

Dear Sir / Madam,

CONTRACT & PAYMENT REQUIREMENTS

Attached is a Certification Work Agreement (PC Contract). Please complete, sign and return this contract through the NSW Planning Portal and arrange payment of the applicable fees at your earliest opportunity, so that your application can progress to lodgement (see separate tax invoice).

Please ensure you tick all the appropriate boxes in Section 2, including both the PC and OC boxes if you have selected Council to be your Principal Certifier. This will ensure your application progresses without delay.

Please note that any alteration or amendment you seek to make to the terms of the attached Agreement is not accepted by Council. Any proposed alteration or amendment must first be discussed and specifically agreed with Council prior to execution by you.

Please contact me should you require further information.

This letter is authorised by

Garon Irwin

Lead - Building & Compliance

Shoalhaven City Council

Telephone (02) 4429 3211

Contract for Certification Works

Shoalhaven City Council ABN: 50 855 182 344

Under section 31 of the Building and Development Certifiers Act 2018 and Clause 31 of the Building and Development Certifiers Regulation 2020

Guidance

A Principal Certifier is abbreviated throughout this Contract to PC.

Council is a certifying authority and employs registered certifiers who are authorised to carry out certification work on behalf of Council. The *Building and Development Certifiers Act 2018* says that Council must not carry out certification work for a person unless it has entered into a written contract with that person. You must therefore have an owner complete and sign this Contract for Certification Work and attach it to your application.

Guidance for completing this application can be found within the [City Development HUB](#) located on Council's website.

To facilitate prompt processing, all relevant information must be provided. Incomplete applications may be delayed or returned.

1 Parties to the Contract

Owner

| | | | | | |
|--|--|--------------|--------------|-----------|-----------|
| Title: | | | | | |
| Given Name/s: | | Family Name: | | | |
| Organisation Name / Company Name (if applicable) | | | | | |
| Email: | | | | | |
| Note: At least contact number must be supplied. | | | | | |
| Mobile: | | Home: | | Business: | |
| Postal Address Shop /Unit / Street No.: | | | Street Name: | | |
| Suburb / Town / Village / Locality: | | | State: | | Postcode: |

Office use only

| | | | | | |
|---|------------|--------------|------------|---------------------|-------------|
| Related Policies: | | | | | |
| Issue Date: | 29/09/2020 | Review Date: | 24/06/2021 | Owned By (Section): | Development |
| Shoalhaven City Council | | | | | |
| ABN: 59 855 182 344 | | | | | |
| Address: Bridge Road Nowra NSW 2541 | | | | | |
| Phone: 02 4429 3211 Email: council@shoalhaven.nsw.gov.au | | | | | |
| Hereafter referred to as 'Council' | | | | | |

2 Application Type

The owner appoints Council to determine certification work and carry out the following functions set out in this contract.

Any of the functions selected from the below list, require a separate application to be lodged through the NSW Planning Portal.

- ☐ Complying Development Certificate Application,
- ☐ Application for Subdivision/Strata Certificate
- ☐ Occupation Certificate Application
- ☐ Construction Certificate Application
- ☐ Compliance Certificate Application
- ☐ Subdivision Works Certificate
- ☐ Carrying out inspections under the Environmental Planning and Assessment Act 1979

The information contained in the Application form is incorporated into this contract.

3 Subsequent Appointment of Council as Principal Certifier (PC)

- ☐ Appointment of Council as Principal Certifier

Note: *If you select Council to be your PC you will be required to complete the following:*

- *Lodge an application to appoint Council as the PC via the NSW Planning Portal as Post Consent Certificate - PCA; and*
- *Select under Item 2 above Carrying out inspections under the Environmental Planning and Assessment Act 1979.*

If you select Council to issue the issue an occupation certificate you will be required to complete the following:

- *Lodge an application to appoint Council as the PC via the NSW Planning Portal as Post Consent Certificate - PCA;*
- *Prior to , lodge an application for an occupation certificate via the NSW Planning Portal as Post Consent Certificate – OC;*
- *Select under Item 2 above Occupation Certificate Application.*

Particulars of the certificate services to be carried out by Council under the contract can be found under the Terms & Conditions of Contract.

Note: This section only applies to determinations of applications for:

- **complying development certificates**
- **construction certificates**
- **subdivision works certificate**
- **occupation certificates**

After entering into this contract, the owner may elect to appoint Council as PC for the development. If the owner elects to appoint Council as PC for the development, upon lodgement of the form: ['Notice of Commencement of Building or Subdivision Work and appointment of Principal Certifier'](#) with Council, the owner agrees that:

- a) this contract will also apply to the subsequent appointment of Council as PC for the development;

- b) the information contained in the application form ['Notice of Commencement of Building or Subdivision Work and appointment of Principal Certifier'](#) and Appointment of Council as PC will be automatically incorporated into this contract;
- c) Fees and Charges will apply.

4 Modification of Certificates and Staged Construction Certificates

Note:

This Part only applies to determinations of application for:

- complying development certificates
- construction certificates for building works
- subdivision works certificate

After entering into this contract, the owner may seek to modify a current Complying Development Certificate, Construction Certificate or Subdivision Works Certificate for the development.

If a modification is sought, upon lodgement of the application form, via the NSW Planning Portal, for any of the above certificates with Council relating to the modification, the owner agrees that:

- this contract will also apply to the subsequent modification application for the development.
- the information contained in the application forms will be automatically incorporated into this contract.
- Fees and Charges will apply.

Or if a Staged Construction Certificate is applied for this contract applies across all stages and construction certificates related to the same application.

5 Development details

In addition to the site details contained in the attached Application form, the owner declares that the development can be described as (e.g.: single storey dwelling):

In addition to the site details contained in the attached Application form, the owner declares that the following development consent details apply (tick as applicable)

☐ **Development consent granted by consent authority**

Name of consent authority:

Development consent no./ identifier:

Date of development consent:

☐ **Development consent given by the issue of a complying development certificate (CDC)**

Name of certifying authority:

CDC no. / identifier:

Date of CDC (determination):

Details of plans, specifications and other documents approved by the Development Consent / CDC:

☐ **Part 6 certificates issued** under the Environmental Planning and Assessment Act 1979
(Construction Certificate, Compliance Certificate, Subdivisions Works Certificate, Occupation Certificate)

Type of Part 6 certificate issued:

Name of principal certifier:

Certificate no. / identifier:

Date of certificate (determination):

Details of plans, specifications and other documents the subject of any Part 6 certificate

6 Certifier's details

The details of the officers employed by Council as principal certifiers, any of whom may carry out certification work and inspections under this contract, can be found at www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/finding-and-appointing-a-certifier

7 Fees and Charges

Council's Schedule of Fees and Charges can be downloaded [here](#) or [Access our Fees and Charges here.](#)

Determination of Applications for Development Certificates

The applicant must pay the fees and charges for the determination of an application for a development certificate (including modification of a current certificate, where relevant) as specified in Council's Schedule of Fees and Charges.

These fees and charges must be paid to Council before, or at the time, the application for a development certificate is lodged with Council.

In the case of fees and charges payable for work arising from unforeseen contingencies, such as the assessment of alternative building solutions, these fees and charges will be calculated as specified in Council's Schedule of Fees and Charges.

Undertaking the functions of Principal Certifying Authority (PC)

The applicant must pay the fees and charges for Council to carry out the functions of a PC for the development as specified in Council's [Schedule of Fees and Charges.](#)

These fees and charges must be paid to Council in full at the time of lodging the PC appointment form (after the construction certificate or complying development certificate is issued) and before Council commences to carry out the functions of PC.

In the case of fees and charges payable for work arising from unforeseen contingencies, such as additional inspections, these fees and charges will be calculated as specified in Council's Schedule of Fees and Charges.

8 Statutory Obligations

The Development and Building Certifiers Regulation 2020 requires an information brochure containing details about the statutory obligations of certifiers, published by Fair Trading NSW to be attached to this contract. This document can also be accessed on the Fair Trading website:

www.fairtrading.nsw.gov.au/trades-and-businesses/business-essentials/building-certifiers

9 Principal Certifier (PC) Obligations

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

1. Not later than two days before any building work or subdivision work commences, the Certifier will:
 - a. notify the consent authority of the Certifier's appointment as PC
 - b. notify the Client of all inspections that are required to be carried out of the building work or subdivision work.
2. Ascertain, before any building work or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work.
3. Ascertain, before any residential building work commences, that 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 all critical stage inspections of the building work or subdivision work prescribed by the EP&A Regulation or required by the Certifier, or ensure that the inspections are carried out by another certifying authority. 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 certifying authority 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

8. 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.
9. 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

10 Principal Contractor Obligations

1. Before the commencement of any residential building work, the principal contractor must provide the PC with Home Building Compensation Fund Policy Insurance pursuant to the Home Building Act 1989.
2. The principal contractor must notify the PC of a date and time for the carrying out of each mandatory critical stage inspection and shall pay the PC the scheduled fees as outlined in Council's adopted Fees & Charges.
3. The principal contractor must rectify any defects identified by the PC during the course of each mandatory critical stage inspection to the satisfaction of the PC before the principal contractor carries out any further building work or at such other time as may be agreed to by the PC.
4. The principal contractor must not allow any occupation of the building to be permitted without first obtaining an occupation certificate (either partial or whole) from the PC.
5. The principal contractor must ensure that a construction certificate or complying development certificate has been issued prior to the commencement of any works.
6. The principal contractor must engage competent tradesman to carry out all aspects of the building works.
7. The principal contractor must provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the development consent, the construction certificate and any occupation certificate at the request of the PC.
8. The principal contractor must attend any meeting if required by the PC to do so.
9. The principal contractor must comply with any notices or orders that the PC issues.
10. The principal contractor must provide compliance certificates as requested by the PC.
11. The principal contractor must provide all information that the principal contractor reasonably can obtain to enable the PC to fulfil its obligations under this Agreement.

11 Owner Obligations

1. The owner must ensure that a construction certificate or complying development certificate has been issued prior to the commencement of any works.
2. The owner must ensure that the subject property is available for the PC to carry out the PC's obligations under this Agreement.
3. The owner must attend any meetings if required by the PC to do so.
4. The owner must not occupy the building until an occupation certificate (either partial or whole) has been issued by the PC.
5. The owner agrees that in the event of a partial occupation certificate being issued by the PC and there being outstanding work that is required to be completed by the owner or a condition of development consent that needs to be satisfied by the owner, the owner agrees to complete any outstanding work or satisfy any condition of the development consent within 5 years from the date of the partial occupation certificate.

12 Termination of This Agreement

This Agreement may be terminated if any of the following occurs:

1. Building works are commenced without the issue of a construction certificate
2. If the owner or principal contractor fails to provide Home Building Compensation Fund Policy pursuant to the Home Building Act 1998 if the building work is residential building work
3. If the PC terminates this Agreement then the principal contractor and owner must pay any money owing to the PC for work done and costs incurred by the PC up to and including the date of termination of this Agreement.

13 Replacing PC

The appointed PC can only be changed or replaced by another PC with the approval of NSW Fair Trading and/or the newly appointed PC.

14 Governing Law

The parties agree that the laws of New South Wales and in particular the Environmental Planning & Assessment Act 1979 and its Regulations govern this Agreement.

15 Definitions

Performance Solution has the same meaning as the term in the National Construction Code.

BCA means the Building Code of Australia including all applicable amendments.

Building means that which is the subject of the Building Works.

Building Contract means the contract to construct the Building Works that the owner enters with the builder.

Building Works means the building works for which a Construction Certificate is to be issued in accordance with this agreement and is referred to in the "Land to be Developed" section of the Application Form relating to the subject works.

Certificates mean statutory certificates and non-statutory certificates.

Certifying Authority means a Certifying Authority within the meaning of the Act.

Owner means the owner or the owner's agent.

Competent people means people authorised to carry out any work associated with Building Works under the Act and includes contractors.

Complying Development Certificate means a Complying Development Certificate within the meaning of the Act.

Construction Certificate means a Construction Certificate within the meaning of the Act.

Deemed to Satisfy Provision has the same meaning as the same term in the Building Code of Australia.

Development Consent means a Development Consent within the meaning of the Act.

Fire Safety Certificate means a Fire Safety Certificate within the meaning of the Act.

Inspection Schedule means the mandatory inspections required under the Act.

NCC means the National Construction Code including all applicable amendments.

Notice includes any notice issued under the Act or this agreement and in respect of notices in this agreement must be made by pre-paid ordinary mail, facsimile transmission or notice by hand delivery to the Address for Notices in this agreement.

Occupation Certificate means an Occupation Certificate within the meaning of the Act.

Order means an Order within the meaning of the Act.

Practicable completion means the date the builder has completed the Building Works in accordance with the Building Contract.

Principal Certifier (PC) is a building practitioner as defined under the Environmental Planning and Assessment Act 1979 (NSW) (as amended).

Regulations means the Environmental Planning and Assessment Regulation 2000 (NSW) (as amended) and all applicable amendments.

Schedule means the Schedule in this agreement.

Scope of Works means obligations in this agreement and any other tasks set out in the Schedule.

Statutory Notices means those notices that are issued by the PC in accordance with the Act.

16 Execution of Contract

This contract is made on the date it is signed by Council:

When the contract is received it will be signed by an authorised officer and a copy of the executed contract will be emailed to you for your records.

By signing this contract, you declare that you:

- (i) you have freely chosen to engage the Shoalhaven City Council to act as certifier, and
- (ii) you have read the contract and any document accompanying the contract and understand the roles and responsibilities of the person and the registered certifier.

Individual Owner

Owners Name:

Owners Signature:

Date:

Authorised Officer SIGNED for and on behalf of the Shoalhaven City Council by its duly authorised officer.

Authorised Officer Signature & Registration Number:

Name of Authorised Officer:

Date:

Important information

Public Access to information

Pursuant to the *Government Information (Public Access) Act 2009* (GIPA Act) Council is required to make certain information publicly available, including by way of publication on public registers and on its website. Information submitted on and with this form may be made available to the public, unless there is an overriding public interest against disclosure of this information.

Privacy

The personal information that Council is collecting from you on submission of this form is personal information for the purposes of the *Privacy Act 1998*. The intended recipients of the personal information are officers within the Council and third parties for the purpose of assessing the application as well as any person wishing to inspect the application in accordance with the *Local Government Act 1993* or the GIPA Act. The personal information may also be included on a public register and displayed on Council's website. The supply of personal information by you is voluntary. However, if you cannot provide or do not wish to provide the information required, Council will be unable to process your application. You may make application for access to, or amendment of, information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the relevant legislation. Enquiries concerning this matter can be addressed to Council by telephoning (02) 4429 3111

Lodgement details

This form must be submitted with your application at lodgement. Please refer to the application form lodgement details or for applications lodged via the **NSW Planning Portal**, please attach to your application at time of lodgement.

For further information regarding your application please contact us by:

Email: council@shoalhaven.nsw.gov.au or

Telephone: Nowra 4429 3211 OR Ulladulla

In person: Council offices at Bridge Rd, Nowra or Deering St, Ulladulla.

Once your application is received, a Council Officer will contact you if further information is required.

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.

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:

¹ Visit www.fairtrading.nsw.gov.au and search 'certification contracts'.

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

What does a registered building surveyor do?

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

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

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

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

What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work² with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

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.

² Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

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.

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