

# CERTIFICATION WORK AGREEMENT (PC CONTRACT)

Please complete, sign and return this contract with your application to Dubbo Regional Council via the NSW Planning Portal.

## Agreement between

Dubbo Regional Council (**the Council**) and  (**the Client**)

## Parties to the agreement

### 1. The Council

COUNCIL DETAILS	
Company Name	Dubbo Regional Council
ABN	53 539 070 928
Company Address <i>Include City, State &amp; Postcode</i>	70 Church Street, DUBBO NSW 2830
Postal Address <i>Include City, State &amp; Postcode</i>	PO Box 81, DUBBO NSW 2830
Contact Number	(02) 6801 4000
Email	council@dubbo.nsw.gov.au

### 2. The Client *(If completed on behalf of a company evidence which confirms the person signing the form is legally entitled to do so must accompany this application.)*

CLIENT DETAILS	
Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other - Please specify:
Name/s	
Residential Address <i>Include City, State &amp; Postcode</i>	
Postal Address <i>Include City, State &amp; Postcode</i>	
Contact Number	
Email Address	
BUSINESS DETAILS	
Your Name	
Company Name	
ABN	
Company Address <i>Include City, State &amp; Postcode</i>	
Postal Address <i>Include City, State &amp; Postcode</i>	
Contact Number	
Email	

## The development

DESCRIPTION OF DEVELOPMENT
Description of development: (eg single storey dwelling)

PROPERTY DETAILS					
Lot No		DP/SP No		House Number	
Street/Road					
Town		State		Postcode	

DEVELOPMENT CONSENT DETAILS (tick appropriate box/s and complete as applicable)				
	Application	Name of consent authority	No./identifier	Date
<input type="checkbox"/>	Development consent granted by consent authority			
<input type="checkbox"/>	Development consent given by the issue of a complying development certificate (CDC)			
<input type="checkbox"/>	Section 6.4 certificate issued (ie CC, OC, SC, SWC)  Type of Section 6.4 Certificate issued: <div style="border: 1px solid #00a0c0; border-radius: 10px; height: 20px; width: 100%; margin-top: 5px;"></div>			

FUNCTIONS
Council will carry out the functions of a certifier in accordance with the requirements of Section 6.5 of the EP&A Act as well as the inspections required under Clause 162A of the EP&A Regulation.
The details of the officers employed by Council as Registered Certifiers, any of whom may carryout certification work and inspections under this agreement. Can be found on the NSW Fair Trading website at <a href="#">Building Certifiers Public Register</a>

**Work to be performed**

CERTIFICATION WORK TO BE PERFORMED (Tick one or more boxes as appropriate)	
<input type="checkbox"/>	Determination of application for a Complying Development Certificate (CDC)*
<input type="checkbox"/>	Determination of application for a Construction Certificate (CC)*
<input type="checkbox"/>	Undertaking the functions of Principal Certifier (PC) for the development*
<input type="checkbox"/>	Determination of application for an Occupation Certificate (OC)*
*Refer to relevant Attachment(s) that contain a <b>Description of Serves</b> and the relevant <b>Fees and Charges</b>	

**Date of agreement**

This Agreement is made on the  day of

**Declaration & Signature**

I/we declare that the undersigned have:

1. Freely chosen to engage Dubbo Regional Council to undertake Certification work the subject to this agreement, and
2. Have read the contract and any document accompanying the contract and understand the roles and responsibilities of the person and the registered certifier.

CLIENT SIGNATURE	
Signature	
Print Name	

AUTHORISED SIGNATURE ON BEHALF OF COUNCIL	
Signature	
Print Name	

## AGREEMENT DETAILS

### Part A. Introduction

1. The Council is a Principle Certifier and employs registered certifiers (Certifiers) who are 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.
3. This Agreement meets the requirements of Section 31 of the Building & Development Certifiers Act 2018 and Part 5 of the Building & Development Certifiers Regulation 2020.

### Part B. Interpretation

Words and terms used in this Agreement are defined in the Dictionary.

### Part C. Certifiers' details

The details of the officers employed by Council as Registered Certifiers, any of whom may carry out certification work and inspections under this agreement, can be found on the NSW Fair Trading website at [Building Certifiers Public Register \(nsw.gov.au\)](https://www.fairtrading.nsw.gov.au/building-certifiers-public-register)

### Part D. 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. The set fees and charges for the determination of a development certificate must be paid to the Council before, or at the time, an application for the development certificate is lodged with the Council.
  - (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, the Council is to send an invoice to the Client within 21 days after the completion of any such work.
2. Principal Certifier (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). Such fees/charges are specified under Council's annual Fees & Charges which may be viewed and downloaded from [Council's website](#).
    - 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 E. Position of Council

### 1. Consent Authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of legislation, including the EP&A Act.

### 2. Agreement does not fetter discretion

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and, without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

### 3. Limitation of Liability

Council's aggregate liability for breach of contract, negligence, breach of statutory duty or other claim arising out of or in connection with this Agreement or the Services provided hereunder shall be limited as follows :

- (a) In respect of any claim for personal injury or death caused by Council's negligence, no limit shall apply;
- (b) In respect of any claim which results from any fraudulent acts (including theft or conversion) or wilful default by Council, no limit shall apply; and
- (c) In respect of any other claim, including in respect of the following losses: loss of revenue; loss of opportunity; loss of reputation; loss of profits; loss of anticipated savings; increased costs of doing business; or any other indirect or consequential loss, Council shall have no liability in any circumstances.

Subject to the provisions of clauses 3(a) and 3(b) above, Council shall have no liability to the Client or any third party in respect of any claim for breach of contract, negligence, breach of statutory duty or other claim in respect of any delay or failure by Council to perform any of its obligations under this Agreement to the extent such failure results directly or indirectly from any negligent or wilful act or omission by the Client or any third party.

## Part F. Responsibilities of the Client

The Client agrees to do all things necessary and convenient to ensure that its responsibilities under this Agreement are met in the most timely manner, including, but not limited to:

- (a) Signing all necessary applications, forms and consents;
- (b) Promptly providing all relevant drawings, plans, statutory plans and documentation associated with but not limited to, the Development Consent or the Certificate or Certificates as requested or required by Council or a Certifier;
- (c) Ensuring that only competent and licensed persons are used for all aspects of the Building Works;
- (d) Providing Council or the Certifier with evidence of Home Building Compensation Fund Insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of the Building Works;
- (e) Attending any meetings if required by Council or the Certifier to do so;
- (f) Complying with any Notices Council or the Certifier issues;
- (g) Providing compliance certificates as may be requested or required by Council or the Certifier;
- (h) Providing all information that the Client can obtain to enable the Council or Certifier to fulfil its obligations under this Agreement;
- (i) Engaging other persons or experts to provide information following such a request, if required;
- (j) Where Council is the PC, provide at least 24 hours' notice before each Critical Stage Inspection;
- (k) Granting, allowing or facilitating access to land as requested by the Certifier or Council, including access to buildings or structures; and
- (l) Acting in good faith, in accordance with the EP&A Act and in a cooperative fashion.

## Part G. Variations

If:

- (a) The Building Works do not commence within 60 days from the date of this Agreement; or
  - (b) Any person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or
  - (c) Any part of the Building Works are re-designed by or on behalf of the Client;
  - (d) Any part of the Building is designed pursuant to a deemed to satisfy provision of the BCA, but is subsequently changed by way of an Performance Solution;
  - (e) Legislation is amended that requires any aspect of the Building Works or Council or the Certifier's role to be varied; or
  - (f) Council is required to undertake more inspections than those identified as Required Inspections; or
  - (g) The Client does anything that causes a delay to the Building Works or does anything that delays the ability of Council or the Certifier to carry out its obligations under this Agreement,
- then:

Council may:

- (1) Vary this Agreement to reflect any consequential change to it, or its Certifier's, obligations under it; and
- (2) Increase the price for the identified work with such increase to be made by way of Notice to the Client stating the reasons for the increase, and the amount of the increase.

## Part H. Termination

1. If:

- (a) A party is in breach of this Agreement and has failed to rectify that breach within 7 Business Days of written notice being given requiring such rectification; or
- (b) A party commits a breach of this Agreement which is not capable of remedy; or
- (c) The Client fails to pay any money owing to Council after 7 days of that money becoming payable; or
- (d) A Certificate is not capable of being issued within 90 days or 3 months (whichever is the lesser) from the date of this Agreement; or
- (e) The Building Works have commenced without the issuing of a Certificate, then:

Council may terminate this Agreement by written notice of termination to the Client, identifying the provision of this clause relied upon.

- 2. Subject to clause 3 below, termination is effective upon receipt of the notice of termination by the Client.
- 3. Council remains entitled to be paid all moneys owing to it at the time of termination, and is entitled to undertake, as it reasonably determines, a final inspection of the development site at the Client's expense.

The Client must pay all outstanding moneys owed at the time of termination to Council within 14 days of receipt of the termination notice.

## Part I. Dispute resolution

1. Dispute resolution procedures

If a dispute arises under this Agreement, a party will not commence any Court proceedings unless it has complied with this clause, except to seek:

- (a) Urgent interlocutory relief; or
- (b) A remedy where a delay in commencing proceedings in Court could prejudice the party's entitlement to seek that remedy.

2. **Negotiations**  
The parties will attempt to resolve any dispute which arises under this Agreement expeditiously by negotiation between representatives of the parties who have authority to settle disputes.
3. **Notice of Dispute**  
If any dispute arises under this Agreement which cannot be resolved by clause 2 above, the party raising the dispute will:
  - (a) As soon as practicable give notice of the dispute to the other party ("Notice of Dispute"); and
  - (b) At the same time, or as soon as practicable thereafter, give to the other party detailed particulars of the matters in issue in the Dispute.
4. **Resolution by Managers**  
Managers or persons with sufficient authority from each party will convene a meeting of the parties within 14 days after a Notice of Dispute has been given. At that meeting:
  - (a) Representatives of the parties concerned must confer in good faith to attempt to resolve the Dispute, putting to each other the issues in dispute and any points of difference;
  - (b) If the parties agree as to how the dispute should be resolved, they will document that agreement; and
  - (c) If the parties cannot agree as to how the dispute should be resolved, the dispute will be referred to expert determination under clause 5 below.
5. **Expert Determination**  
If the procedures in clauses 2 and 4 do not lead to resolution of any dispute, then not earlier than seven (7) days after the meeting in clause 4 either party may give notice in writing to the other referring the dispute to expert determination ("Expert Determination Notice").

Notwithstanding the giving by either party of an Expert Determination Notice, the parties must continue to take all reasonable steps to attempt resolution of the dispute without expert determination.

No later than fourteen (14) days from the date on which the Expert Determination Notice is provided to a party, the parties will organise for the dispute (unless it has been otherwise settled) to be heard and determined by an independent expert agreed by the parties (or if no agreement can be reached, appointed by NSW Fair Trading).

It is intended that the decision of the independent expert will be final and binding if neither party commences further proceedings in respect of the dispute within 14 days after the independent expert's decision is given to the parties.

## **Part J. Statutory obligations**

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

A copy of NSW Fair Trading's Information Brochure is attached.

## Dictionary

**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.

**BADC Act** means the Building & Development Certifiers Act 2018.

**BASIX** means the Building Sustainability Index.

**BCA** means the Building Code of Australia.

**Building works** means any physical activity associated with the erection of a building.

**Business days** means a day other than Saturday, Sunday or public holiday in NSW.

**Certification work** means:

- (a) the exercise of a function of a certifier (including a principal certifier) specified in section 6.5 of the Environmental Planning and Assessment Act 1979,
- (b) the determination of an application for a strata certificate within the meaning of the Strata Schemes Development Act 2015,
- (c) the inspection of swimming pools under Division 5 of Part 2 of the Swimming Pools Act 1992 and the issuing of certificates of compliance and notices under that Division,
- (d) the exercise of any other function of a registered certifier under the certification legislation or under another Act or law,
- (e) any other work of a kind prescribed by the regulations,

but does not include work of a kind that is excluded from this definition by the regulations.

**Certificate** means:

- (a) Construction Certificate
- (b) Subdivision Works Certificate
- (c) Occupation Certificate
- (d) Subdivision Certificate
- (e) Compliance Certificate

**Certifier** means a council or a registered certifier.

**Contractor licence** means a licence issued under the Home Building Act 1989.

**Critical stage inspection means** each of those inspections identified at clause 162A of the EP&A Regulation that pertain to the Building Work the subject of this Agreement.

**Development certificate** means the following-

- (a) a complying development certificate under the Environmental Planning and Assessment Act 1979,
- (b) a certificate referred to in section 6.4 of that Act,
- (c) a strata certificate



**Development consent** has the same meaning as in the EP&A Act.

**EP&A Act** means the Environmental Planning and Assessment Act 1979.

**EP&A Regulation** means the Environmental Planning and Regulation 2000.

**Notice** includes any notice or order issued under the EP&A Act or this Agreement.

**Owner-builder permit** has the meaning given to it by the Home Building Act 1989.

**Principal Certifier** for building work means the certifier appointed as the principal certifier for the building work under section 6.6(1) of the EP&A Act.

**Registered Certifier** means a person who is registered under the Building & Development Certifiers Act 2018 and whose registration is in force.

**Required Inspections** means the inspections required in the Notice of inspections within the meaning of the EP&A Act.

**Residential building work** has the meaning given to it by the Home Building Act 1989.

## Attachment: Application for a Complying Development Certificate (CDC)

### 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. Conduct an inspection of, or arrange for another registered certifier to inspect, the development site, and prepare a record of the inspection.
2. 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.
3. Determine the application and prepare a notice of the determination.
4. 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 (Tick one of the following)

<input checked="" type="checkbox"/> Fixed fee agreement	<input type="checkbox"/> Variable costs 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 Service, 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	Council will undertake all work involved in assessing, determining and finalising the application as set in the Development of Services upon the following basis:
Fixed Fee: \$ See attached Fee Invoice	Council's fee for services \$
Contingency items#*	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 inspect if access not available'. If no provision is to be made for contingency items, write 'N/A'

\*Insert amount or basis of calculation eg 'At cost' or '\$ per hour'

## Attachment: Application for a Construction Certificate (CC)

### 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. If the development is on a site which affects an existing building, inspect, or arrange for another registered certifier to inspect, the building and prepare a record of the inspection.
2. 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.
3. 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.
4. Determine the application and prepare a notice of the determination.
5. 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 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 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 (Tick one of the following)

<input checked="" type="checkbox"/> Fixed fee agreement	<input type="checkbox"/> Variable costs 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 Service, 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	Council will undertake all work involved in assessing, determining and finalising the application as set in the Development of Services upon the following basis:
Fixed Fee: \$ See attached Fee Invoice	Council's fee for services \$
Contingency items#* The applicant will be responsible for the applicable fees related to an initial Fire Safety Report (IFSR) and a Final Fire Safety Report (FFSR) from Fire and Rescue NSW (FRNSW) required under Clause 144 of the EP&A Act for building works that includes a performance solution as referred to in that clause.	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 inspect if access not available'. If no provision is to be made for contingency items, write 'N/A'

\*Insert amount or basis of calculation eg 'At cost' or '\$ per hour'

## Attachment: Application for a Part Occupation Certificate (POC)

### 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. Conduct an inspection of the development and prepare a record of the inspection.
2. 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.
3. Obtain a final fire safety certificate or interim fire safety certificate as required by the EP& A Regulation.
4. 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.
5. 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).
6. Determine the application and prepare a notice of the determination.
7. If the application is granted, prepare an OC and issue it to the Client.

### Fees and charges (Tick one of the following)

<input checked="" type="checkbox"/> Fixed fee agreement	<input type="checkbox"/> Variable costs 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 Service, 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	Council will undertake all work involved in assessing, determining and finalising the application as set in the Development of Services upon the following basis:
Fixed Fee: \$ See attached Fee Invoice	Council's fee for services \$
Contingency items#* Additional re-inspection fee may be charged for defective inspection result. Inspection fee charged in accordance with Council's adopted revenue policy (Fees and Charges).	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 inspect if access not available'. If no provision is to be made for contingency items, write 'N/A'

\*Insert amount or basis of calculation eg 'At cost' or '\$ per hour'

## Attachment: Application for an Occupation Certificate (OC)

### 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. Conduct an inspection of the development and prepare a record of the inspection.
2. 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.
3. Obtain a final fire safety certificate or interim fire safety certificate as required by the EP& A Regulation.
4. 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.
5. 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).
6. Determine the application and prepare a notice of the determination.
7. If the application is granted, prepare an OC and issue it to the Client.

### Fees and charges (Tick one of the following)

<input checked="" type="checkbox"/> Fixed fee agreement	<input type="checkbox"/> Variable costs 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 Service, 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	Council will undertake all work involved in assessing, determining and finalising the application as set in the Development of Services upon the following basis:
Fixed Fee: Included in PCA Fee \$ See attached Fee Invoice	Council's fee for services \$
Contingency items#* Additional re-inspection fee may be charged for defective inspection result. Inspection fee charged in accordance with Council's adopted revenue policy (Fees and Charges).	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 inspect if access not available'. If no provision is to be made for contingency items, write 'N/A'

\*Insert amount or basis of calculation eg 'At cost' or '\$ per hour'

## Attachment: Undertake the functions of Principal Certifier (PC)

### Description of services

The Certifier will, on behalf of the Council, perform all work that is necessary to comply with relevant statutory requirements, including:

1. Notify the Client of all inspections that are required to be carried out of the building work or subdivision work.
2. Ascertain, before undertaking inspection of any building work or subdivision work, that a construction certificate or complying development certificate has been issued for the work.
3. Ascertain, before any residential building work commences, that where applicable, either:
  - a. the principal contractor is the holder of a licence under the Home Building Act 1989 and is covered by appropriate insurance, or
  - b. where the work is to be carried out by an owner-builder, that an owner-builder permit has been issued under the Home Building Act 1989.
4. The Certifier will either carry out critical stage inspections of the building work or subdivision work prescribed by the EP&A Regulation and/or required by the Certifier, or ensure that the inspections are carried out by another registered certifier. However, the Certifier will personally carry out the last critical stage inspection that is prescribed for a building.
5. The Certifier will make a record as required by the EP&A Regulation of all inspections that he or she carries out and will ensure that any other registered certifier that has carried out an inspection also prepares a report and supplies it to the Certifier.
6. The Certifier will determine whether any inspection (other than the last critical stage inspection) has been not carried out due to circumstances that were unavoidable, and whether the work that would have been inspected was satisfactory. The Certifier will make a record of any such missed inspection as required by the EP&A Regulation and provide a copy to the Client. The Certifier will also notify the principal contractor or owner builder of the missed inspection as required by the EP&A Regulation.
7. Determine applications for occupation certificates or subdivision certificate (subject to separate terms under this Agreement)

### Compliance functions

1. The Certifier will take such steps as he or she considers appropriate to address any of the following matters relating to the development:
  - a. non-compliance with the development consent
  - b. the carrying out of work without development consent
  - c. an unauthorised use of a building
  - d. a breach of a law relating to the carrying out of work or the use of the land
  - e. a threat to the safety of a person or a person's property
  - f. any other matter the Certifier considers to be in the public interest to address.
2. Without limiting the actions that the Certifier may take, the Certifier may:
  - a. attend the site or nearby properties to inspect any issue of concern relating to the development
  - b. confer with any person in relation to any issues of concern
  - c. cause correspondence to be issued to any person
  - d. refer any matter of concern to such persons or authorities as the Certifier considers appropriate, including the consent authority, NSW Fair Trading or an environmental protection agency
  - e. issue Development Control Orders under Schedule 5 of the EP&A Act

**Fees and charges** (Tick one of the following)

<input checked="" type="checkbox"/>	<b>Fixed fee agreement</b>	<input type="checkbox"/>	<b>Variable costs agreement</b>
	Council will undertake for a fixed fee all work involved in assessing, determining and finalising the application as set out in the Description of Service, 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		Council will undertake all work involved in assessing, determining and finalising the application as set in the Development of Services upon the following basis:
Fixed Fee: \$ See attached Fee Invoice		Council's fee for services \$	
Contingency items#* Additional re-inspection fee may be charged for defective inspection result. Inspection fee charged in accordance with Council's adopted revenue policy (Fees and Charges).		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 inspect if access not available'. If no provision is to be made for contingency items, write 'N/A'

\*Insert amount or basis of calculation eg '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)<sup>1</sup>. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

### Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

### Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

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<sup>1</sup> Visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) and search 'certification contracts'.



## Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work<sup>2</sup> is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

## What does a registered building surveyor do?

Registered **building surveyors** issue certificates under the *Environmental Planning and Assessment Act 1979* (construction certificates, complying development certificates and occupation certificates), act as the **principal certifier** for development, and inspect building work.

The principal certifier will attend the site to carry out mandatory inspections at certain stages. When construction is complete, the certifier may issue an occupation certificate, which signifies that the work:

- is 'suitable for occupation' – this does not necessarily mean all building work is complete
- is consistent with the approved plans and specifications
- meets all applicable conditions of the approval.

The certifier does not manage or supervise builders or tradespeople or certify that the builder has met all requirements of the applicant's contract with the builder.

## What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work<sup>3</sup> with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

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<sup>2</sup> 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.

<sup>3</sup> Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

## Principal certifier enforcement powers

If the principal certifier becomes aware of a non-compliance with the development approval, the certifier must, by law, issue a direction to you and/or the builder, requiring the non-compliance to be addressed. If it is not, the certifier must notify the council which may take further action.

The certifier is also required to respond appropriately if a complaint is made about the development.

## Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au):

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

## Questions?

The Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au) provides information on the NSW planning and development certification system.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Fair Trading website for more information.