

## CPD Webinar series

Where designs are not coordinated between design consultants – the risks for Architects

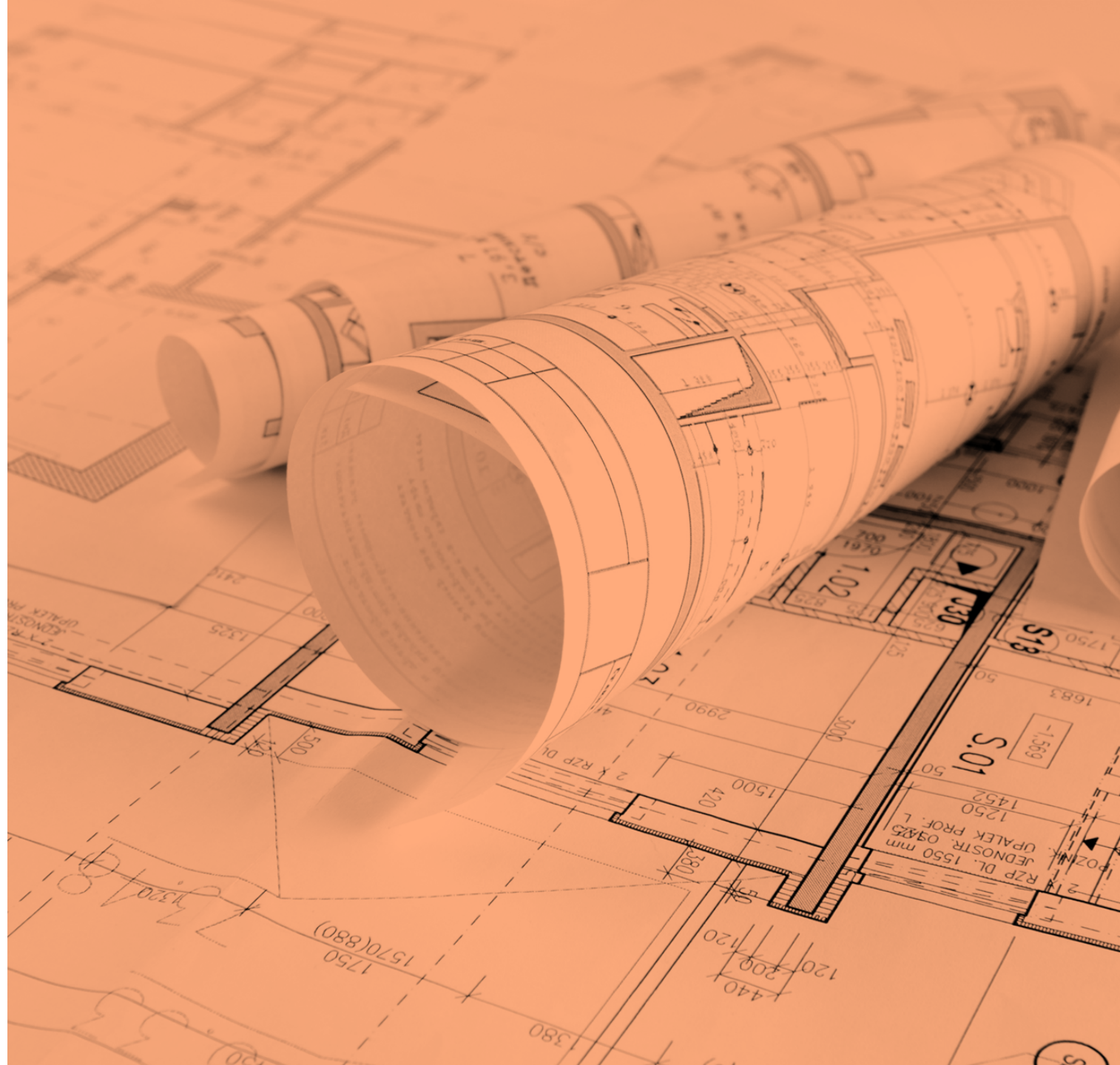
Speaker | **Frances Hall**  
Weir Legal & Consulting

Speaker | **David Sainsbery**  
Architect

**ā rbv**



Architects  
Registration Board  
of Victoria



## Acknowledgment of Country

We respectfully acknowledge the Traditional Owners of the lands wherever attendees are situated, in particular the Wurundjeri People of the Kulin Nation, and pay our respects to their Elders past and present.



# The Role of the ARBV

Architects Registration Board of Victoria is a statutory authority, established under the *Architects Act 1991*.

The Role of the ARBV is to:

- Regulate the profession of architects in Victoria
- Register architects and monitor their ongoing professional obligations
- Protect consumers by ensuring architects provide services in a professional and competent manner
- Accredite providers of architectural qualifications
- Administer the Architectural Practice Examination as a pre-registration pathway for registration as an architect in Victoria
- Regulate professional conduct, not design.

The ARBV's purpose is to protect the community interest and instill confidence in the regulation, integrity and delivery of architectural services in Victoria.



ā rbv

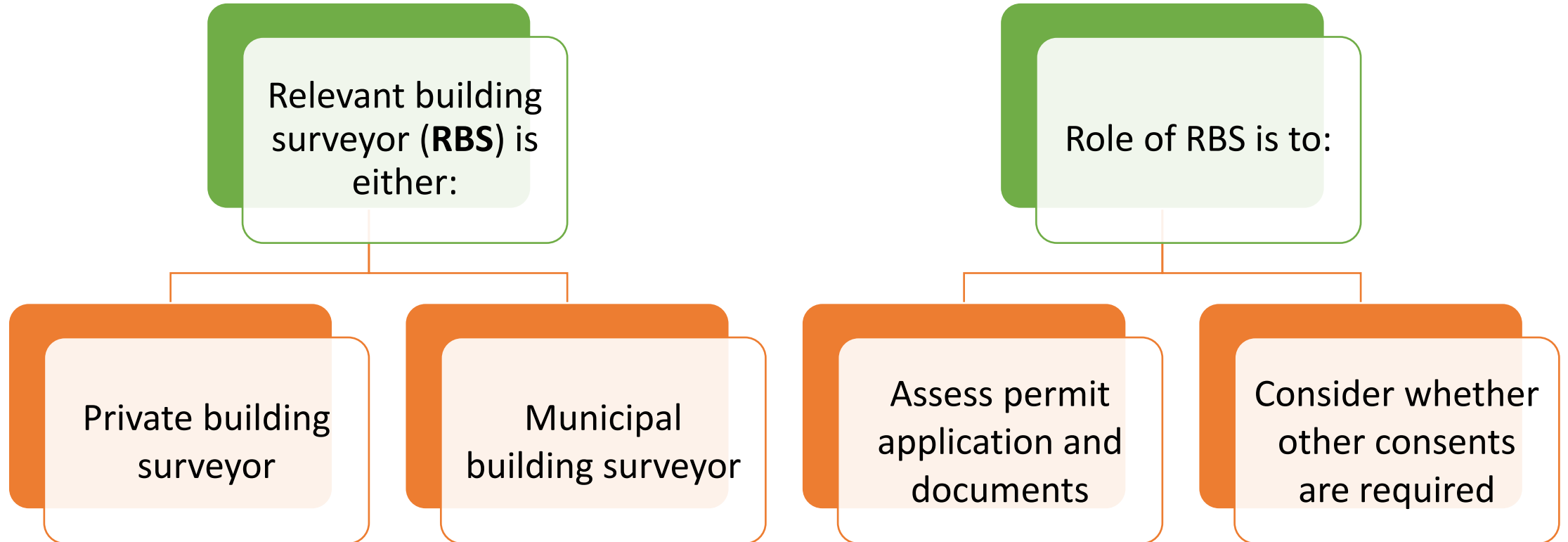


Architects  
Registration Board  
of Victoria

# Summary of the issues

- VBA and building surveyors have reported on an increase in non-compliant building design documentation.
- Some of the causes are:
  - lack of coordination between building design professionals
  - contracts that limit architect's involvement, and
  - lack of client understanding in what documentation is required to be produced.

# Assessment of building design compliance



# Legal requirements for design documentation



## ***Building Act 1993*** (Vic.)

Governs when a building permit can be issued.



## ***Building Regulations 2018*** (Vic.)

Sets out the detailed information to accompany a building permit application.



***National Construction Code*** (incorporated into Building Regulations) Sets standards that a building design must meet.

# What detail must be provided under the Building Act?

A building permit can't be issued until RBS is satisfied that:

- The building work and the building permit complies with the Act, the building regulations and any binding determination;
- Any consent of any reporting authority has been obtained e.g. FRV or local council;
- Any planning permit has been obtained; and
- The building permit will be consistent with the planning permit.

# What detail must be provided under the Building Regulations?

Regulation 25(1) of the Building Regulations sets out the documents that must accompany a building permit application:

- Planning permit
- Drawings showing the plan at each floor level, elevations, sections, dimensions and structural members
- Specifications describing materials and methods to be used in the construction or alteration
- Allotment plans
- A statement of the use or proposed use of all buildings shown on the allotment plans;
- Computations and reports
- For alterations, drawings and plans that clearly differentiate between the existing building and the new building work

Regulation 25(2) then sets out the details of what should be included in the allotment plan.



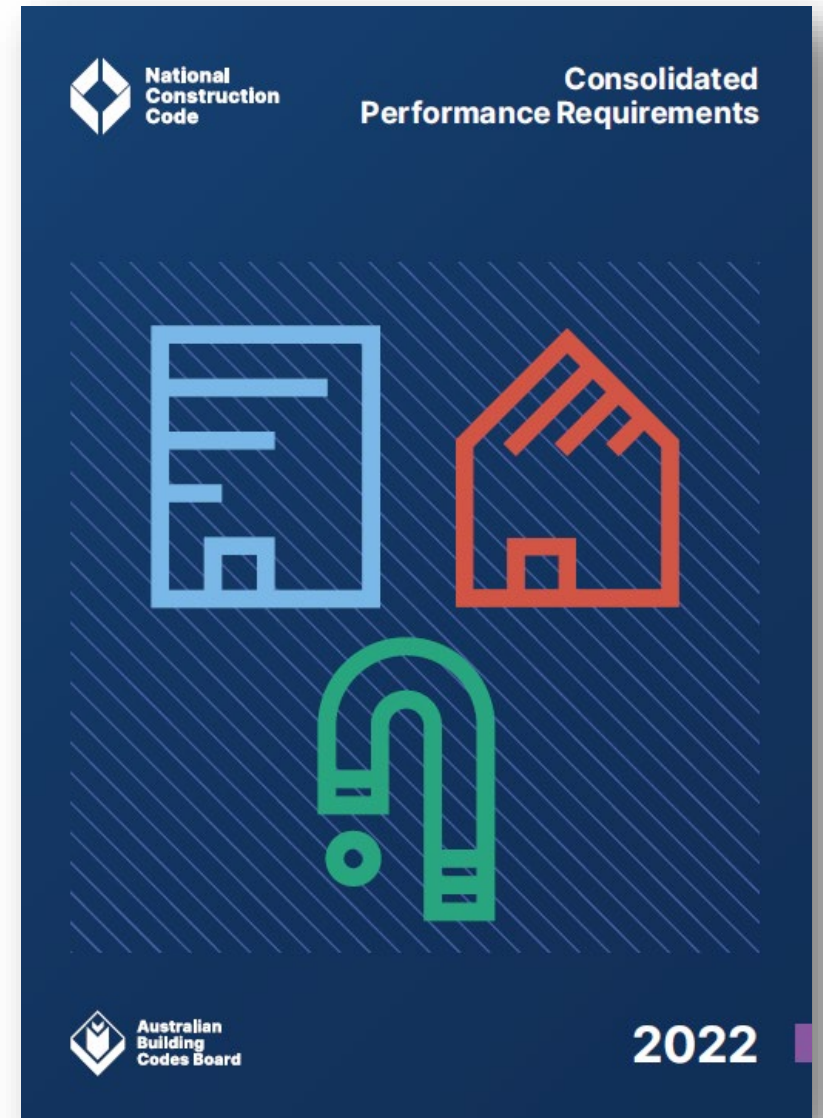
# National Construction Code requirements

Building Regulations incorporate by reference the National Construction Code.

This means:

- an RBS can't issue a building permit without being satisfied that the design meets the performance standards in the NCC.
- if the design does not meet the deemed to satisfy provisions, there should be a performance solution that has been designed and submitted to the RBS for assessment.

A performance solution would usually be prepared by a specific design consultant, such as a fire engineer or the like.





# QUESTION 1



Who assesses the compliance of a building design and when does it occur?

# The role of the architect/project leader

- Inform the client on the best way to undertake the project.
- Determine the building procurement method.
- Emphasise the advantages of a complete service rather than partial services.
- Coordinate involvement of all design professionals.
- Determine the scope of work for each consultant, the program and process for documentation and ongoing input.
- Provide proposed contract for consultant involvement and insurance/invoice arrangements.
- Assist the client to achieve the project taking into account the anticipated project budget, time constraints and the level of quality desired.

# The role of consultant building design professionals


- Support the building design team with appropriate design resolution and technical detail to achieve all relevant permits.
- Introduce and brief consultants early in the process.

# Frequent problems for architects

- Lack of client understanding on the services required.
- Accepting low fees from consultants that won't be sufficient for the services required.
- Consultants not wanting to produce any work until the design is 'frozen'.
- Clients who aren't prepared to engage consultants prior to planning approval being achieved.
- Builder clients who only ask for a limited service and request minimal documentation.
- No involvement of the design team after the preparation of documents.
- Lack of coordination between consultants where they are independently engaged by client or builder.
- An unrealistic program for the preparation of the design and documentation.
- Insufficient time to comprehensively review the consultant's documentation prior to going to tender.
- Project cost increases as a result of insufficient detail or research during the design stages.
- There are occasions where the architect should strongly consider the viability of the project from their own point of view and if the demands for the client seem too great then best to consider ceasing involvement in the project.
- Unacceptable client/architect contract conditions.



## QUESTION 2



Preferably to best protect the architect in their lead role, the professional indemnity insurance cover provided by a sub-consultant should:

- A. Be not less than the sub-consultants fee for the project,
- B. Match the PI cover of the architect, or
- C. Be not less than the value of the building scope covered by the sub-consultant in their documentation.

# The legal issues that arise from lack of coordination

- Non-compliances arising from inadequate detail.
- Need to amend designs because the preliminary design can't be built in a way that meets performance standards.
- The need for off-the-cuff performance solutions to address non-compliances.
- Inconsistencies between building drawings and consultant drawings such as structural, hydraulic.
- Specification of products that won't be compliant in the context.

# The potential legal ramifications for architects

- Expensive rectification work on completed buildings.
- Expensive re-design work during the construction process and potential delay claims from the builder.
- Potential claims from the developer or subsequent owner to recover those costs e.g. Lacrosse.
- Potential disciplinary proceedings e.g. a determination that the professional standards of the architect are demonstrably lower than the standards which a competent architect should meet (section 32(b) of the *Architects Act*) or similar.





## QUESTION 3

What are the two types of legal proceedings architects could face as a result of issues arising from a lack of coordination or consultation?

## How can architects address these issues?



Strive to negotiate contract conditions that allow them to undertake the project comprehensively.



Consider terms of contract – where scope is limited be careful regarding acceptance of design liability.



If lead consultant, ensure that sub-consultant contracts are accepting liability for their scope of design.



## QUESTION 4

The responsibility for overall coordination of project documentation by the architect is greatest when:

- A. The architect has engaged sub-consultants
- B. When the client or builder has engaged the sub-consultants, or
- C. It is the same level of responsibility irrespective of who has engaged the sub-consultants.

# Legislative change regarding design liability

- Changes to NSW legislation to create a statutory liability for design practitioners.
- Requirement for signoff by design practitioner that the design is compliant.
  - For some buildings that can only be architects.
- Effectively forces consultation so that early production of a complete and compliant design can occur.
- Potential for this change to be replicated in other jurisdictions, including Victoria.
- Ramifications for architects in Victoria:
  - Legal liability.
  - Disciplinary.

# *Questions & Answers*

 **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](mailto:registrar@arbv.vic.gov.au)