

Application Form & Certification Contract

APPLICATION TYPE

<input type="checkbox"/> Complying Development Certificate & engagement as Principal Certifier	<input type="checkbox"/> Construction Certificate & engagement as Principal Certifier
	<input type="checkbox"/> Engagement as Principal Certifier

DEVELOPMENT SITE DETAILS

Lot No.:	Section No.:	DP / SP No.:
Street Address:		
Suburb:	Postcode:	

THE DEVELOPMENT

Description of Development:			
Value of Work:	\$	Building Classification:	
If any bonded asbestos material or friable asbestos material will be disturbed, repaired, or removed in carrying out the development, what is the estimated square metre area of the material?			m ²

COMPLYING DEVELOPMENT (Relevant State Environmental Planning Policy (SEPP) the application is to be assessed under)

- | | |
|--|--|
| <input type="checkbox"/> SEPP (Exempt & Complying Development Codes) Part 3 Housing Code | <input type="checkbox"/> Greenfield Housing Code |
| <input type="checkbox"/> SEPP (Exempt & Complying Development Codes) Part 3A Rural Housing Code | <input type="checkbox"/> SEPP (Exempt & Complying Development Codes) Part 4 Housing Alterations Code |
| <input type="checkbox"/> SEPP (Exempt & Complying Development Codes) Part 3B Low Rise Housing Diversity Code | <input type="checkbox"/> SEPP (Exempt & Complying Development Codes) Part 7 Demolition Code |
| <input type="checkbox"/> SEPP (Exempt & Complying Development Codes) Part 3C | <input type="checkbox"/> SEPP (Affordable Rental Housing) Part 3 Housing Code |

DEVELOPMENT CONSENT NUMBER

DA No. or CDC No.:	Approval Authority:	Issue Date:
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AUSTRALIAN BEAURUE OF STATISTICS

ALL NEW BUILDINGS (Please complete the following)

The number of storeys (including underground floors) in the proposed building	
The gross floor area of the building (m ²)	
The gross site area of the land on which the building is to be erected (m ²)	

RESIDENTIAL BUILDINGS (Please complete the following)

The number of existing dwellings on the subject site	
The number of existing dwellings to be demolished	
The number of dwellings to be included in the new building	
Is the new building to be attached to any existing building	Yes No
Does the site contain a dual occupancy?	Yes No
Does the development involve the erection of a wall to a boundary that has a wall less than 0.9m from the boundary	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the development involve the demolition or removal of a wall to a boundary that has a wall less than 0.9m from the boundary	<input type="checkbox"/> Yes <input type="checkbox"/> No

MATERIALS (Please indicate the materials to be used in construction of the new building/s)

Walls	Code		Roof	Code		Floor	Code		Frame	Code	
Brick (double)	11	<input type="checkbox"/>	Tiles	10	<input type="checkbox"/>	Concrete/slate	20	<input type="checkbox"/>	Timber	40	<input type="checkbox"/>
Brick (veneer)	12	<input type="checkbox"/>	Concrete/slate	20	<input type="checkbox"/>	Timber	40	<input type="checkbox"/>	Steel	60	<input type="checkbox"/>
Concrete/stone	20	<input type="checkbox"/>	Fibre cement	30	<input type="checkbox"/>	Other	80	<input type="checkbox"/>	Aluminum	70	<input type="checkbox"/>
Fibre cement	30	<input type="checkbox"/>	Steel	60	<input type="checkbox"/>	Not specified	90	<input type="checkbox"/>	Other	80	<input type="checkbox"/>
Timber	40	<input type="checkbox"/>	Aluminium	70	<input type="checkbox"/>				Not specified	90	<input type="checkbox"/>
Curtain glass	50	<input type="checkbox"/>	Other	80	<input type="checkbox"/>						
Steel	60	<input type="checkbox"/>	Not specified	90	<input type="checkbox"/>						
Aluminum cladding	70	<input type="checkbox"/>									
Timber/weatherboard	40	<input type="checkbox"/>									
Other	80	<input type="checkbox"/>									
Not specified	90	<input type="checkbox"/>									



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 CONTRACTOR / OWNER BUILDER

Licensed Builder <input type="checkbox"/>	Owner Builder <input type="checkbox"/>	TBA <input type="checkbox"/>	Builder or OB Licence Number:
Name:		Address:	
Phone:	Mobile:	Email:	

FEES AND CHARGES

The fees & charges for the determination of an application for a Development Certificate and the carrying out the functions as the Principal Certifier are set out in the accepted fee proposal or as otherwise agreed. The relevant fees & charges for the determination of an application for a Construction/Development Certificate and the carrying out of the functions of the Principal Certifier are to be paid in full before the Certifier commences to carry out those functions. In respect to any unforeseen contingency work provided under this Agreement, an invoice shall be issued within 21 days after completion of such work. The Certifier will undertake for a fixed fee all work involved in assessing, determining and finalising the application as set out in the Description of Services, including the costs of any services provided by a third party and any fees for obtaining or lodging documents, **except** for contingency items (if any) specified below.

<input type="checkbox"/> Fixed fee agreement The Certifier will undertake for a fixed fee all work involved in assessing, determining and finalising the application as set out in the Description of Services, including the costs of any services provided by a third party and any fees for obtaining or lodging documents, except for contingency items (if any) specified below.	<input type="checkbox"/> Variable costs agreement The Certifier will undertake all work involved in assessing, determining and finalising the application as set in the Description of Services upon the following basis:
Fixed fee: \$	Certifier's fee for services: \$
Contingency items#* Re-Inspection \$250 plus GST Additional inspection outside inspections allowed for or staged construction \$300 plus GST Further/more than one Occupation Certificate \$400 plus GST Compliance inspections due to a complaint received \$250 plus GST	Third party fees for services (including for another accredited certifier's services)* \$ Fees for certificates and lodgment of documents* \$ 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 unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out below.
 - (ii) In respect of any unforeseen 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 \$500 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 for all inspections other than a final re-inspection which is charged at & \$300 plus GST per inspection respectively .
 - (v) Should a critical stage inspection (as required by Section 61 (2) of the EP & A Regulations) not be carried within 1 year of the previous critical stage inspection an additional fee equal to fifty percent of the amount of the fee proposal applies.
 - (vi) Should a critical stage inspection (as required by Section 61 (2) of the EP & A Regulations) not be carried within 2 years of the previous critical stage inspection an additional fee equal to the of amount of the fee proposal applies.
 - (vii) Should a critical stage inspection (as required by Section 61 (2) of the EP & A Regulations) not be carried within 3 years of the previous critical stage inspection an additional fee equal to two times (2) the amount of the fee proposal applies.
 - (viii) Should a critical stage inspection (as required by Section 61 (2) of the EP & A Regulations) not be carried within 4 years of the previous critical stage inspection an additional fee equal to three (3) times the amount of the fee proposal applies.
 - (ix) Should a critical stage inspection (as required by Section 61 (2) 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 \$25 plus GST applies per per month applies where more than 12 months has passed since the issue of a Partial/Part OC and a Whole OC is applied for.
 - (xi) Should any fees be paid and a replacement PCA is engaged/project is cancelled no refund would be granted (partial or full).

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 applicant name, address and contact details (pre-approval notification – Clause 130AB), and/or details of the approved development (pre-construction 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
<input type="checkbox"/>	<input type="checkbox"/>			
<input type="checkbox"/>	<input type="checkbox"/>			

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)	it enters a deed of company arrangement with creditors;	Services (and notify the Certifier of any changes to that access); and	7.1	Intellectual property and Confidentiality
EFFECT OF CONTRACT					Certifier's intellectual property:
1. Definitions and interpretation	(iii)	a controller or administrator is appointed;	(b) provide the Client Deliverables to the Certifier;		(a) Subject to the Client complying with its obligations under the Agreement, the Certifier grants to the Client a non-exclusive, royalty-free, revocable license 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.
Accurate means:	(iv)	an application is made to a court for its winding up and not stayed within 14 days;	(c) coordinating other contractors or persons involved in the Project so as not to impede the Certifier's performance of the Services;		(b) Ownership of the intellectual property rights in the documents referenced under clause 7.1 vests in the Certifier.
(a) accurate, complete, correct and suitable for use by the Certifier;	(v)	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 member's voluntary winding up); or	(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;		Client's intellectual property:
(b) free from any Ambiguity and compliant with all Applicable Laws; and	(vi)	it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or	(e) comply with all of the Client's obligations under the WHS Legislation;	7.2	(a) The Client grants the Certifier an unrestricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Certifier to perform the Services.
(c) prepared and issued by a person or persons competent, experienced, qualified and suitable;	(vii)	a mortgagee of any of its property takes possession of that property;	(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		(b) The Client warrants that all information contained in the Client Deliverables 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).
Agreement means the following documents, in order of precedence:		Item means an agreement this contract;	(g) otherwise cooperate with the Certifier and do all other things reasonably necessary so that the Certifier is able to perform the Services.		Each party agrees:
(d) these General Terms (including "Details" and "Execution" sections);		Loss means any liabilities, losses, damages, expenses, and costs (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature;			(a) to keep the other party's confidential information confidential; and
(e) Agreement Items		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);			(b) to not disparage the other party.
(f) Development Particulars		Project means the project specified in Section B;			Payment
(g) Scope of Services		Registered Body Corporate, Registered Certifier and Registered Individual each have the same meanings as are given to those terms under the BDC Act;			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.
(h) Special Conditions		Services means all of the work to be performed by the Certifier identified in the Scope of Services, as varied in accordance with these General Conditions;			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.
(i) Information Sheet and		Site means the location specified in Section B, and includes any other area or location that the Certifier may reasonably require access to in order to perform the Services;			Variations and Variation Sum
(j) any other Contract Documents (fee proposal page 2) ;		Special Conditions means the special conditions;			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.
Ambiguity means error, omission, inconsistency, ambiguity, discrepancy or other defect;		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);			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.
Applicable Laws means:		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 Variations 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).			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).
(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works or the particular part thereof is being carried out;		WHS Legislation means all law relating to work health and safety (including the <i>Work Health and Safety Act 2011</i> (NSW) (WHS Act), <i>Work Health and Safety Regulation 2011</i> (NSW) (" WHS Regulations ") and any code of practice approved under the WHS Act.			The Client acknowledges that Variations may include those specified in Annexure C (Scope of Services).
(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works, including any construction certificates and development approvals issued by Council;					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.
(c) applicable standards issued by Standards Australia (whether voluntary or mandatory) and the National Construction Code (including the Building Code of Australia);					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.
(d) requirements of any government, statutory or other Authority having jurisdiction over the Works or the Site;					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.
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;					Disbursements
Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, statutory authority, local authority, tribunal or agency;					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.
BDC Act means the <i>Building and Development Certifiers Act 2018</i> (NSW), and BDC Regulations means the <i>Building and Development Certifiers Regulation 2020</i> (NSW);					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.
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;					Overdue Amounts
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 are necessary for the Certifier to carry out the Services including third party inspection reports and other documents as requested by, or provided by or on behalf of the Client to, the Certifier from time to time;					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:
Commencement Date means the date the application has been signed ;					(a) the Certifier may charge the Client interest from the day after the relevant
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 the time the Services are provided;					
Insolvency Event means:					
(a) the Client informs the Certifier in writing, or creditors generally, that the Client is insolvent or is financially unable to proceed with the Agreement;	2.	Services			
(b) execution is levied against the Client by a creditor;	2.1	The Certifier agrees to perform the Services with Due Care and Skill, and in accordance with all requirements of the BDC Act and BDC Regulations, including the Code of Conduct prescribed therein.			
(c) if the Client is an individual person or a partnership including an individual person, and if that person:	2.2	The Services will be performed by the Registered Certifier (or Registered Body Corporate and Registered Individual) specified in Section 3.			
(i) commits an act of bankruptcy;	2.3	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.			
(ii) has a bankruptcy petition presented against him or her or presents his or her own petition; is made bankrupt;	2.4	If the Services involve carrying out functions under the <i>Environmental Planning and Assessment Act 1979</i> (NSW), particulars of the relevant development are provided in Annexure B.			
(iv) makes a proposal for a scheme of arrangement or a composition; or	3.	Client Obligations			
(v) has a deed of assignment or deed of arrangement 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	The Client must, at its own cost, promptly:			
(d) if the Client is a corporation and if:		(a) give the Certifier safe access to the Site as and when the Certifier requires, to enable the Certifier to perform the			
(i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;					

	invoice's payment due date, the date of ability to pay by a current director or other officer), or is unable to pay its debts when they fall due;	18.3	If a Dispute Notice is given, the parties must 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.	20.11	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.
	(b) the Client indemnifies the Certifier for its costs and expenses in recovering.	(d)	fails to pay any amount owing by the date due; or		
12. Time and Completion		(e)	ceases to carry on business,		
12.1	The Certifier must commence the Services by the Commencement Date, and complete them within a reasonable period of time.	or if the Certifier:	18.4	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 case:	
12.2	The Certifier is entitled to an extension of time for completing the Services, if the Certifier is delayed in performing the Services by:	(f)	is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Applicable Laws; or	(a)	the mediation will be in accordance with, and subject to, the Mediation Rules of the Resolution Institute;
(a)	an act, default, or omission of the Client, its agents, employees, or any other party associated with the Project (including a suspension or Variation);	(g)	becomes aware of any conflict of interest, 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 before or after entry into this Agreement;	(b)	the parties must participate in the mediation genuinely and in good faith.
(b)	any change in Applicable Laws;		18.5		
(c)	any Client Deliverable not being Accurate; or	(h)	gives the Client 30 days notice that the Certifier wishes to terminate for the Certifier's convenience.	19.	
(d)	any other act, matter, event or thing beyond the Certifier's reasonable Control.		19.1	GST	22.
12.3	The Certifier is not liable for any delay to the Project caused by the Certifier completing the Services in accordance with this clause 12.	16.2	The Client may terminate this Agreement by giving the Certifier written notice to that effect if the Certifier fails to remedy a substantial breach of a material term of this Agreement within 30 days of being requested by notice in writing to do so by the Client.	19.2	Words or expressions used in this clause 19 which are defined in GST Law have that defined meaning unless otherwise provided.
12.3	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 client of any upcoming time where records are to be removed	16.3	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.	19.3	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).
13. Insurance Details		16.4	If the Client receives a notice from the Certifier that:	20.	General
Name of Insurer: Lloyd's Australia Limited		(a)	the Certifier has terminated the Agreement - the Client must as soon as possible: appoint a replacement certifier to take over the certification role comprised in the Services; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement;	20.1	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.
Address: Suite 1603 Level 16, 1 Macquarie, Sydney NSW 2000		(b)	the Certifier will terminate the Agreement - 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 Services from the date of termination of the Agreement; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement.	20.2	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 Agreement.
Policy No: B0507FE2400087		(c)	both parties must return or destroy (at the relevant discloser's request) any confidential information held by the other party.	20.3	This Agreement may only be varied by a document signed by or on behalf of each party.
Cover: From 14/05/2025 to:				20.4	The Client must not assign or novate this Agreement without the Certifier's prior written consent.
14. Liability Limit		16.5	On termination of this Agreement:	20.5	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.
14.1	The Certifier's aggregate liability to the Client 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:	(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 for the termination, for work performed up to and including the date of termination) become immediately due and owing;	20.6	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)	the amount of the Contract Sum;	(b)	if the termination is effected under clauses 16.1(a) - 16.1(f), the Certifier is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit; 20.8 and	20.7	A party's rights and obligations do not merge on completion of any transaction under this agreement.
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:	(c)	both parties must return or destroy (at the relevant discloser's request) any confidential information held by the other party.	20.8	If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect 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.
(a)	the supplying of the relevant Services again; or			20.9	Without limiting any other provision of this Agreement, the parties agree that:
(b)	paying the cost of having the Services supplied again.			(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
14.3	The Certifier's liability to the Client is excluded in relation to any loss of profit, loss of any contract, 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 the Certifier's liability in respect of claims, actions, costs, losses, damages or liability arising due to:			(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.
(a)	liability which cannot be limited at law;				Without limiting any other provision of this Agreement, the parties agree that:
(b)	fraudulent or criminal conduct; or			(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;
(c)	any matters listed in Item 11.			(b)	a waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
15. Suspension				(c)	no waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.
15.1	The Certifier may suspend the Services for so long as:	17.	Force Majeure		
(a)	the Certifier considers that there is 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);	17.1	The Services may be totally or partially suspended by the Certifier during any period in 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.	20.9	
(b)	the Client fails to provide any Client Deliverables required by the Certifier;				
(c)	the Client has not paid any amount by the time that it is due;	17.2	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	
(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	The Certifier incurs no liability to the Client in respect of such suspension.		
15.2	The Client indemnifies and holds harmless the Certifier for any additional costs or expenses the Certifier incurs in relation to a suspension under this clause 15, if the suspension was not caused solely by an act or omission of the Certifier.	18.	Dispute Resolution		
		18.1	If a dispute or difference (Dispute):		
		(a)	arises in respect of any fact, matter or 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.		
		18.2	If a Dispute arises, any party may give the other(s) a notice (Dispute Notice) specifying:		
		(a)	particulars of the Dispute; and		
		(b)	the position which the party believes is correct.		
16. Termination					
16.1	The Certifier may terminate this Agreement if 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 of time not to 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 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				

Information about registered certifiers - building surveyors and building inspectors GUIDELINE

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 Building Commission 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 Building Commission NSW).¹ This is the applicable document for certification work involving a certifier registered in the class 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 the Building Commission'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 Building Commissioner.

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

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

¹ Visit www.nsw.gov.au/departments-and-agencies/building-commission.

Obligations of the applicant

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

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work² is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

What does a registered building surveyor do?

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

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

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

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

What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work³ with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

² Upfront fee payment is required for any work to determine an application for a development certificate or carry out a function of a principal certifier.

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

Principal certifier enforcement powers

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

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

Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found on the Building Commission NSW website www.nsw.gov.au/departments-and-agencies/building-commission

Questions?

The Building Commission NSW website www.nsw.gov.au/departments-and-agencies/building-commission has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier.

The NSW Planning Portal website www.planningportal.nsw.gov.au provides information on the NSW planning and development certification system.

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

Contact us	
For more information please contact Building Commission NSW:	
T:	13 27 00
W:	nsw.gov.au and search 'Building Commission NSW'