



PERFORMANCE OF CERTIFICATION WORK CONTRACT OF AGREEMENT

Revision No. 29-03-2022

OFFICE USE ONLY
DA No:
CC No:
CDC No:
Parcel No:
Date:

PART A: INTRODUCTION

This is an Agreement between Cessnock City Council (the Council) and the Client (as nominated below)

By virtue of the *Environmental Planning and Assessment Act 1979* Council is authorised to perform the functions of a Principal Certifier and employs registered certifiers (the certifier) who are authorised to carry out the Certification Work which is the subject of this Agreement on behalf of the Council.

The Client seeks to engage the Council to perform certain Certification Work on the terms set out in this Agreement *

** Refer to Part E for particulars of Certification Work.*

PART B: PARTIES TO THE AGREEMENT *Client to complete*

1. THE COUNCIL

Name <i>Cessnock City Council</i>			
Address	<i>62-78 Vincent Street</i>	PO Box	<i>152</i>
Suburb	<i>CESSNOCK</i>	State	<i>NSW</i>
		Postcode	<i>2325</i>
Email	<i>council@cessnock.nsw.gov.au</i>		Telephone
			<i>02 4993 4100</i>

2. THE CLIENT *(For whom the Certification Work will be carried out)*

Name		Company	
Postal Address		PO Box	Telephone
Suburb	State	Postcode	Mobile
Email		Customer Reference	
<i>Please indicate by '✓' which of the following applies</i>		Client is the property owner	
		Client is duly authorised by the Owner	

Note: The person having the benefit of the Consent, so as to be able to appoint the Principal Certifier, may be the owner or an applicant authorised by the owner but may NOT be the builder, unless the builder is the owner.

PART C: DESCRIPTION OF DEVELOPMENT *Client to complete*

Provide details of development being certified (e.g. dwelling, garage, swimming pool)

Unit No	House No	Street
Suburb		
Lot(s)	Section	Deposited Plan (DP)
Other		Strata Plan (SP)

PART D: DETAILS OF DEVELOPMENT APPROVAL	Client to complete
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Do you have a development consent? <i>If yes, please provide details below</i>	Yes	No
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Development Consent 8 / / / (e.g 8 / 2000 / 100 / 1)	Date Issued
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Details of any plans and specifications to which these approvals relate (e.g. Drw:SFR2345 dated 01/01/2000)	
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PART E: CERTIFICATION WORK TO BE PERFORMED	Client to complete
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This Agreement relates to the following Certification Work: *Please indicate by '✓' which of the following applies*

- | | |
|--|--|
| | Determination of application for, and issue of, a Construction Certificate* |
| | Determination of application for , and issue of, an Occupation Certificate* |
| | Undertaking the functions of the Principal Certifier (PC) for the development
<i>(Refer to Attachment A for description of PC functions and responsibilities of the Client).</i> |
| | Determination of application for, and issue of, a Complying Development Certificate* |
| | Determination of application for, and issue of, a Compliance Certificate* |
| | Determination of application for, and issue of, a Strata Certificate* |
| | Determination of application for, and issue of, a Subdivision Certificate* |

** These certificates are "Development Certificates" for the purposes of this Agreement.*

PART F: CLIENT DECLARATION AND SIGNATURE	Client to complete
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I/We agree to pay all fees in accordance with Council's adopted fees and charges (www.cessnock.nsw.gov.au) and/or accepted quotation.

Note: In respect of any unforeseen contingency or additional work provided under this Agreement, the Council will send an invoice to the Client and require payment within 14 days of receipt of the invoice and before the completion of any such work.

I/We acknowledge that the fees payable are calculated in accordance with Council's adopted Fees & Charges and are to be paid before or at the time of the lodgement of an application for a Development Certificate and/or before the Council commences to carry out any of the functions as the Principal Certifier.

I/We agree to provide all documents that the Council may reasonably request for it to perform the function of the Principal Certifier.

I/We agree to provide the Council with access to the development site.

I/We agree to notify Council of the appointment of the principal contractor. I/We agree to notify the principal contractor of any critical stage inspections required to be carried out in respect of the building or subdivision work.

I/We acknowledge that I/We have received and understand the description of services as outlined within this Agreement.

I/We declare that I/We have freely chosen to engage Cessnock City Council as the certifier and that I/We have read this contract and the accompanying document from NSW department of Fair Trading (attached) and I/We understand my/our responsibilities and those of Cessnock City Council as the certifier.

Client(s) Name	Date
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Client(s) Signature	
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PART G: THE CERTIFIER (Who will carry out the Certification Work) **Council to complete**

Council employs registered certifiers who are currently registered by NSW Fair Trading under the *Building and Development Certifiers Act 2018*. The employee that Council proposes, at the date of this Agreement, to carry out the Certification Work is nominated from the below list.

The Client is advised that to the extent that any inspections are required to be carried out under the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2021* for the Certification Work, those inspections may be carried out by any one of the Council employees listed below who has the necessary accreditation for that work.

Council's Registered Certifiers

Adrienne Luck (BDC2461)	Craig Hine (BDC2985)	Sarah Marks (BDC1342)
Patricia Beatty (BDC1428)	Grant Hamilton (BDC1266)	Kate Curry (BDC3338)
Simon Brown (BDC1256)	Darren Layt (BDC1715)	

PART H: DATE OF AGREEMENT AND VALIDATION PERIOD **Council to complete**

This Agreement is made on

Note: This agreement remains valid for a period of five (5) years from the date the agreement has been made

PART I: COUNCIL SIGNATURE **Council to complete**

Nominated Certifier: CESSNOCK CITY COUNCIL

Signed on behalf of Cessnock City Council

PRIVACY NOTIFICATION

Council is subject to the *Privacy and Personal Information Protection Act 1998* (NSW) in dealing with your personal information. [Council's Privacy Management Plan](#) and [Privacy Statement](#) describe how the agency meets these obligations. Personal information is being collected for the purpose of processing your application in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) and the *Environmental Planning and Assessment Regulation 2021* (NSW). This includes notification and advertising purposes, and consultation with other NSW government agencies in relation to your application. By providing your personal information you agree for Council to share it from time to time with a third party to conduct customer research or satisfaction surveys relating to your application in order to improve Council processes. You also agree that Council may use your personal information from time to time to contact you and notify you of legislative and other amendments that may have an impact on you. Delegated Council officers and agents acting on behalf of Council will be the recipients of your personal information. The provision of personal information is voluntary, however if you do not provide it we may not be able to process your application. Your personal information will be kept securely in Council's Information Management System in accordance with the relevant legislation. Council's address is 62-78 Vincent Street Cessnock NSW 2325. You may access, correct or update your personal information by visiting [Council's website](#), contacting Council's Privacy Contact Officer on 4943 4100 or by sending an email to council@cessnock.nsw.gov.au.

PART J: FEES AND CHARGES

- The Council's fees and charges for the performance of the Certification Work are viewable via Council's website (www.cessnock.nsw.gov.au).
- The fees and charges must be paid to the Council:
 - before, or at the time, an application for the Development Certificate is lodged with the Council; and/or
 - before the Council commences to carry out any of the functions as the Principal Certifier.
- In the case of fees and charges that may be payable for work arising from unforeseen contingencies, or where council considers additional fees are required to be paid to complete the work (such as multiple assessments of a single application due to insufficient or substandard information), fees and charges are to be calculated as outlined within Council's adopted fees and charges (www.cessnock.nsw.gov.au). In respect of any unforeseen contingency or additional work provided for under this Agreement, the Council will send an invoice to the Client and require payment within 14 days of receipt of the invoice and before the completion of any such work.

PART K: STATUTORY OBLIGATIONS

An information brochure which is to include information about statutory obligations must accompany this Agreement, if one is published by NSW Fair Trading on its website. NSW Fair Trading is the statutory body that issues registration to a Certifier and administers the *Building and Development Certifiers Act 2018* and associated Regulation.

Note: The attached brochure is published on the NSW Fair Trading website and accompanies this agreement.

ATTACHMENT A: PRINCIPAL CERTIFIER FUNCTIONS

1. INTRODUCTION

The *Environmental Planning and Assessment Act 1979 (EP&A Act)* requires the appointment of a Principal Certifier (**PC**) to be responsible for the carrying out of mandatory critical stage building inspections and subsequent issue of an Occupation Certificate (**OC**) prior to the use or occupation of a building.

Section 6.6 & 6.7 of the *EP&A Act* prohibits the commencement of the erection of a building in accordance with a development consent until:

- A construction certificate or complying development certificate has been issued;
- A PC has been appointed and the Client has notified the PC that they will carry out the building work as an owner-builder (if that is the case),
- Where the Client is not carrying out the building work as owner-builder, the Client must have appointed a principal contractor for the building work who is the holder of a contractor licence (where residential building work is involved). The Client must notify the PC of the appointment of the principal contractor and also notify the principal contractor of any critical stage inspections and other inspections required to be carried out in respect of the building work,

Similar requirements apply to the commencement of subdivision work.

This Attachment sets out the responsibilities of the Client and the Council (when engaged by the Client to act as PC).

2. DEFINITIONS

Principal Certifier or PC

The PC is the authority appointed by 'the Client' (being the person having the benefit of the development consent or complying development certificate) under section 6.5 of the *EP&A Act*. A PC may be either Council, or a registered private certifier (except in certain circumstances).

NOTE

- a) Council Registered Certifiers, as the PC, cannot be involved in the design or provide advice in relation to the building/development works; but may offer advice for compliance with Deemed to Satisfy BCA matters for class 1 and 10 buildings only.
- b) When Council has been appointed as the PC, a change of PC can only be undertaken upon agreement of Council or as determined by NSW Fair Trading.

Critical Stage Inspections

Section 61 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* relevantly prescribes the following as critical stage inspections:

- (2) *The building work for a class 1 or 10 building must be inspected on the following occasions—*
 - (a) *after excavation for, and before the placement of, a footing,*
 - (b) *before pouring an in-situ reinforced concrete building element,*
 - (c) *before covering the framework for a floor, wall, roof or other building element,*
 - (d) *before covering waterproofing in a wet area,*
 - (e) *before covering stormwater drainage connections,*
 - (f) *after the building work is completed and before an occupation certificate is issued for the building (the final critical stage inspection).*
- (3) *The building work for a class 2, 3 or 4 building must be inspected on the following occasions—*
 - (a) *after excavation for, and before the placement of, the first footing,*
 - (b) *before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread,*
 - (c) *before covering the junction of an internal fire-resisting construction bounding a sole-occupancy unit and another building element that is required to resist internal fire spread,*
 - (d) *before covering waterproofing in a wet area, for at least 10% of rooms with a wet area in the building,*
 - (e) *before covering stormwater drainage connections,*
 - (f) *after the building work is completed and before an occupation certificate is issued for the building (the final critical stage inspection).*
- (4) *The building work for a class 5, 6, 7, 8 or 9 building must be inspected on the following occasions—*
 - (a) *after excavation for, and before placement of, the first footing,*
 - (b) *for a class 9a or 9c building—before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread,*
 - (c) *before covering stormwater drainage connections,*
 - (d) *after the building work is completed and before an occupation certificate is issued for the building (the final critical stage inspection).*
- (5) *The critical stage inspections must be carried out by—*
 - (a) *the principal certifier, or*
 - (b) *another certifier, as agreed with the principal certifier.*
- (6) *Despite subsection (5), a final critical stage inspection must be carried out by the principal certifier.*
- (7) *Despite Building work comprising a swimming pool must also be inspected as soon as practicable after a barrier, if required under the [Swimming Pools Act 1992](#), is erected.*
- (8) *The inspection required under subsection (3)(b) or (4)(b) is an inspection of at least 1 of each type of protection method for each type of service, on each storey of the building comprising the building work.*
- (9) *The inspection required under subsection (3)(c) is an inspection of at least 30% of sole-occupancy units, on each storey of the building containing sole-occupancy units.*

ATTACHMENT A: PRINCIPAL CERTIFIER FUNCTIONS – Continued

Where Council is the PC all of the critical stage inspections must be carried out by a Council Registered Certifier or another registered certifier upon prior arrangement. Failure to receive an inspection may result in Council being unable to issue an OC.

Requests for final inspections and/or OC's for "BASIX affected buildings" must be accompanied by a completed pre-final self-certification/form for applicants/builders/principal contractors. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.

Inspections involving works approved under the provisions of Section 68 of the *Local Government Act 1993*, as amended, can only be carried out by Council Officers (e.g. on-site wastewater management systems, manufactured homes, temporary structures and amusement devices).

Occupation Certificate (OC)

An OC is a certificate that authorises the occupation and use of a new building or a change of building use for an existing building. It is essentially a post-construction check on whether necessary approvals and certificates are in place, and that the building is suitable for occupation or use in accordance with its Building Code of Australia classification. An OC authorising the occupation or use of a new building and/or change of use of an existing building can only be issued by the PC. The *EP&A Act* outlines circumstances where an OC is not required such as exempt development, development to which the issuing of a compliance certificate is permitted alternative.

NOTE:

- a) An application form for an OC must be completed and submitted to Council including payment of the relevant fee as prescribed in Council's Fees & Charges schedule. Lodgement to Council may require the use of third party processes such as the NSW Government ePlanning Portal.
- b) The OC **MUST** be issued prior to a building being used or occupied unless it relates to a building to which an OC is not required by the *EP&A Act*. It is an offence to occupy a building without benefit of an OC.

3. SERVICE PROVIDED & RESPONSIBILITIES OF COUNCIL

Under the EP&A Act a PC has a range of functions, including:

- (a) Ascertaining, before any building work has or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work;
- (b) Ascertaining, before any residential building work commences, that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the [Home Building Act 1989](#), unless the work is to be carried out by an owner-builder;
- (c) Where the work is being carried out by an owner-builder, ascertaining that the owner-builder is the holder of any owner-builder permit required under the [Home Building Act 1989](#), before an owner-builder commences on the site any residential building work;
- (d) Carrying out critical stage inspections of the building work or subdivision work as prescribed by the *Environmental Planning & Assessment Regulation 2021 (EP&A Regulation)* or required by the Certifier, or ensuring that the inspections are carried out by another certifying authority before issuing an occupation certificate or subdivision certificate for the building or work;
- (e) Ensuring that any preconditions required by a development consent or complying development certificate are met for the work before the issue of an occupation certificate or subdivision certificate.

Council, as the PC, will:-

- 3.1 Carry out inspections the next available working day after notification (excluding applications pre-2005 and development south-west of Millfield village to Wollombi, Payne's Crossing and Bucketty). Such notification for inspection must be lodged at the Council by the Client by 3.00 pm on the day preceding the day of inspection. Inspections will be accepted by approved electronic methods (online inspection bookings or email), telephone 02 4993 4100, or in person at the Customer Relations counter at Council's office.
- 3.2 Carry out inspections south - west of Millfield village to Wollombi, Bucketty and Payne's Crossing on the first Thursday following the notification of the required inspection on or before 3.00 pm the preceding Wednesday.
- 3.3 Make a written record of the inspection and provide a copy to the relevant owner and/or applicant via electronic transmission (e-mail).
- 3.4 Advise the Client of the details of the work the subject of an unsatisfactory inspection and the need (if any) to carry out a reinspection.
- 3.5 Notify the Client if any additional fees for inspection are required as a result of reinspection for incomplete or defective works. Reinspection fees will be levied and payable for all reinspections required as a result of work not being completely ready for the booked inspection or as a result of defective works.
- 3.6 Issue determinations for OC's and subdivision certificates on the prescribed form.

Council, as the PC, will NOT:-

- 3.7 Undertake an inspection in relation to a building 10 years after either an occupation certificate has been issued, the building has been occupied or the date of the last inspection carried out by the PC.

Note: Inspections will be carried out Monday to Friday (inclusive) only and excludes weekends and Public Holidays.

4. RESPONSIBILITIES OF THE CLIENT

The Client, in appointing Cessnock City Council as the PC, agrees to:-

- 4.1 Pay all fees for services provided by the PC or such fees and charges as required by another Authority, eg. NSWFB.
- 4.2 Ensure that arrangements are made for Council to carry out inspections of the building works at various stages indicated in Council's letter of acceptance of PC appointment and the Construction Certificate.

- 4.3 Ensure that notification, as required in clause 3 above, is provided of all required inspections. .The Client acknowledges that pre-2005 applications require a minimum of 72 hours' notice to be given to Council in order to retrieve relevant files from storage.
- 4.4 Ensure that building work is ready for inspection by 9.30 am on the day of inspection. Note: Should a specific inspection time or site access be required this may be arranged, subject to availability, by speaking with the relevant Council Registered Certifier between 9.00am and 9.30 am on the day of the inspection.

Where a reinspection is required as a result of defective or incomplete works the Client shall make payment of the appropriate reinspection fee as prescribed in Council's Fees and Charges at Council's office.

- 4.5 Where an inspection is required, the Client MUST ensure the relevant stamped approved plans and specification, and other required details are on-site and/ or available to the Council Registered Certifier. For example, where a timber floor, roof or wall frame inspection is required the relevant information must be provided such as roof truss specifications, tie-down and joint schedules, roof and wall bracing plans and specifications, wall insulation specifications, timber sizes schedules and the like.
- 4.6 Before booking a final inspection and/or Occupation Certificate for a "BASIX affected building" the Client MUST submit to Council a completed pre-final self-certification/form. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.
- 4.7 Ensure that the erection of the building and/or works are in accordance with the development consent and construction certificate.

5 STAGES AND TYPE OF WORKS REQUIRING INSPECTION

Council, as the PC, will confirm at what stages of construction inspections are to be carried-out. The schedule of inspections will be contained within the Construction Certificate or Complying Development Certificate, or within Council's letter of acceptance of PC appointment.

The type of inspection may include, but not limited to:-

- 5.1 Inspections relating to the aspects of structural integrity or health and amenity matters relating to the building and/or its occupants (eg footings, slab, pre-lining framework, wet area flashing, stormwater connection, final and the like).
- 5.2 Inspections of food premises fitout.
- 5.3 Inspection determining compliance with prescribed development conditions and other provisions prescribed in the *Environmental Planning & Assessment Act and Regulation*.
- 5.4 The mandatory critical stage inspections.

INFORMATION

For further information on this specification and matters relating to the booking of inspections, please contact Council's Customer Relations Team on telephone 02 4993 4100.

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 work² 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 work³ 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 Upfront fee payment is required for any work to determine an application for a development certificate or carry out a function of a principal certifier.

³ 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.