

Contract Agreement for the Performance of Certification Work

Attachment A to Subdivision Works Certificate Application
Required under the Building and Development Certifiers Act 2018

Agreement Between

Wentworth Shire Council and (the client).

PART A - INTRODUCTION

1. The Council is a certifying authority and employs a registered certifier (the Certifier) who is authorised to carry out the certification work which is the subject of this Agreement on behalf of the Council.
2. The Client seeks to engage the Council to perform certification work on the terms set out in this Agreement.

PART B – INTERPRETATION

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

PART C – PARTIES TO THE AGREEMENT

1. The Council

Name of Council

Business Address

Postal Address

Telephone Email

2. The Client

Name of Client

Residential Address

Postal Address

Telephone Mobile Email

PART D – CERTIFIER'S DETAILS

These are the details of the employee that Council proposes, at the date of the Agreement, to have carry out the certification work. If the Council later decides to have another employee carry out the certification work, the Council will within two days notify the Client in writing of the name and registration number of that other employee.

Name of Certifier:

Registration Number:

PART E – CERTIFIER’S INSURANCE DETAILS

Only complete if the Certifier holds insurance required by the B&DC Act. In most cases employees of Council do not hold insurance separate from Council.

Name of Insurer Address
Policy No. / Identifier Address Period of Insurance Cover – From To

PART F – THE DEVELOPMENT

Description of the development

Address of the development Lot DP

Development Consent Details (tick appropriate box/s and complete as applicable)

- ☐ Development consent granted by consent authority ☐ Development consent given by the issue of a complying development certificate (CDC) ☐ Part 6 certificates issued, please state type of certificate issued

Name of Consent Authority or Certifier

Wentworth Shire Council

Development Consent No. / Complying Development Consent No. or Certificate No.

Date Development Consent /Complying Development Consent or Certificate Issued

Details of Approved Documents

Details of plans, specifications and other documents approved by Development Consent / Complying Development Consent or Part 6 Certificate

Inspections (complete as appropriate)

Any inspections of the development site or the development required under the EP&A Act or the EP&A Regulation will be carried out as follows:

☒ Inspections by the Certifier:

- ☐ All
☐ None
☐ Specific (list)

☐ Inspections by *(name & registration no.)

- ☐ All
☐ None
☐ Specific (list)

* These are the details of the person that Council proposes, at the date of the agreement, to perform the inspections. In the event that these proposed arrangements change, Council will inform the Client in writing who will be carrying out the inspections as soon as possible after the arrangements are made.

PART G – CERTIFICATION WORK TO BE PERFORMED

1. Determination of Applications for Development Certificates (tick one or more boxes as appropriate)

- ☐ Determination of application for a CDC*
- ☐ Determination of application for a construction certificate*
- ☐ Determination of application for a subdivision works certificate*
- ☐ Determination of application for a compliance certificate*
- ☐ Determination of application for an occupation certificate*
- ☐ Determination of an application for a strata certificate*

2. Undertaking the functions of Principal Certifier (PC)

Undertaking the functions of PC for the development*

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

PART H – FEES AND CHARGES

1. Development Certificates

a. Set fees and charges

- i. The fees and charges for the determination of an application for a development certificate are set out in the relevant Attachment(s).
- ii. In respect of any unforeseen contingency work provided for under this Agreement, the Council is to send an invoice to the Client within 21 days after the completion of any such work.

b. Contingency fees and charges

- i. In the case of fees and charges that may be payable for work arising from unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out in the relevant Attachment.
- ii. In respect of any unforeseen contingency work provided for under this Agreement, the Council is to send an invoice to the Client within 21 days after the completion of any such work.

2. PC functions

a. Set fees and charges

- i. The fees and charges for the Council to carry out the functions as the PC for the development are set out in the relevant Attachment(s).
- ii. The set fees and charges for the carrying out of the functions as the PC for the development are to be paid in full before the Council commences to carry out any of those functions.

b. Contingency fees and charges

- i. In the case of fees and charges that may be payable for work arising from unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out in the relevant Attachment.
- ii. In respect of any unforeseen contingency work provided for under this Agreement, the Council is to send an invoice to the Client within 21 days after the completion of any such work.

PART I – STATUTORY OBLIGATIONS

An information brochure published by NSW Fair Trading is attached. This document summarises the statutory obligations of the registered certifier who will assess your subdivision works, your obligations as the applicant for the subdivision works, and information available on the online register of certifiers.

PART J – DECLARATION

I DECLARE that I have freely chosen to engage the certifier and that I have read the contract and accompanying document and I understand my responsibilities and those of the certifier.

PART K – DATE OF AGREEMENT

This Agreement is made on the day of 20

PART L - SIGNATURES

Signed/ executed by or on behalf of the Council

Signed/ executed by or on behalf of the Client

DICTIONARY

Registered certifier	means the holder of a certificate of registration as a registered certifier under the <i>B&DC Act</i>
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 <i>Building Code of Australia</i>
B&DC Act	means the <i>Building & Development Certifiers Act 2018</i>
Certification work	Means <ol style="list-style-type: none">the determining of an application for a development certificatethe issue of a development certificatecarrying out the functions of a PCcarrying out of inspections for the purposes of section 6.5(1)(b) & section 6.27(2)(b) of the EP&AA Actcarrying out inspections under section 22 <i>Swimming Pools Act 1992</i> and issuing certificates of compliance under that Act
Contractor licence	means a licence issued under the <i>Home Building Act 1989</i>
Development certificate	means: <ol style="list-style-type: none">a certificate under Part 6 of the EP&A Act, being:<ul style="list-style-type: none">a construction certificatea compliance certificatea sub-division certificatean occupation certificatea complying development certificatea strata certificate issued under the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i>
EP&A Act	means the <i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	means the Environmental Planning and Regulation 2000
Owner-builder permit	has the meaning given to it by the <i>Home Building Act 1989</i>
PCA	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 <i>Home Building Act 1989</i>

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 SWC application form to the Client.
2. If necessary, obtain a certificate under section 10.7 of the EP& A Act.
3. If the development is on a site which affects an existing building, inspect, or arrange for another accredited certifier to inspect, the building and prepare a record of the inspection.
4. If clause 144 of the EP& A Regulation applies to the development (i.e. alternative solutions for certain fire safety measures), apply to the Fire Commissioner for an initial fire safety report.
5. If the development is a residential flat building, obtain a design verification from a qualified designer under clause 50(1A) of the EP& A Regulation.
6. If clause 144A of the EP& A Regulation applies to the application (i.e. where there is an alternative solution relating to fire safety requirements) obtain a compliance certificate or written report from a fire safety engineer.
7. 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 SWC.
8. Determine the application and prepare a notice of the determination.
9. If the application is granted:
 - a. prepare a subdivision works 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 SWC is issued.
 - f. issue SWC to the Client together with associated endorsed plans specifications and other approved documents.
 - g. forward copies of documents prepared to the consent authority as required by the EP&A Regulation.

FEES AND CHARGES

Select one of the following agreements

☐ **Fixed Fee Agreement**

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, including 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.

Fixed Fee \$

Contingency Items#*

☐ **Variable Costs Agreement**

Council will undertake all work involved in assessing, determining and finalising the application as set in the Description of Services upon the following basis:

Council's Fee for Service \$

Third Party Fees for services (including for another Accredited Certifier's Services)*

\$

Fees for Certificates and Lodgement of Documents*

\$

Contingency Items#*

If applicable, insert description of the contingency item – eg, 'additional inspection if access not available'. If no provision is to be made for contingency items, write 'N/A' *Insert amount or basis of calculation e.g. "At cost" or "\$.....per hour"

Information about registered certifiers – strata and subdivision certifiers

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 **certifier—strata** or **certifier—subdivision**.

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* or the *Strata Schemes Development Act 2015*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees upfront for any certification work that involves the determination of a development certificate.
- 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 strata or subdivision certifier do?

A strata certifier can carry out all certification work under the *Strata Schemes Development Act 2015*. This includes issuing a **strata certificate** that is required to register a strata plan, strata plan of subdivision or notice of conversion. This certificate can only be issued if the certifier has inspected the complete or substantially complete construction work and is satisfied that legislative requirements are met.

A subdivision certifier can issue a **subdivision works certificate** under the *Environmental Planning and Assessment Act 1979* for proposed subdivision work. This certificate certifies that the proposed work, if completed in accordance with specified plans and specifications, will comply with regulatory requirements. A subdivision certifier can also inspect subdivision work, with the approval of the principal certifier.

Subdivision certifiers can also issue a **complying development certificate** for a proposed subdivision, or proposed development under clause 130 of *State Environmental Planning Policy (Infrastructure) 2007* (water supply and sewerage connections). They can also inspect the development site.

A subdivision certificate is issued for completed subdivision work. It can be issued by a local council or, if permitted under an Environmental Planning Instrument, a private registered certifier.

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.

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Information about registered certifiers and engineers

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 following classes of registration: acoustic, energy management, hydraulic, location of works, road and drainage, stormwater; or a registered engineer in the following classes of registration: electrical, geotechnical, mechanical and structural. **This document does not cover fire safety certification.**

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.

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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 upfront for any certification work that involves the determination of a development certificate.
- 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 certifier do?

Registered certifiers and engineers in the classes of registration listed at the top of this document are authorised to issue **compliance certificates** under Part 6 of the *Environmental Planning and Assessment Act 1979*.

By law, a compliance certificate may certify strict, substantial or other compliance and is a certificate to the effect that:

- completed building work complies with particular plans, specifications, standards or requirements, or
- a particular condition of development consent has been complied with, or
- a building has a particular classification under the Building Code of Australia, or
- an aspect of development (including design) complies with particular standards or requirements.

Certifiers can issue compliance certificates even if they have been involved in designing or carrying out the work, provided they are not also the principal certifier for the development.

The type of work covered by a certificate issued by a particular certifier will depend on their class of registration and any conditions that may have been imposed on their registration.

A certifier may also issue a report (such as an engineer's report) regarding specific aspects of a development.

Finding more information on certifiers

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