

PERFORMANCE OF CERTIFICATION WORK CONTRACT OF AGREEMENT

PART A : INTRODUCTION

This is an Agreement between City of Ryde Council (the Council) and the Client (as nominated below)

By virtue of the *Environmental Planning and Assessment Act 1979* Council is authorised to perform the functions of a Principal Certifier and employs registered certifiers (the certifier) who are authorised to carry out the Certification Work which is the subject of this Agreement on behalf of the Council.

The Client seeks to engage the Council to perform certain Certification Work on the terms set out in this Agreement*

* Refer to Part E for particulars of Certification Work.

PART B : PARTIES TO THE AGREEMENT

Client to complete

1. THE COUNCIL

Name

Address

Suburb

Postcode

Phone

Email

2. THE CLIENT *For whom the Certification Work will be carried out*

Given name

Family name

Company

Postal address

Suburb

Postcode

Preferred contact

Mobile

Phone

Email

Mobile

Phone

Business phone

Home phone

Email

Customer reference

Tick the box that applies

☐ Client is the property owner

☐ Client is duly authorised by the owner

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

Personal information collected from you is held and used by Council under the provisions of the *Privacy and Personal Information Protection Act 1998*. The supply of information is voluntary, however if you cannot provide, or do not wish to provide the information sought, Council may be unable to process your request. Please note that the exchange of information between the public and Council, may be accessed by others and could be made publicly available under the *Government Information Public Access Act 2009 (GIPA Act)*. If you require further information please contact Council's Customer Service Centre on 9952 8222.

PART C : DESCRIPTION OF DEVELOPMENT

Client to complete

Provide details of development being certified e.g. dwelling, garage, swimming pool

Unit number	House number
Street	
Suburb	Lot(s)
Section	Deposited plan (DP)
Other	Strata Plan (SP)

PART D : DETAILS OF DEVELOPMENT APPROVAL

Client to complete

Do you have a development consent? <i>If yes, please provide details below</i>	Yes	No
Development consent 8/ / / Date issued (e.g 8 / 2000 / 100 / 1)		
Details of any plans and specifications to which these approvals relate (e.g. Drw:SFR2345 dated 01/01/2000)		

PART E : CERTIFICATION WORK TO BE PERFORMED

Client to complete

This Agreement relates to the following Certification Work

Tick the box that 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*	
Determination of application for, and issue of, a Strata Certificate*	
Determination of application for, and issue of, a Subdivision Certificate*	

* These certificates are “Development Certificates” for the purposes of this Agreement.

Please note, Council, as the PC, will NOT undertake an inspection in relation to a building 10 years after either an occupation certificate has been issued, the building has been occupied or the date of the last inspection carried out by the PC.

PART F : CLIENT DECLARATION AND SIGNATURE

Client to complete

- I/We agree to pay all fees in accordance with Council's adopted fees and charges (www.ryde.nsw.gov.au) and/or accepted quotation. I/We are aware I/We are responsible for all filing fees for the development.
- Note: In respect of any unforeseen contingency or additional work provided under this Agreement, the Council will send an invoice to the Client and require payment within 14 days of receipt of the invoice and before the completion of any such work.
- I/We acknowledge that the fees payable are calculated in accordance with Council's adopted Fees & 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 Principal Certifier.
- I/We agree to provide all documents that the Council may reasonably request for it to perform the function of the Principal Certifier.
- I/We agree to provide the Council with access to the development site at time/s and date/s suitable to Council.
- 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 this Agreement.
- I/We declare that I/We have freely chosen to engage City of Ryde Council as the certifier and that I/We have read this contract and the accompanying document from NSW department of Fair Trading (attached) and I/We understand my/our responsibilities and those of City of Ryde Council as the certifier.
- I/We do not hold council responsible for any damage/injury caused by Council during the inspection.
- I/We agree to ensure the safety of Council inspectors while on-site and that the site is safe to inspect.
- I/We understand Council may refuse the request if all requirements are not met.

Name(s)

Date

Client(s)

Signature

PART G : 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 employee that Council proposes, at the date of this Agreement, to carry out the Certification Work is nominated from the below list.

The Client is advised that to the extent that any inspections are required to be carried out under the *Environmental Planning and Assessment Act 1979* and Environmental Planning and Assessment Regulation 2021 for the Certification Work, those inspections may be carried out by any one of the Council employees listed below who has the necessary accreditation for that work.

Council's Registered Certifiers

Anthony McDermott BDC 1566	Colin Murphy BDC 1031	Jane Tompsett BDC 1015
Morris Impala BDC 2199	Daniel Goodwin BDC 2865	
Lorelle Mainsbridge BDC 3203	Sarah McManus BDC 1126	

PART H : DATE OF AGREEMENT AND VALIDATION PERIOD

Client to complete

This Agreement is made on

Note: This agreement remains valid for a period of five (5) years from the date the agreement has been made. In the event the consent is surrendered or an appeal to the Court is dismissed the validation period ends on the date of surrender of consent or appeal being dismissed or five years, whichever is first in time.

Nominated Certifier

Signed on behalf of
City of Ryde Council

PART J : FEES AND CHARGES

1. The Council's fees and charges for the performance of the Certification Work are viewable via Council's website (www.ryde.nsw.gov.au). The Client is responsible for all filing fees for the development.
2. The fees and charges must be paid to the Council:
 - a. before, or at the time, an application for the Development Certificate is lodged with the Council; and/or
 - b. before the Council commences to carry out any of the functions as the Principal Certifier.
3. In the case of fees and charges that may be payable for work arising from unforeseen contingencies, or where council considers additional fees are required to be paid to complete the work (such as multiple assessments of a single application due to insufficient or substandard information), fees and charges are to be calculated as outlined within Council's adopted fees and charges (www.ryde.nsw.gov.au). In respect of any unforeseen contingency or additional work provided for under this Agreement, the Council will send an invoice to the Client and require payment within 14 days of receipt of the invoice and before the completion of any such work.

PART K : STATUTORY OBLIGATIONS

An information brochure which is to include information about statutory obligations must accompany this Agreement, if one is published by NSW Fair Trading on its website. NSW Fair Trading is the statutory body that issues registration to a Certifier and administers the *Building and Development Certifiers Act 2018* and associated Regulation.

Note: The attached brochure is published on the NSW Fair Trading website and accompanies this agreement.

It is the obligation of the Client to be aware of any changes to statutory obligations as shown on the NSW Fair Trading website.

In the event a change to statutory obligations prohibits Council from performing the work in this agreement the agreement will be terminated on the date of the change to statutory obligations affecting Council's role in this agreement.

ATTACHMENT A : PRINCIPAL CERTIFIER FUNCTIONS**1. INTRODUCTION**

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.

Section 6.6 & 6.7 of the *EP&A Act* prohibits the commencement of the erection of a building in accordance with a development consent until:

- A construction certificate or complying development 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.

Similar requirements apply to the commencement of subdivision work.

This Attachment sets out the responsibilities of the Client and the Council (when engaged by the Client to act as PC).

2. DEFINITIONS**Principal Certifier or PC**

The PC is the authority appointed by 'the Client' (being the person having the benefit of the development consent or complying development certificate) under section 6.5 of the *EP&A Act*. A PC may be either Council, or a registered private certifier (except in certain circumstances).

NOTE

- a) Council Registered Certifiers, as the PC, cannot be involved in the design or provide advice in relation to the building/development works; but may offer advice for compliance with Deemed to Satisfy BCA matters with class 1 and 10 buildings only.
- 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.

Critical Stage Inspections

Section 61 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 relevantly prescribes the following as critical stage inspections:

- (2) The building work for a class 1 or 10 building must be inspected on the following occasions—
 - (a) after excavation for, and before the placement of, a footing,
 - (b) before pouring an in-situ reinforced concrete building element,
 - (c) before covering the framework for a floor, wall, roof or other building element,
 - (d) before covering waterproofing in a wet area,
 - (e) before covering stormwater drainage connections,
 - (f) after the building work is completed and before an occupation certificate is issued for the building (the final critical stage inspection).
- (3) The building work for a class 2, 3 or 4 building must be inspected on the following occasions—
 - (a) after excavation for, and before the placement of, the first footing,
 - (b) before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread,
 - (c) before covering the junction of an internal fire-resisting construction bounding a sole-occupancy unit and another building element that is required to resist internal fire spread,
 - (d) before covering waterproofing in a wet area, for at least 10% of rooms with a wet area in the building,
 - (e) before covering stormwater drainage connections,
 - (f) after the building work is completed and before an occupation certificate is issued for the building (the final critical stage inspection).
- (4) The building work for a class 5, 6, 7, 8 or 9 building must be inspected on the following occasions—
 - (a) after excavation for, and before placement of, the first footing,
 - (b) for a class 9a or 9c building—before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread,
 - (c) before covering stormwater drainage connections,
 - (d) after the building work is completed and before an occupation certificate is issued for the building (the final critical stage inspection).
- (5) The critical stage inspections must be carried out by—
 - (a) the principal certifier, or
 - (b) another certifier, as agreed with the principal certifier.
- (6) Despite subsection (5), a final critical stage inspection must be carried out by the principal certifier.
- (7) Despite Building work comprising a swimming pool must also be inspected as soon as practicable after a barrier, if required under the *Swimming Pools Act 1992*, is erected.
- (8) The inspection required under subsection (3)(b) or (4)(b) is an inspection of at least 1 of each type of protection method for each type of service, on each storey of the building comprising the building work.
- (9) The inspection required under subsection (3)(c) is an inspection of at least 30% of sole-occupancy units, on each storey of the building containing sole-occupancy units.

Where Council is the PC all of the critical stage inspections must be carried out by a Council Registered Certifier or another registered certifier upon prior arrangement. Failure to receive an inspection may result in Council being unable to issue an OC. Critical stage inspections are also dependent on any changes made to legislation which may occur from time to time. In the event critical stage inspections are affected by changes to legislation, the applicant can not hold Council liable for delays caused by these legislative changes.

Requests for final inspections and/or OC's for "BASIX affected buildings" must be accompanied by a completed pre-final self-certification/form for applicants/builders/principal contractors. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.

Inspections involving works approved under the provisions of Section 68 of the *Local Government Act 1993*, as amended, can only be carried out by Council Officers (e.g. on-site wastewater management systems, manufactured homes, temporary structures and amusement devices).

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. The *EP&A Act* outlines circumstances where an OC is not required such as exempt development to which the issuing of a compliance certificate is permitted alternative.

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 & Charges schedule. Lodgement to Council may require the use of third party processes such as the NSW Government ePlanning Portal.
- b) The OC **MUST** be issued prior to a building being used or occupied unless it relates to a building to which an OC is not required by the *EP&A Act*. It is an offence to occupy a building without benefit of an OC.

3. SERVICE PROVIDED AND RESPONSIBILITIES OF COUNCIL

Under the *EP&A Act* a PC has a range of functions, including:

- (a) Ascertaining, before any building work has or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work;
- (b) Ascertaining, 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;
- (c) 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 any residential building work;
- (d) Carrying out critical stage inspections of the building work or subdivision work as prescribed by the Environmental Planning & Assessment Regulation 2021 (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 or subdivision certificate for the building or work;
- (e) Ensuring that any preconditions required by a development consent or complying development certificate are met for the work before the issue of an occupation certificate or subdivision certificate.

Council, as the PC, will:-

- 3.1 Carry out inspections following a minimum of two business days after notification provided by the Client. Any period Council is closed will not be counted in this two day period.
- 3.2 Such notification for inspection must be lodged at the Council by the Client by 2.00pm on the two business days preceding the day of inspection. Any period Council is closed will not be counted in this two day period. Inspections will be accepted by approved electronic methods (online inspection bookings or email), telephone (02) 9952 8222, or in person at the Customer Service Centre.
- 3.3 Make a written record of the inspection and provide a copy to the relevant owner and/or applicant via electronic transmission.
- 3.4 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.
- 3.5 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.
- 3.6 Issue determinations for OC's and subdivision certificates on the prescribed form.

Note: Inspections will be carried out Monday to Friday (inclusive) only and excludes weekends and Public Holidays.

4. RESPONSIBILITIES OF THE CLIENT

The Client, in appointing City of Ryde Council as the PC, agrees to:-

- 4.1 Pay all fees for services provided by the PC or such fees and charges as required by another Authority, eg. NSWFB.
- 4.2 Ensure that arrangements are made for Council to carry out inspections of the building works at time/s and date/s suitable to Council at various stages indicated in Council's letter of acceptance of PC appointment and the Construction Certificate.
- 4.3 Ensure that building work is ready for inspection by 9.30am on the day of inspection. Note: Should a specific inspection time or site access be required this may be arranged, subject to availability, by speaking with the relevant Council Registered Certifier between 9.00am and 9.30am on the day of the inspection.

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 Fees and Charges at Council's office.

ATTACHMENT A : PRINCIPAL CERTIFIER FUNCTIONS (CONTINUED)

4.4 Where an inspection is required, the Client MUST ensure the relevant stamped approved plans and specification, and other required details are on-site and/ or available to the Council Registered 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 schedules and the like.

4.5 Before booking a final inspection and/or Occupation Certificate for a “BASIX affected building” the Client MUST submit to Council a completed pre-final self-certification/form. It is the responsibility of the applicants/builders/ principal contractors to ensure all of the BASIX commitments have been fully met.

4.6 Ensure that the erection of the building and/or works are in accordance with the development consent and construction certificate. The client warrants that the site is safe as required and does not hold council liable for any damage/injury caused during the inspection.

5. STAGES AND TYPE OF WORKS REQUIRING INSPECTION

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 the Construction Certificate or Complying Development Certificate, or within Council's letter of acceptance of PC appointment.

The type of inspection may include, but not limited to:-

5.1 Inspections relating to the aspects of structural integrity or health and amenity matters relating to the building and/ or its occupants (eg footings, slab, pre-lining framework, wet area flashing, stormwater connection, final and the like).

5.2 Inspections of food premises fitout.

5.3 Inspection determining compliance with prescribed development conditions and other provisions prescribed in the *Environmental Planning & Assessment Act* and Regulation.

5.4 The mandatory critical stage inspections.

5.5 Stages may be amended from time to time.

INFORMATION

For further information on this specification and matters relating to the booking of inspections, please contact Customer Service on 9952 8222.

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.