

Contract Agreement for the Performance of Certification Work

Attachment A to Construction or Complying Development
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: Mark Scott

Registration Number: BDC1953

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 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 development, your obligations as the applicant for the development, 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&A 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 CC 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. performance 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 performance 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 CC.
8. Determine the application and prepare a notice of the determination.
9. 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 conversionschedule
 - 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.
 - 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, **except** for contingency items (if any) specified below.

Fixed Fee \$

Contingency Items#*

Re-inspection for a critical stage building inspection

☐ **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 Registered 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"

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. If necessary, obtain a certificate under section 10.7 of the EP& AAct.
3. Conduct an inspection of, or arrange for another registered certifier to inspect, the development site, and prepare a record of the inspection.
4. If clause 130(2A) or 130(2E) of the EP&A Regulation applies to the application (i.e. where there is a performance solution relating to fire safety requirements) obtain a compliance certificate or written report from a fire safety engineer or another registered certifier that satisfies the requirements of clause of the 130 EP&A Regulation.
5. 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.
6. Determine the application and prepare a notice of the determination.
7. 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.

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, **except** for contingency items (if any) specified below.

Fixed Fee \$

Contingency Items#*

Re-inspection for a critical stage building inspection

☐ **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 Registered 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"

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 clause 144 of the EP&A Regulation applies to the development (i.e. performance 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 clause 154A of 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. If clause 130(2A) or 144A(1) of the EP&A Regulation applied to the development (i.e. where there is a performance 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 clause 153A of 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.
11. Forward copies of documents prepared to the consent authority and the council 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, **except** for contingency items (if any) specified below.

Fixed Fee

Contingency Items#*

Re-inspection for a critical stage building inspection

☐ **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 Registered 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 – 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 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 work² 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 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.