

## CONTRACT FOR APPOINTMENT AS PRINCIPAL CERTIFIER OR CERTIFICATION WORK AND NOTICE OF COMMENCEMENT

This contract meets the requirements of Clause 31 of the *Building and Development Certifiers Act 2018* and Part 5 of the *Building and Development Certifiers Regulation 2020*.

The Applicant must complete, sign, and submit the contract to Council when lodging an application for a construction certificate or complying development certificate. Council will only start the certification work upon receipt of the completed and signed contract and payment of the relevant fees and charges.

This is a contract between the Applicant and Clarence Valley Council (**Council**), where Council may be appointed as the Principal Certifier (**PC**) and will carry out certification work for the Applicant in the relation to the following development:

<b>1. Development</b>	
Development Description:	
Site Address:	
Lot and DP:	
<i>If not available at the time of lodgement of the application, the following information will be inserted by Council on determination of consent or certificate:</i>	
Development Consent /Complying Development Certificate/Construction Certificate Reference Number	
Related plans, specifications or other documents for consent or certificate	As referred to in the relevant development consent, construction certificate or complying development consent (as applicable).
<b>2. Accredited Certifier</b>	
Name:	Clarence Valley Council
Address:	Locked Bag 23 GRAFTON NSW 2460
Email:	council@clarence.nsw.gov.au
Telephone number:	02 6643 0200
Details of the employees (including contracted Certifiers) that Council proposes to undertake certification works and to perform inspections on behalf of Council are available at <a href="https://search.bpb.nsw.gov.au/PublicRegister/">https://search.bpb.nsw.gov.au/PublicRegister/</a>	

### 3. Details of Applicant

*Note: Only the person/company having the benefit of the development consent or complying development certificate may appoint the PC. The builder may only appoint the PC where the builder is also the owner of the land. (section 6.6).*

Name:

Company/organisation:

Postal Address:

Telephone Number:

Email:

### 4. Council's Insurance

Council will maintain the required insurance during the contract. Certifiers who are employees of Council are not required to hold separate individual insurance.

### 5. Appointment as PC and Certification Work

This Agreement relates to the determination of a Construction Certificate, Complying Development Certificate and / or Occupation Certificate applications and undertaking the functions of the Principal Certifier (PC) for the development.

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 relevant application. The Certifier will, on behalf of the Council, perform all necessary actions in relation to compliance functions under relevant legislation.

*An occupation certificate to commence occupation or use of a new building (including alteration or addition to an existing building) can only be issued by the PC appointed for the erection of the building.*

### 6. Critical Stage & Other Inspections

Council, if appointed as PC, will carry out the critical stage inspections and the other inspections in relation to the development.

The following is a list of the critical stage inspections for each building class. Council will confirm the complete schedule of inspections on the issue of a construction certificate or complying development certificate.

#### **Class 1& 10 buildings - Single Dwellings, Carports, Garages, Sheds, Swimming Pools**

1. Footing inspection (after excavation for, and before the placement of, any footings)
2. Slab and other steel (before pouring any in-situ reinforced concrete building element)
3. Frames (before covering of the framework for any floor, wall, roof or other building element)
4. Wet area waterproofing (before covering waterproofing in any wet areas)
5. Stormwater (before covering any stormwater drainage connections)
6. Final inspection (after the building work has been completed and before occupation of the building)

#### **Class 2, 3 or 4 buildings - Flats, Boarding Houses, Residential Parts of Hotels, Schools**

1. Footing inspection (after the commencement of the excavation for, and before the placement of the first footing)
- 2.
3. Wet area waterproofing (before covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building)
4. Stormwater (before covering any stormwater drainage connections)
5. Final inspection (after the building work has been completed and before occupation certificate of the building).
6. Before all walls, floors and ceilings required by the BCA to have a fire resistance level are enclosed, and before covering of fire/smoke protection at service penetrations and the junctions of fire resisting construction in buildings containing sleeping accommodation.

**Class 5, 6, 7, 8 or 9 buildings - Office, Shop, Car Park, Hospital, School, Church, theatres**

1. Footing inspection (after the commencement of the excavation for, and before the placement of the first footing)
2. Stormwater (before covering any stormwater drainage connections)
3. Final inspection (after the building work has been completed and before occupation of the building)
4. Before all walls, floors and ceilings required by the BCA to have a **fire resistance level** are enclosed, and before covering of fire/smoke protection at service penetrations and the junctions of fire resisting construction in buildings containing sleeping accommodation.

**Swimming Pools**

1. As soon as practicable after the barrier (if one is required under the *Swimming Pools Act 1992*) has been erected

**7. Notice of Inspections**

You are responsible for making suitable arrangements with Council to carry out the critical stage inspections or other inspections. You must give Council at least 24 hours' notice (excluding weekends and public holidays) before each required inspection.

*Inspection bookings can be made online at [www.clarence.nsw.gov.au](http://www.clarence.nsw.gov.au) until midnight on the day before the inspection. The Construction Certificate or Complying Development Certificate number must be provided when booking an inspection.*

You must obtain a satisfactory inspection result from Council for each relevant stage of construction before you can proceed to the next stage of construction.

If you fail to notify Council of the critical stage inspections or other inspections, you may prejudice or even prevent Council from issuing of an occupation certificate in respect to the development.

**8. Outcome of Inspections**

Council will give you confirmation of the outcome of an inspection as soon as practicable after the inspection has been completed. Council will indicate if the inspection was satisfactory or if additional works must be completed before re-inspection.

**9. Missed Inspections**

If a critical stage inspection or other inspection has been unavoidably missed, you must within two (2) days of becoming aware that the inspection has been missed, advise Council in writing as to the circumstances causing the inspection to be missed and must give to Council all documentation requested by Council about the unavoidably missed inspection.

**10. Structural Engineering and Other Specialist Details**

If requested (either before commencement or during the building works), you must forward to Council any structural or other specialist engineering details relating to the development. These details must confirm compliance with the relevant provisions of the Building Code of Australia and/or relevant standards to the satisfaction of Council.

**11. Third Party Certification Works**

To ensure compliance with the development consent, construction certificate or complying development certificate (as applicable), you may be required to submit third party certification from a suitably qualified person in a specific field to Council (eg: structural engineer), demonstrating a specific matter complies with a relevant standard.

Council will advise when this is required as part of an inspection result.

The certification must be prepared by an accredited certifier or other suitably qualified and experienced person and must reference the relevant provisions of the Building Code of Australia, Australian Standards, development consent, construction certificate or complying development certificate approved plans.

The certification is in addition to the critical stage inspections or other inspections listed above.

## **12. Compliance with Consent or Certificate**

You confirm that no building works in relation the development have started before the appointment of Council as PC.

You must ensure that all works are carried out in accordance with the conditions of any development consent, construction certificate or complying development certificate (as applicable), the relevant provisions of the Building Code of Australia and the EP&A Act.

You must obtain Council's approval for any amendments or variations to the development, before you start any work relating to the amendment or variation.

If you do not complete the works in accordance with the development consent, construction certificate or complying developing certificate, Council may refuse to issue an occupation certificate. Council may also serve a notice and order for you to comply with the relevant consent, or may institute legal proceedings.

## **13. Occupation Certificate**

You must obtain an occupation certificate before the occupation or use of a new building (or part of a building) or following the change of an existing building use/classification. Penalties apply under the EP&A Act for use or occupation of a building without a validly issued occupation certificate.

Council will not accept responsibility for any damage or cost associated with its ability to issue an occupation certificate due to (but not limited to) the following:

- (i) Non-compliance with a condition of development consent
- (ii) Unsatisfactory final inspection
- (iii) Non compliance with BASIX commitments
- (iv) Missed critical stage inspections or other inspections
- (v) Non compliance with development consent or construction certificate approved plans or documentation
- (vi) Failure to pay the required inspection or occupation certificate fee

## **14. Fees and Charges**

### **14.1 Certification work**

The fees for Council's appointment as PC and certification work are based on its annual fees and charges, which are published on its website ([www.clarence.nsw.gov.au](http://www.clarence.nsw.gov.au)).

### **14.2 Unforeseen contingencies**

The fees above provide for Council to carry out 1 (one) inspection for each critical stage inspection or other inspections of the building.

Council may charge you additional fees in the following circumstances:

- (i) Additional critical stage inspections or other inspections due to the staging of building works or variations in the construction sequence
- (ii) Re-inspection of works as a result of the relevant stage of construction not being ready, incomplete or unsatisfactory
- (iii) Additional on-site meetings

The fees for unforeseen contingencies are based on Council's annual fees and charges, which are published on its website ([www.clarence.nsw.gov.au](http://www.clarence.nsw.gov.au)).

## **15. Payment**

### **15.1 Determination of an application for a development certificate**

If the certification work relates to the issue of a:

- (i) Complying development certificate
- (ii) Compliance certificate
- (iii) Construction certificate

(iv) Occupation certificate

you must pay the fees and charges on or before the lodgement of the application for that certificate, excluding any fees and charges for work arising as a result of unforeseen contingencies.

**15.2 Appointment as PC**

If the certification work relates to the functions of a PC, you must pay the fees and charges before Council commences those functions, excluding any fees and charges for work arising as a result of unforeseen contingencies.

**15.3 Unforeseen contingencies**

If Council carries out work as a result of unforeseen contingencies, Council will:

- (i) calculate the fees based on its annual fees and charges; and
- (ii) give you an invoice within 21 days after the completion of that work.

You must pay any fees and charges for unforeseen contingencies within the invoice terms.

**15.4 Unpaid fees**

In circumstances where Council is appointed as PC, and the fees are not paid in accordance with this contract, you acknowledge and accept liability for all or any unpaid fees and any associated debt recovery costs plus interest incurred from the time of appointment.

You acknowledge and accept that Council, as PC, may suspend services where fees have not been paid, or remain outstanding.

**16. Applicant's Signature**

*Note: Only the person/company having the benefit of the development consent or complying development certificate may appoint the PCA. The builder may only appoint the PCA where the builder is also the owner of the land. (section 6.6 of EP&A Act).*

I accept the terms and conditions of this contract including the associated payment of fees and:

- a. I have freely chosen to engage Clarence Valley Council as the certifier.
- b. I have read the contract and accompanying document and I understand my responsibilities and those of the certifier.

Signature:	
Date:	

<b>17. Council's Signature</b>	
Signed for and behalf of Council by an authorised officer:	
Officer's name:	
Officer's position:	
Signature:	
Date:	
<b>18. Statutory Obligations of Accredited Certifiers</b>	

The contract must attach any document containing information about the statutory obligations of accredited certifiers that is published by Fair Trading NSW for the purpose of clause 31 and available on its website.

**The Client must sign the Contract for Certification works and appoint the Principal Certifier (PC).**

The person signing the Contract for Certification work and making the appointment of PC must be the property owner or person having the benefit of the development. A building contractor cannot make the appointment unless the contractor is the owner of the development site.

You can only sign on behalf of the owner/s if you have power of attorney or a letter of authority.

If the land is Crown land, an authorised officer of the Department of Land and Water Conservation must sign the application.

**As the owner/s or the person/s who has the beneficiary of the development:**

I / we consent to this application and consent to the Council, its servants or agents entering upon the property without first having given notice, for the purpose of carrying out all or any inspections which the Council may deem appropriate in connection with the processing of this application.

I / we consent to the terms set out in the Agreement between the owner and Council being the certifying authority who employs an Accredited Certifier (the Certifier) who is authorised to carry out the certification work which is the subject of this Agreement on behalf of the Council.

In accordance with [Cl.30, B&DC Reg](#):

I/ we declare that:

I /we have freely chosen to engage Clarence Valley Council as our certifier, and

I /we have read the contract and any document accompanying the contract and understands the roles and responsibilities of the person and the registered certifier.

**NOTICE OF COMMENCEMENT**

Notice of Commencement of Building under the Environmental Planning and Assessment Act 1979 Sections 6.6 (building works) or 6.12 (subdivision works).

I / we consent to comply with and satisfy the prior to commencement of works conditions of the Development Consent / Complying Development Certificate and of the requirements of the Home Building Act 1989, Clause 98B or Clause 136C of the Environmental Planning and Assessment Regulations.

The work of the Construction Certificate/Complying Development Certificate is to commence at least two (2) days after the Date of Determination.

Signature:	
Owner's Name:	
Date:	

*Once endorsed by Council a copy for your records will be sent to you with your Determination.*



## 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 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>2</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> 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.

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