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## Principles for building surveyor integrity and their role in enforcement

1	A statutory building surveyor is appointed by the owner of the land or their agent
2	The appointment of a statutory building surveyor is documented by a written agreement and government is notified
3	The termination of a statutory building surveyor's agreement and the transfer of their functions to another statutory building surveyor is strictly controlled
4	Statutory building surveyors to be prohibited from accepting an appointment or continuing to act if they, or a related person to them, has a conflict of interest
5	Certificates to be checked by the statutory building surveyor
6	Information to be provided to relevant parties
7	Statutory building surveyors' decisions can be reviewed
8	Statutory building surveyors to have enforcement powers to regulate where they detect non-compliance
9	Statutory building surveyors to report specified conduct to the government building regulator
10	Government provides co-regulatory support to statutory building surveyors





















3. Appeal rights from decisions made by the relevant government body, regarding application for termination, should be provided.
4. Principles 1 and 2 would apply to any appointment of a second or subsequent *statutory building surveyor*.
5. It be an offence and a ground for disciplinary inquiry for:
  - a. a *statutory building surveyor*, without reasonable excuse, to accept an appointment or carry out *statutory building surveying work* if they knew, or could reasonably be expected to know, that another *statutory building surveyor* has been appointed and that appointment has not been terminated in accordance with the related provisions for termination; and
  - b. the first *statutory building surveyor* to not cooperate with any request by the relevant government body to hand over relevant documents and information to the *statutory building surveyor* to which their functions are being transferred.
6. The second or subsequent *statutory building surveyor*, appointed following the consent to termination of the previous *statutory building surveyor's* SBSSA, should not be liable for the work of the earlier *statutory building surveyor* provided that the second or subsequent *statutory building surveyor* makes all reasonable enquiries (including making reasonable inspections of the *building work*) in relation to the decisions made by the first *statutory building surveyor* when performing the remaining *statutory building surveying work*.

## **Further comment**

The relevant government body to which applications for consent to termination of agreement and transfer of functions should develop policy and procedures on the factors it will consider when determining applications. This might include streamlining the consent process where transfers occur due to the movement of *statutory building surveyors* between corporate entities.

## Principle 4 – Mitigating conflicts of interest

Statutory building surveyors to be prohibited from accepting an appointment or continuing to act if they, or a person related to them, has a conflict of interest

### Objective

The objective of this Principle is to mitigate against conflicts of interest that impact the impartiality and independence of the *statutory building surveyor* when they are performing *statutory building surveying work* and undermines the integrity of the *building approval process*.

### Context

Given their role as an independent impartial decision maker, the *statutory building surveyor* or a related person to them, must be free from conflicts of interest when they are performing statutory functions.

A fundamental task of the *statutory building surveyor* engaged to perform statutory functions is to assess *building approval* documentation to determine whether it demonstrates compliance with relevant acts, regulations and the NCC. If the *statutory building surveyor* has participated in the development of the design, they are not able to make an impartial *assessment*.

If the *statutory building surveyor* has a pecuniary interest in the project or the business of other practitioners involved in the project, they may be conflicted when exercising their functions. If they are receiving inducements or other benefits unrelated to the payment for their services, their decisions may be influenced by those benefits. The same conflicts and undue influences may arise where a person to whom the *statutory building surveyor* is related has these relationships as they may indirectly benefit from the interest of the related person.

This Principle seeks to prohibit conduct which may give rise to perceived or actual conflicts of interest that may unduly influence a *statutory building surveyor* to make decisions that are not in the public interest.

## Legislative provisions

It is recommended:

1. A *statutory building surveyor* be prohibited from accepting an appointment or carrying out *statutory building surveying work* where they participate in design work for the same building.
2. The phrase 'participate in design work':
  - a. includes:
    - i. not maintaining a high degree of separation and objectivity from the design process;
    - ii. providing advice as to how to detail or amend a plan or specification; and
    - iii. preparing or providing input into the preparation of any supporting documents for a *Performance Solution*, including choosing who undertakes that task.
  - b. does not include:
    - i. preliminary or routine advice on *Deemed-to-Satisfy Solutions*;
    - ii. discussing the concept of *Performance Solutions* and which *Performance Requirements* are relevant; and
    - iii. providing input into a *Performance-based design brief* as a stakeholder consulted as part of development of the Brief.
3. A *statutory building surveyor* be prohibited from:
  - a. accepting an appointment or performing *statutory building surveying work* or continuing to act if they have a direct or indirect pecuniary interest in:
    - i. the land on which the *building work* is being carried out;
    - ii. the *building work* that is being carried out; and/or

- iii. any contractor engaged to carry out the work including a builder or designer.
  - b. accepting any inducements or benefits, whether financial or otherwise, other than payment for *statutory building surveying work*; and
  - c. knowingly issue a false or misleading document.
4. That conflict of interest and pecuniary interest provisions, set out above, apply to the *statutory building surveyor* and any related person, including:
  - a. a partner in a partnership, where the *statutory building surveyor* is a member of the partnership;
  - b. if the *statutory building surveyor* is a body corporate, a director of the body corporate or any related body corporate;
  - c. an employer of the *statutory building surveyor*;
  - d. an employee of the *statutory building surveyor*;
  - e. the spouse, domestic partner, sibling, aunt, uncle, grandparent, grandchild, parent or child of the *statutory building surveyor*; or
  - f. a person with whom the *statutory building surveyor* has a contractual relationship with, that might reasonably be seen to give rise to a conflict of interest.

## Further comment

Whilst the above guidance is detailed, further practice guides or examples can be developed by jurisdictions to assist stakeholders to apply the above controls in a consistent manner. The above provisions and any guidance material should be consistent with applicable codes of conduct for *statutory building surveyors*.

Some jurisdictions prohibit a *statutory building surveyor* from accepting an appointment or carrying out *statutory building surveying work* where the *statutory building surveyor* is currently providing *advisory building surveying work* to the same owner, builder or

designer, or has provided *advisory building surveying work* for the same owner, builder or designer within a prescribed period (for example the past 12 months).

Including this requirement may be appropriate where it is considered that there is a sufficient market supply of practitioners available to provide services in an area or region. Jurisdictions are best placed to determine whether to introduce this prohibition.



## Principle 5 – Acceptance of certificates

Certificates to be checked by the statutory building surveyor

### Objective

The objective of this Principle is to set out the checks that a *statutory building surveyor* is required to undertake when relying on a *certificate of design compliance*, or a *certificate of construction or installation compliance*, for work undertaken by another practitioner. These checks will confirm the competency of the *certifying* practitioner and that their certification is, on its face, appropriately issued.

### Context

Some *statutory building surveyors* have limited expertise of specialist areas of design such as structural, fire safety, mechanical or hydraulic engineering, energy efficiency, and accessibility requirements. In all jurisdictions the *building approval process* provides for a *statutory building surveyor* to accept certificates from others with adequate skills and competency in key aspects of *building work*.

During the construction phase, inspections of work at mandatory notification stages or other times are undertaken directly by, or at the direction of, the *statutory building surveyor*. They may arrange for others to undertake those inspections and rely on reports or certificates of inspection.

When the *statutory building surveyor* accepts a *certificate of design compliance*, or a *certificate of construction or installation compliance* they are allowing another person to assess and approve or confirm compliance. They need to make necessary checks before accepting such certificates.

### Legislative provisions

It is recommended:

1. The *statutory building surveyor* determine that a *certificate of design compliance*, or a *certificate of construction or installation compliance* is provided

by a person that is *registered* and has adequate experience relevant to the building and NCC *Performance Requirement/s* to which the certificate relates.

2. In making this determination the *statutory building surveyor*:
  - a. can rely on the practitioner register maintained by the relevant jurisdiction;
  - b. must document the checks they have made, for example confirming when registers were checked and that they have reviewed and considered the person's experience and its relevance to the project for which the *certificate of design compliance*, or *certificate of construction or installation compliance* has been given; and
  - c. must check that the *certificate of design compliance*, or *certificate of construction or installation compliance* contains all the required information (usually prescribed in relevant provisions) and is accompanied by documentation with adequate detail to demonstrate compliance with the NCC (for example evidence of suitability, reports or drawings in relation to certificates for design) or in the case of inspections, references the relevant *building approval* documentation and NCC provisions.
3. Legislation expressly state that provided the above checks are properly completed, the *statutory building surveyor* will have immunity from liability in relation to the matters certified.

## **Further comment**

The above legislative provisions do not seek to set out requirements for the issuing of and reliance on a *certificate of design compliance*, or a *certificate of construction or installation compliance*, who may issue them and in relation to what aspects of design or work. These are matters considered in other model guidance or are matters for each jurisdiction.

This Principle is not intended to apply in relation to the issuing of *declarations of construction or installation compliance*, or *declarations of design compliance*.

Refer to Figure 2 for the difference between declarations and certificates.

Figure 2 - Declarations and certificates

Document	Declaration of Compliance		Certificate of Compliance	
	Design	Construction / Installation	Design	Construction / Installation
Definition	<p>Is a document that:</p> <p>(a) is provided by the <i>registered</i> person who is responsible for the design work; and</p> <p>(b) states the design complies with the NCC and other prescribed requirements.</p>	<p>Is a document that:</p> <p>(a) is provided by the <i>registered</i> person who is responsible for the construction or installation work; and</p> <p>(b) states the construction or installation work complies with the <i>building approval</i> documentation and other prescribed requirements.</p>	<p>Is a document that:</p> <p>(a) is provided by an appropriately <i>registered</i> and, where necessary, independent, person who has examined and assessed design work; and</p> <p>(b) states that the design complies with the NCC and other prescribed requirements.</p>	<p>Is a document that:</p> <p>(a) is provided by an appropriately <i>registered</i> and, where necessary, independent person who has examined and assessed construction or installation work; and</p> <p>(b) states that their examination and assessment confirms the construction or installation work complies with the <i>building approval</i> documentation, the NCC, and other prescribed requirements.</p>
Who provides?	A <i>registered</i> building practitioner responsible for the work.		A <i>registered</i> building practitioner at an appropriate level in the relevant occupation. Legislation may require an <i>assessment</i> to be undertaken by a <i>registered</i> practitioner who is independent to the design or construction process.	
Who receives?	A person who contracted the work or who will rely on the work.		A person who contracted the <i>assessment</i> or who will rely on the <i>assessment</i> . <sup>1</sup>	
How recorded?	Must be provided to the <i>building approval authority</i> <sup>2</sup> when seeking a <i>building approval</i> or <i>occupancy approval</i> and kept as part of the building records <sup>3</sup> .		Must be recorded by the <i>statutory building surveyor</i> or other person relying on the certificate to make a statutory assessment of building compliance <sup>4</sup> .	
Legal effect?	Holds the person responsible for the work liable for its compliance.		Holds an expert liable for advice. Indemnifies the <i>building surveyor</i> or other person relying on the advice.	

**Notes on figure**

1. A *statutory building surveyor* making a statutory *assessment* may rely on a Certificate of Compliance. A *statutory building surveyor* may choose not to rely on a Certificate of Compliance if not satisfied.
2. The legal entity that issues the *building approval*. This may be a private *building surveyor*, a local government or other body, depending on each jurisdiction's relevant legislation.
3. The building records may be kept by a different legal entity from the *building approval authority*. In most jurisdictions the building records are kept by the relevant local, state or territory government.
4. *Building approval* legislation in each jurisdiction will state whether the *statutory building surveyor* keeps the *assessment* records or includes them in the building records.

## Principle 6 – Communicating information and decisions

Information to be provided to relevant parties
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### Objective

The objective of this Principle is to improve transparency of the decisions made by the *statutory building surveyor* during the *building approval process*.

### Context

This Principle provides for the provision of specified information about the decisions made by the *statutory building surveyor* when exercising their statutory functions. The information is to be accessible by the owner as well as the builder and the agent (if they are not the owner or builder).

### Legislative provisions

It is recommended:

1. The following information be provided by the *statutory building surveyor* to the owner, the builder and their agent (if they are not the builder):
  - a. All approved documents forming part of the *building approval process*;
  - b. Any approved variations to documents or new design documents approved during the works;
  - c. Results of all *mandatory inspections*;
  - d. Any directions issued following *mandatory inspections* including the reasons why those directions were issued;
  - e. Any enforcement actions taken by the *statutory building surveyor* including the reasons why those actions were taken;
  - f. Any *occupancy approval* or final inspection certificate.

2. The above information should be provided:
  - a. directly to the owner regardless of whether the owner has appointed an agent;
  - b. within a specified timeframe of a related event or of the decision being made which should generally be no less than 5 business days.

## Further comment

The mode of providing this information may be simplified through the increased use of information lodgement platforms by some jurisdictions. This may result in an owner having access to the platform or being sent the required information via the platform. In these cases, the *statutory building surveyor* may not need to provide the information to the owner. So long as the outcome is that the owner receives or can access the information in a timely manner, the objective of this Principle will be met.

## Principle 7 – Right of review

Statutory building surveyors' decisions can be reviewed

### Objective

The objective of this Principle is to provide rights for merits review to those affected by decisions of the *statutory building surveyor* consistent with their statutory and administrative nature.

### Context

Decisions made by the *statutory building surveyor* affect the rights of the owner, are administrative in nature (given they relate to a statutory process) and should be subject to due process and review. This Principle is also consistent with the fact that the appointment of the *statutory building surveyor* should not be easy to terminate, enabling the *statutory building surveyor* to make independent and impartial decisions that the owner may not agree with.

### Legislative provisions

It is recommended:

1. All decisions made by the *statutory building surveyor* can be subject to review.
2. Information is available for consumers about these rights, including:
  - a. in the approved Information Sheet provided to the owner at the time of appointment of the *statutory building surveyor* (refer Principle 2); or
  - b. as prescribed information in the written document containing the decision that is made; and/or
  - c. on government websites where consumers can readily access information.
3. Review rights should specify who may seek review and provide appropriate limits to those affected by the decisions of the *statutory building surveyor*.

## Further comment

Provision for a review process requires a decision making body that can conduct the review. This could be a specialist body (such as the Building Appeals Board that operates in Victoria, or the State Planning Commission that operates in South Australia) or an administrative tribunal or other government decision maker. It is not necessarily the case that the review body needs to be the same body for all matters, although this might be more efficient and less confusing for consumers.

## Principle 8 – Enforcement powers

Statutory building surveyors to have enforcement powers to regulate where they detect non-compliance

### Objective

The objective of this Principle is to provide *statutory building surveyors* with suitable powers to enable them to require rectification of non-compliances identified during inspections of *building work*.

### Context

In most jurisdictions *statutory building surveyors* have a responsibility to assess *building approval* documentation. They may also inspect *building work* during construction. Their statutory roles provide them with opportunities to detect fraudulent conduct and non-compliance. It is essential that they act on these issues. However, where the *statutory building surveyor* is operating as a privately owned business, they can only take enforcement action so far before referring the matter to a government body for escalation. This means that the referral process and collaboration between state and local government, and the enforcement actions commenced by *statutory building surveyors* operating as a privately owned business, must be well functioning and effective.

Enforcement powers that enable the *statutory building surveyor* to enter the site, undertake inspections and direct that any non-compliances be rectified are essential to enforce compliance with building legislation. The provision of such powers is complementary to the role of the *statutory building surveyor* when conducting inspections and without such powers there is no way to promptly compel compliance. Builders that carry out non-compliant *building work* should fix that work, at their cost. In instances of *serious non-compliance*, it may be appropriate to stop all other works on the site until the matter is resolved. *Statutory building surveyors* exercising such powers in good faith should not be at risk of legal claims by builders or others.

In all jurisdictions, local councils or territory governments or their officers have powers to require *building work* to be carried out where it is non-compliant or unsafe. *Statutory*



*building surveyors* operating privately owned businesses need similar powers given they are performing these statutory functions in most jurisdictions. They need to be able to act promptly, seek to resolve non-compliances during the works and escalate enforcement to the relevant state or local government body where the matter is not resolved in a timely manner.

The direction powers should be such that the *statutory building surveyor* must use them when non-compliance is detected. This seeks to ensure a level playing field where all *statutory building surveyors* act on non-compliance without having to be concerned that they are the only one enforcing the laws or that they will not attract work if they use their powers to require compliance because other *statutory building surveyors* are not doing so.

## **Legislative provisions**

It is recommended:

1. A *statutory building surveyor* have a power to enter land on which *building work* is being carried out, or to which a *building approval* applies for which they are responsible, for the purposes of inspecting *building work* and monitoring compliance.
2. A *statutory building surveyor* have powers to direct the builder to fix non-compliant *building work*.
3. Powers to direct the builder to fix non-compliant *building work* include:
  - a. requiring a *statutory building surveyor* to direct the builder to fix non-compliant *building work* at any time where it is detected (i.e. not just following a mandatory inspection);
  - b. requiring the direction to fix be provided in writing;
  - c. requiring the direction to fix to be sent to the owner and, if it is not complied with, a relevant local or state government body;
  - d. that the builder is not entitled to receive payment for or in respect of any cost arising from complying with a direction to fix; and

- e. the timeframe for compliance and ability to extend that timeframe are at the discretion of the *statutory building surveyor*.
4. A *statutory building surveyor* have a power to issue orders to stop all work other than work required to resolve the safety or compliance issues where it was the reason for issuing the order. If the order is not complied with, it should be referred to a relevant local or state government body for investigation, prosecution or court orders.
5. A *statutory building surveyor* is not liable for anything done or omitted to be done in good faith in exercising the above powers and functions.

## **Further comment**

Where the *statutory building surveyor* causes or is responsible for overseeing inspections carried out by other *registered* practitioners, the expectation would be that those persons would report back to the *statutory building surveyor* promptly after each inspection and the *statutory building surveyor* would then use their powers as necessary. Refer to the model guidance for [Independent third party review](#) for more information.

The powers given to local government or their officers should be consistent where they are engaged to perform *statutory building surveying work*. However, local government or its officers may also have powers to respond to safety or compliance issues in buildings that are not under construction or the subject of a *building approval*.

## Principle 9 – Reporting specified conduct to government

Statutory building surveyors to report specified conduct to the government regulator

### Objective

The objective of this Principle is to provide a mechanism for governments to be made aware of fraud or *serious non-compliance*.

### Context

Industry stakeholders have reported high levels of non-compliance, deceptive behaviours and fraud in the building industry. The senate inquiry into *non-conforming building products*<sup>6</sup> was told that there was a high incidence of fraudulent certificates and information in relation to *building products*. Government regulators cannot be on every building site and even with proactive audit programs, will not always detect behaviour that is deliberate and intended to deceive.

Given *statutory building surveyors* work very closely with building practitioners throughout the construction process, they can observe poor practices and may become aware of *serious non-compliance* and fraud. *Statutory building surveyors* should not ignore such conduct.

Mandatory reporting is a way for regulators to gain improved intelligence about poor practices in the industry. As a co-regulator, *statutory building surveyors* should refer serious matters to government. However, individuals fear that if they are in the minority of *statutory building surveyors* who do, they may be subject to recrimination or retribution.

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<sup>6</sup> On 23 June 2015, the Senate referred an inquiry into non-conforming building products to the Senate Economics References Committee. The Committee [produced reports](#) on 4 May 2016; 6 September 2017 and 22 November 2017.

Mandatory reporting provides *statutory building surveyors* with an obligation to notify government of *serious non-compliance* including fraudulent practices. This can contribute towards creating a level playing field and signalling to industry that such practices will be reported regardless of which *statutory building surveyor* they deal with.

## Legislative provisions

It is recommended:

1. Where a *statutory building surveyor* forms a reasonable belief that a “reportable matter” has occurred or is likely to occur, they must report it to their state or territory government regulator within 48 hours (or other specified time) after becoming aware of the reportable matter (i.e. a failure to do so would be an offence).
2. ‘Reasonable belief’ means supported by evidence or information even if the evidence or information is not conclusive.
3. ‘Reportable matters’ are defined as:
  - a. where the *statutory building surveyor* has received a document they reasonably believe is fraudulent or misleading;
  - b. where the *statutory building surveyor* has become aware of *serious non-compliance* that includes *building work*, which:
    - i. is a departure from the approved plans beyond acceptable standards and tolerances; and/or
    - ii. has or could endanger the safety of the public or occupants of the building.

## Further comment

Jurisdictions should develop guidance with examples on matters such as what constitutes a ‘departure beyond acceptable standards and tolerances’ referencing their own guides to standards and tolerances or other material. The guidance might also

cover what would be considered to 'endanger the safety of the public or occupants of the building'.

## Principle 10 – Co-regulatory support

Government provides co-regulatory support to statutory building surveyors

### Objective

The objective of this Principle is to improve the regulatory oversight of the building and construction sector through a more effective, efficient and collaborative partnership between state and territory government, local government and *statutory building surveyors* operating privately owned businesses that perform statutory functions.

### Context

As co-regulators, *statutory building surveyors* operating privately owned businesses need training and support to exercise enforcement powers. The preparation of directions or notices and orders to ensure they meet legal requirements and are enforceable is a skill that *statutory building surveyors* operating privately owned businesses may not have. These activities also take time, which a *statutory building surveyor* may not be able to recover their costs for. Further, taking enforcement action is not seen as a ‘customer service’ and *statutory building surveyors* can be reluctant to regulate their clients.

If the regulatory oversight mechanisms do not operate to require non-compliance to be rectified, particularly when the builder is being recalcitrant, there will be little incentive for compliance.

The support and collaboration between state or territory government, local government and *statutory building surveyors* operating privately owned businesses are not necessarily matters for legislation. These matters are related to the model guidance for [Building regulator collaboration](#), which outlines formal mechanisms for a more collaborative and effective partnership between those responsible for regulation and enforcement. Consideration should be given to which level of government a *statutory building surveyor* operating a privately owned business should refer unresolved notice or directions to, and how that recipient will be funded and resourced to respond.

## Non-legislative actions

It is recommended:

1. Each jurisdiction publish its strategy on how it will support collaboration between state or territory government, local government and *statutory building surveyors* operating privately owned businesses. This will enable these bodies to effectively exercise their enforcement functions and to act on referrals to resolve non-compliance. The strategy would be supported by the model guidance on [Building regulator collaboration](#).
2. Jurisdictions require mandatory *continuing professional development* be undertaken by *statutory building surveyors* that includes a minimum number of hours covering how to exercise their enforcement powers. Refer to the model guidance for [Continuing professional development on the NCC and ethics](#) for more information.

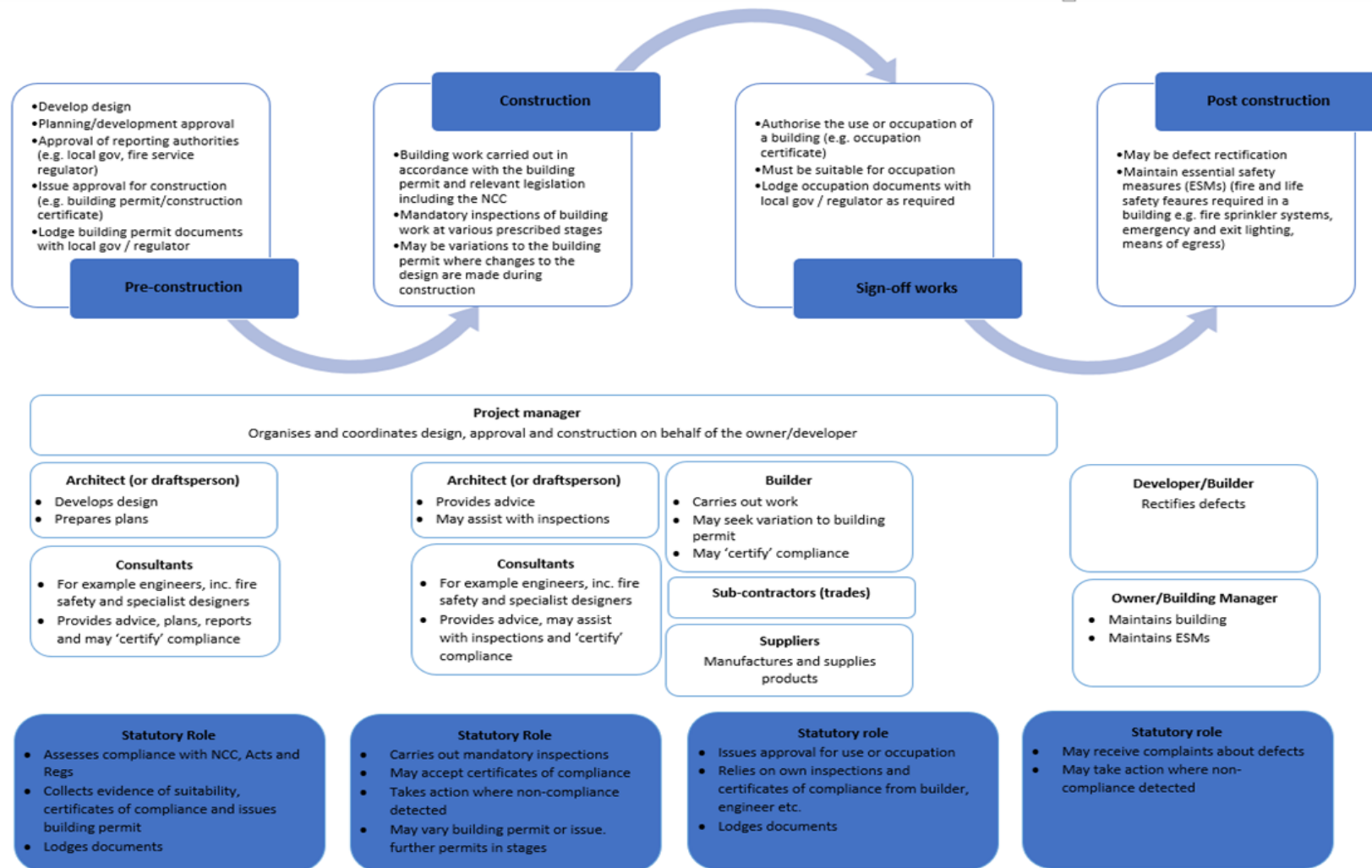
# APPENDICES





# Appendix 1

Figure 3 Building approval process, the relationships of key practitioners and the statutory functions of building surveyors



**Notes on Figure 3**

1. This figure shows the typical process and roles at a high level. It does not include all statutory obligations, responsibilities, nor does it depict contractual relationships.
2. Further information on the proposed roles and responsibilities of all building practitioners identified in this figure can be found in the [National Registration Framework for building practitioners](#).