

Certification Engagement Contract

Current 28.12.2020

This contract contains information legally required within the Building and Development Certifiers Act Clause 31, BDAC Regulation Part 5.

This contract, along with the documents you intend to submit with your application must be provided to us via the NSW Planning Portal. As of January 1 2021, all Certifiers and Councils can only accept applications through the portal <https://www.planningportal.nsw.gov.au/>

Details of person requesting the Certification work. *The Builder cannot be the applicant for a Construction Certificate, unless the Builder is also the Owner*

Name _____

Phone number _____

Email _____

Mailing Address _____

Signature _____ Date _____

Particulars of the Certification work;

- Construction Certificate appointment of Principal Certifier and Occupation Certificate
- Complying Development Certificate appointment of Principal Certifier and Occupation Certificate
- Appointment of Principal Certifier and Occupation Certificate

What is the proposed development? *Eg. additions to a dwelling, new dwelling, new inground pool...*

Description: _____

What is the BCA class of the Building? *(circle as appropriate, your proposal may include several classes)*

- Dwelling 1a
- Boarding house 1b
- Shed carport garage 10a
- Pool, fence, wall, 10b
- Other Class 2,3,4,5,6,7,8,9

Development Address

Flat/Street no. _____ Street name _____

Suburb/Town _____ Post code _____

Council area _____ Lot _____ DP _____

DA number and date of determination (does not apply to Complying Development) _____

Fees and charges

Accompanying this Contract is a quote specific to the proposed development. Payment of said quote is taken as acceptance of the contract conditions.

1. if the certification work involves the determination of an application for a development certificate—the fees and charges payable for the determination (excluding any fees and charges for work arising as a result of unforeseen contingencies) must be paid on or before the lodgement of the application, and
2. if the certification work involves the carrying out of functions of a principal certifier—the fees and charges payable for carrying out those functions in respect of particular development (excluding any fees and charges for work arising as a result of unforeseen contingencies) must be paid before the functions are carried out in respect of that development, and
3. if the contract provides for payment of fees and charges for carrying out work arising as a result of unforeseen contingencies—provide for invoices to be issued within 21 days after the completion of that work.

Owners Consent

I/We are the owners of the lot. We agree to this contract as required by the BDAC. We have freely chosen to engage this particular certifier and we have read the contract and any document accompanying the contract. We understand the roles and responsibilities of the Certifier.

Name _____ Name _____

Phone number _____ Phone number _____

Address _____ Address _____

Signature _____ Signature _____

Name _____ Name _____

Phone number _____ Phone number _____

Address _____ Address _____

Signature _____ Signature _____

All owners must sign above to give consent to the applicant to lodge the application. The owner agrees to be bound by the contract attached to this application form where applicable. **Do not sign this document if you have not received the Fair Trading Information sheet describing the role of the Certifier**

The agreement

“we” or “us” means My Certifier, it’s employees and subcontracted accredited certifiers

“You” “Your” means the applicant, the property owner and Builder The Builder is the person carrying out the work, regardless of whether they are licenced under the Home Building Act.

1. You will ensure all parties engaged by you who interact with us are aware of the conditions of this contract.
2. You confirm any details provided on the plans and supporting documentation are accurate and correct. Any misleading or incorrect information supplied in obtaining the approval may invalidate the certificate. Costs incurred as a result will be the responsibility of the owner.
3. You confirm that no work subject to this certification has started prior to this application, and no work will commence until the Certificate is issued and notice has been provided to the PC and Council.
4. You will ensure that all mandatory inspections are carried out. Failure to ensure this may prevent issue of an Occupation Certificate
5. You will request Inspections not less than 48 hrs prior to the required inspection.
6. Additional inspections that arise as a result of the method of the construction or reinspection of defective/incomplete works will be subject to additional inspection fees based on the quoted price, subject to this contract.
7. Issue of the CC/CDC does not relieve any other person of their responsibilities including compliance with the development consent, BCA or any other legislation or Code. We are not a site supervisor or project manager. We will carry out ONLY the critical stage inspections and ONLY when requested by the Builder or your other representative in line with the EP&A Act. Failure to request these inspections can prevent the Occupation Certificate from being issued. We will rely on 3rd party statements for work not directly subject to critical stage inspections.
8. Any verbal conversation between you and us shall be confirmed in writing. Any advice you think we gave you that is not confirmed in writing shall not be taken as legal advice, planning advice or BCA advice. Verbal advice is too open to interpretation and mistakes and shall be non-binding.
9. Our quoted cost is for a maximum two year period from the invoice payment date. Any certification work on this development beyond that date may be subject to extra fees. The fees will be calculated based on the quoted value of any outstanding works, plus 8%p/a compounding, plus any increase in our costs determined by us.
10. You will ensure that a Construction Certificate or Complying Development Certificate has been issued prior to the commencement of any works;
11. Before the commencement of any residential building work the builder will provide the PC with HBCF insurance or an Owner Builder Permit pursuant to the Home Building Act 1989, and satisfy any other preconditions within the development consent
12. You will engage subcontractors with relevant licences as required by any relevant legislation including but not limited to the Home Building Act;
13. We agree to carry out mandatory critical stage inspections during the course of construction of the proposed building work as defined in the quote, contract and Consent. Reasonable notice must be given by the applicant or Builder. Reasonable notice will be determined by us at the time of request for inspection.
14. You will ensure construction will not continue beyond any critical stage inspection until you have written confirmation from us that the inspection has been carried out.
15. You will ensure that the subject property is accessible for us to carry out our obligations under this Agreement. This includes gate access, ladder access and any other means required to access the requested inspection
16. You agree the builder or builder’s representative may request inspections. You are liable for any reinspection fees.
17. You will provide structural design including but not limited to any concrete element, timber or steel framed element prior to that critical stage inspection.
18. We may choose to have any suitably qualified registered certifier carry out the mandatory critical stage inspections, other than the inspection prior to occupation of the building.
19. The builder/owner builder must rectify any defects identified by the us during the course of each inspection to the satisfaction of the PC before the builder carries out any further building work or at such other time as may be agreed to by us

-
20. You will attend any meetings if required by the PC to do so;
 21. You will comply with any notices or orders that the PC issues;
 22. You are aware of the requirements of the Swimming Pools Act, including the requirement to provide a barrier around the pool at all times.
 23. You will provide certification for various components of works and materials used during construction in the format as specified by us. These certificates are generally listed in our "Developer Guidelines" Document that will be provided with the CC or CDC, subject to change throughout the development.
 24. We will issue an Occupation Certificate for the proposed development when we are satisfied that: a) Any preconditions to the issue of the Occupation Certificate as specified in the Development Consent or Complying Development Certificate have been met; and b) That the building works for which the Certificate has been issued are suitable for occupation or use in accordance with their classification under the Building Code of Australia; and c) A fire safety certificate has been issued (if required).
 25. Any additional consultation for dispute resolution, council liaison or compliance advice and action will be charged at \$198/hr plus GST
 26. We will carry out our work in accordance with the BDAC Act and EP&A Act. Our work will not extend beyond this legislated role.
 27. In the case of any legal action, dispute or other matter brought against us, you agree to pay all legal costs, court ordered costs or damages, insurance excesses, increases in our insurance premiums, costs agreed to by mediation or any other cost against us. We will not be liable for any costs beyond the applicable certification fees for the project.
 28. Please see the Fair Trading NSW website for detail on the role of the Certifier

Termination of this Agreement

29. This Agreement may be terminated by the PC if any of the following occurs:- Building works are commenced without the issue of a Construction Certificate or Complying Development Certificate; The owner or builder fails to provide HBCF insurance or Owner Builder Permit pursuant to the Home Building Act 1998 if the building work is residential building work;
If the owner, builder or any other person involved in the development breaches the requirements of the Environmental Planning and Assessment Act/Regulations. If the owner or principle contractor fails to provide sufficient or accurate documentation in support of any part of the development If misleading or inaccurate information or details are supplied in obtaining any certificate under the Environmental Planning and Assessment Act/Regulations.
30. If we terminate the agreement, you will appoint another certifier before work continues, at your own cost
31. Withdrawal of the application will be subject to fees proportional to the works carried out at the time of withdrawal. Withdrawals will only be accepted in writing.
32. Replacing the PCA The appointed PC can only be changed or replaced by another PC with the approval of the Building Professionals Board or by mutual agreement of the appointed and proposed PC. Change of PC will incur administrative costs
33. The parties agree that this Agreement is governed by the laws of New South Wales and in particular the Environmental Planning and Assessment Act and its Regulations and the Building and Development Certifiers Act and Regulation. Further information relating to the requirements of contracts and payments for the services by the Certifying Authority can be found on the Fair Trading Website
34. If we terminate this Agreement based on any action or lack of action required by the owner or builder, then the owner must pay any money owing to the PC for work done, costs incurred and business overheads as determined by us.

Information about registered certifiers – building surveyors and building inspectors

Important: this is a summary document only.

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)¹. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

¹ Visit www.fairtrading.nsw.gov.au and search 'certification contracts'.

Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

What does a registered building surveyor do?

Registered **building surveyors** issue certificates under the *Environmental Planning and Assessment Act 1979* (construction certificates, complying development certificates and occupation certificates), act as the **principal certifier** for development, and inspect building work.

The principal certifier will attend the site to carry out mandatory inspections at certain stages. When construction is complete, the certifier may issue an occupation certificate, which signifies that the work:

- is 'suitable for occupation' – this does not necessarily mean all building work is complete
- is consistent with the approved plans and specifications
- meets all applicable conditions of the approval.

The certifier does not manage or supervise builders or tradespeople or certify that the builder has met all requirements of the applicant's contract with the builder.

What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work² with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

² Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

Principal certifier enforcement powers

If the principal certifier becomes aware of a non-compliance with the development approval, the certifier must, by law, issue a direction to you and/or the builder, requiring the non-compliance to be addressed. If it is not, the certifier must notify the council which may take further action.

The certifier is also required to respond appropriately if a complaint is made about the development.

Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at www.fairtrading.nsw.gov.au:

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

Questions?

The Fair Trading website www.fairtrading.nsw.gov.au has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at www.planningportal.nsw.gov.au provides information on the NSW planning and development certification system.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Fair Trading website for more information.