

# Contract for Certification Work

Under section 31 of the Building and Development Certifiers Act 2018 and clause 31 of the Building and Development Certifiers Regulation 2020.

## About this contract

Shellharbour City Council must not carry out certification work for a person unless it has entered into a written contract with that person. You must therefore complete and sign this Contract for Certification Work and attach it to your application.

### 1. Parties to this Contract

#### Applicant

Title

Given Name/s

Family Name

Organisation Name / Company Name (if applicable)

Address

Preferred contact number

Email

#### Shellharbour City Council

ABN 78 392 627 134  
Address 76 Cygnet Avenue, Shellharbour City Centre NSW 2529  
Mail Locked Bag 155, Shellharbour City Centre NSW 2529  
Phone 4221 6111  
Email council@shellharbour.nsw.gov.au

The applicant appoints Council to carry out certification work on the terms set out in this contract.

### 2. Application Type

The owner appoints Council to carry out certification work on the forms set out in this contract.

Complying Development Certificate Application

Construction Certificate Application

Subdivision Works Certificate Application

Compliance Certificate Application

Occupation Certificate Application

Subdivision Certificate Application

Appoint Council as Principal Certifier (PC)

Carry out inspections under the EP&A Act 1979

The information contained in the attached Application Form is incorporated into this contract.

### 3. Certification Work to be performed by Council

The owner appoints Council to perform the following certification work

- |  |                          |
|--|--------------------------|
| Determination of application for a complying development certificate | <input type="checkbox"/> |
| Determination of application for construction certificate            | <input type="checkbox"/> |
| Determination of application for subdivision works certificate       | <input type="checkbox"/> |
| Determination of application for compliance certificate              | <input type="checkbox"/> |
| Determination of application for occupation certificate              | <input type="checkbox"/> |
| Determination of application for subdivision certificate             | <input type="checkbox"/> |

### 4. Subsequent Appointment of Council as Principal Certifier (PC)

Appointment of Council as Principal Certifier

**Note:** If you select Council to be your PC you will also need to formally appoint Council as the PC to carry out inspections and to issue an occupation certificate. A form will be forwarded to you with your approval (construction certificate, complying development certificate or subdivision works certificate) to complete and return to the Council.

Particulars of the certificate services to be carried out by Council under the contract can be found under the Terms & Conditions of Contract.

**Note:** This part only applies to determinations of applications for:

- **complying development certificates**
- **construction certificates**
- **subdivision works**
- **occupation certificates**

After entering into this contract, the owner may elect to appoint Council as PC for the development.

If the owner elects to appoint Council as PC for the development, upon lodgement of the form 'Notice of Commencement of Building or Subdivision Work and Appointment of Council as Principal Certifier' with Council, the owner agrees that:

- a. this contract will also apply to the subsequent appointment of Council as PC for the development;
- b. the information contained in the application form 'Notice of Commencement of Building or Subdivision Work and Appointment of Council as Principal Certifier' will be automatically incorporated into this contract;
- c. fees and charges will apply.

### 5. Modification of Complying Development Certificate, Construction Certificate or Subdivision Works Certificate

**Note:** This part only applies to determinations of applications for:

- **complying development certificates**
- **construction certificates**
- **subdivision works**

After entering into this contract, the owner may seek to modify any of the above certificates for the development.

If a modification is sought, upon lodgement of the application form for any of the above certificates with Council relating to the modification, the owner agrees that::

- a. this contract will also apply to the subsequent appointment of Council as PC for the development;
- b. the information contained in the application form 'Notice of Commencement of Building or Subdivision Work and Appointment of Council as Principal Certifier' will be automatically incorporated into this contract;
- c. fees and charges will apply.

## 6. Development details

In addition to the site details contained in the attached application form, the owner declares that the development can be described as (eg single storey dwelling):

In addition to the site details contained in the attached application form, the owner declares that the following development consent details apply (tick as applicable)

Development consent granted by consent authority

Name of consent authority

Development consent no. / identifier

Date of development consent

Development consent given by the issue of a complying development certificate (CDC)

Name of certifying authority

CDC no. / identifier

Date of CDC determination

Details of plans, specifications and other documents approved by the development consent / CDC:

Part 6 certificates issued under the Environmental Planning and Assessment Act 1979 (Construction Certificate, Compliance Certificate, Subdivisions Works Certificate, Occupation Certificate)

Type of Part 6 certificate issued:

Name of certifying authority

CDC no. / identifier

Date of CDC determination

Details of plans, specifications and other documents the subject of any Part 6 certificate:

## 7. Certifier's Details

The details of the officers employed by Council as principal certifiers, any of whom may carry out certification work and inspections under this contract, can be found at [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renoate/finding-and-appointing-a-certifier](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renoate/finding-and-appointing-a-certifier)

## 8. Fees and Charges

Determination of Applications for Development Certificates

- The applicant must pay the fees and charges for the determination of an application for a development certificate (including modification of a current certificate, where relevant) as specified in Council's Schedule of Fees and Charges.
- These fees and charges must be paid to Council before, or at any time, the application for a development certificate is lodged with Council
- In the case of fees and charges payable for work arising from unforeseen contingencies such as the assessment of performance solutions, these fees and charges will be calculated as specified in Council's Schedule of Fees and Charges.

Undertaking the functions of Principal Certifier (PC)

- The applicant must pay the fees and charges for Council to carry out the functions of a PC for the development as specified in Council's Schedule of Fees and Charges
- These fees and charges must be paid to Council in full at the time of lodging the PC appointment form (after the certificate is issued) and before Council commences to carry out the functions of PC.
- In the case of fees and charges payable for work arising from unforeseen contingencies, such as additional inspections, these fees and charges will be calculated as specified in Council's Schedule of Fees and Charges.

Council's Schedule of Fees & Charges can be downloaded [here](#)

## 9. Statutory Obligations Information Brochure

The Development and Building Certifiers Regulation 2020 requires an information brochure containing details about the statutory obligations of certifiers, published by Fair Trading NSW to be attached to this contract. This document can also be accessed on the Fair Trading website [www.fairtrading.nsw.gov.au/trades-and-businesses/business-essentials/building-certifiers](http://www.fairtrading.nsw.gov.au/trades-and-businesses/business-essentials/building-certifiers)

## 10. Execution of Contract

By signing this contract I declare that:

1. I have freely chosen to engage Shellharbour City Council to act as certifier
2. I have read the contract and any document accompanying the contract and understand my responsibilities, and those of the certifier.

This contract is made on the date it is signed by Council.

**Individual Owner**

Name/s	Position in Company (if applicable)	Signature/s	Date

## 10. Execution of Contract (cont.)

### Authorised Officer

Signed \*\* for and on behalf of Shellharbour City Council by its duly authorised officer.

Authorised Office signature:

Date:

Name of Authorised Officer (printed):

\*\* This section will be completed the Customer Services Applications Team after lodgement.

## 11. Important Information

### Public Access to Information

Pursuant to the *Government Information (Public Access) Act 2009* (GIPA Act) Council is required to make certain information publicly available, including by way of publication on public registers and on its website. Information submitted on and with this form may be made available to the public, unless there is an overriding public interest against disclosure of this information.

### Privacy

The personal information that Council is collecting from you on submission of this form is personal information for the purposes of the *Privacy Act 1998*. The intended recipients of the personal information are officers within the Council and third parties for the purpose of assessing the application as well as any person wishing to inspect the application in accordance with the *Local Government Act 1993* or the GIPA Act. The personal information may also be included on a public register and displayed on Council's website. The supply of personal information by you is voluntary. However, if you cannot provide or do not wish to provide the information required, Council will be unable to process your application. You may make application for access to, or amendment of, information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the relevant legislation. Enquiries concerning this matter can be addressed to Council by telephoning 4221 6111.

For more information, please see our Privacy Management plan on our website [www.shellharbour.nsw.gov.au](http://www.shellharbour.nsw.gov.au). Information leaflets are also available at all offices and libraries.

### Lodgement Details

You must lodge the completed application and contract for certification work on the NSW Planning Portal.

Once your application is received, a Council Officer will contact you if further information is required.

# **TERMS & CONDITIONS**

## **PRINCIPAL CERTIFIER (PC) OBLIGATIONS**

- a. The PC agrees to carry out mandatory critical stage inspections during the course of construction of the proposed building work (where applicable) as follows:
  - i. at the commencement of the proposed building work, and
  - ii. after excavation for and prior to placement of any footings, and
  - iii. prior to pouring any in-situ reinforced concrete building element, and
  - iv. prior to covering of the framework for any floor, wall, roof or other building element, and
  - v. prior to covering of waterproofing in any wet areas, and
  - vi. prior to covering any stormwater drainage connections, and
  - vii. after the proposed building work has been completed and prior to any occupation certificate being issued in relation to the building, and
  - viii. any other inspections as the PC considers necessary in addition to those nominated which may be required from time to time to enable the issuing of the final occupation certificate.
- b. The owner and principal contractor acknowledge that the PC or another certifying authority (with the approval of the PC) must inspect the mandatory critical stage inspections number (a) i-vi inclusive. The PC must carry out the final mandatory critical inspection.
- c. The PC shall issue the final occupation certificate for the proposed building work when the PC is satisfied that:
  - i. all preconditions for the issue of the final certificate that are specified in the development consent or complying development certificate have been met, and
  - ii. the building works for which the construction certificate has been issued are suitable for occupation for use in accordance with their classification under the Building Code of Australia 1996 (as amended), and
  - iii. a final fire safety certificate has been issued (if required).
- d. The PC shall issue a partial occupation certificate for the proposed development when the PC is satisfied that:
  - i. any preconditions to the issue of an occupation certificate as specified in the development consent or complying development certificate have been met, and
  - ii. that the building works for which the construction certificate has been issued are suitable for occupation for use in accordance with their classification under the Building Code of Australia 1996 (as amended), and
  - iii. the building does not constitute a hazard to the health or safety of the occupants of the building.

## **PRINCIPAL CONTRACTOR OBLIGATIONS**

- a. Before the commencement of any residential building work, the principal contractor must provide the PC with Home Owner Warranty Insurance pursuant to the Home Building Act 1989.
- b. The principal contractor must notify the PC of a date and time for the carrying out of each mandatory critical stage inspection and shall pay the PC the scheduled fees as agreed.
- c. The principal contractor must rectify any defects identified by the PC during the course of each mandatory critical stage inspection to the satisfaction of the PC before the principal contractor carries out any further building work or at such other time as may be agreed to by the PC.

- d. The principal contractor must not allow any occupation of the building to be permitted without first obtaining an occupation certificate (either partial or full) from the PC.
- e. The principal contractor must ensure that a construction certificate or complying development certificate has been issued prior to the commencement of any works.
- f. The principal contractor must engage competent tradesman to carry out all aspects of the building works.
- g. The principal contractor must provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the development consent, the construction certificate and any occupation certificate at the request of the PC.
- h. The principal contractor must attend any meeting if required by the PC to do so.
- i. The principal contractor must comply with any notices or orders that the PC issues.
- j. The principal contractor must provide compliance certificates as requested by the PC.
- k. The principal contractor must provide all information that the principal contractor reasonably can obtain to enable the PC to fulfil its obligations under this Agreement.

## **OWNER OBLIGATIONS**

- a. The owner must ensure that a construction certificate or complying development certificate has been issued prior to the commencement of any works.
- b. The owner must ensure that the subject property is available for the PC to carry out the PC's obligations under this Agreement.
- c. The owner must attend any meetings if required by the PC to do so.
- d. The owner must not occupy the building until an occupation certificate (either partial or full) has been issued by the PC.
- e. The owner agrees that in the event of a partial occupation certificate being issued by the PC and there being outstanding work that is required to be completed by the owner or a condition of development consent that needs to be satisfied by the owner, the owner agrees to complete any outstanding work or satisfy any condition of the development consent within three months from the date of the partial occupation certificate or such other time as may be agreed between the owner and the PC.

## **TERMINATION OF THIS AGREEMENT**

This Agreement may be terminated if any of the following occurs:

- a. building works are commenced without the issue of a construction certificate
- b. if the owner or principal contractor fails to provide Home Warranty Insurance pursuant to the *Home Building Act 1998* if the building work is residential building work
- c. if the PC terminates this Agreement then the principal contractor and owner must pay any money owing to the PC for work done and costs incurred by the PC up to and including the date of termination of this Agreement.

## **REPLACING PC**

The appointed PC can only be changed or replaced by another PC with the approval of NSW Fair Trading and/or the newly appointed PC.

## **GOVERNING LAW**

The parties agree that the laws of New South Wales and in particular the *Environmental Planning & Assessment Act 1979* and its Regulations govern this Agreement.

## **DEFINITIONS**

Alternative Solution has the same meaning as the term in the Building Code of Australia.

BCA means the Building Code of Australia including all applicable amendments.

Building means that which is the subject of the Building Works.

Building Contract means the contract to construct the Building Works that the owner enters with the builder.

Building Works means the building works for which a Construction Certificate is to be issued in accordance with this agreement and is referred to in the "Land to be Developed" section of the Application Form relating to the subject works.

Certificates mean statutory certificates and non-statutory certificates.

Certifying Authority means a Certifying Authority within the meaning of the Act.

Owner means the owner or the owner's agent.

Competent people means people authorised to carry out any work associated with Building Works under the Act and includes contractors.

Complying Development Certificate means a Complying Development Certificate within the meaning of the Act.

Construction Certificate means a Construction Certificate within the meaning of the Act.

Deemed to Satisfy Provision has the same meaning as the same term in the Building Code of Australia.

Development Consent means a Development Consent within the meaning of the Act.

Fire Safety Certificate means a Fire Safety Certificate within the meaning of the Act.

Inspection Schedule means the mandatory inspections required under the Act.

Notice includes any notice issued under the Act or this agreement and in respect of notices in this agreement must be made by pre-paid ordinary mail, facsimile transmission or notice by hand delivery to the Address for Notices in this agreement.

Occupation Certificate means an Occupation Certificate within the meaning of the Act.

Order means an Order within the meaning of the Act.

Practicable completion means the date the builder has completed the Building Works in accordance with the Building Contract.

Principal Certifier (PC) is a building practitioner as defined under the Environmental Planning and Assessment Act 1979 (NSW) (as amended).

Regulations means the Environmental Planning and Assessment Regulation 2000 (NSW) (as amended) and all applicable amendments.

Schedule means the Schedule in this agreement.

Scope of Works means obligations in this agreement and any other tasks set out in the Schedule.

Statutory Notices means those notices that are issued by the PC in accordance with the Act.

## 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 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>2</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> 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.