

**CONTRACT FOR THE PERFORMANCE OF CERTIFICATION WORK**

**COMPLETE ALL SHADED AREAS AND ENSURE ALL OWNERS HAVE SIGNED THE SIGNATURE PANEL (SECTION 9) PRIOR TO LODGEMENT**

Authority No: .....

**ADVISORY NOTE:** Pursuant to the Environmental Planning and Assessment Act 1979, states that persons with the benefit of development consent must appoint a Certifying Authority (CA). The CA is the person responsible for undertaking inspections during the building process and for the issuing of an Occupation Certificate.

The person with the benefit of the development consent is generally taken to be the owner of the land.

The owner/s must complete, sign and submit this contract to Council when lodging an application for a Construction Certificate or Complying Development Certificate. Council will only start the certification work upon receipt of the completed and signed agreement and payment of the relevant fees and charges.

**This is an agreement between Bathurst Regional Council (“Council”) and the Owner/s, where Council is appointed as the Certifying Authority pursuant to the Environmental Planning and Assessment Act 1979.**

**Section 1 The Certifier**

Name: Bathurst Regional Council  
Address: Private Mail Bag 17, BATHURST NSW 2795  
Email: [council@bathurst.nsw.gov.au](mailto:council@bathurst.nsw.gov.au)

The employees that Council proposes, at the date of the Agreement, to have carry out the certification work and undertake any inspections required under the Environmental Planning and Assessment Act or the Environmental Planning and Assessment Regulation under this agreement will be:

<i>Council Registered Certifiers</i>	<i>Accreditation No</i>
David Nelson	BDC1378
Geoffrey Press	BDC1375
Rebecca Higgins-Daley	BDC1629
Andrew Ballard	BDC2023

**Section 2 Owner details**

Contact Name:  
Company:  
Postal Address:  
Suburb: Postcode:  
Phone:  
Email:

**Section 3 The development**

Description of development (e.g. single storey dwelling)

Address of development  
Street No: Street Name:  
Suburb:  
Lot/DP:

**Section 4 Certification work to be performed (tick on or more boxes as appropriate)**

- Determination of Applications for Development Certificates
- Determination of application for a CDC
- Determination of application for a Construction Certificate
- Determination of application for a Compliance Certificate
- Determination of application for an Occupation Certificate

**Section 5 Details of any consents relating to the development**

**A. Is there an existing Development Application (DA) approved consent in place?**

- No  Yes – Complete details below

Name of consent authority:

DA consent no:

Date of consent:

Details of plan:

**B. Is there an existing Complying Development Certificate (CDC) approved consent in place?**

- No  Yes – Complete details below

Name of consent authority:

CDC consent no:

Date of consent:

Details of plan:

**C. Has a Construction Certificate been issued?**

- No  Yes – Complete details below

Name of consent authority:

Certificate no:

Certificate date:

Details of plan:

**D. Has a Compliance Certificate or Occupation Certificate been issued?**

- No  Yes – Complete details below

Name of consent authority:

Certificate no:

Certificate date:

**E. Has a Modification been issued?**

- No  Yes – Complete details below

Name of consent authority:

Certificate no:

Certificate date:

Details of plan:

**Section 6 Fee Schedule**

Council will undertake, for a fixed fee, all work involved in assessing, determining and finalising the application as set out in the Description of Services, excluding 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.

These fees are exclusively for the determination of a development certificate and the carrying out of inspections and Occupation Certificates. Other fees will also be payable in accordance with Council’s adopted Management Plan.

All fees are reviewed annually and will change as of 1 July each year. The fee payable will be based on those applicable on the day on which the agreement is executed by both parties.

Complying Development Certificate fee	\$
Construction Certificate fee	\$
Inspection fee (includes all compliance certificates and occupation certificates)	\$
<b>TOTAL FEES</b>	<b>\$</b>

**Contingency items:**

Any additional inspections required as a result of Council being unable to issue a compliance certificate or Occupation Certificate may be subject to additional charges based on the rates outlined above.

**Section 7 Statutory Obligations**

An information brochure which is to include information about statutory obligations must accompany this Contract, if one is published by the Building Professionals Board on its website. The Board is the statutory body that accredits the Certifier and administers the Building Professionals Act 2005 (BP Act).

A copy of the Board’s Information Brochure is attached

**Section 8 Conditions of Contract**

Before signing this Contract please read Bathurst Regional Council’s Standard Contract Conditions and ensure applicable attachments are included with this agreement.

**Section 9 EXECUTED by the parties**

As the person for whom the certification work is to be carried out, I confirm that I:	
i. have freely chosen to engage Bathurst Regional Council as the registered certifier, and	
ii. have read the contract and any document accompanying the contract and understand my role and responsibilities and that of Bathurst Regional Council as the registered certifier.	
Signed/executed by <b>ALL PROPERTY OWNERS</b>	Signed/executed by or on behalf of BATHURST REGIONAL COUNCIL
Dated:	Dated:

***The information on this form is being collected to allow Council to process your application and/or carry out its statutory obligations. All information collected will be held by Council and will only be used for the purpose for which it was collected. An individual may view their personal information and may correct any errors.***

# STANDARD CONTRACT CONDITIONS

## INTRODUCTION

1. The Council is a certifying authority and employs accredited certifiers (the Certifier) who are authorised to carry out the certification work which is the subject of this Agreement on behalf of the Council.

The Client seeks to engage the Council to perform certification work on the terms set out in this Agreement.

## WHAT IS CERTIFICATION WORK

*Certification work* means:

- a) the determining of an application for a development certificate;
- b) the issue of a development certificate;
- c) carrying out the functions of a PCA;
- d) carrying out of inspections for the purposes of section 109E(3)(d) of the EP&A Act;
- e) carrying out inspections under section 22 Swimming Pools Act 1992 and issuing certificates of compliance under that Act.

*Development certificate* means:

- a) a certificate under Part 6 of the EP&A Act, being:
  - a construction certificate
  - Subdivision works certificate
  - a compliance certificate
  - a subdivision 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*.

## INTERPRETATION

Words and terms used in this Agreement are defined in the Dictionary (page 4).

## 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.

**BPAct** means the Building Professionals Act 2005.

**Contractor licence** means a licence issued under the Home Building Act 1989.

**EP&A Act** means the Environmental Planning and Assessment Act 1979.

**EP&A Regulation** means the Environmental Planning and Assessment Regulation 2000.

**Owner-builder permit** has the meaning given to it by the Home Building Act 1989.

**PCA** means a principal certifying authority appointed under section 109E of the EP&A Act.

**Residential building work** has the meaning given to it by the Home Building Act 1989.

## FEES & CHARGES

The set fees and charges for the determination of a development certificate must be paid to the Council before, or at the time, an application for the development certificate is lodged with the Council.

**These fees are exclusively for the determination of a development certificate and the carrying out of mandatory inspections and occupation certificates. Other fees will also be payable in accordance with Council's adopted Revenue Policy.**

All fees are reviewed annually and will change as of 1 July each year. The fee payable will be based on those applicable on the day on which the agreement is executed by both parties.

Please refer to Council's Revenue Policy for current fees and charges.

## UNDERTAKE THE FUNCTIONS OF PRINCIPAL CERTIFYING AUTHORITY (PCA)

### Description of services

The Certifier will, on behalf of the Council, 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, the Certifier will:
  - a) notify the Client of all inspections that are required to be carried out of the building work or subdivision work.
2. Ascertain, before any building work or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work.
3. Ascertain, 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. The Certifier will either carry out all critical stage inspections of the building work or subdivision work prescribed by the EP&A Regulation or required by the Certifier.
5. The Certifier will make a record as required by the EP&A Regulation of all inspections carried out and will ensure that any other certifying authority that has carried out an inspection also prepares a report and supplies it to the Certifier.
6. The Certifier will determine whether any inspection (other than the last critical stage inspection) has been not carried out due to circumstances that were unavoidable, and whether the work that would have been inspected was satisfactory. The Certifier will make a record of any such missed inspection as required by the EP&A Regulation and provide a copy to the Client. The Certifier will also notify the principal contractor or owner builder of the missed inspection as required by the EP&A Regulation.
7. Determine applications for occupation certificates (subject to separate terms under this Agreement).

### Compliance functions

8. The Certifier will take such steps as considered 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 Certifier considers to be in the public interest to address.
9. Without limiting the actions that the Certifier may take, the Certifier 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 Certifier considers appropriate, including the consent

- authority, NSW Fair Trading or an environmental protection agency;
- e) issue notices under the EP&A Act.

### **Council's responsibilities as PCA**

As the PCA Council will:

- Carry out inspections of the building work (referred to as critical stage inspections).
- Advise when third party certification may be required.
- Advise upon specific works to be completed or consent conditions to be satisfied before issuing occupation certificate(s).
- Issue an Interim Occupation Certificate and Final Occupation Certificate where warranted.

#### **10. Critical stage and other building inspections**

Council will undertake building inspections where applicable during the building process. These inspections are generally:

- After excavation for, and prior to the placement of any footings.
- Prior to pouring in situ reinforced concrete building elements.
- Prior to covering of the framework of any floor, wall, roof or other building element.
- Prior to covering waterproofing in wet areas.
- Prior to covering any stormwater drainage connections.
- In the case of a swimming pool, after the construction of the swimming pool is completed and the barrier has been erected and before the pool is filled with water.
- After building work has been completed and prior to an Occupation Certificate being issued in relation to the building.

#### **11. Notice before inspection**

The owner or principal contractor must provide Council with notice (excluding weekends and public holidays) when each inspection is ready to inspect. Notice is generally required 24 hours before the inspection is required.

#### **12. Approval of inspections**

Upon the completion of each satisfactory inspection Council will issue a Certificate certifying that the works are in accordance with the BCA. Where works are not satisfactory corrective action will be required or the Certificate will be refused. Where corrective action is required or the Certificate is refused the reasons for the decision will be recorded on the Certificate.

#### **13. Missed Critical Stage Inspections**

If any inspection is not carried out the owner/principal contractor must submit, in writing, the specific reasons why the inspection was missed and provide evidence that the building work complies with the Building Code of Australia.

#### **14. Documentation**

Prior to the commencement of construction, or during construction, Council may ask the Owner to provide specialist reports, plans, specifications and certification of building materials, process or works. Typical documents include structural engineering and other specialist details, survey reports, compliance certificates and fire safety certificates.

Any compliance certificates or other certification required must be prepared by an accredited certifier or other suitably qualified person and must reference the relevant provisions of the BCA, Australian Standards and approved drawings, to the satisfaction of Council.

**Note:** It is an offence to knowingly make a false or misleading statement in an important aspect, or in connection with any document lodged with a certifying authority for purposes of the Environmental Planning and Assessment Act 1979 or the Environmental Planning and Assessment Regulation 2000.

### **The Consent Holder's responsibilities**

15. The owner must:

- Ensure that a sign is erected in a prominent position on site showing the name and telephone number (outside of working hours) of the principal contractor (builder) and stating that unauthorised entry to the site is prohibited.
- Ensure that the Principal Contractor is advised of the inspections required by Council and that the directions of Council are to be observed to ensure compliance with the development consent, construction certificate, BCA and the terms of this Agreement.
- Notify Council at least 24 hours before each stage of construction for which Council requires an inspection is ready to be inspected (or re-inspected).
- Provide any specialist reports, plans, specifications and certification of building materials, process or works requested by Council at any stage of construction prior to issue of an occupation certificate.
- Comply with all relevant legislation, consents and approvals relating to the subject development including but not limited to the following Acts and the regulations made thereunder:
  - The Environmental Planning and Assessment Act 1979;
  - The Contaminated Land Management Act 1997;
  - The Protection of the Environment Operations Act 1997;
  - The Local Government Act 1993;
  - The Roads Act 1993;
  - The Road Transport (Safety and Traffic Management) Act 1999.

NOTE: To vary and modify a condition of consent requires the submission and approval of an application under S4.55 of the Environmental Planning and Assessment Act 1979.

- Inform Council of any known breach of any relevant legislation or matter that may require rectification or remediation as soon as practicable but not less than twenty four (24) hours after the Owner becomes aware of the breach or matter.
- Pay the service and inspection fees detailed in Council's Schedule of Fees and Charges.
- Refer to relevant Attachment(s) that contain a **Description of Services** and the relevant **Fees and Charges**.

### **ATTACHMENTS**

#### **APPLICATION FOR A COMPLYING DEVELOPMENT CERTIFICATE (CDC)**

##### **Description of services**

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

1. Provide a blank copy of CDC application form to the Client.
2. Conduct an inspection of, or arrange for another accredited certifier to inspect, the development site, and prepare a record of the inspection.
3. Where there is an alternative solution relating to fire safety requirements obtain a compliance certificate or written report from a fire safety engineer or another accredited certifier that satisfies the requirements of the EP&A Regulation.
4. Assess whether the proposed development satisfies the development standards set out in the relevant environmental planning instrument, development control plan and the EP&A Regulation.
5. Determine the application and prepare a notice of the determination.
6. If the application is granted:
  - a) prepare a complying development certificate

- b) endorse all relevant plans, specifications and other documents
- c) prepare any associated fire safety schedule or fire link conversion schedule
- d) ascertain if any long service payment levy is required to be made, and if so, that the amount (or instalment) has been paid.
- e) ascertain if any contributions plan requires the CDC to be subject to a condition requiring a monetary payment.
- f) issue CDC to the Client together with associated endorsed plans specifications and other approved documents.
- g) forward copies of documents prepared to statutory authorities, including the NSW Rural Fire Service, as required by the EP&A Regulation.

## **APPLICATION FOR A CONSTRUCTION CERTIFICATE (CC)**

### **Description of services**

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

1. Provide a blank copy of CC application form to the Client.
2. If the development is on a site which affects an existing building, inspect the building and prepare a record of the inspection.
3. For alternative solutions for certain fire safety measures apply to the Fire Commissioner for an initial fire safety report.
4. If the development is a residential flat building, obtain a design verification from a qualified designer under the EP&A Regulation.
5. There is an alternative solution relating to fire safety requirements obtain a compliance certificate or written report from a fire safety engineer.
6. Assess 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. Determine the application and prepare a notice of the determination.
8. If the application is granted:
  - a) prepare a construction certificate
  - b) endorse all relevant plans, specifications and other documents
  - c) prepare any associated fire safety schedule or fire link conversion schedule
  - d) ascertain if any long service payment levy is required to be made, and if so, that the amount (or instalment) has been paid.
  - e) ascertain 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) issue CC to the Client together with associated endorsed plans specifications and other approved documents.

## **APPLICATION FOR AN OCCUPATION CERTIFICATE (OC)**

### **Description of services**

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

1. Provide a blank copy of an OC application form to the Client.
2. Conduct an inspection of the development and prepare a record of the inspection.
3. If alternative solutions for certain fire safety measures), apply to the Fire Commissioner for a final fire safety report.
4. Obtain a final fire safety certificate or interim fire safety certificate as required by the EP&A Regulation.

5. If the development is a residential flat building to which the EP&A Regulation applies, obtain a further design verification from a qualified designer in relation to the completed works.
6. Ensure 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.
7. Where there is an alternative solution relating to fire safety requirements), obtain a further compliance certificate or written report from a fire safety engineer with respect to the completed works as required by the EP&A Regulation.
8. Assess whether the application satisfies the requirements of the EP&A Regulation, including whether any pre-conditions of the development consent or CDC which 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).
9. Determine the application and prepare a notice of the determination.
10. If the application is granted, prepare an OC and issue it to the Client.

## **APPLICATION FOR A SUBDIVISION CERTIFICATE (SC)**

### **Description of services**

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

1. Provide a blank copy of SC application form to the Client.
2. Conduct an inspection of any subdivision work, if necessary.
3. Ascertain if any conditions of development consent, or requirements of a planning agreement, which are required to be complied with before a SC may be issued have been satisfied.
4. Ascertain if a certificate of compliance from a water supply authority is required, and if so, whether one has been obtained.
5. Ascertain if objector rights of appeal, if any, have lapse or been determined.
6. Ascertain if any drainage easement is required by an order under section 40 of the Land and Environment Court Act 1979, and if so, whether such an easement has been provided.
7. If any subdivision work has not been completed, ascertain if any agreement has been reached with the consent authority relating to the payment for, or the giving of security for, the completion of the subdivision work.
8. Determine the application and prepare a notice of determination.
9. If the application is granted, prepare a subdivision certificate and endorse the plan of subdivision.

## **APPLICATION FOR A COMPLIANCE CERTIFICATE**

### **Description of services**

The Certifier will perform, on behalf of the Council, all work that is necessary to comply with relevant statutory requirements and to facilitate the timely determination of the application, including:

1. Conduct an inspection of any building work or subdivision work, if necessary.
2. Where appropriate, ascertain if a development consent or complying development certificate is in force with respect to building work or subdivision work which is the subject of the application.

If the application is granted, prepare a compliance certificate and issue it to the Client.

## 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)<sup>1</sup>. 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.

<sup>1</sup> Visit [www.fairtrading.nsw.gov.au](http://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<sup>2</sup> 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 work<sup>3</sup> with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

---

<sup>2</sup> 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.

<sup>3</sup> 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](http://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](http://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](http://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.