

## CPD Webinar series

# DEEP DIVE INTO SYSTEMIC RISKS IN THE AUSTRALIAN ARCHITECTURE SECTOR

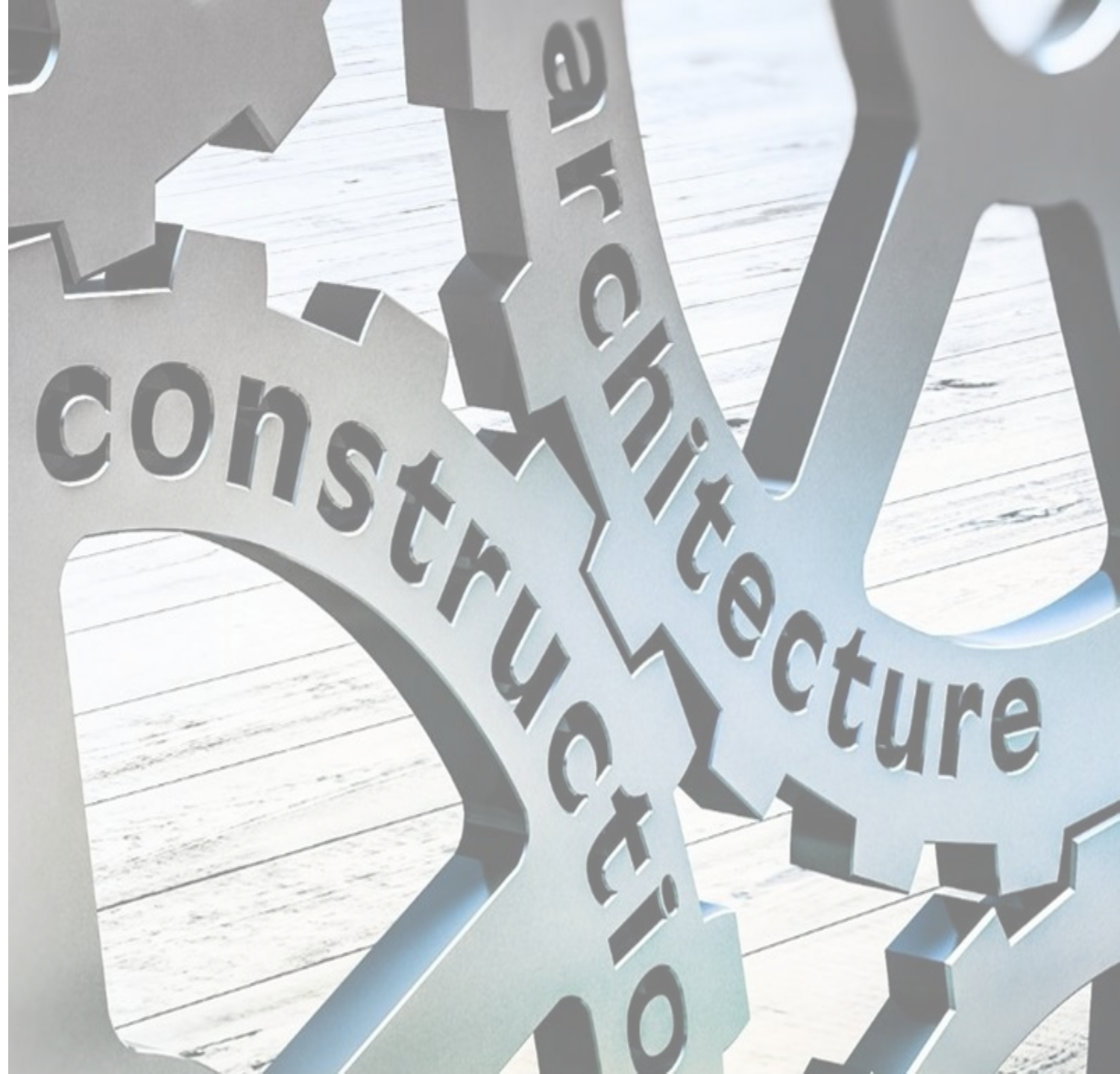
NCC Compliance

**Anthony Apolloni** | Architectus  
**Daniel De Sousa** | Dart Legal & Consulting

**ā rbv**



Architects  
Registration Board  
of Victoria



# Acknowledgment of Traditional Owners

*This presentation is being delivered on the lands of the Wurundjeri People and I wish to acknowledge them as Traditional Owners.*

*I would also like to pay my respects to their Elders, past and present, and Aboriginal Elders of other communities who may be here today.*



# CPD Questionnaire

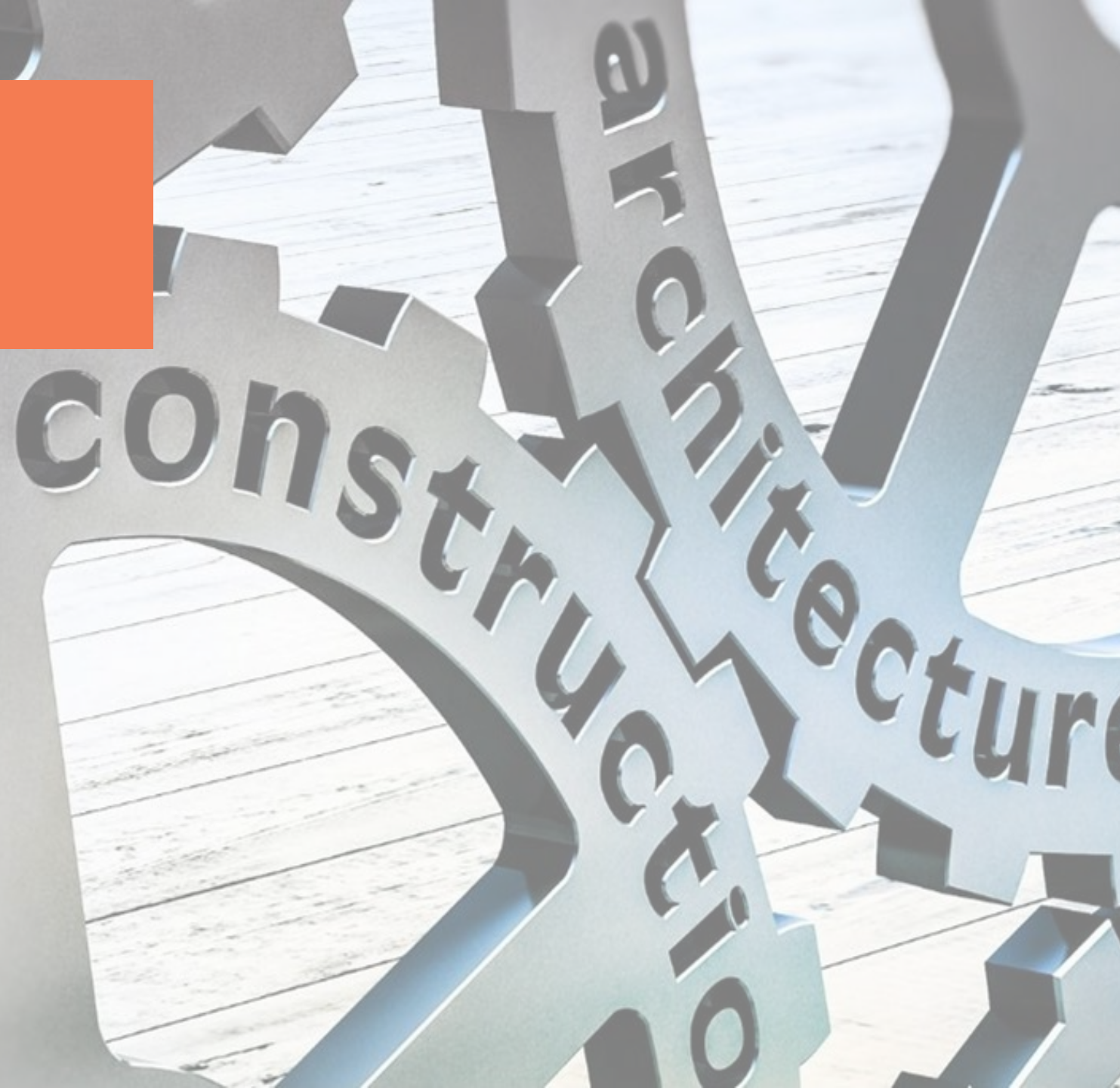
- Attending this webinar live and submitting this form will qualify you for 1 hour formal CPD. Certificates will be sent to the email address used to complete this form, please ensure your name and contact details are correct. This form will close 24 hours after the webinar has commenced.
- Certificates will be issued within 1 week of the closure of the quiz.

<https://forms.office.com/r/JxB1hmYbDj>

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12 March 2025



# ABOUT THE RESEARCH



# What are systemic risks and why is the ARBV concerned about them?

- Systemic risks are risks that:
  - Extend across the sector
  - Can compromise architects' ability to comply with their professional standards' obligations
  - Can cause widespread harm to clients, users, the public and architects themselves
- Systemic risks may be difficult to address:
  - May be latent
  - Difficult to identify in advance
  - Too widespread for the regulator to tackle at once or without assistance from other bodies

# What is the purpose of the research?

- Joint research project undertaken by the ARBV and the NSW ARB:
  - To identify key current, emerging and future systemic risks facing the architectural profession in Australia
  - To assist the ARBV and NSW ARB to better target proactive regulatory activity
  - To support architects to navigate systemic risks while discharging their regulatory obligations
  
- Work undertaken by the ARBs:
  - **Systemic Risks in the Australian Architecture Sector (2022)** – largely based on a desktop review
  - **Deep Dive Report into Systemic Risks in the Australian Architecture Sector (2024)** – insights gained from focus groups with broad range of sectoral participants from Vic and NSW

# Using a systemic lens



**NATIONAL  
CONSTRUCTION CODE  
(NCC)**





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# Link between NCC compliance and quality



**Findings:** There is disagreement among sectoral participants about whether NCC compliance can drive quality in built outcomes

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**Insights:** NCC establishes minimum standards, which has raised questions among some sectoral participants about whether it can drive quality built outcomes

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**Implications:** There is work to be done to determine how NCC compliance can be used to ensure quality built outcomes, particularly in the context of different procurement processes and types of projects

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# Link between NCC compliance and quality

- The provisions of the NCC as drivers of quality in built outcomes
  - the qualitative aspect of design, and
  - the quantitative aspect of design
- Choosing which pathway to compliance with NCC's performance requirements to pursue:
  - Deemed-To-Satisfy
  - Performance Solution
- The Design & Construct project procurement strategy and its impact on compliance pathway decision-making



*Casa Malaparte, Adalberto Libera, 1928, Island of Capri.*



***Question 1: Which of the following statements is true in relation to architects' compliance with the NCC?***

- (a) Architects are not required to comply with the NCC because it only applies to built outcomes, not designs
- (b) Architects must ensure compliance with the NCC regardless of the type of project and the level of detail of the design
- (c) Architects only need to worry about NCC compliance for certain types of projects that involve detailed designs

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# RESPONSIBILITY FOR NCC COMPLIANCE



# Who is responsible for NCC compliance?



**Findings:** There is general agreement that responsibility for NCC compliance is a shared role among building sector participants, but there is less clarity about specific roles and responsibilities of each participant



**Insights:** The interface between the provision of design services and the construction of a building may give rise to ambiguity about who is responsible for NCC compliance



**Implications:** There is a need for greater clarity about roles and responsibilities for NCC compliance

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# Who is responsible for NCC compliance?

- Roles and responsibilities for NCC compliance and the project procurement strategy - who decides and when?
  - Traditional Contract
  - Design & Construct
  - Other
- Architect as Principal Consultant, the consultant team and delegation
- Minimising 'grey areas'
- Consultant Agreements under the Design & Construct procurement model, the NCC Performance Solution pathway and the risks in accepting to undertake services beyond our typical areas of expertise



**Question 2: In which of the following scenarios is the architect responsible for NCC compliance of the design?**

- (a) The contractor took over responsibility for an architect's design following novation of a D&C contract
- (b) The architect was only engaged to prepare a schematic design for a project before the building was constructed
- (c) A building designer was engaged to develop the architect's design before the building was constructed
- (d) None of the above
- (e) All of the above

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# ARCHITECTS' RESPONSIBILITY FOR NCC COMPLIANCE



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# Architects' obligations to ensure NCC compliance



**Findings:** Design documentation must be compliant with the NCC but it can be difficult to demonstrate NCC compliance if limited design documentation is required



**Insights:** Design documentation that is not sufficiently detailed may lead to NCC non-compliance in the built form



**Implications:** Greater clarity is needed about the possible impact of different levels of detail of design documentation on NCC compliance

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# Architects' obligations to ensure NCC compliance

- Design and Construct procurement and the facts of life
- NCC Compliance knowns and unknowns and establishing the level of D&C design completion to minimise risk to design integrity
- Designing, documenting and minimising (or eliminating) ambiguity

*There are known knowns; there are things we know that we know.*

*There are known unknowns; that is to say, there are things that we now know we don't know.*

*But there are also unknown unknowns – there are things we do not know we don't know.*

-Donald Rumsfeld



***Question 3: In which scenario would the architect most likely be protected from regulatory responsibility for NCC non-compliance if material defects are found in the built outcome?***

- (a) The contractor closely followed the architect's design
- (b) The contractor substituted aspects of the architect's design that relate to the material defects
- (c) The contractor significantly deviated from the architect's design in all respects, including aspects that relate to the material defects
- (d) None of the above
- (e) All of the above

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# FACTORS AFFECTING NCC COMPLIANCE



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# Issues with the NCC



**Findings:** There are various factors that can compromise architects' ability to support NCC compliance of built outcomes, but some are outside architects' control



**Insights:** The NCC has gaps and limitations that could affect architects' ability to ensure compliance



**Implications:** More work could be undertaken to determine whether gaps and limitations associated with the NCC have an impact on compliance and, if so, how these limitations could be overcome

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# Issues with the NCC

- Limitations on an architect's control under the D&C procurement approach
- Monthly obligations to certify design compliance and legislative compliance
- Obstacles to accessing Australian Standards referenced in the NCC

**Part O**  
Annexure to the  
Australian Standard General Conditions of Contract for Design and Construct  
AS 4902 - 2000

Form of Consultant Statement

Words not defined in this Statement have the same meaning as in the Agreement.

The Consultant confirms and represents that (except as expressly listed below as an exception) as at []:

- (a) the Services comply with the Agreement;
- (b) to the extent required by the Agreement, the Consultant has undertaken appropriate and periodic inspections of the Site and the Works in order to provide this Statement;
- (c) the design documentation listed below is suitable, adequate and otherwise meets the functional requirements of the schedule of Services and complies with the Agreement and all relevant legislative requirements;
- (d) based on the Consultant's professional opinion and inspections on Site, the Works and commissioning tests, the Works as far as the Consultant is aware, comply in all material aspects with the requirements of the drawings, specifications and other documents prepared by the Consultant in providing the Services;

OR (if Consultant did not prepare the design documentation)

- (e) based on the Consultant's professional opinion and inspections of the design documentation, inspections on Site, the Works and commissioning tests, the Works as far as the Consultant is aware, comply in all material aspects with the Principal's Project Requirements; and

it is aware that the Principal and the Contractor will be relying on this Statement.

Signature of Officer  
Signature of Witness  
Name of officer  
Name of Witness

***Question 4: Which of the following would be a valid defence to an allegation that an architect has failed to comply with the NCC?***

- (a) The NCC does not contain sufficient detail
- (b) The Australian Standards to which the NCC refers are too outdated
- (c) The Australian Standards to which the NCC refers are not freely available
- (d) None of the above
- (e) All of the above

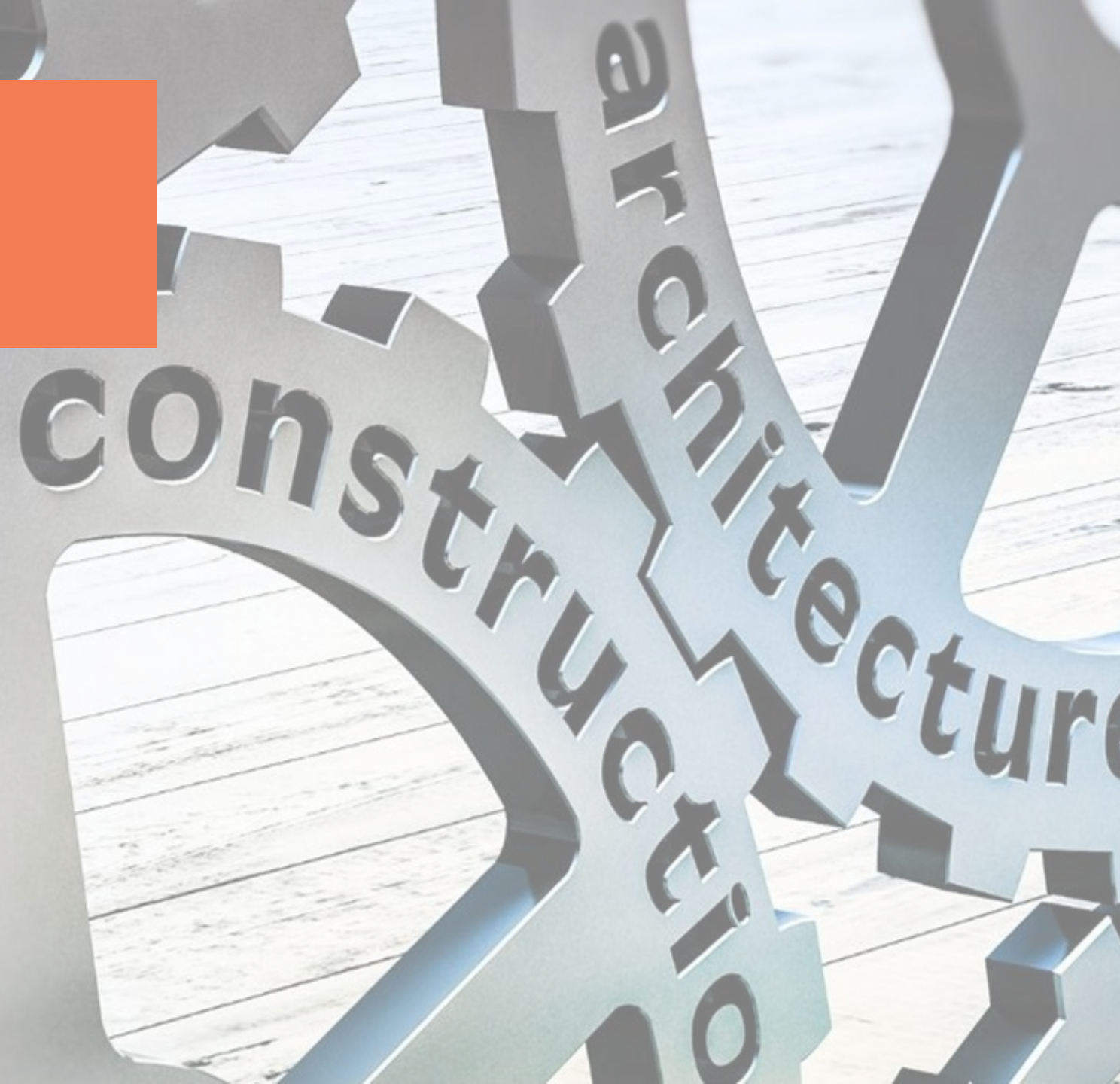
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- (d) None of the above**
- (e) All of the above

# MITIGATION MECHANISMS



# Mitigation of risks of NCC non-compliance



**Findings:** Some participants believe that following the performance solution pathway may mitigate the risks of non-compliance and also deliver better built outcomes



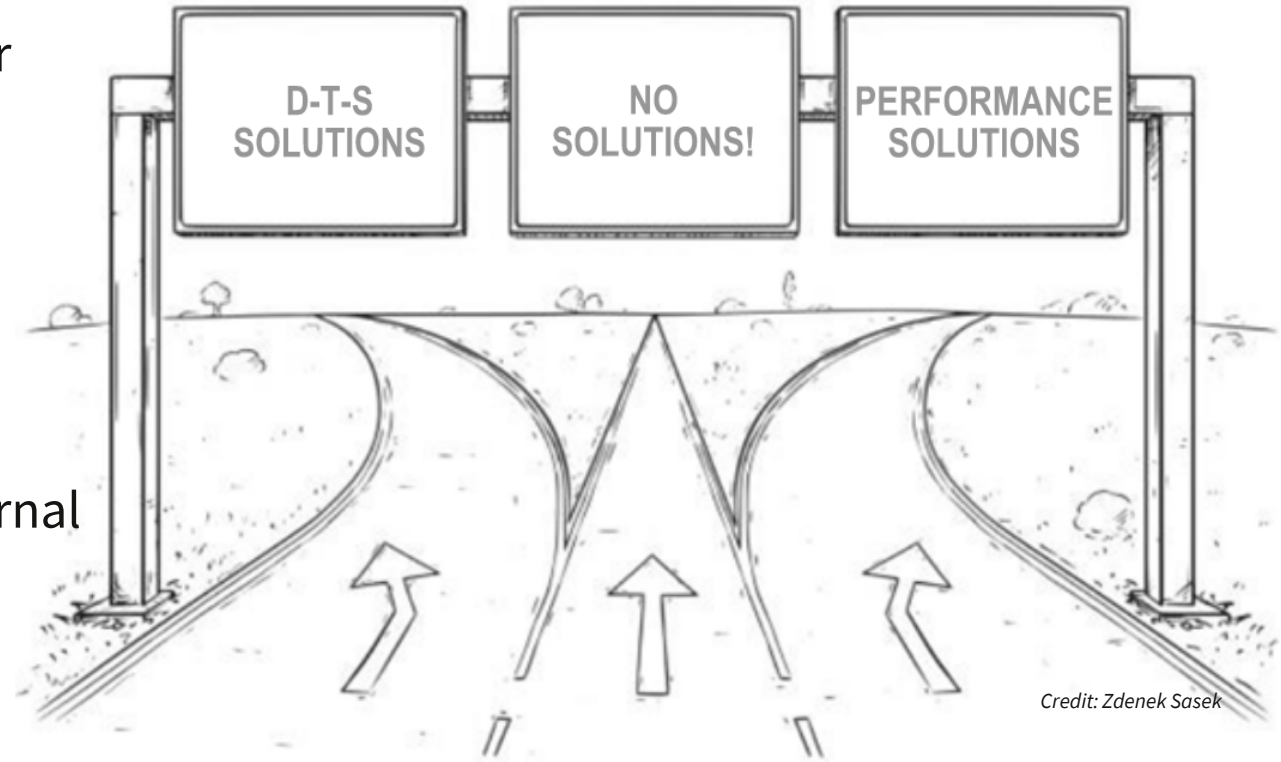
**Insights:** It may be difficult to demonstrate compliance when the performance solution pathway is followed



**Implications:** Greater guidance may be needed to illustrate how NCC compliance can be achieved using the performance solution pathway

# Mitigation of risks of NCC non-compliance

- The architect's familiarity with the NCC and their knowledge of NCC compliance pathways
- Who to turn to for NCC compliance advice
- The potential pitfalls of an over-reliance of external advice when preparing project designs



*Credit: Zdenek Sasek*

Q&A



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