

# Application Form & Certification Contract

PPLICATION TYPE											
Complying Development Certificate & engagement as				Construction Certificate & engagement as Principal Certifier							
incipal Certifier				Engagement as Principal Certifier							
DEVELOPMENT SITE DETAIL	S										
Lot No.:		Section N	lo.:					DP /	/ SP No.:		
Street Address:		-									
Suburb:								Pos	tcode:		
THE DEVELOPMENT											
Description of Developm	ient:										
Value of Work:	\$ Building Classification:										
If any bonded asbestos r in carrying out the devel							emoved				n
COMPLYING DEVELOPME	NT (Releva	nt State Envir	onmental Pl	anning Polic	cy (SEPP	) the application is t	to be assess	sed under)			
SEPP (Exempt & Comp	olying Dev	elopment C	Codes) Part	3 Hous-		Greenfield	Housing Co	ode			
SEPP (Exempt & Complying Development Codes) Part 3 Hous- ing Code     Greenheid Housing Code       SEPP (Exempt & Complying Development Codes) Part 3 Hous-     SEPP (Exempt & Complying Development Codes)							evelopment	Codes) Pa	irt 4 H		
SEPP (Exempt & Comp	olying Dev	elopment C	Codes) Part	3A Rural		ing Alteration	ons Code				
Housing Code							npt & Com	nplying D	evelopment	Codes) Pa	irt 7 D
SEPP (Exempt & Comp	olying Dev	elopment C	Codes) Part	3B Low		lition Code					
Rise Housing Diversity	Code					SEPP (Affor	rdable Rer	ntal Hous	ing) Part 3 H	ousing Coc	le
SEPP (Exempt & Comp	olying Dev	elopment C	Codes) Part	3C							
DEVELOPMENT CONSENT NU	UMBER										
DA No. or CDC No.: Approval Authority:							Issue Date:				
AUSTRALIAN BEAURUE OF S	TATISTICS										
ALL NEW BUILDINGS (Pleas		the following	7)								
The number of storeys (inclu				oosed huildi	nσ						
The gross floor area of the b		giouna noor.			115						
The gross site area of the lar		the building	is to be ered	cted (m²)							
RESIDENTIAL BUILDINGS (P				, ,							
The number of existing dwe	ellings on the	e subject site									
The number of existing dwe	llings to be	demolished									
The number of dwellings to	be included	in the new b	ouilding								
Is the new building to be attached to any existing building								Yes	N	lo	
Does the site contain a dual occupancy?								Yes	N	lo	
Does the development involv	ve the erecti	on of a wall t	o a boundary	/ that has a v	wall less	than 0.9m from the	boundary		Yes	- N	lo
Does the development involv	ve the demo	lition or remo	oval of a wall	to a bounda	ary that l	has a wall less than (	0.9m from t	he bound-	Yes	N	lo
ary	o the meteri	ials to be use	d in constru	ation of the	n ou hu	ilding (c)					
MATERIALS (Please indicate					new bu		Cada		E	Code	
Walls Prick (doublo)	Code	Roo Tiloc	T	Code		Floor	Code		Frame	Code	
Brick (double) Brick (veneer)	11 12	Tiles   Conc	rete/slate	10 20		Concrete/slate Timber	20 40		Timber Steel	40 60	
Concrete/stone	20		cement	30		Other	80		Aluminum	70	
Fibre cement	30	□ Steel		60		Not specified	90		Other	80	
	40		inium	70					Not specified	90	
Timber									· ·		
Timber Curtain glass		Other	r	80							
Timber Curtain glass Steel	50 60	Other   Not s		80 90							
Curtain glass	50		r pecified		_						_
Curtain glass Steel	50 60	□ Not s			_						
Curtain glass Steel Aluminum cladding	50 60 70	□ Not s			_						



OWNER DETAILS						
Name:						
Postal Address:		Suburb:		Postcode:		
Phone:	Mobile:	Email:				
APPLICANT DETAILS (If different to	Owner details)					
Name:						
Postal Address:		Suburb:	Postcode:			
Phone:	Mobile:	Email:				
DETAILS OF PRINCIPAL CONTRACTO	DR / OWNER BUILDER	1				
Licensed Builder	Licensed Builder 📮 Owner Builder 📮			nber:		
Name:	Address:					
Phone:	Mobile:	Email:				
FEES AND CHARGES						
Certifier are set out in the accept for a Construction/Development Certifier commences to carry out shall be issued within 21 days a determining and finalising the ap and any fees for obtaining or lod Fixed fee agreement The Certifier will under ake in determining and finalising the ap and any fees for obtaining or lod	mination of an application for a Development ed fee proposal or as otherwise age certificate and the carrying out of those functions. In respect to any u fter completion of such work. The plication as set out in the Description ging documents, <b>except</b> for conting a evelopment each involved in inalising the application as set out s, including the costs of any erection d any fees for obtaining or outging ingency items (if any) specified be-	the functions o inforeseen conti certifier will un on of Services, in- gency items ( ) ivariable The Certifio	t fees & charges for the dete f the Principal Certifier are t ngency work provided under ndertake for a fixed fee all cluding the costs are and cluding the costs are and e costs agreement will undertake all work involve 3 the application as set in the D	ermination of an application to be paid in full before the r this Agreement, an invoice work involved in assecting ovid the control party ed in assessing, determining		
Fixed fee: \$ Contingency items#* Re-Inspection \$250 plus GST Additional inspection outside ins construction \$300 plus GST Further/more than one Occupati	Certifier's fee for services: \$ Third party fees for services (including for another accredited certifier's services)* \$ Fees for certificates and lodgment of documents*					

Compliance inspections due to a complaint received \$250 plus GST Contingency items#\*

# If applicable, insert description of the contingency item – eg, 'additional inspection if access not available.' If no provision is to be made for contingency items, write N/A'. \*Insert amount or basis of calculation e.g. "At cost" or "\$......per hour".

- a) Contingency fees and charges
  - (i) In the case of fees and charges that may be payable for work arising from unforseen contingencies, the basis on which those fees and charges are to be calculated are set out below.
  - (ii) In respect of any unforseen contingency work provided for under this Agreement, the Certifier is to send an invoice to the Client within 21 days after the completion of any such work.
  - (iii) In the event of an Interim/Part/Partial Occupation Certificate being issued an additional fee no less than \$400 plus GST is applicable for the additional final inspection and issuance of the Final/Whole Occupation Certificate and lodgment of documents to Council.
  - (iv) The fee schedule allows for one (1) of each of the required critical stage inspections to be carried out, re-inspections or additional inspections of the same type (including staged construction) will incur a fee of \$250 & \$300 plus GST per inspection respectively.
  - (v) Should a critical stage inspection (as required by Cl 162A of the EP & A Regulations) not be carried within 1 year of the previous critical stage inspection an additional fee equal to fifty percent the amount of the fee proposal applies.
  - (vi) Should a critical stage inspection (as required by Cl 162A of the EP & A Regulations) not be carried within 2 years of the previous critical stage inspection an additional fee equal to the amount of the fee proposal applies.
  - (vii) Should a critical stage inspection (as required by Cl 162A of the EP & A Regulations) not be carried within 3 years of the previous critical stage inspection an additional fee equal to 2 (two) times the amount of the fee proposal applies.
  - (viii) Should a critical stage inspection (as required by Cl 162A of the EP & A Regulations) not be carried within 4 years of the previous critical stage inspection an additional fee equal to 3 (three) times the amount of the fee proposal applies.
  - (ix) Should a critical stage inspection (as required by Cl 162A of the EP & A Regulations) not be carried within 5 or more years of the previous critical stage inspection an additional fee equal to 5 (five) times the amount of the fee proposal applies.
  - (x) A standard fee of \$150 plus GST applies per per month applies where a final inspection has been carried out and there has been a delay in completing any required works and or provision of any required documentation.

## DM Certifiers Pty Ltd | PO Box 220 Thornleigh NSW 2120

## LODGEMENT & PRINCIPAL CERTIFIER DECLARATION - All property owners must consent to, and sign, this application

- i. I/We hereby apply for a Construction Certificate (CC); Complying Development Certificate (CDC); Occupation Certificate (OC) or any other application or modification required or related to this development.
- ii. I/We appoint Domenic Di Matteo Pty Ltd (Accreditation No. 1869) as the Principal Certifier (PC) as outlined in the Environmental Planning & Assessment Act, 1979 (as amended).
- iii. We consent to the certifying authority, or an accredited certifier, or consent authority, entering the subject property at any reasonable time, for the purpose of carrying out any mandatory critical stage inspection as required by the Act, or a regulatory inspection where required.
- iv. Where a Complying Development application requires neighbour notification in accordance with the Environmental Planning & Assessment Regulation, I/we agree to allow DM Certifiers Pty Ltd to notify occupants of neighbouring properties of the subject site with the applicantname, address and contact details (pre-approval notification – Clause 130AB), and/or details of the approved development (preconstruction notification – Clause 136AB).
- v. I/We acknowledge that I/we must comply with all relevant DA or CDC conditions and/or pre-conditions of consent nominated in the approval documentation prior to works commencing, and that the PC can't be appointed until all pre-conditions have been complied with.
- vi. I/We advise that building works have not commenced, and will not commence, until 2 days after the Appointment of PC and Notice of Commencement have been provided to Council,
- vii. I/We declare that all the information provided is true and correct. I/We also understand that, if incomplete, the application may be delayed or rejected, and further information may be requested.
- viii. I/We agree to receive approval documentation via electronic communication.
- ix. I/We have freely chosen to engage Domenic Di Matteo.
- x. I/We have read DM Certifiers Pty Ltd's Contract for Certification Work and understand the role and responsibilities of each party to the Contract. I/We agree to the execution of the Contract.
- xi. By signing this agreement either by hand or electronically, I/we agree to be legally bound by the terms of this agreement.

OWNER	APPLICANT	NAME	POSITION (If company owned)	SIGNATURE

Date signed:

\_Application received on: \_\_

OFFICE USE ONLY

### Please note:

- An application may NOT be made by a person who will carry out the building work, unless that person owns the land on which the work is to be carried out. An application may be made by any other person, provided the owner has given written consent.
- The Principal Certifier (PC) may NOT be appointed by a person who will carry out the building work, unless that person owns the subject land. The PC is to be appointed by the person who has the benefit of the Development Consent (ordinarily the owner).
- If signing on the owner's behalf, please state your legal authority, and provide documentary evidence (e.g. copy of Power of Attorney, trust deed, etc.)

 If signing on behalf of a body corporate or company, the application should be signed by two authorised representatives of the Company, and the names and positions of authority in the Company must be stated on the form. If you are the Sole Director, or are signing under Common Seal, this should be stated, and one signature will suffice. Alternatively, authority may be provided on Company letterhead. Terms and Conditions: (ii) EFFECT OF CONTRACT Definitions and interpretation (iii) Accurate means: (iv) accurate, complete, correct and suitable for (a) use by the Certifier; (v) (b) free from any Ambiguity and compliant with all (vi) Applicable Laws; and (c) prepared and issued by a person or persons competent, experienced, qualified and suita-(vii) hle Agreement means the following documents, in order of Item means an agreement this contract; precedence: (d) these General Terms (including "Details" and "Execution" sections); (e) (f) Agreement Items Development Particulars (g) Scope of Services (h) Special Conditions Information Sheet and (i) (j) any other Contract Documents (fee proposal page 2) : Ambiguity means error, omission, inconsistency, ambi- Project means the project specified in Section B; guity, discrepancy or other defect; Applicable Laws means: (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works or the particular part thereof Services means all of the work to be performed by the 3.2 is being carried out; (b) certificates, licences, consents, permits, approvals and requirements of organisations hav ing jurisdiction in connection with the carrying Site means the location specified in Section B, and inout of the Works, including any construction certificates and development approvals issued by Council; (c) applicable standards issued by Standards Aus- Special Conditions means the special conditions; tralia (whether voluntary or mandatory) and the National Construction Code (including the Building Code of Australia); (d) requirements of any government, statutory or other Authority having jurisdiction over the Works or the Site: Approval means any approval, certification, decision, or determination that the Certifier may grant or make, as part of, or as a consequence of, performing the Services in accordance with the Certifier's professional duties; Authority means any government or governmental semi-governmental, quasi-governmental, administrative, fiscal or judicial body, depart-ment, commission, authority, statutory authority, local authority, tribunal or agency; BDC Act means the Building and Development Certifiers Act 2018 (NSW), and BDC Regulations means the Building and Development Certifiers Regulation 2020 (NSW); Business Day means any day other than: a Saturday, Sunday or public holiday in New South Wales, or 27, 28, 29, 30 or 31 December; Client Deliverables means all information, documents, and other particulars which the Certifier requires the Client to provide (or which the Client provides, or which is provided to the Certifier on behalf of the Client by any person) which (a) are necessary for the Certifier to carry out the Services including third party inspection reports and other documents as requested by, or (b) provided by or on behalf of the Client to, the Certifier from time to time; Commencement Date means the date the application (d) a reference to "includes", "including" and "in-has been signed ; clude" is to be read as if followed by the words Contract Sum means the amount specified on page 2; Due Care and Skill means such skill, care, and diligence as is generally exercised by competent members of the consulting profession performing services of a similar nature to the Services, at 2. the time the Services are provided; Insolvency Event means: the Client informs the Certifier in writing, or (a) creditors generally, that the Client is insolvent or is financially unable to proceed with the Agreement; 2.2 (b) execution is levied against the Client by a creditor: (c) if the Client is an individual person or a part nership including an individual person, and if 2.3 that person: commits an act of bankruptcy; (i) (ii) has a bankruptcy petition presented against him or her or presents his or her own petition; (iii) is made bankrupt: makes a proposal for a scheme of arrangement (iv) or a composition; or (v) has a deed of assignment or deed of arrange- 2.4 ment made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing the Agreement; or 3.1 if the Client is a corporation and if: (d) (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

it enters a deed of company arrangement with creditors; a controller or administrator is appointed; an application is made to a court for its winding up and not stayed within 14 days; a winding up order is made in respect of it; it resolves by special resolution that it be wound up voluntarily (other than for a mem ber's voluntary winding up); or a mortgagee of any of its property takes possession of that property; Loss means any liabilities, losses, damages, expenses, and costs (including legal costs on a full indem-nity basis and whether incurred or awarded) of any kind or nature; No Claim means no claim on any basis whatsoever. whether contractual, tortious (including in negligence), statutory or pursuant to any other principle of law or equity, and includes any claim for moneys (including under quantum meruit): Registered Body Corporate, Registered Certifier and Registered Individual each have the same meanings as are given to those terms under the BDC Act; Certifier identified in the Scope of Services, as varied in accordance with the these General Conditions; 4.1 cludes any other area or location that the Certifier may reasonably require access to in order to perform the Services; Variation means any increase, decrease, amendment, or modification to the Services determined by the Certifier to be necessary for completing the Services (or any delay or disruption to the Services due to an event for which the Certifier is entitled to an extension of time), including those identified as potential variations under (Scope of Services); Variation Sum means the amount the Certifier charges the Client for work performed as a result of a Variation, calculated at the hourly rate specified in Item 7 where applicable, plus Disbursements and any other amounts as otherwise reasonably determined by the Certifier (and including a reasonable amount of at least 10% for profit and overheads in respect of any Vari- 5.1 ations which increase the amount payable by the Client, and no amount for profit and overheads for any Variations which decrease the amount payable by the Client). WHS Legislation means all law relating to work health and safety (including the Work Health and Safety Act 2011 (NSW) (WHS Act), Work Health and Safety Regulation 2011 (NSW) ("WHS Regulations") and any code of practice approved under the WHS Act. In this Contract: words herein denoting persons shall also denote companies, and words denoting the singular shall include the plural: ere an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

without limitation". A reference to a person include an individual, firm or a body, corporate or unincorporated. A reference to a party is a reference to a party to this Contract; Services

The Certifier agrees to perform the Services with Due Care and Skill, and in accordance with 6 all requirements of the BDC Act and BDC Regu- 6.1 lations, including the Code of Conduct pre scribed therein.

6.2 The Services will be performed by the Registered Certifier (or Registered Body Corporate and Registered Individual) specified in Section

The Client acknowledges that any Approval is at the Certifier's discretion, subject to the Certifier exercising its discretion in good faith and in compliance with all Applicable Laws. Entry into, or performance of any act or obligation under, this Agreement must not be construed as confirmation that any Approval that may be granted or made by the Certifier, will be made If the Services involve carrying out functions under the Environmental Planning and Assessment Act 1979 (NSW), particulars of the relevant development are provided in Annexure B. **Client Obligations** 

The Client must, at its own cost, promptly: give the Certifier safe access to the 6.3 (a) Site as and when the Certifier requires, to enable the Certifier to perform the

Services (and notify the Certifier of any7. changes to that access); and 7.1 provide the Client Deliverables to the

- Certifier: coordinating other contractors or per (c) sons involved in the Project so as not to impede the Certifier's performance of the Services:
- (d) notify the Certifier of anything which the Client is aware of or becomes aware of which could materially affect the Certifier's performance of the Services, including any Authority requirements, any design changes, or any defects in the works the subject of the Services;
- comply with all of the Client's obliga- 7.2 (e) tions under the WHS Legislation;
- (f) notify the Certifier if the Client anticipates that there is a material risk of it being the subject of an Insolvency Event, or otherwise being unable to perform this Agreement; and
- otherwise cooperate with the Certifier and do all other things reasonably nec-(g) essary so that the Certifier is able to perform the Services.

The Certifier is not liable for any Loss or delay that may result from the Client's failure to comply with this clause 3. Client Deliverables

#### The Client:

(b)

- acknowledges that the Certifier, in (a) performing the Services, is relying upon the Client Deliverables being Accurate;
- (b) warrants to the Certifier that the Cli-8.1 ent Deliverables are Accurate;
- (c) has No Claim against the Certifier (or any employee of the Certifier), in relation to or connection with any risks, Losses and delays suffered or incurred by the Client as a result of the Client 8.3 Deliverables not being Accurate, including where that inaccuracy results in some defect or non-compliance in 8.4 the Services:
- (d) accepts all risks, Losses and delays associated with any Ambiguity in relation to the Client Deliverables.

#### Ambiguities

In the event of any Ambiguity in or between the documents forming part of the Agreement 9.1 or comprised in the Client Deliverables:

the order of precedence set out in the definition of "Agreement" will apply; (a)

- otherwise, the Certifier may resolve (b) 9.2 the Ambiguity in whichever way the Certifier considers appropriate in its absolute discretion, and notify the Client accordingly, in which case:
  - (i) to the maximum extent permitted at law, the Client will have No Claim in relation to the resolution of the ambigu ity referred to in subclause (b) above; and
  - (ii) the Certifier will be entitled to a deemed Variation to the ex- 9.5 tent that the resolution of the Ambiguity results in any increase, decrease, amend ment, or modification to the Services which the Contractor did not anticipate as at the date of this Agreement.

#### Legislative changes

Each party must perform its obligations under this Agreement in compliance with all Applica-9.6 ble Laws.

Subject to clause 6.3, if there is a change in Applicable Laws on or after the date of this Agreement, and that change requires a Variation in 97 order for the Services to be performed in accordance with this Agreement, then:

- the Certifier is entitled to a deemed (a) Variation and shall notify the Client of 10. the additional Variation Sum which 10.1 the Client must then pay; and
- (b) once the Client pays the Variation Sum referred to in the previous subparagraph, the Certifier will perform the 10.2 Variation;
- (c) to the maximum extent permitted at law, the Client will have No Claim in relation to the change in Applicable Laws other for breach of the obliga-11.

tion referred to in subclause (b) above The Client will have No Claim against the Certifier as a result of or in any way connected with any change in Applicable Laws, which occurs after the Certifier has ceased to perform the Services.

Intellectual property and Confidentiality Certifier's intellectual property:

- Subject to the Client complying with (a) its obligations under the Agreement. the Certifier grants to the Client a nonexclusive, royalty-free, revocable li-cense to use the intellectual property in any document which the Certifier gives to the Client (that was prepared by the Certifier created solely for the benefit of, or solely and specifically in relation to, the Services) for the purpose of completing the Project.
- Ownership of the intellectual property rights in the documents referenced (b) under clause 7.1 vests in the Certifier
- Client's intellectual property: (a) The Client grants the Certifier an unre stricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Certifier to perform the Services.
- The Client warrants that all infor-(b) mation contained in the Client Deliver ables is Accurate will not infringe any intellectual property rights of any person. The Client indemnifies and holds harmless the Certifier against any Loss arising from a breach of the warranty in clause 7.2(b).
- Each party agrees: to keep the other party's confidential (a) information confidential; and (b) to not disparage the other party.

#### Payment

7.3

The Client must pay the Certifier the Contract Sum within 2 Business Days of entry into this Agreement and in any event, prior to the Certifier commencing the Services

The Certifier must issue a valid tax invoice to the Client in respect of the Contract Sum The Certifier reserves the right to withhold the issue of any certificates until such time as all outstanding invoices have been paid in full. The Client acknowledges that payment of the Contract Sum does not guarantee or imply that any certification will be issued by the Certifier; rather the Certifier can only provide certifications to the extent the conditions for certification are satisfied.

#### Variations and Variation Sum

If, in the Certifier's reasonable opinion, a Variation has occurred or is required, the Certifier must provide the Client written notice of such Variation.

Within 2 Business Days of the date the Certifier provides notice under the previous subclause, the Client must provide written notice to the Certifier if it disputes the Variation, and the reasons for that dispute.

If there is any dispute about the Variation, then the Client may either approve the Variation pending the outcome of any dispute resolution process, or the Certifier may suspend the Services under clause 15.1(d).

The Client acknowledges that Variations may include those specified in Annexure C (Scope of Services).

If, in the Client's reasonable opinion, a Variation is required, the Client must provide the Certifier with written notice providing details of the proposed Variation to the Certifier, at least 5 Business Days prior to the Certifier being required to perform work in relation to the Variation. If the Certifier agrees that a Variation is required, the work required in relation to the Variation is deemed to form part of the Services.

The Certifier is entitled to charge the Client the Variation Sum for work performed under any Variation, and shall issue an invoice in respect of the Variation Sum to the Client.

The Client must pay invoices issued for a Variation Sum within the time specified on the relevant invoice or if no such time is stated, within 7 days from the invoice date. Disbursements

The Certifier may invoice the Client for the cost of any disbursements, plus a reasonable margin for profit and overheads, including as listed in

Item 9. The Client must pay invoices issued for a disbursement within the time specified on the relevant invoice or if no such time is stated, within 7 days from the invoice date

#### **Overdue Amounts**

If the Client does not pay the Certifier in accordance with this Agreement then, without prejudice to any other rights or remedies the Certifier may have: (a)

the Certifier may charge the Client interest from the day after the relevant

- invoice's payment due date, until payment is made, at the rate specified in Item 8:
- the Client indemnifies the Certifier for (b) its costs and expenses in recovering
- 12. Time and Completion 12.1
- The Certifier must commence the Services by the Commencement Date, and complete them within a reasonable period of time.
- The Certifier is entitled to an extension of time 12.2 for completing the Services, if the Certifier is delayed in performing the Services by:
  - an act, default, or omission of the Cli-(a) ent, its agents, employees, or any other party associated with the Project (including a suspension or Variation);
  - any change in Applicable Laws; (b) (c) any Client Deliverable not being Accu-
  - rate; or
  - any other act, matter, event or thing (d) beyond the Certifier's reasonable Control.
- The Certifier is not liable for any delay to the 16.2 12.3 Project caused by the Certifier completing the Services in accordance with this clause 12.
- 123 Pursuant to Part 7, Division 1, Section 49 of the Building and Development Certifiers Regulation 2020 records are required to be kept for 10 years, the certifier is not responsible for advising the cleint of any upcoming time where records are to be accessed. 16.3
- 13.Insurance Details Name of Insurer: Lloyd's Australia Limited Address: Level 9, 1 O'Connell St, Sydney NSW 2000 Policy B0831IN0027723 No
  - 14/05/2023 Cover: From to:

16.4

(a)

(b)

- 14/05/2024
- Liability Limit 14/05/2024 The Certifier's aggregate liability to the Client **14.** 14.1 arising in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of: the amount of the Contract Sum; (a)
- 14 2 If, and to the extent that, clause 14.1 is void as a result of section 64A of the Australian Consumer Law under Schedule 2 of the Competition and Consumer Act 2010 (Cth), then the Certifier's liability for a breach of a condition or warranty is limited to:
  - the supplying of the relevant Services (a) again; or 16.5
  - (b) paying the cost of having the Services supplied again.
- 14.3 The Certifier's liability to the Client is excluded in relation to any loss of profit, loss of any con-tract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any other indirect or consequential losses or damages arising in connection with the Agreement.
- Clauses 14.1 and 14.3 do not limit or exclude 14.4 the Certifier's liability in respect of claims, ac tions, costs, losses, damages or liability arising due to:
  - liability which cannot be limited at (a) law:
  - (b) fraudulent or criminal conduct; o (c) any matters listed in Item 11.
- Suspension
- 15.1 The Certifier may suspend the Services for so long as:
  - 17 the Certifier considers that there is (a) 17.1 any risk to health or safety in providing the Services or entering any areas of the Site required to perform the Services (including because any persons on the Site are abusive or threatening);
  - the Client fails to provide any Client (b) Deliverables required by the Certifier; 17.2 the Client has not paid any amount by (c)
  - the time that it is due: (d)
  - the parties are in dispute in relation to a Variation (and that dispute has not resolved by a final and binding form of dispute resolution). 17.3
- 15.2 The Client indemnifies and holds harmless the Certifier for any additional costs or expenses the Certifier incurs in relation to a suspension 18.1 under this clause 15, if the suspension was not caused solely by an act or omission of the Certifier.

#### Termination 16.

- The Certifier may terminate this Agreement if 16.1 the Client:
  - (a) breaches a material term of this Agreement; (b) breaches a term of this Agreement and fails to remedy that breach within a reasonable period e not to of the Certifier's notice to so rectify;
  - (c) becomes or is likely to become subject to any Insolvency Event, and fails to provide proof of 18.2 its ability to comply with all of its future obligations under the Agreement including with respect to payment (which proof shall include a current asset liability statement, profit loss statement and declaration

- of ability to pay by a current director 18.3 or other officer), or is unable to pay its debts when they fall due;
- (d) fails to pay any amount owing by the date due; or
- ceases to carry on business, (e) or if the Certifier:
- 18.4 (f) is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Ap-
- plicable Laws: or becomes aware of any conflict of in-(g) terest, which conflict may prevent the Certifier from complying with relevant laws or regulations if the Certifier continues to perform the Services, irrespective whether such conflict existed 18.5 before or after entry into this Agreement; 19
- gives the Client 30 days notice that the 19.1 (h) Certifier wishes to terminate for the Certifier's convenience.
- The Client may terminate this Agreement by giving the Certifier written notice to that effect 19.2 if the Certifier fails to remedy a substantial breach of a material term of this Agreement 19.3 within 30 days of being requested by notice in writing to do so by the Client.
- If the Certifier has an entitlement to terminate the agreement it may exercise that right with or without notice, in the Certifier's absolute discretion
- If the Client receives a notice from the Certifier 20. that: 20.1
  - the Certifier has terminated the Agree ment - the Client must as soon as possible: appoint a replacement certifier to take over the certification role com prised in the Services: advise the Certifier of that replacement; and notify all 20.2 relevant Authorities of that replace ment:
  - the Certifier will terminate the Agree ment - the Client must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement certifier to take over the certification role comprised in the Ser- 20.3 vices from the date of termination of the Agreement; advise the Certifier of 20.4 that replacement; and notify all relevant Authorities of that replacement.
- On termination of this Agreement: 20.5 (a) any amounts owing to the Certifier in respect of the Services up to and including the date of termination (together with any other amounts which the Certifier would be entitled to, but 20.6 for the termination, for work performed up to and including the date of termination) become immediately due
- and owing; if the termination is effected under (b) clauses 16.1(a) - 16.1(f), the Certifier is 20.7 entitled to its usual common law damages in respect of termination, includ ing damages for breach and lost profit;20.8 and
- both parties must return or destroy (at (c) the relevant discloser's request) any confidential information held by the other party

#### Force Majeure

- The Services may be totally or partially suspended by the Certifier during any period in 20.9 which the Certifier may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside the Certifier's reasonable control or where such performance is rendered materially more expensive by such circumstances. Circumstances beyond the Certifier's reasonable control include strikes. lockouts or other labour difficulty, inability to obtain any necessary materials or services on usual terms, failure of software, hardware or communication network, or pandemic. 20.10
- The Certifier incurs no liability to the Client in respect of such suspension.
- Dispute Resolution If a dispute or difference (Dispute):
- arises in respect of any fact, matter or (a) thing arising out of, or in any way in connection with, this agreement, or the conduct of a party in relation to the subject matter of this agreement at any time; and
- (b) is not required to be determined in accordance with a procedure in another clause in this agreement,
- the Dispute must be determined in accordance with the procedure in this clause 18.
- If a Dispute arises, any party may give the other(s) a notice (Dispute Notice) specifying:
- particulars of the Dispute; and (a)
- (b) the position which the party believes is correct.

- If a Dispute Notice is given, the parties must 20.11 procure that their respective nominated representative holding the position specified in Item 12 meet and undertake genuine and good faith negotiations with a view to resolving the Dispute specified in that Dispute Notice. If the Dispute specified in a Dispute Notice is not resolved within 10 Business Days after the date on which the parties receive that Dispute Notice, the Certifier may elect that the Dispute must be referred to mediation in which cases the mediation will be in accordance (a)
  - with, and subject to, the Mediation Rules of the Resolution Institute; the parties must participate in the me- 21
- (b) diation genuinely and in good faith. 21.1 This clause 18 will survive termination, completion, or expiration of this Agreement. 22.
- GST "GST Law" has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Words or expressions used in this clause 19 which are defined in GST Law have that defined meaning unless otherwise provided. Except where express provision is made to the contrary, any amount that may be payable for the Contract Sum (and Variation Sum, if relevant) under this Agreement is exclusive of any GST. The applicable GST amount payable must be added to the Contract Sum (and the Variation Sum, if relevant). General

To the extent permitted by law, this Agreement constitutes the entire Agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

The Client agrees that, other than is expressly stated in this Agreement, in entering into the Agreement it has not relied upon any representation, warranty, or inducement by the Certifier nor is any representation, warranty or thing made or done by the Certifier to be inferred, incorporated or implied into the Agree ment.

This Agreement may only be varied by a document signed by or on behalf of each party. The Client must not assign or novate this Agreement without the Certifier's prior written consent.

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

This Agreement may be executed electronically and in a number of counterparts and by the parties on separate counterparts. Each counterpart comprises the Agreement of each party who has executed and delivered that counterpart.

. A party's rights and obligations do not merge on completion of any transaction under this agreement.

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in re spect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect. Without limiting any other provision of this Agreement, the parties agree that:

- (a) each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement. Without limiting any other provision of this
- Agreement, the parties agree that: (a)
  - failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement;
- a waiver given by a party under this (b) Agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and no waiver of a breach of a term of this (c)
  - Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

This Agreement is governed by the law specified in Item 13. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state or territory and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement, and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue is in accordance with the provisions of this clause 20.11.

#### Employees

Employees who may provide services under this contract are: Domenic Di Matteo (BDC1869), Alessandro Riggio (BDC 3223)

Inspections 22.1 Any inspections of the development site or the nominated building works of the development under the Environmental Planning & Assessment Act or the Environmental Planning & Assessment Regulation will be carried out by the nominated Certifier or by another Accredited Certifier as agreed by the respective parties listed above. The PCA shall carry out or arrange to be carried out as many inspections as the PCA considers necessary in addition to those nomi nated as mandatory by the Environmental Planning and Assessment Act, 1979 (as amended). Any inspections undertaken, and the notification of the result of any inspection that has been undertaken, in relation to the subject development are prepared and provided to the Owner/s solely for the purpose specified, for the Owner/s exclusive use in regard to the property identified only, and on the undertaking/condition that the Owner/s shall not communicate the contents of the notification of result to any third person who might act to his/her detriment on the basis of the notification. The Owner/s agrees to indem nify the accredited certifier and DM Certifiers Pty Ltd against any loss or damage suffered as a result of the Owner/s failure to observe this abovementioned clause. All inspections undertaken are based on a visual inspection and do not comment therefore on aspects, faults or otherwise, which are below ground level, covered up in any way, or which are not apparent at the time of inspection. No indication is given as to the adequate performance of any plumbing, hydraulic, gas or electrical appliance or fitting that may be installed or included in the building or on the site. Any notification of the result of an inspection is not intended to imply compliance or otherwise with any requirements of any Local Government Authority. Any parts of any structure that have been or are covered, unexposed or inaccessible will not be inspected and there fore any notification of the result of an inspection will no have no reference to those parts. Any inspections of the development site or the nominated building works of the development under the Environmental Planning & Assessment Act or the Environmental Planning & Assessment Regulation will be carried out by the nominated Certifier or by another Accredited Certifier as agreed by the respective parties listed above. The PCA shall carry out or arrange to be carried out as many inspections as the PCA considers necessary in addition to those nominated as mandatory by the Environmental Planning and Assessment Act, 1979 (as amended).

Any inspections undertaken, and the notification of the result of any inspection that has been undertaken, in relation to the subject development are prepared and provided to the Owner/s solely for the purpose specified, for the Owner/s exclu-sive use in regard to the property identified only, and on the undertaking/condition that the Owner/s shall not communicate the contents of the notification of result to any third person who might act to his/her detriment on the basis of the notification. The Owner/s agrees to indemnify the accredited certifier and DM Certifiers Pty Ltd against any loss or damage suffered as a result of the Owner/s failure to observe this abovementioned clause. All inspections undertaken are based on a visual inspection and do not comment therefore on aspects, faults of otherwise, which are below ground level, cov-ered up in any way, or which are not apparent at the time of inspection. No indication is given as to the adequate performance of any plumbing, hydraulic, gas or electrical appliance or fitting that may be installed or included in the building or on the site. Any notification of the result of an inspection is not intended to imply compliance or otherwise with any requirements of any Local Government Authority. Any parts of any structure that have been or are covered, unexposed or inaccessible will not be inspected and therefore any notification of the result of an inspection will no have no reference to those parts.

Non Issue of Occupation CertificateThe certifier 23 is within their right to refuse an application for an Occupation certificate for any building or part of a building that has been occupied unlawfully or where any statutory warranty from trades and the like is expired.

## DM Certifiers Pty Ltd | PO Box 220 Thornleigh NSW 2120



# Information about registered certifiers – building surveyorsand 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 *Build-ing and Development Certifiers Regulation 2020*, a contract to carry out certificationwork must be accompanied by an applicable document made available on the website of theDepartment 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 alsosets 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 avoidconflicts 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 thisis 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.

<sup>&</sup>lt;sup>1</sup> Visit <u>www.fairtrading.nsw.gov.au</u> 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 eachstage. 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 carriedout 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 buildingwork.

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 builderhas 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 orbe appointed as the principal certifier.

<sup>&</sup>lt;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>&</sup>lt;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.

Information about registered certifiers – building surveyors and building inspectors – October 2020

## **Principal certifier enforcement powers**

If the principal certifier becomes aware of a non-compliance with the development approval, thecertifier 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, professionalindemnity insurance and disciplinary history can be found at <u>www.fairtrading.nsw.gov.au</u>:

- <u>Details of registered certifiers</u> (or search 'appointing a certifier' from the homepage)
- <u>Disciplinary actions against certifiers</u> (or search 'certifier disciplinary register' from the homepage).

## **Questions?**

The Fair Trading website <u>www.fairtrading.nsw.gov.au</u> has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '<u>what certifiers do</u>' for information about a certifier's role and responsibilities.
  - Search '<u>concerns with development</u>' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at <u>www.planningportal.nsw.gov.au</u> 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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