

# TERMS OF ENGAGEMENT FOR BUILDING CERTIFICATION SERVICES

*Environmental Planning and Assessment Act 1979 and  
Building and Development Certifiers Act 2018.*

Office Hours: 8.30am – 5pm  
240 Blende Street  
PO Box 448  
Broken Hill NSW 2880  
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www.brokenhill.nsw.gov.au  
**General Enquiries**  
Phone 08 8080 3300  
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## SECTION 1 – INTRODUCTION

This is a Contract between Broken Hill City 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.

## SECTION 2 – PARTIES TO THE CONTRACT

- The Council**      The Council of the City of Broken Hill (trading as Broken Hill City Council)
- The Client**      (for whom the certification work will be carried out)

## SECTION 3 – CLIENT DETAILS

**Client Name:**

**Client ABN:**

**Client contact person:**

**Client telephone:**

**Client Mobile:**

**Client Email:**

**Client Address:**

## SECTION 4 – DESCRIPTION OF DEVELOPMENT

**Description of the development:**  
*(e.g. dwelling, garage, shop fitout)*

**Property Address:**

**Property Title Details:** Lot/s:                      Sec:                      DP/SP:

**SECTION 5 –DETAILS OF APPROVALS (WHERE APPLICABLE)**

<b>Development Consent No:</b>	<b>Date issued:</b>
<b>Complying Development Certificate No:</b>	<b>Date issued:</b>
<b>Construction Certificate No:</b>	<b>Date issued:</b>

**SECTION 6 – CERTIFICATION WORK TO BE PERFORMED**

This contract relates to the following Certification Work in relation to the development (indicate with an "X" which of the following applies):

Determination of application for and, if applicable, issue of a Construction Certificate	
Determination of application for and, if applicable, 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)	
Carrying out of inspections required by Part 6 of the <i>Environmental Planning and Assessment Act 1979</i>	

**SECTION 7 –CLIENT DECLARATION AND SIGNATURE**

Please tick each statement to acknowledge and agree:

I/We acknowledge that the fees payable are in accordance with Council's adopted Fees and Charges Schedule and to be paid prior to 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 acknowledge that additional inspections not paid ahead of time (such as for reinspection of unsatisfactory work), will be invoiced by Council within 28 days of the inspection and the fees will be calculated in accordance with Council's adopted fees and charges as at the date of the inspection and will be payable within 14 days of the invoice date.	
I/We agree to provide all documents and/or information that the Council may reasonably request in order 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 that the Principal Contractor may request an inspection under this contract on my/our behalf.	
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 understand the roles and responsibilities of the client and the registered certifier.	

<b>Client Signatory Name</b>	<b>Client Signature</b>	<b>Date</b>

**SECTION 8 – 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 the certification work and any inspections required to be carried out under the *Environmental Planning & Assessment Act 1979* and its regulations 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-renovate/finding-and-appointing-a-certifier>

If Council engages any other Certifier after the date of this contract, the client will be advised by the posting of that person's details on Council's website [www.brokenhill.nsw.gov.au](http://www.brokenhill.nsw.gov.au)

**SECTION 8 – DATE OF CONTRACT****Council to complete**

This contract is made on the date of:

**SECTION 9 – COUNCIL SIGNATURE****Council to complete****Name:****Position:****Signed (on behalf of Broken Hill City Council):****Date:****SECTION 10 – FEES AND CHARGES**

The fees and charges payable by the client at the time of making this agreement are set out in the fee request proposal. Fees are calculated based on the value and description of works listed on the application and Council's adopted Schedule of Fees and Charges as at the time of lodgment.

All fees and charges (excluding any fees and charges for work arising as a result of unforeseen contingencies) are to be paid either:

- a. before or upon lodgement of any application for a development certificate, or
- b. before the conducting of any functions of a principal certifier.

The fees and charges payable by the client for any unforeseen items will be in accordance with Council's Schedule of Fees and Charges as adopted:

- c. at the time of lodgement of an application for a development certificate, or
- d. at the time of the inspection, for certification work consisting of an inspection, or
- e. at the time of acceptance of the request for certification work for any other certification work.

In the case of any unforeseen contingencies, Council shall issue an invoice for the fees within 28 days after the completion of the relevant work.

Contingency items may include:

- Additional inspections (for example, due to unsatisfactory or incomplete work, site access restrictions and the like)
- Additional/subsequent applications for any Occupation Certificates

Council's Schedule of Fees and Charges can be obtained from Council's Administrative Centre at 240 Blende Street Broken Hill NSW or is available for download from Council's website [www.brokenhill.nsw.gov.au](http://www.brokenhill.nsw.gov.au). It is the responsibility of the client to obtain a copy.

**SECTION 11 – INFORMATION BROCHURE**

The following Information Sheets are relevant to the Project and are included in the Annexure to this Agreement:

*Information about registered certifiers – building surveyors and building inspectors*

## SECTION 12 – PRIVACY STATEMENT

Council is collecting your personal information in accordance with the *Privacy and Personal Information Protection Act 1998*.

The purpose for collecting your personal information is to obtain and record details to assess your application. The intended recipients of the personal information collected includes Council officers or other agents contracted by Council. If necessary for reporting purposes, your name will be made publicly available via Council's Business Papers and on Council's website. Your contact details will not be made public on Council's website and will be removed from all applications and reports in Council's Business Papers.

The supply of your personal information is voluntary. If you cannot provide or do not wish to provide the information sought, Council may not be able to process your application.

You may make an application for access or amendment to information held by Council. Council will consider any such application in accordance with the Act. Enquiries concerning this matter can be directed to the Public Officer by email [council@brokenhill.nsw.gov.au](mailto:council@brokenhill.nsw.gov.au) or addressed to Broken Hill City Council, 240 Blende Street, Broken Hill NSW 2880.

Your information will be collected and stored by Broken Hill City Council, 240 Blende Street, Broken Hill NSW 2880

## SECTION 13 – TERMS

### 1. CERTIFICATION WORK

#### 1.1. The Certification Work includes, as required for the Project:

- 1.1.1. issuing a complying development certificate;
- 1.1.2. issuing the construction certificate;
- 1.1.3. carrying out inspections;
- 1.1.4. issuing the occupation certificate;
- 1.1.5. issuing compliance certificates.

#### 1.2. The Certification Work excludes:

- 1.2.1. building design or advice for the Project;
- 1.2.2. drafting plans or any other documents required for the Application;
- 1.2.3. matters pertaining to Building Quality
- 1.2.4. any guarantee by the Council that a construction certificate or other development certificate will be issued;
- 1.2.5. any act or activity deemed by the Council to be contrary to the requirements of the *Building and Development Certifiers Act 2018 (NSW)*, the *Environmental Planning and Assessment Act 1979 (NSW)* as relevant and other State and Commonwealth legislation pertaining to the oversight of decision-making functions and building work as relevant.

#### 1.3. The Client acknowledges that the Council is subject to the requirements of the *Building and Development Certifiers Act 2018 (NSW)* and the *Environmental Planning and Assessment Act 1979 (NSW)*.

This means that the Council must:

- 1.3.1. assess the Project in accordance with law and the *National Construction Code of Australia*; and
- 1.3.2. must avoid conflicts of interest, as defined by the *Building and Development Certifiers Act 2018 (NSW)*; and
- 1.3.3. must, strictly adhere to the disciplinary requirements and conditions of approval imposed on them by the *Building and Development Certifiers Act 2018 (NSW)*; and
- 1.3.4. must act in a manner consistent with the Code of Conduct and Practice standard for registered certifiers adopted by NSW Fair Trading pursuant to the *Building and Development Certifiers Act 2018 (NSW)* at all times.

#### 1.4. The Client acknowledges that the Council may engage in any other business, occupation or activity during the Term, provided that does not detrimentally affect the performance of the Certification Work.

#### 1.5. If the Client engages another person to provide services substantially the same as the Certification Work in respect of the Project, then the Council may terminate this agreement.

#### 1.6. The Client acknowledges and agrees that they accept the terms and conditions contained in this agreement.

### 2. THE CERTIFICATION WORK

The Council may subcontract or license all or part of its obligations under this agreement without prior notice to the Client.

### **3. FEES AND CHARGES**

- 3.1. The Fees and Charges payable for the Certification Work are in accordance with Councils Fees and Charges Schedule.
- 3.2. The Council reserves the right to change the Fees and Charges in the event of a variation to the scope of work for the Certification Work. Any variation to the Certification Work (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to the Council in the cost of materials and labour) will be charged for and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3. Payment of an invoice is required within 14 days of issue.
- 3.4. Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Council.
- 3.5. Receipt by the Council of any form of payment other than cash does not constitute payment until that payment has been honoured, cleared or recognised by the Council.
- 3.6. GST, other taxes, duties, disbursements and applicable government and council fees and charges will be added to the Fee other than where they are expressly included in the Fee.

### **4. INTELLECTUAL PROPERTY AND DATA**

- 4.1. Nothing in this agreement affects the Intellectual Property Rights of either party, except as set out in this clause.
- 4.2. The Client grants the Council an unrestricted, royalty free license to use and manipulate all Intellectual Property Rights in any Data which the Client provides to the Council to the extent reasonably necessary for the Council to perform the Certification Work.
- 4.3. The Client warrants that any Data provided by it to the Council will not infringe the Intellectual Property Rights of any person. The Client indemnifies the Council against any direct loss, costs, expenses, demands or liability arising out of a claim by a third party against the Surveyor alleging that such Data infringes any such Intellectual Property Rights.

### **5. INDEMNITY AND EXCLUSION OF LIABILITY**

- 5.1. The Council must indemnify the Client and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Council, a breach by the Council of this agreement, a willful unlawful or negligent act or omission of the Council, and any claim action or proceeding by a third party against the Client or its employees officers and contractors caused or contributed to by the Council.
- 5.2. This indemnity is reduced by the extent to which the Client contributes to the event giving rise to the claim for the indemnity.
- 5.3. The Council must perform the Certification Work at its own risk in all things and releases the Client and its employees, officers, members and contractors from all claims, actions, proceedings, costs, expenses, losses, suffering, illness and liabilities incurred by the Council or its employees, agents, subcontractors, third parties, and customers which arise from the performance of the Certification Work.
- 5.4. Notwithstanding any other provision in this agreement, the Council is not liable to the Client, nor is it required to indemnify the Client, for any loss or damage suffered by the Client or for any claim against the Client (howsoever arising) for economic, indirect or consequential losses of any kind whatsoever.
- 5.5. The Client indemnifies the Council and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Client, a breach by the Client of this agreement, a willful unlawful or negligent act or omission of the Client, and any claim action or proceeding by a third party against the Council or its employees officers and contractors caused or contributed to by the Client.
- 5.6. The Client releases and holds harmless the Council against all claims, demands, expenses, loss or damage arising in connection with the Client's reliance on, or use of, any aspect of the Certification Work, including advice, given to the Client by the Council in a manner which is not contemplated or authorised by the Act or otherwise not in accordance with any exclusions or assumptions given by the Council.

## **6. MUTUAL WARRANTIES**

Each party represents and warrants to the other that as at the date of this agreement:

- 6.1. all actions, conditions and things required to be taken, fulfilled and done by it in order to enable it to enter into, exercise its rights and perform its obligations under this agreement have been done; and
- 6.2. all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this agreement have been obtained.

## **7. CLIENT WARRANTIES AND OBLIGATIONS**

7.1. The Client warrants:

- 7.1.1. that any Data provided to the Council is accurate and complete in all respects;
- 7.1.2. that, in performing the Certification Work, the Surveyor acts with the Client's authority;
- 7.1.3. that no other person has been appointed to perform the Certification Work in relation to the Project.

7.2. The Client must:

- 7.2.1. provide all information required by the Council within the time specified by the Council to enable the Council to perform the Certification Work;
- 7.2.2. provide all information required by the Council within the time specified by the Council to enable the Council to perform the Certification Work;
- 7.2.3. give the Council such access to the Project and any relevant site as is required by the Council to perform the Certification Work.

## **8. FORCE MAJEURE**

8.1. If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:

- 8.1.1. neither party is liable for such delay or failure; and
- 8.1.2. all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.

8.2. A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:

8.2.1. notify the other party as soon as possible giving:

- 8.2.1.1. reasonably full particulars of the Force Majeure Event;
- 8.2.1.2. the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
- 8.2.1.3. where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;

8.2.2. use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;

8.2.3. resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;

8.2.4. notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and

8.2.5. notify the other party when resumption of performance occurs.

8.3. If a delay or failure under this clause exceeds 60 days, either party may immediately terminate this agreement by notice to the other party.

## **9. TERMINATION**

9.1. The Council may, at any time, terminate this agreement provided that in doing so the Council acts reasonably and in accordance with law.

9.2. Notwithstanding any other provision of this agreement, the Client must pay the Council the Fees and Charges within 14 days of the termination of this agreement, or such part of the Fee which is, at that time, unpaid.

9.3. Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

## 10. CONFIDENTIAL INFORMATION

- 10.1. Subject to the *Building and Development Certifiers Act 2018 (NSW)*, the *Environmental Planning and Assessment Act 1979 (NSW)* and other applicable legislation, each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:
- 10.1.1. keep confidential;
  - 10.1.2. take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
  - 10.1.3. maintain proper and secure custody of; and
  - 10.1.4. not use or reproduce in any form, any confidential information belonging to the other party.

## 11. INSURANCE

- 11.1. The Council must maintain at all times during the Term all insurances required by law.
- 11.2. The Council must not allow any act or omission which would make any such policy of insurance void or unenforceable.

## 12. DISPUTE RESOLUTION

- 12.1. General
- 12.1.1. A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
  - 12.1.2. A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.
- 12.2. Negotiation
- 12.2.1. On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
  - 12.2.2. If the parties are unable to resolve the dispute within 10 Business Days, they must promptly refer the dispute:
    - 12.2.2.1. in the case of the Client to the Client's Representative; and
    - 12.2.2.2. in the case of the Council to the Council's Representative.
  - 12.2.3. Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.
- 12.3. Mediation
- 12.3.1. If those persons are unable to resolve the dispute within 10 Business days of referral, a party may refer the dispute for mediation under the mediation rules of the Resolution Institute to:
    - 12.3.1.1. a mediator agreed by the parties; or
    - 12.3.1.2. if the parties are unable to agree a mediator within five Business Days, a mediator nominated by the Resolution Institute.
  - 12.3.2. The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
  - 12.3.3. Any information or documents disclosed by a party under this clause:
    - 12.3.3.1. must be kept confidential; and
    - 12.3.3.2. may not be used except to attempt to resolve the dispute.
  - 12.3.4. Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.
- 12.4. Performance
- If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

## 13. MISCELLANEOUS

- 13.1. Entire agreement
- This agreement:
- 13.1.1. constitutes the entire agreement between the parties about its subject matter;
  - 13.1.2. supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- 13.2. Waiver
- A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

- 13.3. Exercise of power
  - 13.3.1. The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
  - 13.3.2. An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.
- 13.4. Survival
 

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.
- 13.5. Governing law
 

This agreement is governed by the law in New South Wales and is subject to the jurisdiction of the Courts in New South Wales.
- 13.6. Consumer Law
  - 13.6.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Act 1987 (NSW) except to the extent permitted by those Acts where applicable.
  - 13.6.2. Where the Client buys Certification Work as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

## 14. NOTICES

- 14.1. A notice, demand, consent, approval or communication under this agreement (Notice) must be:
  - 14.1.1. in writing, in English and signed by a person authorised by the sender; and
  - 14.1.2. hand delivered or sent by prepaid post or email to the recipient's address or email address specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- 14.2. A Notice is deemed to be received:
  - 14.2.1. if hand delivered, on delivery;
  - 14.2.2. if sent by prepaid post, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);
  - 14.2.3. if sent by email, at the time deemed to be the time of receipt under the *Electronic Transactions Act 2000* (NSW) or the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.

However, if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am the next Business Day.

## 15. DEFINITIONS AND INTERPRETATION

- 15.1. Definitions
 

In this agreement:

  - 15.1.1. **Authorisation** means any authorisation, agreement approval, license, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.
  - 15.1.2. **Building Quality** means any matter that could or might be a defective item with respect to any contract between the Client and another party which defines the standards of work to be achieved pursuant to that contract with respect to the Project but does not include matters which relate to conformance by the Project to technical standards including the National Construction Code.
  - 15.1.3. **Council** means the person identified as such on the front page of this agreement.
  - 15.1.4. **Business Day** means a day which is not a weekend or public holiday in New South Wales.
  - 15.1.5. **Confidential Information** means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.
  - 15.1.6. **Data** means information directly or indirectly relating to this agreement and/or the Certification Work and includes software (including source code and object code versions) manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, market research, information, correspondence, letters, warranties and manufacturer's information and data sheets, personal identification numbers (PINS) and

access codes for security and alarm systems, and papers of every description including all copies of and extracts from them.

15.1.7. **Fee** is defined in Council's Fees and Charges Schedule and clause 3.

15.1.8. **Force Majeure Event** means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

15.1.8.1. acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and

15.1.8.2. acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

15.1.9. **Intellectual Property Rights** includes property and rights in respect of or in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or on or after this agreement.

15.1.10. **Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

15.1.11. **Certification Work** is defined in Clause 1 to this agreement.

15.1.12. **Term** means the period starting on the date that the Client accepts the terms and conditions of this agreement as per clause 1 and concluding upon the completion of the Certification Work or Termination, whichever occurs first.

## 15.2. Interpretation

In this agreement, unless the context otherwise requires:

15.2.1. headings do not affect interpretation;

15.2.2. singular includes plural and plural includes singular;

15.2.3. words of one gender include any gender;

15.2.4. a reference to a party includes its executors, administrators, successors and permitted assigns;

15.2.5. a reference to a person includes a partnership, corporation, association, government body and any other entity;

15.2.6. a reference to this agreement includes any schedules and annexures to this agreement;

15.2.7. an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

15.2.8. an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

15.2.9. a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

15.2.10. a provision is not construed against a party only because that party drafted it;

15.2.11. an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;

15.2.12. the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

15.2.13. an expression defined in the *Building and Development Certifiers Act 2018 (NSW)*, or the *Environmental Planning and Assessment Act 1979 (NSW)* has the meaning given by that Act at the date of this agreement;

15.2.14. an expression defined in the *Corporations Act 2001 (Cth)* has the meaning given by the Act at the date of this agreement; and

15.2.15. an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999 (Cth)* has the meaning given by that Act at the date of this agreement

## ANNEXURE – INFORMATION SHEET(S)

## Information about registered certifiers – building surveyors and building inspectors

**Important: this is a summary document only.**

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

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

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

### Obligations of registered certifiers

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

### Who does a registered certifier work for?

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

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

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

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<sup>1</sup> Visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) and search 'certification contracts'.

## Obligations of the applicant

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

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work<sup>2</sup> is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

## What does a registered building surveyor do?

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

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

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

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

## What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work<sup>3</sup> with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

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<sup>2</sup> 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>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.

## Principal certifier enforcement powers

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

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

## Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au):

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

## Questions?

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

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

The NSW Planning Portal at [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au) provides information on the NSW planning and development certification system.

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