

Agreement for the Performance of Certification Work

INTRODUCTION

- The Council is a certifying authority that employs accredited certifiers who are authorised to carry out certification work on behalf of the Council.
- Section 31 of the Building and Development Certifiers Act 2018 provides that an accredited certifier must not carry out certification work for a person unless the certifier, or their employer, has entered into a written agreement with the person.
- This document, when signed by you and the Council, forms the agreement between you and the Council for the purposes of section 31 of the Act.
- The rights and responsibilities of each party to this Agreement are set out in the following Attachment, which forms part of this Agreement.
- In the event that a dispute arises in relation to this Agreement, the parties agree to use their best endeavours to resolve the dispute.
- Words and terms used in this Agreement are defined in the Dictionary (page 3).

PARTIES TO THE AGREEMENT

Gunnedah Shire Council (the 'Council')

63 Elgin Street, Gunnedah NSW, 2380

Phone: 02 6740 2100 Email: council@infogunnedah.com.au

The 'Client'

Client Name:

Client Address:

Suburb: State: Postcode:

Client Postal Address:

Telephone: Mobile:

Client Email:

PERSONS WHO MAY CARRY OUT THE CERTIFICATION WORK AND INSPECTIONS

- Certification work under this Agreement may be carried out by any of the following employees of the Council on behalf of the Council, subject to the terms of their accreditation:
 - Sue Cox, BDC1550
 - Blake O'Mullane, BDC1124
- Inspections required under the Environmental Planning and Assessment Act 1979 may be carried out by any of the following employees of the Council subject to the terms of their accreditation:
 - Sue Cox, BDC1550
 - Blake O'Mullane, BDC1124
 - Wade Hudson, BDC3429
 - Ashleigh Nixon, BDC04928
- The Council will notify you in writing if any other person is to carry out certification work and inspections prior to that work being undertaken.

THE DEVELOPMENT

Description of Development: (e.g. Single Storey Dwelling):

Street Address:

Lot Number: DP Number:

Development Consent granted by consent authority

Name of Consent Authority:

DA Consent Number: Date of Consent:

Details of Approved Document:

Details of plans, specifications and other documents approved by development consent

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CERTIFICATION WORK TO BE PERFORMED

Determination of application for Development Certificates: *(Tick one or more boxes as appropriate)*

Determination of application for a construction certificate*

Determination of application for an occupation certificate*

Undertaking the Functions of Principal Certifying Authority (PCA)

Undertaking the functions of PCA for the development*

** Refer to relevant Attachment(s) that contain a **Description of Services** and relevant **Fees and Charges**.*

FEES AND CHARGES

Fees and charges are set out in the following Attachment, which forms part of this agreement.

SIGNATURES

Signed/executed by or on behalf of 'The Council'

Name:

Signature: Date:

Signed/executed by or on behalf of 'The Client'

I/we declare that as 'The Client' I/we have freely chosen to engage 'The Council' as certifier and have read the contract and any accompanying document and understand my/our responsibility and those of the certifier.

Name(s):

Signature(s):

Date:

DICTIONARY

- **Accredited certifier** means the holder of a certificate of accreditation as an accredited certifier under the BP Act
- **Applicable environmental planning instrument** means the State Environmental Planning Policy or the Local Environmental Plan nominated by the Client as the instrument against which an application for a complying development certificate is to be assessed.
- **BASIX** means the Building Sustainability Index
- **BCA** means the Building Code of Australia.
- **BDC Act** means the Building and Development Certifiers Act 2018.
- **Certification work** means:
 - a. the exercise of a function of a certifier (including a principal certifier) specified in section 6.5 of the Environmental Planning and Assessment Act 1979,
 - b. the determination of an application for a strata certificate within the meaning of the Strata Schemes Development Act 2015,
 - c. the inspection of swimming pools under Division 5 of Part 2 of the Swimming Pools Act 1992 and the issuing of certificates of compliance and notices under that Division,
 - d. the exercise of any other function of a registered certifier under the certification legislation or under another Act or law,
 - e. any other work of a kind prescribed by the regulations, but does not include work of a kind that is excluded from this definition by the regulations.
- **Contractor licence** means a licence issued under the Home Building Act 1989
- **Development certificate** means:
 - a. a certificate under Part 4 and 6 of the EP&A Act, being:
 - a construction certificate
 - a compliance certificate
 - a sub-division certificate
 - an occupation certificate
 - b. a complying development certificate
 - c. a strata certificate issued under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*
- **EP&A Act** means the Environmental Planning and Assessment Act 1979
- **EP&A Regulation** means the Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023
- **Owner-builder permit** has the meaning given to it by the Home Building Act 1989
- **PC** means a principal certifier appointed under section 6.5 of the EP&A Act
- **Residential building work** has the meaning given to it by the Home Building Act 1989

ATTACHMENT: APPLICATION FOR A CONSTRUCTION CERTIFICATE (CC)

Rights and Responsibilities of Council:

The Council agrees to perform all work necessary to comply with relevant statutory requirements and to facilitate timely determination of the application, including:

1. Providing a blank copy of CC application form to the Client.
2. If necessary, obtaining a certificate under section 10.7 of the EP& A Act
3. If the development is on a site which affects an existing building, inspecting, or arranging for another accredited certifier to inspect, the building and preparing a record of the inspection.
4. If clauses 25-29 of the EP& A Regulation applies to the development (i.e. performance solutions for certain fire safety measures), applying to the Fire Commissioner for an initial fire safety report.
5. If clause 18 of the EP& A Regulation applies to the application (i.e. where there is a performance solution relating to fire safety requirements) obtaining a compliance certificate or written report from a fire safety engineer.
6. Assessing whether the application satisfies the requirements of the EP&A Regulation, including compliance with the BCA, the development consent and any pre-conditions to the issue of a CC.
7. Determining the application and preparing a notice of the determination.
8. If the application is granted:
 - a. preparing a construction certificate
 - b. endorsing all relevant plans, specifications and other documents
 - c. preparing any associated fire safety schedule or fire link conversion schedule
 - d. determining if any long service payment levy is required to be made, and if so, that the amount (or instalment) has been paid.
 - e. determining if any security or monetary payment or levy under sections 7.11 or 7.12 of the EP&A Act are required before the CC is issued.
 - f. issuing the CC to the Client together with associated endorsed plans specifications and other approved documents.
 - g. forwarding copies of documents prepared to the consent authority as required by the EP&A Regulation.

Rights and Responsibilities of Client:

1. The Client agrees to respond in a timely manner to any request from the Council for information concerning the proposed development.
2. The Client acknowledges the necessity for compliance with the conditions of development consent.
3. The Client may terminate this agreement for any reason on the giving of at least two weeks written notice to the Council.
4. The Client agrees to pay all fees and charges set out below on or before lodgement of the application.

Fees and Charges:

The Council agrees to undertake all of the above work for a fixed fee of: \$.....

Any additional inspections to those included in the fixed fee will be charged separately. This fee includes the costs of any service provided by a third party and any fees for obtaining or lodging documents, **except** for contingency items (if any) specified below:

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ATTACHMENT: APPLICATION FOR AN OCCUPATION CERTIFICATE (OC)

Rights and Responsibilities of Council:

The Council agrees to perform all work necessary to comply with relevant statutory requirements and to facilitate the timely determination of the application, including:

1. Providing a blank copy of an OC application form to the Client.
2. Conducting an inspection of the development and prepare a record of the inspection.
3. If clause 25-29 of the EP& A Regulation applies to the development (i.e. performance solutions for certain fire safety measures), applying to the Fire Commissioner for a final fire safety report.
4. Obtaining a final fire safety certificate or interim fire safety certificate as required by the EP& A Regulation.
5. Ensuring that all BASIX requirements required to be complied with before an OC may be issued have been satisfied, including obtaining any necessary BASIX completion receipt.
6. If clause 18(1) of the EP& A Regulation applied to the development (i.e. where there is an performance solution relating to fire safety requirements), obtaining a further compliance certificate or written report from a fire safety engineer with respect to the completed works as required by clause 40 of the EP& A Regulation.
7. Assessing whether the application satisfies the requirements of the EP&A Regulation, including whether any preconditions of the development consent are required to be met before an OC may be issued, have been met and (where building work has been carried out) whether the work is not inconsistent with the development consent).
8. Determining the application and preparing a notice of the determination.
9. If the application is granted, preparing an OC and issuing it to the Client.
10. Forwarding copies of documents prepared to the consent authority as required by the EP&A Regulation.

Rights and Responsibilities of Client:

1. The Client agrees to respond in a timely manner to any request from the Council for information concerning the proposed development.
2. The Client acknowledges the necessity for compliance with the conditions of development consent.
3. The Client may terminate this agreement for any reason on the giving of at least two weeks written notice to the Council.
4. The Client agrees to pay all fees and charges set out below on or before lodgement of the application.

Fees and Charges:

The Council agrees to undertake all of the above work for a fixed fee of: \$.....

Any additional inspections to those included in the fixed fee will be charged separately.

This fee includes the costs of any service provided by a third party and any fees for obtaining or lodging documents, **except** for contingency items (if any) specified below:

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ATTACHMENT: UNDERTAKE THE FUNCTIONS OF PRINCIPAL CERTIFYING AUTHORITY

Descriptive Services:

The Council agrees to perform all work that is necessary to comply with relevant statutory requirements, including:

1. Not later than two days before any building work or subdivision work commences:
 - a. notifying the consent authority of the Certifier's appointment as PC
 - b. notifying the Client of all inspections that are required to be carried out of the building work or subdivision work.
2. Determining, before any building work or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work.
3. Determining, before any residential building work commences, that either:
 - a. the principal contractor is the holder of a licence under the Home Building Act 1989 and is covered by appropriate insurance, or
 - b. where the work is to be carried out by an owner-builder, that an owner-builder permit has been issued under the Home Building Act 1989
4. Carrying out all critical stage inspections of the building work or subdivision work prescribed by the EP&A Regulation or required by the Council, or ensuring that the inspections are carried out by another certifying authority. However, a certifier employed by the Council will personally carry out the last critical stage inspection that is prescribed for a building.
5. Making a record as required by the EP&A Regulation of all inspections that the Council carries out and ensuring that any other certifying authority that has carried out an inspection also prepares a report and supplies it to the Council.
6. Determining whether any inspection (other than the last critical stage inspection) that has not been carried out was due to circumstances that were unavoidable, and whether the work that would have been inspected was satisfactory. The Council will make a record of any such missed inspection as required by the EP&A Regulation and provide a copy to the Client. The Council will also notify the principal contractor or owner builder of the missed inspection as required by the EP&A Regulation.
7. Determining applications for occupation certificates or subdivision certificate (subject to separate terms under this Agreement).
8. Taking such steps as Council considers appropriate to address any of the following matters relating to the development:
 - a. non-compliance with the development consent
 - b. the carrying out of work without development consent
 - c. an unauthorised use of a building
 - d. a breach of a law relating to the carrying out of work or the use of the land
 - e. a threat to the safety of a person or a person's property
 - f. any other matter the Council considers to be in the public interest to address.
9. Without limiting the actions that Council may take, Council may:
 - a. attend the site or nearby properties to inspect any issue of concern relating to the development
 - b. confer with any person in relation to any issues of concern
 - c. cause correspondence to be issued to any person
 - d. refer any matter of concern to such persons or authorities as the Council considers appropriate, including the consent authority, NSW Fair Trading or an environmental protection agency
 - e. issue notices under schedule 5, clauses 8 and 9 of the EP&A Act

Rights and Responsibilities of Client:

1. The Client agrees to respond in a timely manner to any request from the Council for information concerning the proposed development.
2. The Client acknowledges that inspections are required to be carried out of the building work or subdivision work and agrees to ensure that building personnel are aware of these inspections.
3. The Client agrees to give the Council not less than two days' notice before the commencement of any building works.
4. The Client acknowledges the necessity for critical stage inspections and compliance with the conditions of development consent.
5. The Client acknowledges that the Council must be given not less than 48 hours' notice before any 'critical stage inspection' or other inspection is required.
6. The Client may terminate this agreement for any reason on the giving of at least two weeks written notice to the Council.
7. The Client agrees to pay all fees and charges set out below on or before lodgement of the application.

Fees and Charges - PCA:

The Council agrees to undertake all of the above work for a fixed fee of: \$.....

Any additional inspections to those included in the fixed fee will be charged separately.

This fee includes the costs of any service provided by a third party and any fees for obtaining or lodging documents, **except** for contingency items (if any). For unforeseen contingencies Council will provide an invoice/quote within 21 days after the completion of that work. The contingency items (if any) are specified below:

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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 work² 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 work³ 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 Upfront fee payment is required for any work to determine an application for a development certificate or carry out a function of a principal certifier.

³ 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.

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 you receive a certificate. 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.