The Role of the Superintendent

PREAMBLE.

This document has been prepared for use within the land development industry.

The Industry Working Group intention is to provide clarity in relation The Role of the Superintendent, which will provide a greater understanding and save costs through reduction in disputes.

The Industry Working Group has agreed on the content and seeks to have the document adopted and embedded within the EDCM and IDM, along with private developers.

The role of the Superintendent during the Construction Phase of a project is probably the most misunderstood role in the land development industry.

The Working Group considers that the role is quite simply to act as Superintendent in accordance with generally accepted principles and the following is an appropriate definition/commentary;

DEFINITION

The Superintendent is a person named in a contract by the two parties to that contract (the Proprietor and the Contractor) and is required to undertake certain functions under that contract by those two parties. The Superintendent is not a party to the contract.

The Superintendent is required:-

- to assess quality of materials and workmanship in accordance with the contract documents;
- to assess progress claims and issue of progress certificates;
- to assess claims for extra payment for variations to the contract;
- to assess claims for extra payment (such as claims under the latent conditions provisions) under the contract; and
- to assess claims for extension of time.

The Superintendent shall effect these requirements by the periodic inspection and attendance on site and attending, where appropriate, meetings with the principle, Council, contractors, suppliers and other parties as required to progress and finalise the works. The Superintendent is not required to provide continuous nor detailed supervision, nor act as a clerk of works nor as an inspector.
INDUSTRY WORKING GROUP
Guideline for the Role of the Superintendent

The Australian Standard 2124/4000 General Conditions of Contract note that the Principal is to ensure that the Superintendent acts honesty and fairly at all times/functions reasonably and in good faith.

COMMENTARY

The Superintendent is appointed by the Principle.

The Superintendent is a person named in the contract which is usually AS2124 or AS4000; in the majority of projects the Superintendent is generally the Consultant.

There are a number of important actions required to be able to successfully function as a superintendent; the most problematic is that the Superintendent must act and must be seen to act fairly at all times.

It is therefore recommended that the Consultant’s nominated Superintendent should not be the Consultant’s designer, to meet the probity requirements.

The starting point for the Superintendent is to ensure that both parties are aware of the Superintendent’s role, and to act fairly, impartially and responsibly throughout the entire process from the commencement of the Contract to its completion, in accordance with the General Conditions of Contract (usually AS2124/AS4000) and the Engineers Australia Code of Ethics.

It is strongly recommended that the Superintendent liaise with Designer in the preparation of the tender documents that must be inclusive of all those requirements (ie scope of works, applicable standards) that the Contractor will be required to complete in the provision of the works under the contract.

On the basis that the above has occurred, it should be a reasonably simple task to be able to assess claims for any extra cost variations. Claims for time variations can be more complex, especially when the Principal has imposed a high rate of Liquidated Damages.

The Superintendent is required to visit the site to observe that construction of the works in progress is in accordance with the Contract and to process the Contractor claims for payment and variations payments.
To enable the Superintendent to observe that the construction is occurring in accordance with Contract, generally there are critical witness/hold points that do need to be observed, which will be nominated in a given construction program, and are likely to occur at Council witness points, which are to be agreed between the Principle, Superintendent and the Council.

As a part of the processing of the Contractor claims for payment the Superintendent may need to determine cost and or time and latent conditions.

It is essential that the requirements of the General Conditions of Contract be followed in relation to variations and latent conditions, to ensure that the cost and time allowances are resolved where practicable prior to the works being under taken, and which will ensure that the Superintendent can process the Contractor claims for the varied works in accordance with General Conditions of Contract.