

BUILDING & DEVELOPMENT CERTIFICATION SERVICES AGREEMENT

EP & A Act 1979 [Part 3 Division 3] EP&A Regs 2000 [Part 5]

COUNCIL AREA

APPLICATION NO:

Date Received:/...../.....

Principal Certifying Authority Construction Certificate Complying Development Certificate Modification

LAND TO BE DEVELOPED

Lot No.: DP/SP: Street No.:
Street Name: Site Area (m²): Zone:
Suburb: Easements, Buffer Zones &/or
Covenants On property Yes No

Proposed Building Work: Residential Commercial Industrial Rural

Description of Development:

Value of Work: \$

Building Classification:

CONSENTS (IF APPLICABLE)

Development Consent No.: Date of Issue:

RESIDENTIAL BUILDING WORK (Complete whichever is applicable)

BUILDER DETAILS

Builder Name:

Licence No.: ABN No.:

Address:

Contact Details: Ph:Fax:Mobile:.....
Email:

OWNER BUILDER DETAILS

Owner Builder Permit No:

PRIVACY POLICY

The information you provide in this contract agreement, and notice, is required under the Environmental Planning and Assessment Act 1979 if you are going to erect a building. If you do not provide the information to the consent authority, you cannot commence the work. The information will be held by the consent authority and by the council. Please contact the *principal certifier* or the council if the information you have provided in this notice is incorrect or changes.

OWNERS CONSENT FOR THE CONTRACT AGREEMENT & APPOINTMENT OF THE CERTIFYING AUTHORITY & PRICIPAL CERTIFIER

Being the owner(s) of the subject property &/or beneficiaries of the Development Consent, I/We, authorize and appoint Michael Brooks as the *Principal Certifier* as outlined in the EP&A Act 1979 (as amended) for the aforementioned development as identified in the contract agreement. I/We also authorize and appoint Michael Brooks as the Certifying Authority.

With reference to this proposed development I/We, the owners of the subject property, acknowledge and accept the Contract Terms and Conditions of the contract agreement and as a requirement of its appointment, the *Principal Certifier, Michael Brooks (BDC2056)* will be carrying out all Critical Stage Inspections required by the Act during the period of the contract and should the need arise that a different Certifier is required to undertake any inspection, that Certifier will be identified to the applicant prior to the inspection.

We also agree ,that if the approval is a Complying Development Certificate, the prescribed completion period may be extended as required by the Principal Certifier. EP&A Act 1979 (Clause 4.28(8))

We also give consent for the Certifying Authority to make any necessary changes to any Certificate Application through the Planning Portal

SCHEDULE OF FEES (Clause 29 B&DC Regulations 2020)

The owner agrees to the payment of fees for the determination the application and the services of Principal Certifier as per the invoice issued

OWNERS DECLARATION (Clause 30 B&DC Regulations 2020)

I/We the owners of the subject property have freely chosen to engage Mick Brooks Building Certifiers with Registered Certifier Michael Brooks as the Principal Certifier.

I/We have read the contract and any document accompanying the contract and i/we understand the roles and responsibilities of ourselves as the owners and the registered certifier.

I/We are also aware that there may be conditions imposed on any Development Consent related to this development that may be my/our responsibility.

The Receiving of the application and this Appointment will take effect upon the endorsement of this document by the *Principal Certifier*.

OWNERS DETAILS & CONSENT

Surname/
Company Name: []
First Name: []
Postal Address: []
Contact Details: Ph:.....Fax:.....Mobile:.....
Email:

ALL OWNERS TO SIGN

Signed: Date:/...../.....
Signed: Date:/...../.....

PRINCIPAL CERTIFIER/ACCREDITED CERTIFIER

I acknowledge that I have been appointed by the owner (s) to carry out the role of the Principal Certifier / Registered Certifier for this development.

Signed: Date:/...../.....
Name: Michael Brooks (PC)

Adress.60 Station Street Eungai Rail NSW 2441 Mob 0407 261 557 Email mick@mickbrooks.com.au Web www.mickbrooks.com BDC 2056

INSURANCE (Clause 28 B&DC Regulations 2020)

Type	Underwriter Policy	Period of Policy
Professional Indemnity	Lloyds of London..... B0572MR20Q103-0189	From 27 June 2022 to 27 June 2023

CONTRACT TERMS AND CONDITIONS FOR THE CONTRACT AGREEMENT & APPOINTMENT OF PRINCIPAL CERTIFIER

1.EFFECT OF CONTRACT

This Contract supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation. All pages inclusive of the Application form/contract all form the Contract. All documents listed within the Construction Certificate (CC) or Complying Development Certificate (CDC) are relevant documents for the purpose of the Contract.

2.OBLIGATIONS OF THE PC

Issuing of Certificates

2.1 The PC shall issue the Construction/Complying Development Certificate

2.1.1 When the Owner pays the AC/PC fees for work associated with the issuing of a Construction/Complying Certificate, ie. Certificate & Inspection fees as set out in the quote

2.1.2 The owner is also responsible for the payment of any statutory fees & the provision of a Home Warranty Insurance certificate or Owner Builders permit, if required, and;

2.2 when the designs of the Building/s comply with the Development Consent, the Regulations and relevant Council policies, and;

2.3 when the designs comply with the Deemed-to-Satisfy provisions of the BCA.

2.4 The PC shall provide the Council with a Notice of Determination within two (2) days of the determination.

2.5 When the PC issues a CC, the PC may issue as many Certificates or statements from any Certifying Authority or any other party that the PC considers necessary in addition to any Certificates that may be listed in the Terms and Conditions Schedule.

3.INSPECTION SCHEDULE

3.1 The PC shall carry out as many inspections as the PC considers necessary in addition to the Critical Stage inspections listed in the schedule attachment of the CC or CDC.

3.2 It is the responsibility of the applicant to ensure that the inspections as set out in the schedule are undertaken by the PC

3.3 The owner will ensure that a minimum of 48 hour's notice is given to the PC prior to any inspection

3.4 The owner shall be liable for any expenses or costs incurred should there be a missed critical stage inspection including any specialist engineers, surveyors or consultants required to verify work completed

4.ISSUING THE OCCUPATION CERTIFICATE

4.1 The PC shall issue an Occupation Certificate for the Building Works when the PC is satisfied that:-

4.1.1 An application has been received from the applicant

4.1.2 All conditions of a Development Consent or a Complying Development Certificate have been complied with;

4.1.3 The building complies with the BASIX certificate (if applicable)

4.1.4 The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and

4.1.5 The building meets the requirements of the Environmental Planning and Assessment Act 1979

4.1.6 A Fire Safety Certificate has been issued (if required)

5.OBLIGATIONS OF THE OWNER

The Owner shall:-

5.1 Not engage any other PC after the PC appointed pursuant to this contract has been engaged. Breach of this condition will entitle the PC to recover any losses or costs of whatsoever nature that flow from such breach.

5.2 Pay all quoted fees payable to the PC/AC on lodgement of the application.

5.3 Ensure that a CC or CDC has been issued prior to the commencement of any works and the Notice of Commencement has been delivered to council two (2) days before commencement of any works.

5.4 Ensure that the site is available for the PC to carry out its obligations under this Contract.

5.5 Use Competent appropriately licensed tradespeople for all aspects of the Building Works.

5.6 Provide the PC with evidence of the builder's details, professional indemnity and public liability insurance for the Building Work prior to the commencement of any works.

5.7 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.

5.8 Ensure the PC is given at least 24 hours notice of the need to carry out any inspections as noted in the approval Attachment 'A'.

5.9 Attend any meetings if required by the PC to do so.

5.10 Comply with any Notices or Directions that the PC issues.

5.11 Provide Compliance Certificates as requested by the PC.

5.12 Provide all information that the Owner reasonably can obtain to enable the PC to fulfil its obligations under this Contract.

5.13 Provide the PC with the date of practicable completion, if requested.

5.14 Act in good faith, in accordance with the Act and in a cooperative fashion.

5.15 Return the enclosed Application for Occupation Certificate to the PC together with all required Compliance Certificates immediately upon completion of the building. An Occupation Certificate will not be issued beyond six months from completion.

5.16 Where any fines are levied by Council against the PC in respect of any work required to be done by the client, but not done, the client will reimburse the PC for the full cost of those fines within 14 days of the fines being imposed.

6.VARIATIONS TO THIS CONTRACT

If:-

6.1 The Building Works do not commence within 60 days from the date of the execution of this agreement; or any Competent Person used by the Owner in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or

6.2 Any part of the Building Works are re- designed by the Owner; or

6.3 Any part of the Building is designed pursuant to a Deemed To Satisfy Provision and is subsequently changed by way of an Alternative Solution; or

6.4 Additional CC's or CDC's are required to be issued by an AC other than those listed in the Schedule (which shall be determined by the PC); or

6.5 An amendment to the Act, the BCA or any other law that requires any aspect of the Building Works or the PC's work to be varied; or

6.6 The PC is required to undertake more inspections than those listed in the Approval Attachment 'A'; or

6.7 The Owner does anything that causes a delay to the Building Works or does anything that delays the ability of the PC to carry out its obligations under this contract; or

6.8 The building is not completed within twelve(12) months of the CC or CDC being issued.

6.9 Any notice or Order is issued by the PC, then the PC may:-

6.9.1 vary this contract to the extent that the PC will be able to carry out its obligations under this contract; and

6.9.2 increase the agreement price, such increase to be made by way of Notice to the Owner stating the reason/s for the increase and the amount of the increase.

6.10 The fees charged for variations will be based on the PC/AC's hourly rate at the time of the variation.

6.11 Notice must be given to the Owner within seven (7) days from the date on which the PC becomes aware that a variation will be necessary.

7.EXCLUSIONS

7.1 The following circumstances are exclusive of the contract;

7.1.1 We cannot be engaged where there is any form of conflict of interest

7.1.2 Changes to the legislation during or subsequent to the approval.

7.2 The client is to manage advice, notices & issues with the property neighbours. Additional fees will be charged (as per 7.10) for our involvement in neighbourly issues.

8. TERMINATION OF CONTRACT

If:-

- 8.1 The person/s or Company responsible for making payment for this service fails to pay any money owing to the PC after seven (7) days of that money becoming payable; or
- 8.2 The person/s or Company responsible for making payment for this service has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or
- 8.3 Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or
- 8.4 The Owner or the person/s or Company responsible for making payment for this service breaches the contract in any respect; or
- 8.5 The CC or CDC is not capable of being issued within 180 days or six (6) months (whichever is the lesser) from the date of application; or
- 8.6 The Building Works do not commence within the Consent time frame for the CC or CDC when issued; or
- 8.7 The Owner does not advise and/or permit the PC to issue the Occupation Certificate within 60 days from the date of practicable completion; or
- 8.8 The Building Works have commenced without the issuing of a CC, then the Contract becomes null and void and is terminated.
- 8.9 Failure of the owner to notify the PC within 90 days of practical completion terminates this contract.
- 8.10 The PC may terminate this contract for other breaches by sending a written Notice of Termination, stating the breach/s, to the Owner. Termination will take effect as soon as the Owner receives the Notice of Termination.
- 8.11 If the PC terminates the contract then the PC is entitled to payment of Termination Money.
- 8.12 Unless the Owner disputes the Notice of Termination, the Owner must pay all Termination Money to the PC within 14 days of receiving a Notice of Termination.
- 8.13 If the PC terminates the agreement, the PC is entitled to carry out a final inspection, at the Owner's expense, prior to termination.
- 8.14 As from the date of final inspection, the Owner must indemnify the PC for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:
 - 8.14.1 the need to terminate this contract or the Building Agreement;
 - 8.14.2 any matters of non-compliance with the Act on the part of the Owner or any other contractors.
- 8.15 If the contract has run for more than two years from the issue date of the approval and all works and or application for Occupation are not finalised an Occupation Certificate may not be issued by the PC.
- 8.16 If the PC ceases to practice as a PC, Mick Brooks shall arrange, after consultation with the client, for the project to be transferred to either another PC, or the relevant Council, after consultation with Fair Trading. If it becomes necessary to transfer the project due to the project not being completed in accordance with the terms of this contract, the client shall be responsible for the payment of all fees for the completion of the transfer.

9. DISPUTE RESOLUTION

- 9.1 Any dispute of whatever nature to do with this contract must be referred to mediation.
- 9.2 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.
- 9.3 The mediator must be appointed by the AIBS or BPB.
- 9.4 The mediation will be invoked by either party serving Notice on the AIBS or BPB and the other party within seven (7) days of a party being notified of a dispute.
- 9.5 Both parties must attend the mediation and must co-operate with the mediator and each other and shall give the mediator whatever the mediator requests.
- 9.6 If the mediator resolves the dispute the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.9.7 If the mediation fails then either party may take action to resolve the dispute in a court of competent jurisdiction.9.8 Both parties will remunerate the mediator on a 50/50% basis regardless of any alleged fault and regardless of the outcome.

10. MISCELLANEOUS

- 10.1 If for whatever reason an Occupation Certificate is not issued whether it be on account of the insolvency of the Owner, the disappearance of the Owner or the termination of the agreement or non-compliance with that which may be occasioned under Part 6 of the Act the PC will be able to give evidence that no action can be brought 10 years after the date upon which the act, that evidenced the ending of the contract occurred.
- 10.2 The use of any external cladding product that does not comply with the Building Codes of Australia as non-combustible or does not have a codemark certificate to verify its compliance will be cause for the termination of this contract
- 10.3 The use of any non-complying building product that does not comply with the Building Codes of Australia or does not have a codemark certificate to verify its compliance will be cause for the termination of this contract
- 10.4 The certifier has and takes no liability or indemnity for the use of non-compliant cladding products or non-complying building products as outlined in 11.2 – 11.3.

11. ADDRESS FOR NOTICES

Where any Notice is to be forwarded to the Owner the address for such Notice shall be the address stated in the Complying Development Certificate or Construction Certificate or to any other address that is notified in writing by the Owner to the PC.

END OF CONTRACT

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.