

Application form; Inspection of pool barrier under the Swimming Pools Act. 17.09.2022

Once complete this application form becomes part of the contract required by the BDAC Act

Who is the applicant?

Name _____

Phone number _____

Email _____

Signature _____ Date _____

Details of Land to be inspected

Flat/Street no. _____ Street name _____

Suburb/Town _____ Post code _____

Council area _____ Lot _____ DP _____

Pool barrier description

When was the pool installed? _____

What's the site (property) area? _____ Has the pool barrier ever been modified? When? _____

Owners Consent

I/We consent to this application for Pool barrier inspection and grant the Accredited Certifier access to the property during normal business hours. I understand that if any modifications are required, the entire barrier must be upgraded to current standards. I understand that if any required repairs are not complete within 6 weeks Council will be notified. I understand in the case the barrier is not compliant and reinspection is required, this will be at extra cost. 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 _____

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**

OFFICE USE ONLY. TO BE COMPLETED BY My Certifier

My Certifier Insurance Details: Insurance Australia LTD T/A CGU Insurance 30 July 2023- 30 July 2024
Policy number 82CON1847011

Quoted price \$ 385 inc gst for an initial inspection, follow up inspections will be applied for separately.
Date of receipt of application by My Certifier

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 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 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.

The Agreement

“we” or “us” means My Certifier, its 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. We will carry out an inspection as defined in the Swimming Pools Act.
2. We will provide reports and records as required by the Swimming Pools Act.
3. In the event a non-compliance notice being issued, if a compliance certificate is not issued within 6 weeks, the Certifier is required to notify Council.
4. If the pool poses a significant risk, the Certifier will notify Council within 5 days. Significant risk includes situations such as no barrier in place.
5. You will ensure all parties engaged by you who interact with us are aware of the conditions of this contract.
6. 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.
7. Issue of the CC/CDC does not relieve any other person of their responsibilities including compliance with
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. 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
10. We may choose to have any suitably qualified registered certifier carry out the inspection, other than the inspection prior to occupation of the building.
11. You are aware of the requirements of the Swimming Pools Act, including the requirement to provide a barrier around the pool at all times.
12. You will provide certification for various components of works and materials used during construction in the format as specified by us.

13. Any additional consultation for dispute resolution, council liaison or compliance advice and action will be charged at \$198/hr plus GST
14. We will carry out our work in accordance with the BDAC Act and Swimming Pools Act. Our work will not extend beyond this legislated role.
15. 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.
16. Please see the Fair Trading NSW website for detail on the role of the Certifier

Termination of this Agreement

17. This Agreement may be terminated by us at our discretion including but not limited to any of the following circumstances: - 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 principal 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, if the applicant or Builder becomes uncooperative or aggressive.
18. 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.
19. The parties agree that this Agreement is governed by the laws of New South Wales and in particular the Swimming Pools Act and the Building and Development Certifiers Act Regulations and the Building and. 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
20. 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 – swimming pool 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 class of **swimming pool inspector**. It does not apply to swimming pool inspections by a local council².

This document summarises the statutory obligations of the registered certifier who will assess your swimming pool or spa pool barrier and your obligations as the pool owner. 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 pool owner. 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'.

² Council officers who inspect pools do not have to be registered as certifiers by Fair Trading.

Obligations of the pool owner

As a pool owner, you have the following obligations:

- Visit the NSW Swimming Pool Register at www.swimmingpoolregister.nsw.gov.au to register your pool.
- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out. The certifier may refuse to issue a certificate of compliance until the fee is paid.
- Ensure your pool barrier continues to comply at all times. If needed, ask your council to see a copy of the Australian Standard that applies to your pool.

What does a registered certifier – swimming pool inspector do?

A registered swimming pool inspector is authorised to carry out all certification work under the *Swimming Pools Act 1992*, but not if the swimming pool achieves compliance with the performance requirements of the Building Code of Australia by means of a performance solution. They cannot issue certificates under the *Environmental Planning and Assessment Act 1979* for newly-constructed pools.

Registered building surveyors (a different type of certifier) also certify pool barriers. Only a building surveyor may certify a pool that has a performance solution under the Building Code of Australia.

A swimming pool inspector may issue a certificate of compliance if the pool barrier complies with requirements under the *Swimming Pools Act*. A certificate of compliance is valid for three years and may be required in order to sell or lease the property.

If the swimming pool is non-compliant, the certifier may issue a certificate of non-compliance and a notice of non-compliance setting out the defects.

Notes about swimming pool certificates of compliance

- A certificate of compliance is not an occupation certificate and does not certify that the pool meets all conditions of its original development consent
- A certificate of compliance becomes invalid if the council issues a direction requiring compliance with the *Swimming Pools Act*.

Non-compliant pool barrier

If a swimming pool is non-compliant, you will need to address the defects set out in the certifier's notice, then contact the certifier (or another certifier or the council) for a reinspection.

If you do not obtain a certificate of compliance within six weeks of the first inspection, the certifier must send the notice of non-compliance to the council, which may take enforcement action.

If the certifier deems the pool to be a significant risk to public safety they must notify the council immediately and the six-week period will not apply.

Minor repairs to pool barriers

Some certifiers can do minor repairs to a non-compliant pool barrier that they have inspected, but only if:

- they are licensed or authorised under the *Home Building Act 1989* to construct a swimming pool or structural landscaping, and
- the repairs cost no more than \$1,000 including materials and labour, and
- the repairs are for the purpose of issuing a certificate of compliance.

You can check if a certifier is authorised to do minor repairs by checking their *Home Building Act* licence or certificate number at www.service.nsw.gov.au (search 'builder licence').

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?

Visit www.swimmingpoolregister.nsw.gov.au and follow the 'information' or 'inspections' tabs for more information and swimming pool safety and certification.

You can also visit www.fairtrading.nsw.gov.au and search '[concerns with development](#)' for information about how to resolve concerns about a certifier.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate councils carrying out their functions under the *Swimming Pools Act*. Visit the Fair Trading website for more information.