

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

## About this Contract for Certification Services (contract)

*Council* must not carry out certification services for a person unless it has entered into a written contract with that person. You must therefore complete and sign this *Contract for Certification Services*.

**The four key steps for appointing a Registered Certifier are set out in the process steps attached to this *Contract*.**

If there are any terms that you do not fully understand please seek independent legal advice.

When the *Contract* is received it will be signed by an authorised officer and a copy of the executed *Contract* will be emailed to you for your records. The *Contract* comprises the following documents:

- a. this *Contract*;
- b. the General Conditions attached to this *Contract*; and
- c. the information entered on the NSW Planning Portal application and contained in the Principal Certifier Appointment Application and as updated from time to time.

Any conflict between the documents listed above will be resolved by giving precedence to the documents in the above order or as agreed by the parties in writing.

## How to complete this Contract

Ensure that all fields have been filled out correctly and fully

### Part A: Parties to this contract

#### 1. Applicant\*

Given Name/s

Family Name\*

Organisation name / Company name\* (if applicable)

Applicant's Address

Preferred contact number

Email address

\*If you are not the property owner you must give written notice to the owner of your intention to enter into this Contract.

Have you given such notice to the owner? Yes  N/A (I am the property owner)

#### 2. The Council of the City of Sydney

ABN 22 636 550 790

Town Hall House, 456 Kent Street, Sydney NSW 2000

Phone: 02 9265 9333

Email address: [council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au)

### Part B: Introduction

- Council is a certifying authority and employs registered certifiers (Employee Certifiers) who are authorised to carry out certification services on behalf of Council.
- Section 31(1) of the Building and Development Certifiers Act 2018 requires Council to enter a written contract in order to carry out certification services for a person.
- The Applicant appoints Council to carry out Certification Services on the terms set out in this Contract.

## Part C: Application Type

3. I am the applicant described in the attached Application made under the NSW Planning Portal for: (tick as applicable)
- Complying Development Certificate Application**  
(Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)
- Construction Certificate Application**  
(Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)
- Subdivision Works Certificate Application**  
(Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)
- Occupation Certificate Application**  
(Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)
- Council as Principal Certifier (PC)** to undertake inspections and issue an occupation certificate:
- If you wish to use Council as your PC tick this section in Part D to make this service part of the contract.
  - Refer to the Process Steps attached to this contract for further information about the PC functions and formal appointment.
4. The information contained in the certificate applications and PC Appointment Application from the NSW Planning Portal are incorporated into this Contract.

## Part D: Certification Services to be performed by Council

5. The Applicant appoints Council to perform the following certification services: (tick as applicable)
- Determination of Applications for Development Certificates**
- Determination of application for a Complying Development Certificate
- Determination of application for a Construction Certificate
- Determination of application for a Subdivision Works Certificate
- Determination of application for an Occupation Certificate
- Undertaking the function of Principal Certifier (PC)**
- Appointment of Council as Principal Certifier (PC) - see Part E
- Note:** If you select Council to be your PC you will also need to formally appoint Council as the PC (through the NSW Planning Portal) to carry out inspections and to issue an Occupation Certificate. You must also pay the inspection fees prior to Council accepting the PC appointment. A letter confirming Council's appointment and the terms of its appointment will then be issued by Council.

## Part E: Subsequent Appointment of Council as Principal Certifier (PC)

6. Particulars of the Certification Services to be carried out by Council under the Contract can be found on Council's website or provided by Council on receipt of a written request.

**Note: This Part E only applies to determination of an application for certificates set out in Part C.**

7. If the Applicant selects Council as PC for the Development, upon lodgement of the PC Appointment Application through the NSW Planning Portal, the Applicant agrees that:
- a. this Contract will also apply to the subsequent appointment of Council as PC for the Development; and
  - b. the Fees and Charges in Part I will apply.

## Part F: Modification of Complying Development Certificate, Construction Certificate or Subdivision Works Certificate

**NOTE: This Part F only applies to an application to modify an existing determination for a:**

- **Complying Development Certificate**
  - **Construction Certificate**
  - **Subdivision Works Certificate**
8. After entering into this Contract, the Applicant may seek to modify any of the above certificates for the Development.
9. If a modification is sought, upon lodgement of the application with Council to modify any of the above certificates the Applicant agrees that:
- a. this Contract will also apply to any modification to the application for the Development;
  - b. the information contained in the application form will be automatically incorporated into this Contract; and
  - c. the Fees and Charges in Part I will apply.

Part G: Development details

10. In addition to the site details contained in the attached Application form, the applicant declares that:

a. the development site is located at:

Lot

DP/SP

b. the development can be described as (e.g.: single storey dwelling):

c. the following development consent/certificate details apply (tick as applicable)

Development consent granted by consent authority

Name of consent authority

Development consent no. / identifier

Date of development consent

Development consent given by the issue of a Complying Development Certificate (CDC)

Name of certifier that issued the CDC

CDC no. / identifier

Date of CDC (determination)

Part 6 certificates (building and subdivision certification) issued under the Environmental Planning and Assessment Act 1979

Type of Part 6 certificate issued:

Name of certifier that issued the certificate

Certificate no. / identifier

Date of certificate (determination)

d. the documents listed in the Development Consent/ CDC/ CC /SWC apply including other documents provided by the Applicant such as details of plans, specifications and other documents listed in the certificate:

## Part H: Certification Services

11. Council proposes, at the date of this Contract, the Employee Certifier whose details are entered at Part K will carry out the Certification Services stated in Part D.
12. If Council later decides (in its discretion) to have a different Employee Certifier carry out the Certification Services any one of the following Employee Certifiers will carry out these functions:

<u>Name of Employee Certifier</u>	<u>Registration number</u>	<u>Name of Employee Certifier</u>	<u>Registration number</u>
Joe Burton	BDC1535	Peter Conroy	BDC0862
Lee Dunstan	BDC1017	Hayden Fox	BDC3410
John Lee	BDC0863	Joe Pignone	BDC1871
John Riley	BDC0861	Somalingam Sivayoganathan	BDC0581
Jae Lee	BDC2666	Michael Merlino	BDC1005
Thomas Yoo	BDC3374		

## Part I: Fees and Charges

### Undertaking Certification Services

13. The Applicant must pay the fees and charges for Certification Services for the determination of an application for certification work (including modification of a current certificate, where relevant) calculated by Council using the rates specified in Council's Schedule of Fees and Charges (see paragraph 19) and notified to the Applicant.
14. These fees and charges must be paid in full to Council at the time the application for Certification Services is lodged with Council.
15. In the case of fees and charges payable for Certification Services arising from unforeseen contingencies, such as the assessment of performance solutions under the Building Code of Australia or an application to modify an existing determination, such fees and charges will be calculated using the rates specified in Council's Schedule of Fees and Charges. For the fees for such additional Certification Services:
  - a. Council may issue an estimate before commencing the additional Certification Services; and
  - b. Council will issue a payment notice to the Applicant requiring fees to be paid before commencing the additional Certification Services.

### Undertaking the function of Principal Certifier (PC)

16. The Applicant must pay the Fees and Charges for Council to carry out the Certification Services of a PC for the Development as specified in Council's Schedule of Fees and Charges (see paragraph 19).
17. These Fees and Charges must be paid to Council in full at the time of lodging the PC Appointment Application via the NSW Planning Portal (after the certificate is issued) and before Council commences to carry out the Certification Services of a PC.
18. In the case of Fees and Charges payable for Certification Services not included in the original fee arising from unforeseen contingencies, such as additional inspections, these Fees and Charges will be calculated using the rates specified in Council's Schedule of Fees and Charges. Council will issue a payment notice to the Applicant within 21 days after the completion of such additional Certification Services and the Applicant must pay by the due date specified on the payment notice. If payment is not received in full by the due date all Certification Services including inspections will cease and Council may terminate the Contract. Termination of the Contract will require the Applicant to formally appoint an alternative PC for the Development.

## Part J: Information

19. Council's Schedule of Fees and Charges can be obtained from Council's One Stop Shop, Neighbourhood Service Centres or by download from the City of Sydney website [cityofsydney.nsw.gov.au/policies/revenue-policy-fees-charges](http://cityofsydney.nsw.gov.au/policies/revenue-policy-fees-charges).
20. The Development and Building Certifiers Regulation 2020 requires an information brochure containing details about the statutory obligations of certifiers, published by Fair Trading NSW to be made available as attached to this Contract.

## Part K: Execution of Contract

### Declaration:

1. I have freely chosen to engage Council; and
2. I have read the Contract including the General Conditions and the attached information brochure and understand my responsibilities and those of Council.

This Contract is executed as an agreement and made on the date it is signed by Council:

### Individual Applicant

**SIGNED** by the applicant in the presence of:

Witness signature:

Name & Address of Witness (printed):

Date:

Applicant's signature:

Applicant's name (printed):

### Incorporated Company

**SIGNED** by the applicant in accordance with section 127 of the Corporations Act 2001:

Director signature:

Name (printed):

Date:

Director / Secretary signature:

Name (printed):

### Authorised Officer

**SIGNED** \*\* for and on behalf of the Council of the City of Sydney ABN 22 636 550 790 by its duly authorised officer:

Name of Authorised Officer (printed):

Authorised Officer Signature (electronic):

Date:

\*\* This section will be completed by the Building Certification Services team after lodgement.

### 1. Definitions and interpretation

**Accurate** means:

- (a) accurate, complete, correct and suitable for use by *Council*;
- (b) free from any *Ambiguity* and compliant with all *Legislative Requirements*; and
- (c) prepared and issued by a person or persons competent, experienced, qualified and suitable;

**Ambiguity** means error, omission, inconsistency, discrepancy or other defect;

**Applicant** means the party shown at Part A of the *Contract*;

**Approval** means any approval, certification, decision, or determination that *Council* may grant or make, as part of, or as a consequence of, performing the *Certification Services* in accordance with *Council's* professional duties;

**BDC Act** means the *Building and Development Certifiers Act 2018* (NSW), and **BDC Regulations** means the *Building and Development Certifiers Regulation 2020* (NSW);

**Business Day** means any day other than: a Saturday, Sunday or public holiday in New South Wales, or 27, 28, 29, 30 or 31 December;

**Certification Services** means all of the certification work to be performed by *Council* identified in Part C, Part D, Part E or Part F, as varied in accordance with these General Conditions including any *Council Deliverables*;

**Conflict of interest** has the meaning in section 29 of the BDC Act.

**Contract** means the following documents, in order of precedence:

- (a) this Contract for *Certification Services*;
- (b) these General Conditions (including "Details" and "Execution" sections);
- (c) the information entered on the NSW Planning Portal application and contained in the PC Appointment Application and as updated from time to time;
- (d) any other information provided by the Applicant;
- (e) or as agreed by the parties in writing.

**Council** means the Council of the City of Sydney (ABN 22 636 550 790);

**Deliverables** means any documents, certificates, declarations, materials or information (including notes, drawings, specifications, tools, methodologies, processes, sketches, templates, tables and reports) in any format, electronic or otherwise which are necessary for *Council* to carry out the *Certification Services* including third party inspection reports and other documents as requested by, or provided by or on behalf of the *Applicant* to *Council* from time to time;

**Development** means the project specified in Part G of the *Contract*;

**Development Address** means the location specified in Part G of the *Contract*, and includes any other area or location that *Council* may reasonably require access to in order to perform the *Certification Services*;

**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 *Certification Services*, at the time the *Certification Services* are provided;

**Employee Certifier** means registered certifiers employed by *Council* and authorised to carry out certification services on behalf of *Council*;

**Fees and Charges** means the amount for the *Certification Services* calculated using *Council's* Schedule of Fees and Charges and as may be adjusted in accordance with this *Contract* including any disbursements;

**GST** means the same as in the *GST Law*;

**GST Law** means the same as "GST Law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, in relation to the *Applicant*, where it informs *Council* in writing or *Council* is notified that it is insolvent or is financially unable to proceed with this *Contract* or it is unable to pay its debts as and when they fall due;

**Legislative Requirement** means acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth or State of New South Wales, licences, consents, permits, approvals, requirements of an authority, the Building Code of Australia and all other industry standards, codes, guidelines and policies applicable to the *Certification Services*;

**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;

**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 monies (including under quantum meruit);

**Personal Information** has the meaning provided to it in the *Privacy Law*.

**Privacy Law** means the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

**Registered Certifier** has the meaning in the *Environmental Planning and Assessment Act 1979* (NSW).

**Variation** means any increase, decrease, amendment, or modification to the *Certification Services* determined by *Council* to be necessary for completing the *Certification Services* (or any delay or disruption to the *Certification Services* due to an event for which *Council* is entitled to an extension of time).

**Variation Sum** means the amount *Council* charges the *Applicant* for work performed as a result of a *Variation*, calculated using the rates specified in *Council's* Schedule of Fees and Charges (available on request) where applicable, plus Disbursements and any other amounts as otherwise reasonably determined by *Council* (and including a reasonable amount of 10% for profit and overheads in

respect of any *Variations* which increase the amount payable by the *Applicant*, and no amount for profit and overheads for any *Variations* which decrease the amount payable by the *Applicant*).

**WHS Law** means all law relating to work health and safety including the *Work Health and Safety Act 2011* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.

In this *Contract*:

- (a) words herein denoting persons shall also denote companies, and words denoting the singular shall include the plural;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to “includes”, “including” and “include” is to be read as if followed by the words “without limitation”. A reference to a person include an individual, firm or a body, corporate or unincorporated. A reference to a party is a reference to a party to this *Contract*.

#### 1.1 Contra proferentem

This *Contract* is not to be interpreted against the interests of a party merely because that party proposed this *Contract* or some provision in it.

## 2. Certification Services

2.1 *Council* agrees to perform the *Certification 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.

2.2 The *Certification Services* specified in Part D will be performed by *Council*.

2.3 The *Applicant* acknowledges that any *Approval* is at *Council's* discretion, subject to *Council* exercising its discretion in good faith and in compliance with all *Legislative Requirements*. Entry into, or performance of any act or obligation under, this *Contract* must not be construed as confirmation that any *Approval* that may be granted or made by *Council*, will be made.

## 3. Applicant Obligations

3.1 The *Applicant* must, at its own cost, promptly:

- (a) give *Council* safe access to the *Development Address* as and when *Council* requires, to enable *Council* to perform the *Certification Services* (and notify *Council* of any changes to that access); and
- (b) provide the *Applicant Deliverables* to *Council*;
- (c) coordinate other contractors or persons involved in the *Development* so as not to impede *Council's* performance of the *Certification Services*;
- (d) notify *Council* of anything which the *Applicant* is aware of or becomes aware of which could materially affect *Council's* performance of the *Certification Services*, including any authority

requirements, any design changes, any non-compliances, or any defects in the works the subject of the *Certification Services*;

- (e) comply with all of the *Applicant's* obligations under the *WHS Law*;
- (f) notify *Council* if the *Applicant* anticipates that there is a material risk of it being the subject of an *Insolvency Event*, or otherwise being unable to perform this *Contract*; and
- (g) otherwise cooperate with *Council* and do all other things reasonably necessary so that *Council* is able to perform the *Certification Services*.

3.2 *Council* is not liable for any *Loss* or delay resulting from the *Applicant's* failure to comply with this clause 3.

## 4. Applicant Deliverables

### 4.1 The Applicant:

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

## 5. Ambiguities

5.1 In the event of any *Ambiguity* in or between the documents forming part of the *Contract* or comprised in the *Applicant Deliverables*:

- (a) the order of precedence set out in the definition of *Contract* will apply;
- (b) otherwise, *Council* may resolve the *Ambiguity* in whichever way *Council* considers appropriate in its absolute discretion, and notify the *Applicant* accordingly, in which case:
  - (i) to the maximum extent permitted at law, the *Applicant* will have *No Claim* in relation to the resolution of the ambiguity referred to in subclause (b) above; and
  - (ii) *Council* will be entitled to a deemed *Variation* to the extent that the resolution of the *Ambiguity* results in any increase, decrease, amendment, or modification to the *Certification Services* which *Council* did not anticipate as at the date of this *Contract*.

## 6. Legislative changes

6.1 Each party must perform its obligations under this *Contract* in compliance with all *Legislative Requirements*.

6.2 Subject to clause 6.3, if there is a change in *Legislative Requirements* on or after the date of this *Contract*, and that change requires a *Variation* in order for the *Certification Services* to be performed in accordance with this *Contract*, then:

- (a) *Council* is entitled to a deemed *Variation* and shall notify the *Applicant* of the additional *Variation Sum* which the *Applicant* must then pay; and



- (b) once the *Applicant* pays in full the *Variation Sum* referred to in the previous subparagraph, *Council* will perform the *Variation*;
- (c) to the maximum extent permitted at law, the *Applicant* will have *No Claim* in relation to the change in *Legislative Requirements* other than for breach of the obligation referred to in subclause (b) above.

6.3 The *Applicant* will have *No Claim* against *Council* as a result of or in any way connected with any change in *Legislative Requirements*, which occurs after *Council* has ceased to perform the *Certification Services*.

## 7. Payment

- 7.1 The *Applicant* must pay *Council* the *Fees and Charges* within two (2) *Business Days* of entry into this *Contract* and in any event, prior to *Council* commencing the *Certification Services*.
- 7.2 *Council* will issue a receipt when payment in full of the *Fees and Charges* is received. *Council* will issue a tax invoice on receipt of a written request.
- 7.3 *Council* reserves the right to withhold the issue of any certificates until such time as all outstanding payments have been paid in full.
- 7.4 The *Applicant* acknowledges that payment of the *Fees and Charges* does not guarantee or imply that any certification will be issued by *Council* and that *Council* can only provide certifications to the extent the conditions for certification are satisfied.

## 8. Variations and Variation Sum

- 8.1 If, in *Council's* reasonable opinion, a *Variation* has occurred or is required, *Council* must provide the *Applicant* written notice of such *Variation*. Any *Variation* to the *Certification Services* must be performed in accordance with and subject to this *Contract* and once issued to the *Applicant* is deemed to be incorporated into this *Contract*.
- 8.2 Within five (5) *Business Days* of the date *Council* provides notice under the previous subclause, the *Applicant* must provide written notice to *Council* if it disputes the *Variation*, and the reasons for that dispute.
- 8.3 If there is any dispute about a *Variation* *Council* may suspend the *Certification Services* under clause 11.1(d) until the dispute is resolved in accordance with clause 14.
- 8.4 The *Applicant* acknowledges that *Variations* may include those specified in Part E and Part F.
- 8.5 If, in the *Applicant's* reasonable opinion, a *Variation* is required, the *Applicant* must provide *Council* with written notice providing details of the proposed *Variation* to *Council*, at least five (5) *Business Days* prior to *Council* being required to perform work in relation to the *Variation*. If *Council* agrees that a *Variation* is required, the *Council* will issue a notice in accordance with clause 8.1.

- 8.6 *Council* is entitled to charge the *Applicant* the *Variation Sum* for work performed under any *Variation*, and shall issue a payment request in respect of the *Variation Sum* to the *Applicant*.
- 8.7 The *Applicant* must pay *Fees and Charges* issued for a *Variation Sum* within the time specified on the relevant payment request or if no such time is stated, within ten (10) *Business Days* from the date of the payment request.

## 9. Time and Completion

- 9.1 *Council* must commence the *Certification Services* promptly after payment is received in full and will endeavour to complete the *Certification Services* within a reasonable period of time.
- 9.2 *Council* is entitled to an extension of time for completing the *Certification Services*, if *Council* is delayed in performing the *Certification Services* by:
  - (a) an act, default, or omission of the *Applicant*, its agents, employees, or any other party associated with the *Development* (including a suspension or *Variation*);
  - (b) any change in *Legislative Requirements*;
  - (c) any *Applicant Deliverable* not being *Accurate*; or
  - (d) any other act, matter, event or thing beyond *Council's* reasonable Control.
- 9.3 *Council* is not liable for any delay to the *Development* caused by *Council* completing the *Certification Services* in accordance with this clause 9.

## 10. Liability Limit

- 10.1 *Council's* aggregate liability to the *Applicant* arising in connection with this *Contract*, 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) the amount of the *Fees and Charges*; and
  - (b) \$100,000.00.
- 10.2 If, and to the extent that, clause 10.1 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 *Council's* liability for a breach of a condition or warranty is limited to:
  - (a) the supply of the relevant *Certification Services* again; or
  - (b) paying the reasonable cost of having the *Certification Services* supplied again.
- 10.3 *Council's* liability to the *Applicant* 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 *Contract*.
- 10.4 Clauses 10.1 and 10.3 do not limit or exclude *Council's* liability in respect of claims, actions, costs, losses, damages or liability arising due to:
  - (a) liability which cannot be limited at law; or
  - (b) fraudulent or criminal conduct.

## 11. Suspension

11.1 *Council* may suspend the *Certification Services* for so long as:

- (a) *Council* considers that there is any risk to health or safety including matters subject to the *WHS Law* in providing the *Certification Services* or entering any areas of the *Development Address* required to perform the *Certification Services* (including because any persons on the *Development Address* are abusive or threatening);
- (b) the *Applicant* fails to provide any *Applicant Deliverables* required by *Council*;
- (c) the *Applicant* has not paid any amount by the time that it is due;
- (d) the parties are in dispute in relation to a *Variation* (and that dispute has not resolved by a final and binding form of dispute resolution).

11.2 The *Applicant* indemnifies and holds harmless *Council* for any additional costs or expenses *Council* incurs in relation to a suspension under this clause 11, if the suspension was not caused solely by an act or omission of *Council*.

## 12. Confidentiality, privacy and public access

12.1 Where either party (Recipient) receives or otherwise possesses confidential information of the other party (Discloser), the Recipient must:

- (a) keep it confidential;
- (b) only use it where required to exercise its rights or perform its obligations under this *Contract*;
- (c) not disclose it to anyone other than:
  - (i) with the prior consent of the Discloser and on the condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements as specified in this *Contract*;
  - (ii) where required by any *Legislative Requirement* which may require the Recipient to publish or disclose certain information regarding this *Contract*.

12.2 Neither party will issue any press release or make any other public statement regarding this *Contract* without the prior written consent of the other, except as required by a *Legislative Requirement*.

12.3 Without limiting its obligations at law with respect to privacy and the protection of *Personal Information*, *Council* will;

- (a) comply with the *Privacy Law*; and
- (b) notify the *Applicant* on becoming aware of any unauthorised access, modification, disclosure or use of *Personal Information* or privacy breach in relation to any *Personal Information*.

12.4 No publicity

The *Applicant* must not use *Council's* name, trade mark or logo in any advertisement, media release, public statement, promotional materials or announcement relating to this *Contract* or the *Certification Services* without *Council's* prior written approval.

## 12.5 Public Access to Government Information

- (a) The *Applicant* acknowledges and agrees that *Council* is subject to the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)*. To the extent the GIPA Act applies, *Council* may disclose information in this *Contract* (including the entire *Contract*) on its nominated website established for GIPA Act disclosures. The *Applicant* irrevocably consents to *Council* acting in accordance with this clause.

## 13. Termination

13.1 *Council* may terminate this *Contract*:

- (a) at any time and for any reason, in its sole discretion, by giving to the *Applicant* not less than ten (10) *Business Days'* prior written notice;

or if the *Applicant*:

- (b) breaches a material term of this *Contract*;
- (c) breaches a term of this *Contract* and fails to remedy that breach within a reasonable period of time of *Council's* notice to so rectify;
- (d) 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 *Contract* including with respect to payment (which proof shall include a current asset liability statement, profit loss statement and declaration of ability to pay by a current director or other officer), or is unable to pay its debts when they fall due;
- (e) fails to pay any amount owing by the date due; or
- (f) ceases to carry on business,

or if *Council*:

- (g) is prevented from lawfully completing the *Certification Services* in accordance with this *Contract* due to a change in the *Legislative Requirements*; or
- (h) becomes aware of any *conflict of interest*, which conflict may prevent *Council* from complying with relevant laws or regulations if *Council* continues to perform the *Certification Services*, irrespective of whether such conflict existed before or after entry into this *Contract*.

13.2 The *Applicant* may terminate this *Contract* by giving *Council* written notice to that effect if *Council* fails to remedy a substantial breach of a material term of this *Contract* within twenty (20) *Business Days* of being requested by notice in writing to do so by the *Applicant*.

13.3 If the *Applicant* receives a notice from *Council* that:

- (a) *Council* has terminated the *Contract* - the *Applicant* must as soon as possible: appoint a replacement Principal Certifier to take over the certification role comprised in the *Certification Services*; advise *Council* of that replacement; and, where necessary notify all relevant authorities of that replacement;
- (b) *Council* will terminate the *Contract*, the *Applicant* must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement Principal

Certifier to take over the certification role comprised in the *Certification Services* from the date of termination of the *Contract* and advise *Council* of that replacement; and, where necessary notify all relevant authorities of that replacement.

#### 13.4 On termination of this *Contract*:

- (a) any amounts owing to *Council* in respect of the *Certification Services* up to and including the date of termination (together with any other amounts which *Council* would be entitled to, but for the termination, for work performed up to and including the date of termination) become immediately due and owing;
- (b) if the termination is effected under clauses 13.1(a) - 13.1(h), *Council* is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit;
- (c) the *Applicant* must return or destroy (at the *Council's* request) any confidential information held by the *Applicant*; and
- (d) the *Council* must, subject to any *Legislative Requirement*, return or destroy (at the *Applicant's* request) any confidential information held by the *Council*.

### 14. Dispute Resolution

#### 14.1 Notice of dispute

- (a) If a dispute between the parties arises out of, or in any way in connection with, the subject matter of this *Contract*, then either party may, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.
- (b) Notwithstanding the existence of a dispute, the parties must, subject to clause 13, continue to perform the *Contract*.

#### 14.2 Negotiation

Within ten (10) *Business Days* after receiving a notice of dispute, the *Applicant* must meet with representatives from the senior management of the *Council* to undertake genuine negotiations with a view to resolving the dispute.

14.3 This clause 14 will survive termination, completion, or expiration of this *Contract*.

### 15. GST

15.1 Terms used in this clause 15 which are not defined in the *Contract*, but which are defined in the *GST Law*, have the meanings given to them in the *GST Law*.

15.2 Except where express provision is made to the contrary, any amount that may be payable for the *Fees and Charges* (and *Variation Sum*, if relevant) under this *Contract* is exclusive of any *GST*. The applicable *GST* amount payable must be added to the *Fees and Charges* (and the *Variation Sum*, if relevant).

### 16. General

To the extent permitted by law, this *Contract* constitutes the entire *Contract* 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.

- 16.2 The *Applicant* agrees that, other than as expressly stated in this *Contract*, in entering into the *Contract* it has not relied upon any representation, warranty, or inducement by *Council* nor is any representation, warranty or thing made or done by *Council* to be inferred, incorporated or implied into the *Contract*.
- 16.3 This *Contract* may only be varied by a document signed by or on behalf of each party.
- 16.4 The *Applicant* must not assign or novate this *Contract* without *Council's* prior written consent.
- 16.5 This *Contract* may be executed electronically and in counterparts and by the parties on separate counterparts. Each counterpart comprises the *Contract* of each party who has executed and delivered that counterpart. The parties acknowledge and agree to this *Contract* being executed electronically, and in counterparts, in accordance with the Electronic Transactions Act 2000 (NSW).
- 16.6 A party's rights and obligations do not merge on completion of any transaction under this *Contract*.
- 16.7 If any provision or part of a provision of this *Contract* 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.
- 16.8 Without limiting any other provision of this *Contract*, the parties agree that:
  - (a) each indemnity in this *Contract* is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this *Contract*; and
  - (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this *Contract*.
- 16.9 Without limiting any other provision of this *Contract*, the parties agree that:
  - (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this *Contract* 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 *Contract*;
  - (b) a waiver given by a party under this *Contract* is only effective and binding on that party if it is given or confirmed in writing by that party; and
  - (c) no waiver of a breach of a term of this *Contract* operates as a waiver of another breach of that term or of a breach of any other term of this *Contract*.
- 16.10 This *Contract* is governed by the law in force in New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts in New South Wales 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 *Contract*.

16.11 Nothing in this *Contract* will fetter, limit or restrict in any way the discharge by *Council* of its obligations or rights under any Legislative Requirements or as an authority.

16.12 The *Applicant* will deal with *Council* as it would any other authority with respect to obtaining any permits, approvals or licences.

#### 16.13 Notices

- (a) A notice, consent, direction or other communication under this *Contract* is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email at the addresses (including email addresses) specified in Part A.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
  - (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
  - (ii) if it is sent by mail, five (5) *Business Days* after it is posted; or
  - (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

#### 16.14 Liability for expenses

Each party must pay its own expenses incurred in connection with executing this *Contract*.

#### 16.15 Survival

Clauses 2.1 (*Due Care and Skill*), 7 (*Payment*), 11 (*Overdue Amounts*), 13 (*Insurance - to the extent it relates to professional indemnity insurance*), 10 (*Liability Limit*), 12 (*Confidentiality and privacy*), 13.4 (*obligations on termination*), 14 (*Dispute Resolution*) and this clause 16.5 survive the expiry or earlier termination of this *Contact*, together with any other term which by its nature is intended to do so.

## Lodgement Details

This Contract must be submitted after your Application is lodged through NSW Planning Portal and received by Council.

For further information regarding your application please contact us by:

**EMAIL:** [council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au)

**TELEPHONE:** 02 9265 9333

**WEBSITE:** [www.cityofsydney.nsw.gov.au](http://www.cityofsydney.nsw.gov.au)

## Privacy & Personal Information Protection Notice

**Purpose of Collection:** For Council to carry out certification services for an individual or organisation.

**Intended recipients:** Council staff and approved contractors of the Council of the City of Sydney.

**Supply:** A contract for certification services is required by law in order for the Council of the City of Sydney to carry out certification services. The Contract must be correctly completed & signed for Certification Services to occur.

**Access/Correction:** Contact the Council of the City of Sydney Customer Service Unit to access or correct this information.

**Storage:** The City of Sydney Council 456 Kent St Sydney.

# Steps in the certificate\* approval and inspection processes

\***Certificate** includes any of the following: construction certificate; complying development certificate; subdivision works certificate. The contract can include one or more of these certificate-types.

**\*Certificate application has been lodged via the NSW Planning Portal.**



There are four key steps in the development process which must be followed to obtain building approval, commence works and occupy a building.

## Step 1: Contract and fee payment for the certificate

Complete and lodge a *Contract for Certification Services* including making payment of the application processing fees. Note: The contract can cover one or more of the certification services listed in Parts C and D of the Contract.

When the contract is executed and your application is approved Council will upload the certificate to the NSW Planning Portal.

## Step 2: Appointing a Principal Certifier (PC)

After receiving your certificate and before commencing work you must appoint a PC. The PC will:

- monitor the development;
- undertake mandatory inspections; and
- issue an occupation certificate at completion of the works (see **Step 4**).

If you have indicated in the Contract that you wish to use Council as your PC, you must complete a PC appointment form via the NSW Planning Portal: <https://www.planningportal.nsw.gov.au/>. The completed form will be automatically forwarded to Council.

Note: Payment of applicable service fees must be made at this point - refer to the letter accompanying the certificate for details and the online payment link.

## Step 3: Council's acceptance of PC appointment and notice of when work is to commence

The appointment of Council as your chosen PC will be confirmed (by letter) via the Planning Portal. The terms of appointment are set out in the letter including a list of mandatory inspections to be carried out by the PC (see 'note'). At least 48 hours' notice must be given of the planned date of commencing the development.

Note: If an inspection is missed this could prevent an occupation certificate being issued (see **Step 4**). It is therefore important that all required inspections are requested and carried out on time. Make sure your builder is aware of the required inspections.

## Step 4: Completion of work and occupation/use

Upon completion of work, you must lodge an application to seek approval to occupy or use the completed building or part (obtain an occupation certificate). The application must be made via the NSW Planning Portal. Refer to the PC appointment letter for details about the information and documents that must be provided with the application.

Note: You must not occupy the building or use the area of the completed works until an occupation certificate is obtained.

## 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.

<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 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>2</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> 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.



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## 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.

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