

Contract for the Carrying out of Certification Work (Building)



Pursuant to the *Environment Planning and Assessment Act 1979* & the *Building and Development Certifiers Act 2018*

99-101 Bank Street, Molong NSW 2866 (PO Box 17, Molong NSW 2866)

(02) 6392 3200 council@cabonne.nsw.gov.au

PART A: INTRODUCTION

This is a Contract between Cabonne Council (the Council) and the Client (as nominated below).

In accordance with the provisions of the *Environmental Planning & Assessment Act 1979*, Council employs Registered Certifiers who are authorised to carry out the Certification Work which is the subject of this Contract on behalf of the Council.

The Client seeks to appoint the Council as the Principal Certifier (PC) and to perform Certification Work in accordance with the terms set out in this contract.

* Refer to Part C for particulars of Certification Work.

PART B: PARTIES TO THE CONTRACT

1. **The Council:** CABONNE COUNCIL
2. **The Client** (for whom the certification work will be carried out)

1. Client Details

Note: The person having the benefit of the Consent, so as to be able to appoint the PC, may be the owner of the land or an applicant authorised by the owner but may NOT be the builder, unless the builder is the owner.

Name of Client:	
Contact Name:	
Postal Address:	
Locality:	Postcode:
Business Phone:	Mobile Phone:
Email:	

2. Description of the Development

Description of the development (e.g. swimming pool, dwelling house etc.):					
Property Details					
Lot/s:		Sec:		DP/SP:	
Street Number:		Street/Road Name:			
Locality:					

3. Details of Approvals (where applicable)

Development Consent Number:		Date Issued:	
Complying Development Certificate No:		Date Issued:	
Construction Certificate No:		Date Issued:	

PART C: CERTIFICATION WORK TO BE PERFORMED

This Contract relates to the following Certification Work (please indicate by 'X' which of the following applies):

Determination of application for, and issue of, a Construction Certificate*	
Determination of application for, and issue of, an Occupation Certificate*	
Undertaking the functions of the Principal Certifier (PC) for the development (Refer to Attachment A for description of PC functions and responsibilities of the Client)	
Determination of application for, and issue of, a Complying Development Certificate*	
Determination of application for, and issue of, a Compliance Certificate*	
Carrying out of inspections under section 22 of the <i>Swimming Pools Act 1992</i> and issuing certificates of compliance under the Act	

*Note: These certificates are 'Development Certificates' for the purposes of this Contract.

PART D: CLIENT DECLARATION AND SIGNATURE

Please tick each statement to acknowledge.

I/We acknowledge that the fees payable are calculated in accordance with Council's adopted Fees and Charges and are to be paid before or at the time of the lodgement of an application for a Development Certificate and/or before the Council commences to carry out any of the functions as the PC.		
I/We agree to provide all documents that the Council may reasonably request for it to perform the function of the PC and/or Certifier.		
I/We agree to provide Council with access to the development site.		
I/We agree to notify Council of the appointment of the principal contractor.		
I/We agree to notify the principal contractor of any critical stage inspections required to be carried out in respect of the building or subdivision work.		
I/We acknowledge that I/we have received and understand the description of services as outlined within the Contract.		
I/we have freely chosen to engage the particular certifier.		
I/we have read the contract and any document accompanying the contract and understands the roles and responsibilities of the client and the registered certifier.		
Client Name	Client Signature	Date

PART E: THE CERTIFIER (Who will carry out the Certification Work) - Council to complete

Council employs registered certifiers who are currently registered by NSW Fair Trading under the *Building and Development Certifiers Act 2018*.

The Client is advised that to the extent that the certification work and any inspections required to be carried out under the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000* may be carried out by any one of the Council employees listed on the NSW Fair Trading register of certifiers:

<https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renoate/finding-and-appointing-a-certifier>

PART F: DATE OF CONTRACT - Council to complete

This Contract is made on the date of:

PART G: COUNCIL SIGNATURE - Council to complete

Name:			
Position:			
Signed (on behalf of Cabonne Council):		Date:	

PART H: FEES AND CHARGES

Fees payable to Council for the undertaking of all work involved in assessing, determining and finalising the application must be paid at time of lodgement and will be as per Councils Adopted Fees & Charges for the current financial year. These fees are exclusively for the determination of a development certificate and the carrying out of critical building inspections. Other fees may be payable in accordance with Council's adopted Fees & Charges. Please note all fees are reviewed annually and may change as of 1 July each year. The fee payable will be based on those applicable on the day on which the Contract is executed by both parties. Any additional inspections required as a result of Council being unable to issue a Complying Development Certificate, Compliance Certificate, Occupation Certificate, or due to unfinished work will incur additional charges based on the rates of inspection applicable for the current financial year. A Council Fee Estimate may be obtained from Council once the proposed application is uploaded to the NSW Planning Portal.

PART I: RE-INSPECTION PAYMENTS

Any re-inspections for building works must be paid for prior to the release of the relevant compliance certificate. Council will not release the compliance certificate until confirmation of the payment is received.

PART J: STATUTORY OBLIGATIONS

This contract is accompanied by an information sheet (**Attachment B**) prepared by NSW Fair Trading pursuant to Clause 3 of the *Building and Development Certifiers Regulation 2020*, addressing the following:

- a) The role and statutory obligations of the Registered Certifier; and
- b) The role of the person for whom the certification work is carried out; and
- c) The types of information that can be found on the register of Registrations and Approvals under the *Building and Development Certifiers Act 2018*.

ATTACHMENT A: TERMS AND CONDITIONS

1. Introduction

This is a contract between Cabonne Council (“Council”) and the person/s (hereinafter referred to as “the client”) whose name/s and signature/s appear on the application form.

The contract relates to an application from the client to engage Council to provide certification services; including the appointment of Council as the Certifying Authority and Principal Certifier (PC) in order to assess and determine the application/s the subject of this contract and carry out nominated critical stage inspections of the building works and determination of application/s for Occupation Certificates.

This Attachment sets out the terms, conditions and responsibilities of the Client and the Council.

2. General

The *Environmental Planning and Assessment Act 1979* (EP&A Act) requires the appointment of a Principal Certifier (PC) to be responsible for the carrying out of mandatory critical stage building inspections and subsequent issue of an Occupation Certificate (OC) prior to the use or occupation of a building.

The *Environmental Planning and Assessment Act 1979* prohibits the commencement of the erection of a building in accordance with a development consent until:

- A Construction Certificate has been issued;
- A PC has been appointed and the Client has notified the PC that they will carry out the building work as an owner-builder (if that is the case),
- Where the Client is not carrying out the building work as owner-builder, the Client must have appointed a principal contractor for the building work who is the holder of a contractor licence (where residential building work is involved). The Client must notify the PC of the appointment of the principal contractor and also notify the principal contractor of any critical stage inspections and other inspections required to be carried out for in respect of the building work,
- The PC has, no later than two days before the building work commences, notified the consent authority of his/her appointment and notified the Client of any critical stage inspections and other inspections that are required to be carried out in respect of the building or subdivision work, and
- The Client has given at least two days’ notice to the Council (and the PC if that is not the Council) of the person’s intention to commence the erection of the building or subdivision work.

3. Dictionary

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

Applicable environmental planning instrument means the State Environmental Planning Policy or the Local Environmental Plan nominated by the Client as the instrument against which an application for a complying development certificate is to be assessed.

BASIX means the Building Sustainability Index.

BCA means the Building Code of Australia.

BDAC Act means the *Building and Development Certifiers Act 2018*.

Certification work means:

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

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

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

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

EP&A Regulation means the Environmental Planning and Regulation 2000

Principal Certifier (PC): The PC for building work means the certifier appointed as the principal certifier for the building work under section 6.6(1) of the EP&A Act. A PC may either be Council or a registered private certifier (except in certain circumstances).

Note:

- a) Council Building Surveyors, as the PC cannot be involved in the design of the building/development works; but may offer advice for compliance with Deemed to Satisfy BCA matters.
- b) When Council has been appointed as the PC, a change of PC can only be undertaken upon agreement of Council or as determined by NSW Fair Trading.

Occupation Certificate (OC) An OC is a certificate that authorises the occupation and use of a new building or a change of building use for an existing building. It is essentially a post- construction check on whether necessary approvals and certificates are in place and that the building is suitable for occupation or use in accordance with its Building Code of Australia classification. An OC authorising the occupation or use of a new building and/or change of use of an existing building can only be issued by the PC.

Note:

- a) An application form for an OC must be completed and submitted to Council including payment of the relevant fee as prescribed in Council's Fees and Charges schedule.
- b) The OC MUST be issued prior to a building being used or occupied. It is an offence to occupy a building without benefit of an OC.

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

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

4. Service provided and responsibilities of Council

Under the EP&A Act a certifier including the principal certifier (PC) has a range of functions, including:

- (1) In relation to building work:
 - (a) issuing construction certificates for building work,
 - (b) carrying out inspections of building work,
 - (c) issuing occupation certificates,
 - (d) issuing compliance certificates.
- (2) A certifier also has any other functions conferred or imposed on the certifier under the EP&A or any other Act

Council, as the PC will:

- 4.1 Ascertain, before any building work commences, that a construction certificate or complying development certificate has been issued for the work;
- 4.2 Ascertain, before any residential building work commences, that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989, unless the work is to be carried out by an owner-builder;
- 4.3 Where the work is being carried out by an owner-builder, ascertaining that the owner-builder is the holder of any owner-builder permit required under the Home Building Act 1989, before an owner builder commences on the site of any residential building work;

- 4.4 Council as the PC will confirm at what stages of construction inspections are to be carried-out. The schedule of inspections will be contained within Council's letter of acceptance of PC appointment.
- 4.5 Carry out critical stage inspections of the building work as prescribed by the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) or required by the Certifier, or ensuring that the inspections are carried out by another certifying authority before issuing an occupation certificate for the building work;
- 4.6 Make a record as required by the EP&A Regulation of all inspections and provide a copy to the owner or their representative. Note: Inspections will be carried out Monday to Friday (inclusive) only and excludes Public Holidays.
- 4.7 Advise the Client of the details of the work the subject of an unsatisfactory inspection and the need (if any) to carry out a reinspection.
- 4.8 Notify the Client if any additional fees for inspection are required as a result of reinspection for incomplete or defective works. Reinspection fees will be levied and payable for all reinspections required as a result of work not being completely ready for the booked inspection or as a result of defective works.
- 4.9 Council will determine whether any inspection (other than the last critical stage inspection) has been not carried out, and whether the work that would have been inspected was satisfactory. Council will make a record of any such missed inspection and provide a copy to the Client. Council will also notify the principal contractor of the missed inspection.
- 4.10 Assess applications and issue determinations for Occupation Certificates in the prescribed form.
- 4.11 Ensure that any preconditions required by a development consent or complying development certificate are met for the work before the issue of an occupation certificate.
- 4.12 Without limiting the compliance actions that Council may take, Council may:
 - (a) attend the site to inspect any issue of concern relating to the development.
 - (b) cause correspondence to be issued to any person.
 - (c) refer any matter of concern to such persons or authorities as Council considers appropriate, including the consent authority, NSW Fair Trading or an environmental protection agency.
 - (d) issue Directions and Orders under the EP&A Act.

For further information on the PC Contract and matters relating to the booking of inspections, please contact Council's Development Services team on (02) 6392 3265.

5. Responsibilities of the Client

The Client, in appointing Cabonne Council as the PC agrees to:

- 5.1 Provide Council a completed Notice of Commencement not less than two days before the commencement of any building works.
- 5.2 Pay all fees for services provided by the PC or such fees and charges as required by another Authority, e.g. Fire and Rescue NSW.
- 5.3 Ensure that arrangements are made for Council to carry out inspections of the building works at various stages indicated in Council's letter of acceptance of PC appointment. The owner or principal contractor must provide Council with a minimum of 24 hours' notice (excluding weekends and public holidays) when each inspection is ready to inspect. Inspections must be booked through Council's Development Services team on (02) 6392 3265.
- 5.4 Ensure that the relevant building work is ready for inspection by the booked inspection time. Where a reinspection is required as a result of defective or incomplete works, the Client shall make payment of the appropriate reinspection fee as prescribed in Council's Adopted Fees and Charges.
- 5.5 Where an inspection is required, the Client MUST ensure the relevant stamped approved plans and specifications and other required details are on-site and/or available to the Council Accredited Certifier. For example, where a timber floor, roof or wall frame inspection is required, the relevant information must be provided such as roof truss specifications, tie-down and joint schedules, roof and wall bracing plans and specifications, wall insulation specifications, timber sizes and the like.

- 5.6 Before booking a final inspection and/or Occupation Certificate the client shall provide to Council the certificates listed in the schedule of PC requirements.
- 5.7 Ensure that the erection of the building and/or works are in accordance with the development consent and construction certificate.
- 5.8 Provide the PC specialist reports, plans, specifications, compliance certificates and certification of materials, processes or works as requested. Additional documents we may request (where necessary) may include but are not limited to engineer's plans, engineering reports, engineering certification, Compliance Certificates, Fire Safety Certificates, Identification Surveys and evidence of suitability.
- 5.9 The applicant acknowledges that it is the applicant's responsibility (and that of your builder and/or sub-contractors) to ensure that the applicant complies with all relevant legislation, consents, certificates and approvals relating to the subject development.
- 6. Contract Termination**
- 6.1 This contract will automatically terminate upon the expiration of five (5) years from the date of this contract unless Council and the applicant have entered into a written contract to vary the duration of the contract and the applicant has paid all relevant fees.
- 6.2 As soon as the PC has issued a Final or Whole Occupation Certificate for all building and development work the subject of this contract, the contract will automatically terminate.

Privacy Statement

In lodging this form, you are providing personal information such as your name and contact details. The personal information that Council has collected or is collecting from you is personal information for the purposes of the *Privacy and Personal Information Protection Act 1998* (PPIPA). Your personal information will be handled in accordance with the PPIPA and Council's [Privacy Management Plan](#). For further information regarding Council's privacy obligations, see [Privacy Guidelines](#).

Purpose of collection and intended recipients: The personal information in this form will be used and disclosed for the purpose of communicating with you regarding your application, facilitating Council's exercise of its functions under the *Local Government Act 1993*, placing the application on public exhibition and publishing the application online on Council's DA tracker (if applicable). Intended recipients of this information include Council officials, contractors and persons granted lawful access under the *Government Information (Public Access) Act 2009*.

Supply: Supply of your personal information is required by the applicable legislation. If you do not provide the requested information (or any part of it) your application may not be accepted.

Storage and access/correction: Your personal information is being collected and will be stored by Cabonne Council, 99-101 Bank Street, Molong NSW 2866. This form will be placed on a relevant file and/or recorded in Council's electronic document and records management system. You may make application to access or amend your personal information. Any such application will be handled in accordance with the PPIPA.

Information about registered certifiers – building surveyors and building inspectors

Important: this is a summary document only.

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)¹. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

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

Obligations of registered certifiers

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

Who does a registered certifier work for?

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

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

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

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

Obligations of the applicant

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

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification 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 at www.fairtrading.nsw.gov.au:

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

Questions?

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

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

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

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