

TRANSCRIPT

LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into Apartment Design Standards

Melbourne—Wednesday, 16 February 2022

MEMBERS

Ms Sarah Connolly—Chair

Mr David Morris—Deputy Chair

Mr Will Fowles

Ms Danielle Green

Mr Paul Hamer

Mr Tim McCurdy

Ms Cindy McLeish

WITNESSES (*via videoconference*)

Dr Todd Bentley, Chief Risk Officer,

Ms Shobini Mahendra, Chief Analyst, Research and Review, and

Mr Matthew Waters, Senior Manager, Technical and Regulation, Victorian Building Authority.

The CHAIR: I advise that the sessions today are being broadcast live on the Parliament's website and rebroadcast of the hearing is only permitted in accordance with Legislative Assembly standing order 234. Thanks for taking the time out of your busy schedules to join us today at this public hearing for the Inquiry into Apartment Design Standards.

On behalf of the committee I acknowledge the traditional Aboriginal owners of this land, and we pay our respects to them, their culture, their elders past, present and future and elders from other communities who may in fact be joining us here today. I also welcome back any members of the public and media who may be watching today.

This is one of several public hearings that the Environment and Planning Committee is conducting to inform itself about the issues relevant to the inquiry. Before we begin I need to point out just a couple of things to you all. All evidence taken today will be recorded by Hansard and is protected by parliamentary privilege. What this means is that you can go ahead and you can speak freely here today without fear of legal action in relation to the evidence that you give. However, it is really important to remember that parliamentary privilege does not apply to comments made outside the hearing, even if you are just simply restating what you say here today. You will receive a draft transcript of your evidence in the next week or so to check and approve, and corrected transcripts are published on the committee's website and may be quoted from in our final report.

So again, welcome. Just some quick housekeeping, and I am sure all of you are totally across it after two years of Zoom: if you could just stay on mute until you speak to minimise interference for Hansard, that would be fantastic.

My name is Sarah Connolly, and I am the Chair of the Environment and Planning Committee and the Member for Tarneit.

Mr MORRIS: I am David Morris, the Member for Mornington and the Deputy Chair of the committee.

Mr HAMER: Paul Hamer, Member for Box Hill.

Ms McLEISH: Cindy McLeish, Member for Eildon.

Ms GREEN: Danielle Green, Member for Yan Yean and Parliamentary Secretary for Regional Victoria and for sport.

The CHAIR: I am not sure if you have got a lead speaker or someone to introduce the group. We just need, for Hansard's purposes, full names and your position. It would be lovely if you have a 5-minute opening statement, and then we can just jump right into a discussion. So welcome.

Dr BENTLEY: Thank you so much for the welcome. I will lead the opening for the VBA. My name is Todd Bentley. I am the Chief Risk Officer at the Victorian Building Authority. With me today we have Shobini Mahendra, who is VBA's Chief Analyst, and we also have Matthew Waters, who is VBA's Senior Manager, Technical and Regulation. We really appreciate the opportunity to attend today. I will briefly summarise our submission. Then, as you suggested, we will move straight into questions, and we look forward to answering and supporting the inquiry.

Just to start off with, as the regulator, VBA aims to build trust and uphold the safety and accountability of everybody in the building system, so the building and plumbing industries, with the aim of safeguarding Victoria's future. Our regulatory role helps practitioners and also the community achieve their potential by creating a safe and a sustainable and a thriving built environment. As you would be aware, our role is described in section 197 of the *Building Act*. Just to abbreviate that, our role really has three primary facets to it: we have

a research role—as part of our submission we did include an element of that; we have an educating and informing role; and then of course we have the compliance and enforcement role. The VBA works very closely with the Department of Environment, Land, Water and Planning as well as other agencies to help inform them through our expertise and our industry knowledge. So we work to inform on policy, we work to inform on standards. We do provide information and advice to practitioners and consumers on relevant standards and regulatory activities in the building and plumbing industries. We also participate in national and state forums on building reforms, and again we aim to share our expertise and our industry knowledge to inform the development of and enhancement of those standards, both from a national and from a building and plumbing perspective.

In our submission we focused on two main areas. I will just start with the first one, which was the adoption of accessible housing standards. In our submission we strongly welcomed the adoption of mandatory accessibility standards in the National Construction Code. These standards, which will obviously affect apartment design, will take effect in 2022 and are expected to increase the availability of Australian homes with accessibility features to 50 per cent by 2050. Those reforms were enacted following significant advocacy from Victoria at the national building ministers meeting last year. The *Livable Housing Design Guidelines* silver standards will see basic accessibility features included in all newly constructed homes and apartments. That means that these new homes will have features such as step-free entry, ground-level accessible toilets and transitional spaces to allow ease of movement, creating a more accessible building for all. Of course it is also important to recognise that housing designs include critical safety elements that need to be consistent with the standards in the National Construction Code, or the NCC, and reflect current construction best practice, which brings us onto the next discussion point, which is around essential safety measures.

A critical part of apartment design standards is essential safety measures. These are safety features built into apartments, such as exit doors, emergency lifts, fire detection and alarm systems, smoke alarms and sprinkler systems. When these systems are well maintained they are going to ensure and provide residents with more time to exit, decreasing the risk to their life, health and safety, and also reduce the chance of fire spreading. However, they do require ongoing care and maintenance, and that ongoing care and maintenance needs to be done by a suitably qualified practitioner. The *Building Act 1993* gives councils the responsibility for enforcing the compliance of essential safety measures, or ESMs, and that includes the maintenance of these. Building owners are required to prepare an annual ESM report that provides evidence that these maintenance checks have been carried out by an appropriate practitioner, and councils monitor these reports. VBA does take an active role in ESMs, though. We do educate and inform consumers and practitioners and building owners and managers on the importance of the ESMs and their role in saving lives. We have produced several instructional podcasts aimed towards building owners and managers and also provide readily accessible information on ESMs across our website.

The next area I wanted to touch on is some of our research activity into safer building and plumbing work. As I previously said, VBA does have a research role and we do aim to use our knowledge, data and industry insights to target and inform our research activities and approach, and the aim is that we learn more and that we can also share and educate the industry more. The VBA conducts and promotes research relating to the regulation of the Victorian building and plumbing industries. In doing so we are aiming to increase the awareness and understanding of all the stakeholders involved, be they practitioners, consumers, owners corporations, as well as other agencies, with the aim to help improve the compliance and safety of the built environment. As part of this research program we aim to engage with reputable research institutions and consortiums to help deliver this research to a high quality standard.

Two recent research projects of direct relevance to this inquiry include routine servicing of wet fire protection equipment as well as indoor mould and moisture damage in Victoria. On the first, the wet fire protection equipment, again this relates to things like sprinklers, pump sets, hose reels and hydrants. They are an example of an essential safety measure, and they do need to be maintained, as with all other essential safety measures. The routine servicing of this equipment needs to be carried out by appropriately qualified licensed or registered plumbing practitioners, and it is absolutely critical to ensuring the safety of apartment building residents. The research we undertook found that approximately 1.8 million hours per year are required to service that equipment in Victoria alone. Associated with that, we also found that there was sufficient capacity for practitioners to service hose reels, pump sets and sprinkler systems, but the capacity to service hydrants is a little bit more limited. As discussed, these ESMs need to be well maintained to be effective at mitigating the risks to life and safety. One of the things that we have found is there really needs to be strong diligence on

behalf of the building owners and managers to ensure that this requirement for maintenance by suitably qualified practitioners is continually delivered on. The VBA, to support owners and owners corporations, have developed relevant educational material, including videos, to raise the awareness of the ESM maintenance requirements. The aim there is, as mentioned, to make sure that they do know that these have to be maintained—and maintained by a suitably qualified practitioner.

The next bit of research was around indoor mould and moisture damage. We recognise that indoor mould is actually a key barrier that impacts the livability of apartments. Mould in buildings is an indicator of underlying moisture problems, and that can occur because of water ingress through defective cladding and plumbing failure or due to a lack of management of water vapour within buildings. Condensation in buildings is linked to negative impacts on human health and amenity as well as building structural integrity. So mould and moisture have significant impacts overall. It routinely tops the list of defects that we encounter in buildings as well as in complaints to the VBA and claims to the VMIA and also in part of the disputes to Domestic Building Dispute Resolution Victoria.

This research is currently ongoing, but some of the early indicators show patterns and clusters of problematic building work that could result in indoor mould. This includes design of balconies, waterproofing and exposure of construction materials to weather during construction. We are still analysing these patterns, and as we conduct further analysis of these patterns and clusters we expect that we will get greater insight into practitioner competencies or skill gaps, which will then inform both future research activity on indoor mould and also opportunities to work with practitioners to enhance competency and appropriate behaviours. With that, Chair, we are happy to answer your questions.

The CHAIR: Thanks, Todd. I am going to hand over to Cindy for the first question.

Ms McLEISH: Thank you. You have mentioned mould in buildings, and that, as you know, can be a really quite risky thing. Can you tell me: with regard to department of housing stock, is there work that is actually done pre new dwellings around how to make sure that we mitigate mould—and in existing stock as well?

Dr BENTLEY: Matt, would you care to answer that one?

Mr WATERS: Yes. Thank you for the question. There have been some recent developments in some condensation management provisions that were implemented into the National Construction Code. There is a multistaged piece of work that is happening through the Australian Building Codes Board that is looking at different stages of condensation management provisions. Currently there have been some initial provisions implemented. That was with the National Construction Code 2019, and then as we are kind of shifting to 2022 there will be some more expected on 1 September, and that was recently out for public comment.

Ms McLEISH: Do you audit those buildings to see whether they are compliant?

Mr WATERS: The VBA has a desktop audit program which looks at design documentation to ensure that designs are compliant with the National Construction Code. So there is a range of different buildings that are selected for review as part of that process. And then the VBA also has a proactive inspection program which looks at inspecting building work at different stages of development.

Ms McLEISH: And once it is built—existing stock?

Mr WATERS: So that would be when it goes to the remit of local government to consider the safety of existing buildings.

Ms McLEISH: Thank you.

The CHAIR: Thanks, Cindy. Paul.

Mr HAMER: Thanks, Sarah. I understand your role as the regulator, but I would like to just ask you a couple of questions about some policy issues that were raised by a number of other witnesses to the committee yesterday. One was in terms of changes to the design standards, and this particularly came from the construction industry, being focused primarily on the construction side. So if there were to be changes, one of the examples that was used was about, say, access to daylight and to direct sunlight and how much and the extent of that. I think the example that was drawn on was in Sydney and the design standards that were used

from a planning perspective about the amount of sunlight required, and there was, I guess, an argument put forward that that should be more dealt with as part of changes to the building code or the construction code, if that were to be required. I was wondering if you had any views or thoughts on where the appropriate balance would be for some of those issues, whether they should be more handled at a planning phase or more handled at the construction and then, I suppose, a compliance stage that you would traditionally deal with.

Mr WATERS: Again I am happy to answer this one as well. The National Construction Code does have minimum light and ventilation requirements—so it has performance requirements which are essentially the level of performance that the building has to meet—and then it has also got prescriptive provisions which are called deemed-to-satisfy provisions. So essentially that is kind of your cake recipe on specifically what it has to meet, but you can do alternative pathways to also meet compliance. It is publicly available to submit proposals for change. Anybody can submit a proposal to change to the Australian Building Codes Board, who are basically the standards-writing body responsible for the National Construction Code and set up via an intergovernmental agreement. So if there is any kind of rationale for a change, generally a proposal for change can be submitted, and it needs to be accompanied through evidence. People can do consultation—obviously that goes a long way in getting that considered and put on the board’s work plan or their business plan—and then it can be considered. I think probably a hard thing about this is that there are a lot of different priorities, so as part of the board’s plan they consider what the priorities are. But yes, it is probably a combination of considered at the planning stage but then also considered through the National Construction Code.

Mr HAMER: Thanks, Matt. Also, another piece of evidence that was raised yesterday by one of the witnesses was in relation to inspections. You mentioned a fair bit about the fire safety emergency or central safety measures, and I think, if I recall correctly, the evidence that was introduced suggested that, particularly in elements of fire safety, the designers of that fire safety system are often not involved in that inspection before it is commissioned. So I was just wondering if you had particular thoughts about—obviously you have got a fairly broad regulation remit—just at that individual building level whether that is an issue, and if it is, what recommendations you might put forward to assist that.

Mr WATERS: So the legislation is quite robust in terms of how specific it is about who can carry out certain inspections. For fire safety systems, for instance, it would be the building surveyor that is obviously the one with the most knowledge about the whole building, and they have to issue the building permit and the occupancy permit. They can also rely on other registered building practitioners to carry out inspections, and that could be a hydraulic engineer if the circumstance ever arises. So I guess it is quite broad for it to be considered on a building-by-building basis. Obviously in some circumstances you might not need to engage a hydraulic designer to do a verification, but in others you might, and that is, probably to go to your question a bit more, something that is currently on the agenda in terms of looking at building complexity and whether there are some triggers through the complexity of a building to have some more stringent regulatory tools implemented. That might be third-party certification or a third-party independent review as part of an inspection. So I think in terms of probably some solutions, potentially some buildings do require third-party verification. Obviously that can happen now, and it is quite open to the relevant building surveyor to determine what is appropriate, but that is something that I believe government is considering.

Mr HAMER: Thanks, Matt.

The CHAIR: Thanks, Paul. I will throw to David.

Mr MORRIS: No, I am good. Paul has asked all mine.

The CHAIR: One of the questions I have is just a bit sort of left field, really. It has come from evidence that a previous witness has given today. There was some talk about a design review panel and looking at ensuring that apartment designs and apartment buildings are livable, of high quality and a great standard and really what communities are looking for and would be embraced by communities and a good thing for neighbourhoods. What are your opinions about that? Do you have an opinion, or have you heard about a design review panel? Is it something you think would be conducive to improved design here in Victoria?

Dr BENTLEY: Yes, I can answer that. I am personally not aware of a suggestion around having a design review panel similar to that. If I look at that from the VBA’s perspective, I am not sure if we would necessarily be the right body to be represented on that, and that would only be because our focus has to be on compliance

to the National Construction Code. So if there was a view that, yes, we want to ensure that as we are reviewing these they do comply et cetera, then, yes, maybe that is a role, but certainly that would be all done throughout the building process as things are being designed et cetera. So yes, I think it sounds like a reasonable idea, but I do not know if there would be a specific spot for the VBA in that space.

The CHAIR: You do not think that would be an opportunity, Todd, to help create awareness, look at improvements and innovation and ensure that the design and the actual build—whether it is owner-occupier or someone who is renting; I guess it has been paid and invested in by an investor—to try and clean up areas that you might say you know that particular developers or builders can and need to and the industry must do better in?

Dr BENTLEY: I guess you could say from that perspective, yes, there would definitely be an opportunity for us to provide that sort of input to say, ‘These are the weakness areas’. I think where I was coming from is more that the regulatory system and our role in ensuring compliance to the NCC and the broader building system, including building surveyors and even councils, in delivering to the compliance with the NCC, is already reasonably well established and in place. And certainly there are improvements. As we can see, there is a building system review being done by the expert panel to improve that system as well. And perhaps this weaves as part of that. I think where my comment was coming from is: if we are talking about quality of finishings, perhaps that is starting to go beyond the remit of compliance to the NCC per se. But if they did seek specific opinions about how we address compliance, yes, certainly we would be there, and we would be very willing to contribute our knowledge and insights.

The CHAIR: Thank you. Did you have any other questions, committee members?

Ms GREEN: No. I am a firefighter, and I was interested in the fire safety stuff, but Paul has covered that. Thank you.

The CHAIR: Paul, did you have any other questions?

Mr HAMER: No, I do not.

The CHAIR: Some of the stakeholders have pointed to design, novate and construct procurement models as one of the challenges. Can you talk a little bit more about how that is currently regulated? Does the VBA or any other government agency provide any guidance on procurement methods for the industry?

Dr BENTLEY: I know that the VBA does not. I cannot speak comprehensively for all the other government agencies, but the VBA does not. I will note, though, that as part of the building system review and the expert panel, that is something that we did raise to the expert panel—that there is a need to ensure that all the stakeholders across that life cycle of a building do have accountabilities and they are able to be held to account. So that would include whether it be the developers, the builder, the building surveyors and ultimately also the owners corporations in terms of that ongoing maintenance of their building et cetera. That was something that we did raise to the expert panel, and they are now considering that as part of their reforms.

The CHAIR: Okay.

Ms McLEISH: I have got another question.

The CHAIR: Yes, Cindy.

Ms McLEISH: Thank you. I have just got a question regarding combustible cladding. There has been quite a bit of news about the risks there, and I am not sure where it is at in Victoria in terms of the rectification works. But what are the changes that are being put in place now with regard to new buildings when they are using different types of cladding that perhaps have not been used before—the development and the trialling behind that—and also the risk assessment for the buildings where it has not been completely removed yet?

Dr BENTLEY: Apologies. I think we were trying to debate virtually who was going to answer first. If I can just kick off—Matt or Shobini, please step in as well—combustible cladding, as we know, is a very complex issue. It is a national and international issue, and it is one of the ones certainly where Victoria is seen as one of the most proactive and advanced in terms of addressing and reducing this.

In terms of new materials, there is provision in the NCC that these materials have to perform to a certain standard, and that is where that has to be proven by the builder or building surveyor to ensure that those things do achieve that specific standard. So that is where that system would come through, and quite often they would have to be working with the supplier to say, 'Hey, are you meeting these performance requirements?'. If they are not able to demonstrate that, then those things should not be used.

Ms McLEISH: So is that an international standard?

Dr BENTLEY: Which one? The—

Ms McLEISH: The one you were just referring to now.

Dr BENTLEY: No, that is part of the National Construction Code performance standard.

Ms McLEISH: Yes, but you said that they need to meet certain standards.

Dr BENTLEY: Yes.

Ms McLEISH: Are those certain standards consistent with international standards?

Dr BENTLEY: So those are the performance requirements in the National Construction Code—

Ms McLEISH: I understand that, but are they reflective of international standards?

Dr BENTLEY: I am going to pass over to Matt.

Mr WATERS: Yes, so it is probably important to point out how the code operates. It has got obviously performance requirements that are written in either qualitative or quantitative terms, and they will say something like, 'Fire spread must be prevented from going to another unit'. That is kind of how it is broadly written. There are prescriptive standards, so, for instance, there are Australian standards for things like non-combustibility and other things. There is full-scale fire testing that is called up under a performance-based approach through what is called a verification method. But broadly it is not prescribed, the precise method that you do achieve compliance, and that is to allow things that the industry and community want, which are things like innovation, design and other things. So there are options to use standards, but it is not a mandate. However, in Victoria—I am not sure whether the committee is aware of this—there is a prohibition on the use of certain high-risk cladding products that Victoria has implemented which limits the ability to use certain types of cladding, which is mainly expanded polystyrene cladding systems and aluminium composite panels. They are basically in buildings that are—it depends on the building—generally two storeys and above residential-type buildings, multi-unit residential.

Ms McLEISH: Okay, thank you.

The CHAIR: Thanks. Paul.

Mr HAMER: No, I do not have any questions.

The CHAIR: Okay. Todd, Matt, Shobini, thank you so much for taking the time this morning to join us here at this inquiry. We really appreciate it, and your submission and the information you have provided us with.

Dr BENTLEY: Thank you so much for the opportunity.

Witnesses withdrew.