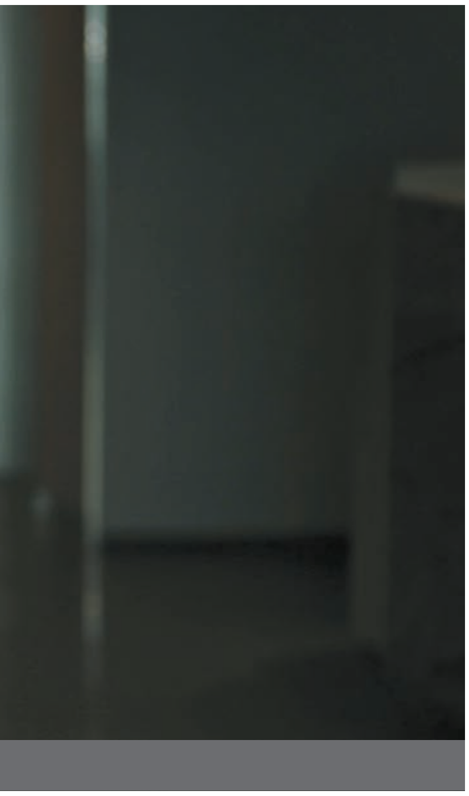
In 2016, the federal government announced a national review of

Louise Stewart has expanded ProjectPay to the UK.

security of payments to identify areas of best practice.

The final report was released in 2018 and outlined 86 recommendations, including the establishment of a system of statutory trusts for all building projects valued at $1 million or more with suggestions that those trusts would operate in a similar manner to project bank accounts, but with tighter oversight.

During that time, the state government undertook its own review, establishing an industry advisory



group chaired by barrister John Fiocco, which subsequently recommended the implementation of cascading statutory trusts.

Project bank accounts have been common on government construction contracts.

> “[I]t’s common sense to make sure that the small businesses in the sector get paid - Louise Stewart

Project bank accounts and cascading statutory trusts essentially integrate stricter regimes to ensure subcontractors are paid what is owed to them in real time (governing the entire project sum) directly from the payment to the head contractor.

Mr Pentony said the administrative costs associated with these measures was a likely reason as to why they weren’t mandated in the SOP Bill.

Former Subcontractors WA non-executive chair Louise Stewart has experienced the repercussions of payment issues in the construction industry firsthand, with her husband’s subcontracting business left unpaid on numerous occasions.

That exposure, along with witnessing individuals losing their homes due to non-payment, and previous experience in the technology sector, led Ms Stewart to establish ProjectPay in 2016.

The ProjectPay SaaS platform uses smart tech and a proprietary cascading trust system to protect project funds for work completed by subcontractors and suppliers, linking cascading project accounts with the payment request, approval, and payment process.

“The platform enables project financiers to keep track of project capital provided and ensure all funds are being used appropriately,” Ms Stewart said.

“The level of data analytics and insight we provide into project cash flows provides project financiers with an additional layer of risk management and control.

“ProjectPay’s payment process ensures the security of payment for all project participants on a project.

“Unfortunately, the stats speak for themselves; it’s an industry with the highest rates of insolvency, with over $5 billion lost every year and terrible rates for delayed and non-payment.

“Any construction fund owner needs to take the risk of builder collapse and non-payment of subcontractors more seriously, alongside the terrible impact this has on everyone, including on investor returns.”

ProjectPay has since been tested by more than 100 subcontractors in WA, with the platform trialled on projects including construction at Curtin University and Hollywood Hospital.

However, it has found greater support abroad.

Last year, it received a £100,000 grant from the British government to trial its payment system on a £20 million project in London.

In addition, Ms Stewart said she had received an approach from UK-based Lloyds Bank, which had expressed interest in a joint venture.

She said some US states had already legislated cascading statutory trusts to protect payments.

“The business was always going to have a global focus and I think the barriers I faced in WA just accelerated our global expansion,” Ms Stewart told *Business News*.

“From an economic point of view, it’s common sense to make sure that the small businesses in the sector get paid so they can employ people, train apprentices, pay their taxes and continue to operate.

“It will go a long way to addressing the skills crisis in the sector as well.

“Ultimately the question is, who wants to work in this sector if you can’t get paid?”

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