

CPD Webinar series

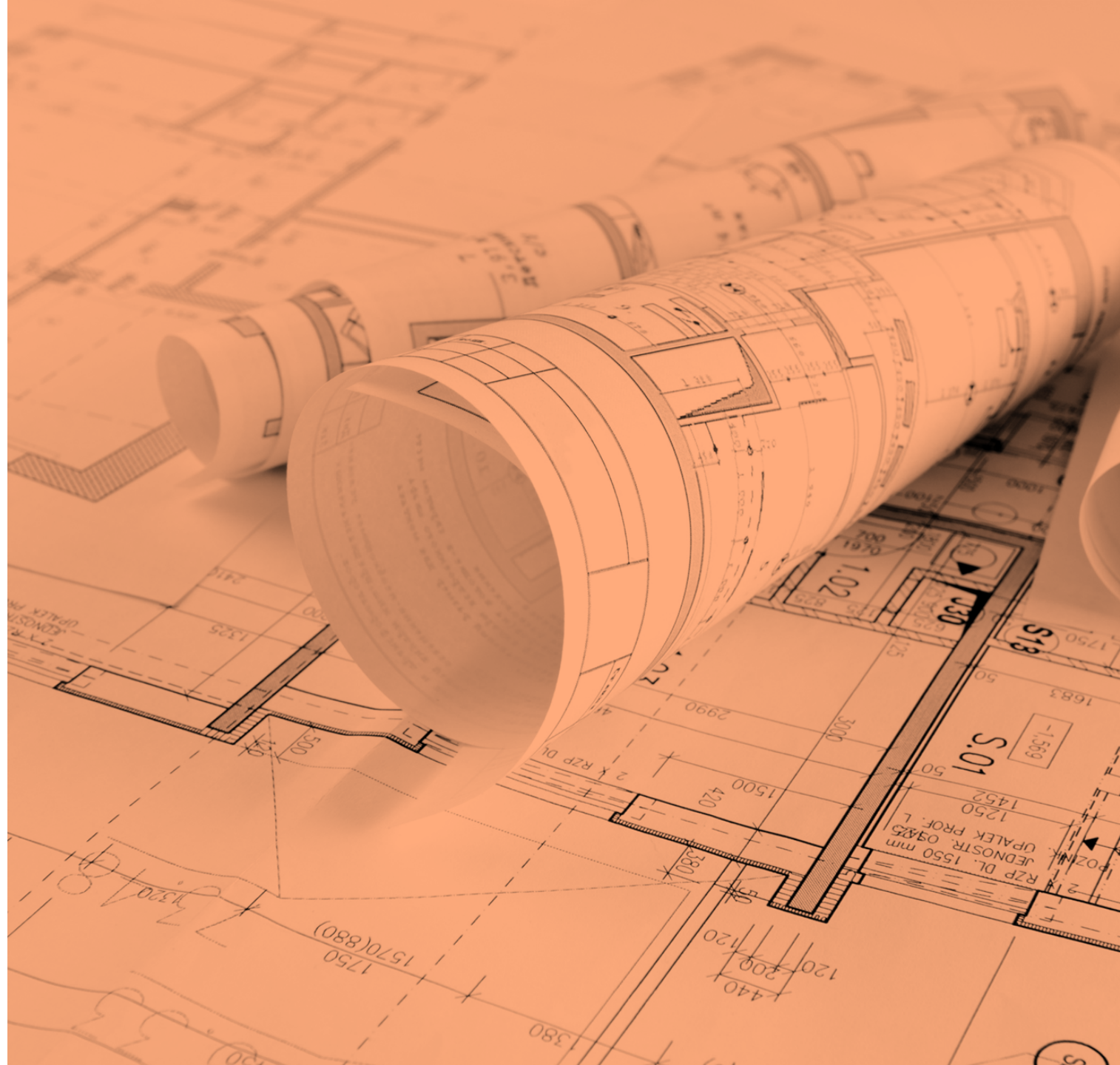
Tackling common design issues with the State Building Surveyor

Speaker | **Steven Baxas**
State Building Surveyor

Speaker | **Frances Hall**
Weir Legal & Consulting

ā rbv

Architects
Registration Board
of Victoria



Address from the State Building Surveyor

Architects Registration Board of Victoria



Steven Baxas

State Building Surveyor

Office of the State Building Surveyor



The VBA respectfully acknowledges the Traditional Owners and custodians of the land and water upon which we rely. We pay our respects to their Elders past and present.

We recognise and value the ongoing contribution of Aboriginal peoples and communities to Victorian life.

We embrace the spirit of reconciliation, working towards equality of outcomes and an equal voice.



Today's presentation

1. The Building and Plumbing Commission (BPC)
2. State Building Surveyor
3. Municipal Building Control Plan
4. Design documentation
5. Waterproofing and design
6. Design preparation where building permits are being staged
7. Design and Construct Contracts and Novation Contracts Report



The Building and Plumbing Commission (BPC)





A new regulator for building and plumbing

The Building & Plumbing Commission, will bring together:

- The Victorian Building Authority (VBA)
- Domestic Building Disputes Resolution Victoria (DBDRV)
- and the Domestic Building Insurance (DBI) division from the Victorian Managed Insurance Authority (VMIA)

Single entry point for consumers and practitioners providing:

- Efficiencies across the regulatory system
- Joined up use of data and intelligence to focus regulatory effort
- Improvements in consumer protection, boosting consumer confidence





Four elements of building reform

1. New Integrated Regulator
 - The Building and Plumbing Commission (BPC)
 - VBA + dispute resolution + domestic building insurance
2. Domestic Building Insurance **first resort**
 - For buildings 3 storeys or less
3. Mandatory Decennial Liability Insurance
 - For buildings 4 storeys and above
 - Developer bond as a foundation
4. Additional Powers for the VBA
 - Rectification Order post-occupancy permit
 - Pre-occupancy permit notification for apartments





The new BPC will

- Create a **single-entry point** for building and plumbing regulation
- Be a **game changer** for new apartment owners thanks to new powers
- See the VBA **join forces** with VMIA and DBDRV
- **Better use** data and information to broaden practitioner education
- Give industry **greater insights** into the building system and new opportunities to collaborate
- **Boost** practitioner education and knowledge





Next steps

- Consultation – continue the conversations with stakeholders
- Role of PSAP
- 2025: the Year of Reform
 - The new Building and Plumbing Commission
 - Integrated processes
 - Legislative change



Design documentation





Getting design documentation right

Key component of the building permit documentation package provided to the relevant building surveyor

Must contain sufficient information to show that the proposed building work will be compliant

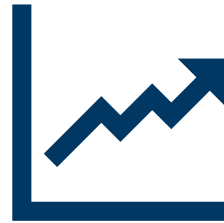
Regulations 25 and 29 provide other types of documentation and details that must be included or may be required by the relevant building surveyor



Poor design documentation



Project variations



Increased construction costs



Potential construction of non-compliant building works



Design Standards Working Group

- Includes stakeholders and members from architectural and draftsman design groups
- Addresses the role of designers in construction and the adequacy of documentation
- Seeks to:
 - **Develop a practice guide**
 - **Investigate the current practice of documentation** for building permits by design practitioners
 - **Set out the minimum details required** in design documentation





VBA Design Documentation Practice Guide



Waterproofing and design





Root cause(s) of problematic waterproofing work

Poor design documentation

Design choices

Unclear chain of responsibility and accountability

Lack of understanding & misinterpretations of waterproofing requirements

Poor coordination and collaboration during design stages



Improvement opportunities for waterproofing

Improving practitioner education and awareness

Prescribing critical details for inclusion in drawings/building plans

Increased supervision of the design and construction of high-risk building elements

Use of technology to support safe roofing inspections

Guidance and education on protection of materials from exposure to weather



NCC 2025 – Waterproofing

- **To help reduce the incidence of building defects** resulting from the ingress of water
 - DTS Provision for drainage and grading to external areas
 - DTS Provision for substrate materials to require a structural substrate in a building or part of a building
- **Aim to resolve issues stemming from the lack of sub-surface water management** in NCC 2022 and clarify the interpretation and application of multiple Performance Requirements
- **Will give greater flexibility in design** and clarity in construction



**National
Construction
Code**

Design preparation where building permits are being staged





Design preparation where building permits are being staged



- Each staged building permit must demonstrate compliance for the RBS to be satisfied
- Challenges for designer and RBS in ensuring the proposed design clearly demonstrates compliance
- Once building work has commenced as part of the initial building permit stages, it becomes further challenging for the RBS to ensure only the approved staged work is being carried out
- Is the responsibility of the builder to ensure the building works complies with the approved documentation

Design and Construct Contracts and Novation Contracts Report





Design and Construct Contracts and Novation Contracts Report

Identified the adverse impacts of these contracts on the Construction Sector

Identified proposals for improvement

Articulated a plan to deliver these improvements

Thank you

What is novation of a contract?

- It is a substitution of one party in a contract for a new party
- Occurs when an architect's contract with the owner/developer is 'transferred' to the builder
- Increasingly common in design and construct procurement
- AIA 2019 report shows perception of negative impact on project quality
- ARBV and NSW ARB's 2024 Deep Dive into Systemic Risks in the Architecture Sector identified novation as a systemic risk for design quality

How does it work?

Contract between developer and architect expressly permits novation

Builder is appointed and agrees to novation

Deed of novation is entered into

Architect operates under same contract but is now contracting with the builder

Why does novation of architect contracts occur?



Where a design and construct procurement method is used

Architect prepares preliminary design
Builder submits tender based on the preliminary design and is appointed
Architect is novated to builder
Appointed builder then finalises design with architect
Contract between principal and builder allows value management process



Benefit to the principal – builder accepts obligation for meet the design requirements in the preliminary design as well as constructing the building

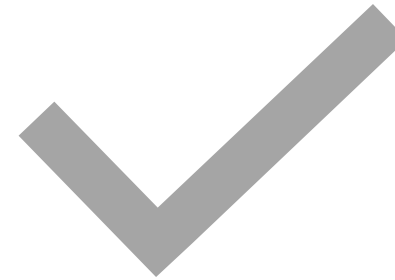


Benefit to the builder – builder engages in a value management process to save on the build cost

Do the architect's contractual obligations change on novation?



No. Obligations remain the same but they are owed to the builder



Exception where Deed of Novation creates changes to agreement where architect and builder both agree



Impact for architects on novation

Changes to design
during design
development phase

Value management
process – architect
involvement in
approval of materials

The legal risks for architects in the value management process

- The builder may push to substitute a specified material for an inferior product or to change the design in a way that makes it non-compliant
- This could be:
 - contractual breach if the terms of the architect's agreement may make them responsible for design compliance.
 - duty of care breach to developer or purchasers
 - breach of the architect's professional conduct obligations



What changes are permitted to the design in a 'value management' process?

Contract vs. legislation

Section 16 Building Act – building work must comply with the building permit

Not understood by builders

All changes to approved design must be approved by the RBS



Review the architect client contract terms

Contract – take care to avoid overly onerous provisions regarding design risk – will the architect be in a position to control design compliance?

Does the contract impose indemnities or warranties which affect the architect's PI insurance?

Consider inclusion of contractual mechanisms for dealing with design changes

How to “manage” value management - design phase

- Detailed Design phase:
 - Ensure the design and specifications are detailed and precise
 - Consider whether other consultants should be involved – structural engineer, fire engineer
 - Once a building permit is issued, take steps to bring changes to the attention of the RBS





How to “manage” value management – construction phase

- Does it change the approved design? Take active steps to bring any changes to the attention of the RBS
- Approving materials:
 - What do the specifications require about compliance of products or materials, both generally and specifically for that product type?
 - Do you have documentary evidence supporting the use of the material or product?
 - Does any certification specifically relate to this type of use?

Conclusion

- Know your contract terms
- Ensure designs and specific have as much detail as possible
- Collaborate with other consulting practitioners
- After building permit is issued, material changes must be run past the RBS
- If approving material selections, consider whether suitability of the product is proven for this specific use

Any questions?

 **ā** rbv



Architects
Registration Board
of Victoria

**ARCHITECTS REGISTRATION BOARD
OF VICTORIA**

Address

Level 10, 533 Little Lonsdale Street
Melbourne VIC 3000

Phone number

03 9417 4444

Email

registrar@arbv.vic.gov.au