

# Beale & Company

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and



## Taking Stock on the Practical and Legal Implications of BIM

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Casey Rutland, Arup Associates

Wednesday 16 September 2015

## Introductions

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- + Solicitor, Beale & Company
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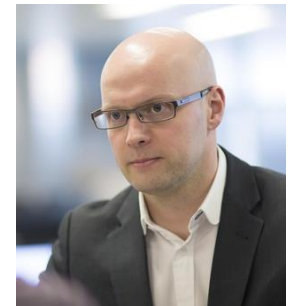
@andrewiancroft



- + Casey Rutland
- + Associate Director, Arup Associates



@caseyrutland



#BIMinar

## Taking Stock on BIM



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## Webinar Outline

### Practical Considerations

- + What “BIM” actually means and how it impacts on the design process;
- + Current best practice in relation to BIM, both at an organisational and project level.

### Legal Considerations

- + Common legal questions regarding the use of BIM, including:
  - Copyright;
  - Responsibility for Models;
  - Insurance;
  - Disclaimers; and
  - Interoperability.
- + How is BIM reflected contractually?

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## Practical Considerations

- + Casey Rutland
- + Associate Director, Arup Associates

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 **IN A**  
*nut shell*

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 **DIGITISING**  
*the industry*

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# ACCESS to company INFO

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# ACCESS to project INFO

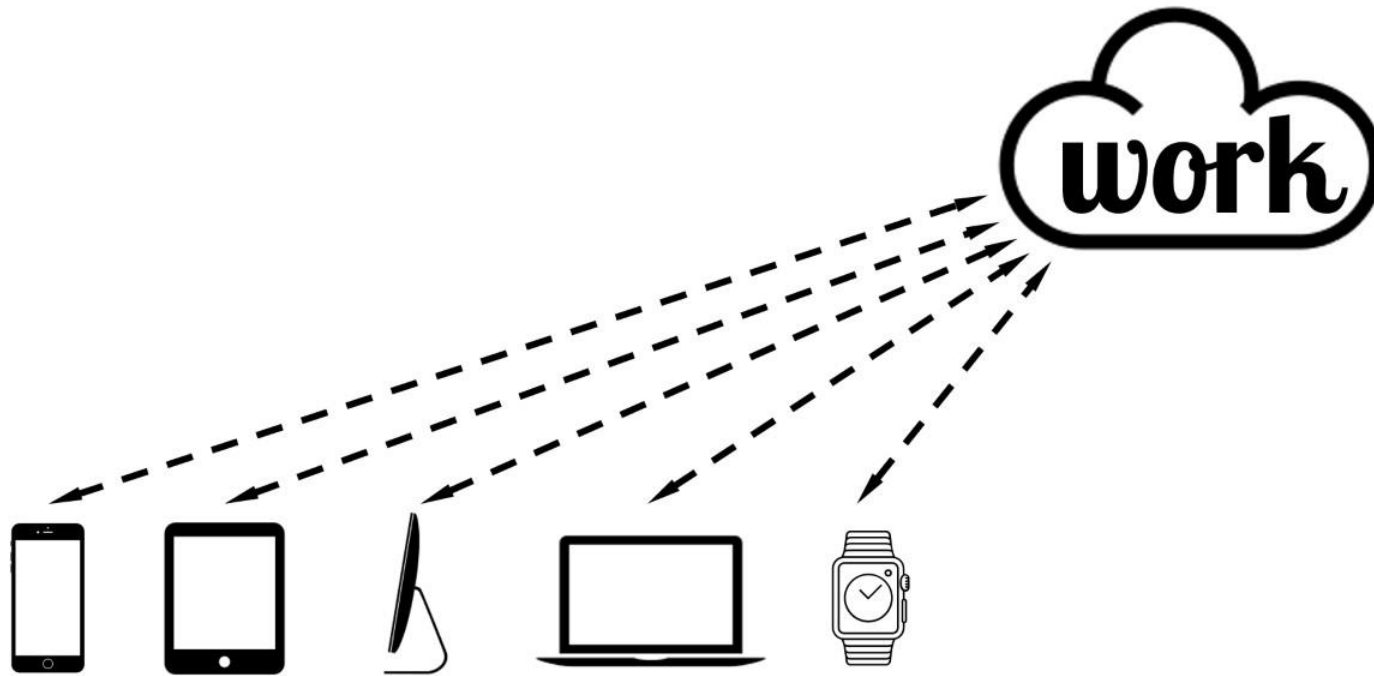
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# ACCESS *to staff* INFO

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# BIM IS FOR everyone

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# TOP 10 Challenges

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# #10

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**BIM**  
**DOESN'T**  
*affect me*


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# #9

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**BIM** 

---

*is for nerds*

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# #8

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I don't have

TIME 

to 'do' BIM

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 **PROCRASTINATION.**

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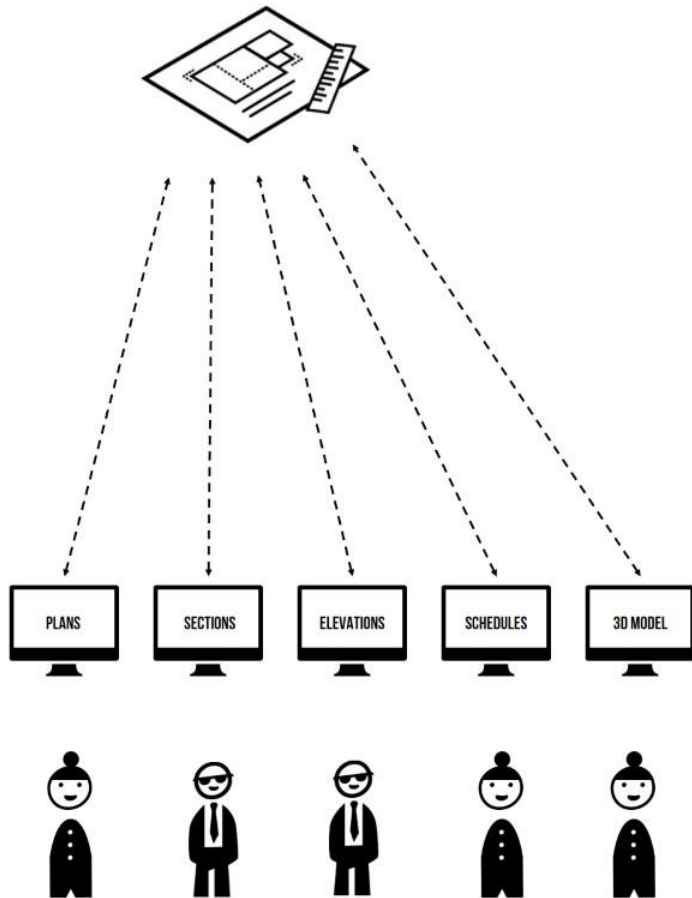
**#7**

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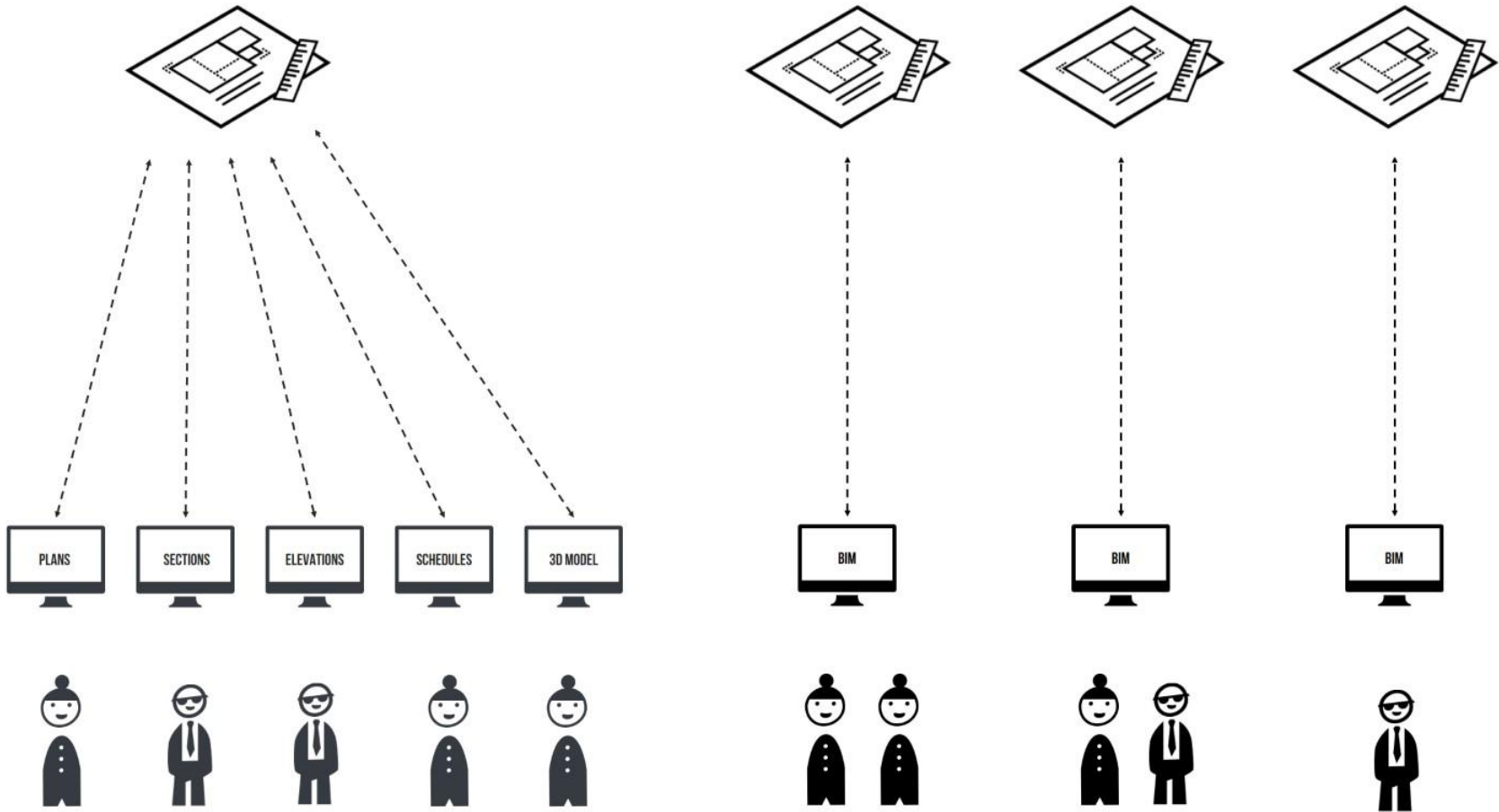
**BIM**  
**costs**  
**TOO MUCH** 

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#BIMinar



#BIMinar

# #6

#BIMinar

*Asking for*  
**SOMETHING**  
*you don't*  
**UNDERSTAND**



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**#5**

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# STANDARDS


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# #4

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# Change.



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# #3

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**BIM**   
**is all about**  
**SOFTWARE**  
**right?**

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# #2

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**PINK**  
*fleshy*  
**BITS**



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#1

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People see these as an

---

**OBSTACLE**

to adopting a

**BETTER WAY OF WORKING!**

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How does  
**BIM**  
IMPACT DESIGN?

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less waste 

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Improved

  
**VISIBILITY**

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# Greater confidence

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# COMMUNICATION

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understanding 

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 **LIGNMENT**

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Best practice  
**BIM**  
@ ORGANISATION

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# Who are you?



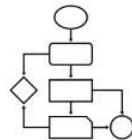
CLIENT



DESIGNER



CONTRACTOR



PM



PAINTER



BUILDER



QS



MANUFACTURER

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# Who are you?



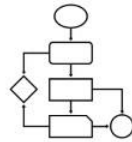
CLIENT



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PAINTER



BUILDER



QS



MANUFACTURER

## IT AFFECTS YOU ALL

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# Who are you?



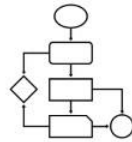
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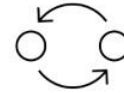
**IT AFFECTS YOU ALL BUT DIFFERENTLY.**

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**BUT IN THE SAME WAYS** 

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**CHANGE MANAGEMENT**



**CONSISTENCY**



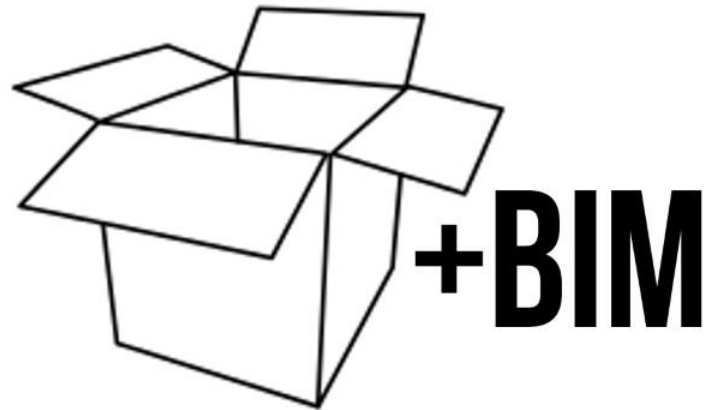
**STANDARDS**



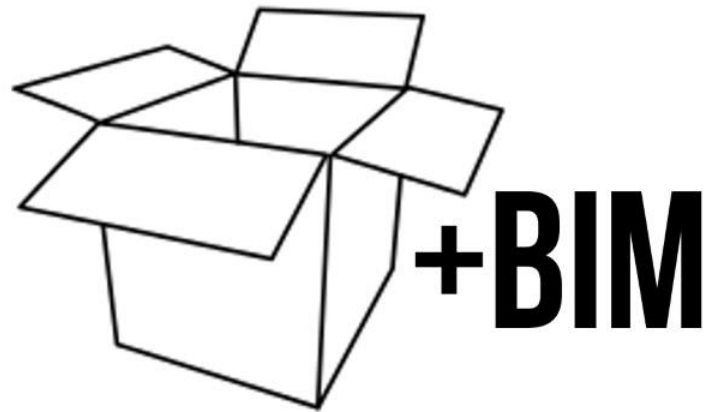
**LEAN APPROACH**



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# BIM



# pillars

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# LEGAL

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# PROCESS

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# SECURITY

#BIMinar

# PLAN

#BIMinar

# INFORMATION



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# CLASSIFICATION



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# SOFT LANDINGS



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Best practice  
**BIM**  
@ PROJECT LEVEL

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# Commercial arrangement

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# PLANNING

#BIMinar



# PLANNING

#BIMinar

# PLANNING

#BIMinar



#BIMinar



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**SHARE** 

#BIMinar

# DIGITALLY



#BIMinar

**consistently** 

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Use the  
**BIM**  
STANDARDS

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## Legal Considerations

- + Andrew Croft
- + Solicitor, Beale & Company

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## BIM – Legal Issues



+ BIM + Law = ??

+ BIM will impact on rights and obligations (and liability).....

+ .... can be managed if clear about:

- what “BIM” means on the project;
- responsibilities of the project team; and
- how team will collaborate.

+ Important on any project.

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## Common Concern: BIM will involve taking more risk

- + No UK case law on implications of BIM.
- + ...but should only involve onerous obligations if you agree to them!
- + “....solely responsible for the suitability and integrity of the selected software and any information, drawings, specifications or other information extracted from the model. “



(CIOB Complex Projects Contract (clause 11.3.4)).

- + Consider any BIM protocol and contractual provisions carefully.

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## Common Concern: Losing Intellectual Property Rights (IPR)



- + Licence should suffice.
- + CIC Protocol - ownership remains with party producing Model.
- + BIM used as excuse to transfer IPR.
- + If assign IPR – cannot use on other projects.
- + More important to protect IPR re Model Objects etc?

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## Common Concern: BIM blurs lines of responsibility



- + “Ownership of information remains with the originator, although it is shared and reused, only the originator can change it”.

PAS 1192-2, Para 9.2.2, Note 3

- + Responsibility clear....if BIM Execution Plan agreed and PAS 1192:2 followed.
- + Record keeping important.
- + “Level 3”?

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## Common Concern: BIM will not be covered by insurance

- + CIC Best Practice Guide for PI insurance (Griffiths & Armour, BIM Task Group).
- + *“There were no perceived issues that would prevent designers from obtaining PI insurance when working on projects delivered at BIM Level 2.”*
- + If agree to something outside policy, won't be covered - hosting data/CDE?
- + Integrated Project Insurance *“the only insurance product capable of supporting BIM Level 3”* (Stephen Bamforth, Griffiths & Armour).
- + Speak to insurers.

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## Common Concern: Disclaiming liability for use of a Model



- + Wide disclaimers being used because:
  - unable to verify content of Model;
  - basis of collaboration has not been agreed, e.g. in:
    - Protocol (Model Production and Delivery Table); and/or
    - BIM Execution Plan;
  - Models not contractual deliverable.
- + Importance of due diligence before Models issued/used.
- + Disclaimers may become less restrictive if basis on which Models shared agreed at outset.

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## Common Concern: BIM and software issues

- + Interoperability – software speaking different languages.
- + Unlikely to be able to recover from software provider.
- + CIC Protocol, CI 5.2 – no liability for data corruption.
- + Manage–
  - BIM Execution Plan – agree how team will collaborate;
  - Verification – if format changed, check Model; and
  - IFC (Industry Foundation Classes), Open BIM.



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## How is BIM being reflected contractually?

- + Level 2 does not require significant amendments, if roles and responsibilities clear.



- + CIC Protocol:

- Must be incorporated into contracts.
- Models contractual deliverable;
- Permitted Purpose - LOD;
- Define responsibilities in MPDT;
- Information Requirements; and
- In contracts of all project team for consistency.

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## How is BIM being reflected contractually? (cont.)

- + NEC3, JCT, ICC – limited amendments published.
- + CIOB Complex Projects Contract – Clause 11 and Appendix C.
- + Bespoke contracts/protocols.
- + Consistency between contracts and use of BIM?
- + Importance of discussing BIM pre-contract.



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## Collaborative Contracts



- + Likely to see more collaborative contracts.
- + Joint ventures.
- + PPC2015 – “a strong basis for BIM levels 2 and 3”.
- + Integrated Project Insurance – alliancing:
  - Gain/Pain share linked to success of project;
  - IPI steps in if any issues; and
  - no blame culture.

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## Conclusion

- + BIM will impact on rights and obligations (& liability),
- + ... can be managed if understood at the outset.
- + Agreeing basis of collaboration is key.
- + Make sure contracts reflect project approach to BIM.
- + Likely to see more collaborative contracts



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Questions?

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