



Sustainability

Background

1. This consultation paper is designed to explain the reasoning that has led the JCT to ask whether construction contracts should include clauses which put requirements on contracting parties with regard to sustainability. This could apply to the specification of both construction products and to the construction process. It can and should apply throughout the supply chain.
2. There is extensive literature about the meaning and content of sustainability, a concept which is not easy to grasp. Shorthand phrases such as green growth and not cheating on your children can be used for speech material. But they do not capture the full breadth of the sustainability concept.
3. Sustainability rests on three pillars, namely economic, environmental and social. The trick of optimising performance and output is to bring these three perspectives into proper balance. There are few rules for doing this, there are no widely adopted and generally accepted 'standards', and so far, progress can chiefly be made by trial and error and such means as Ecopoints and ecoprofiling. Traditional tools, such as cost benefit analysis, fail to take a long enough view to incorporate potentially catastrophic circumstances over centuries, such as climate change. Whole life costing has much to commend it in theory, but it is extremely complex to apply in practice, and frequently fails because of inadequate data or erroneous judgements.
4. There are many aspects to the application of sustainability to construction. Construction is a substantial part of the economy, around 10 per cent by some measures, and because it uses real resources, both materials and manpower, it brings all aspects of sustainability readily into play. Much of the current process is inherently inefficient, and there is a substantial reform process in progress that is designed to increase efficiencies. This reform process lends itself to improving sustainability as well, it simply becomes a part of the continuous improvement that we all seek.
5. Sustainability applies both to the construction process and to the results or output of that process. The Government's commitments to three million new homes and zero carbon houses are obvious targets for a sustainable approach. But issues such as energy and water use, waste minimisation, improved occupational health and better skills and training applications are also vital to sustainability. It is important to remember

that sustainability is not just environmentalism dressed up, but also requires a more efficient and optimised economic process, which brings into play the improved process techniques such as integrated supply chain management, just-in-time philosophies, and use of off site techniques, many of which were pioneered in the automotive industry. Sustainability forms an excellent framework within which to bring these many strands together.

6. Traditionally, Government has sought to improve the sustainability culture of business, through persuasion, through economic instruments (such as the Emissions Trading Scheme (ETS) and Renewable Obligation (RO)), through tax and fiscal incentives, or through straightforward statutory regulation such as the planning system or building regulations. There is however a risk that some of these approaches are inadequate, and some too heavy-handed. The incorporation of suitable provisions in guidance notes or clauses in construction contracts offers the possibility of a halfway house, where the supply chain and the clients can be incentivised to improve sustainability through measures which are enforceable if so desired, but are not necessarily so.

Preliminary Consultations

7. The JCT have held preliminary consultations with senior industry figures and have found a consensus that the inclusion of such provisions in contracts and guidance, is, in principle, desirable and should not impose impossible barriers either on suppliers and their advisers or on the legal community. There is however a consensus that the framing of appropriate provisions will not be straightforward, and that achieving the correct level of detail will be crucial to success, in particular, in ensuring wherever practical that provisions are enforceable. However, enforceability may be more about whether or not a supplier secures repeat business than it is about traditional legal remedies. There are already some farsighted clients and suppliers who have made progress in this area, for example in relation to the Olympics project, and the JCT proposes to consider the use of these models in developing its approach. Guidance might include reference to existing literature, to appropriate management processes and tools, and how to use the product and other data that is available.
8. Areas for possible inclusion under the heading of sustainability, are: desired levels of energy, and water use; targets for waste minimisation and recycling; requirements for use of materials that come from sustainable sources (this is particularly desirable for timber); targets for health and safety of the workforce on site; targets for training and appropriate skills levels; requirements for use of up-to-date integrated supply chain methods including improved logistics and use of logistics plans; and targets for improved working conditions for staff both on and off site. Considerations on the transport side, both for bringing staff on site and bringing materials to the site will also be important to the overall

carbon footprint of the project. The contract might also wish to make reference to the sustainability targets being set for the product being built, to ensure that design optimises sustainability both for the building process, and for the eventual outcome over the whole of its life. Performance requirements and performance targets have an important part to play but it is essential that they are developed consensually and where included in contracts they are not overly prescriptive. Hence, the earlier reference to the correct level of detail. However, it is equally important that meaningless terms are avoided.

Consultation

9. The JCT, as part of its consultation process, is now seeking comments from interested individuals within and outside the industry, as well as trade associations and professional institutions.

10. The following sets out some questions in an attempt to provide a focus to what is an immense topic but these should not inhibit those wishing to respond.

Q1 Do you believe that sustainability performance can be improved in the industry through industry-specific contract documentation?

Q2 Which contract document, if any, is best suited for setting out and regulating matters related to sustainability?

Q3 The following identifies a list of sustainability items that might be covered in the contract documents.

Please tick the six most important items in terms of providing for them in the contract documents.

() Carbon emissions associated with construction process

() Carbon emissions associated with the end use of the 'project'

() Commercial vehicle movements

() Consumption of energy during construction process

() Consumption of energy associated with the end use of the 'project'

() Consumption of water during construction process

() Consumption of water associated with the end use of the 'project'

- () Economic sustainability in construction supply chain
- () Maintenance or optimisation of biodiversity
- () Origin of construction materials
- () Waste management in construction process
- () Waste management associated with the end use of the 'project'

List any other items not included in the above list, which you believe should be provided for in the contract documents.

Q4 Do you include, or have you seen, terms in the contract agreement related to sustainability?

- i) If so, to what extent are they used?
- ii) If not, do you believe there will be a need for express standard contract provisions dealing with sustainability?

Q5 Do you believe that all contract clauses must be legally enforceable?

- i) If so, do you believe it is possible to draft contract clauses related to sustainability that are legally enforceable?
- ii) If not, what sanctions might apply to terms that are not legally enforceable?

Q6 Does the absence of standards inhibit reference to sustainability in contracts or contract guidance?

Q7 Is guidance required for dealing with sustainability issues in contract documents?

Q8 Do you see sustainability fundamentally changing the way buildings are procured?

11. These questions are repeated in the Annex: Response Form, which can be downloaded from our website www.jctltd.co.uk.

12. Please submit your completed Response Form by letter, fax or e-mail to:

JCT, 9 Cavendish Place, London W1G 0QD
Fax: 020 7637 8670
e-mail: stanform@jctltd.co.uk

The last date for receipt of responses will be **29 February 2008**.

13. Information provided in response to this consultation process will be used by JCT in preparing a document setting out the way forward. Individual responses may be subject to publication or disclosure but will not identify the respondent.

Way forward

14. In the light of comments received from the consultation process, a document will be produced, which will form the basis for a public conference in order to achieve common ownership of the way ahead with regard to a topic of major importance. The JCT will then be able to produce a draft guidance note before final consultation and approval, which will, if appropriate, include model or draft clauses. What JCT is seeking to do is to move from a vision, to developing strategic objectives and then to put in place the means to enable and facilitate construction participants to deliver a part of the sustainability agenda.
15. The JCT believes that proceeding in this way will be of material benefit in assisting with the achievement of Government policy on resource use optimisation, greater business efficiency and reduction of carbon emissions and help safeguard and improve the human condition.

Annex: Response Form for JCT Consultation Paper on Sustainability

Respondent Details	
Name:	Please return your responses by 29 February 2008 by post, fax or e-mail to: JCT 9 Cavendish Place London W1G 0QD Fax: 020 7637 8670 e-mail: stanform@jctltd.co.uk
Position:	
Organisation:	
Address:	
Postcode:	
Email:	

Information provided in response to this consultation process will be used by JCT in preparing a document setting out the way forward. Individual responses may be subject to publication or disclosure but will not identify the respondent.

Organisation type (**tick one box only**)

- | | |
|---|---|
| <input type="checkbox"/> Approved Inspector | <input type="checkbox"/> Manufacturer |
| <input type="checkbox"/> Architects | <input type="checkbox"/> Trade body or association |
| <input type="checkbox"/> Civil/Structural Engineer | <input type="checkbox"/> Private individual (unaffiliated) |
| <input type="checkbox"/> Commercial Developers | <input type="checkbox"/> Professional body or institution |
| <input type="checkbox"/> Consultancy | <input type="checkbox"/> Property funder |
| <input type="checkbox"/> House or property developer | <input type="checkbox"/> Research/academic organisation |
| <input type="checkbox"/> Housing Association
(Registered Social Landlords) | <input type="checkbox"/> Specific interest or lobby group |
| <input type="checkbox"/> Other non-governmental
organisation | <input type="checkbox"/> Individual in practice, trade or
profession |
| <input type="checkbox"/> Builder/other contractor
(please specify) | <input type="checkbox"/> Journalist/media |
| <input type="checkbox"/> Local authority –
Building Control | <input type="checkbox"/> Insurer |
| <input type="checkbox"/> Local authority –
Environmental health | <input type="checkbox"/> Other (please specify): |
| <input type="checkbox"/> Local authority –
other (please specify) | |

Q1. Do you believe that sustainability performance can be improved in the industry through industry-specific contract documentation?

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Q2. Which contract document, if any, is best suited for setting out and regulating matters related to sustainability?

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Q3. The following identifies a list of sustainability items that might be covered in the contract documents. Please tick the six most important items in terms of providing for them in the contract documents.

- Carbon emissions associated with construction process
- Carbon emissions associated with the end use of the 'project'
- Commercial vehicle movements
- Consumption of energy during construction process
- Consumption of energy associated with the end use of the 'project'
- Consumption of water during construction process
- Consumption of water associated with the end use of the 'project'
- Economic sustainability in construction supply chain
- Maintenance or optimisation of biodiversity
- Origin of construction materials
- Waste management in construction process
- Waste management associated with the end use of the 'project'

List any other items not included in the above list, which you believe should be provided for in the contract documents.

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Q6. Does the absence of standards inhibit reference to sustainability in contracts or contract guidance?

Q7. Is guidance required for dealing with sustainability issues in contract documents?

Q8. Do you see sustainability fundamentally changing the way buildings are procured?

Q9. Any other comments that you wish to make.

Thank you for your time.