

Principal Certifier / Registered Certifier Contract

Lodge Agreement at Ballina Shire Council • 40 Cherry Street Ballina (Mon-Fri 8.15am to 3.00pm)
mail PO Box 450 Ballina 2478 • **e** council@ballina.nsw.gov.au • **abn** 53 929 887 369
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Ballina Shire Council's Building Services section provides an efficient, quality and cost effective building inspection, approval and certification service to its clients. Use this form if you have chosen Council as the Principal Certifying Authority in your Construction Certificate or Complying Development application.

1. Ballina Shire Council is a certifying authority and employs registered certifiers who are authorised to carry out the certification work which is the subject of this Contract on behalf of Council.
2. The Client seeks to engage the Ballina Shire Council to act as the Principal Certifier and to perform certification work on the terms set out in this Agreement.

Development Details

These details identify the land where the development is to be located.

Unit / Street Number

Street

Suburb / Town / Locality

Postcode

Lot/DP or Lot/Section/DP or Lot/Strata Plan Number

Briefly describe the type of work you propose to carry out

This Agreement is to be read in conjunction with the relevant submitted Development Application/ Construction Certificate Application/Complying Development Application.

Declarations

As the owners of the land subject to the development, I/we agree to the terms of the attached Agreement and hereby appoint and authorise Ballina Shire Council to act as the Principal Certifier and its Registered Certifiers to perform the duties required under the *Environmental Planning and Assessment Act (EPAAct) 1979* and Regulations, and *Building and Development Certifiers Act 2018*.

I/we have freely chosen to engage Ballina Shire Council and its Registered Certifiers.

I/we have read the contract and any document accompanying the contract and I/we understand my/our roles and responsibilities and those of the Registered Certifiers.

Owner's Name

Owner's Name

Postal Address

Postal Address

Email Address

Email Address

Phone

Phone

Signature

Date

Signature

Date

Principal Certifier / Registered Certifier Terms of Agreement

Building and Development Certifiers Act 2018

1.0 Role of the Principal Certifier/Registered Certifier

- The appointed Principal Certifier/Registered Certifier is to assess and determine the issue of Construction Certificates, Complying Development Certificates and Occupation Certificates under the *Environmental Planning and Assessment Act (EPAAct)* and the *Building Code of Australia (BCA)/National Construction Code (NCC)*.
- The appointed Principal Certifier/Registered Certifier is to conduct mandatory critical stage progress inspections of certified development in accordance with the *EPAAct*, including the following:
 - Any concrete building element prior to concrete pour including footings, slab, pool/ bond beams and retaining wall core filling
 - Any floor, wall and roof framework prior to cladding
 - Waterproofing of wet areas prior to cladding
 - Stormwater drainage connections prior to covering
 - Prior to covering any required fire protection service penetrations to resist the spread of fire and smoke
 - Prior to covering any internal fire resisting construction bounding a sole occupancy unit or any building element required to resist the spread of fire and smoke
 - Pool barrier fencing prior to the filling of the pool with water and use of the pool.
 - Final inspection prior to the issue of an Occupation Certificate

Note: Additional water and sewer drainage inspections as follows are also required under Section 68 of the *Local Government Act (LGA)* due to Ballina Shire Council being the Water and Sewer Authority:

- Internal/external sewer drainage lines including On-site Sewage Management (OSSM) systems
- Internal rough-in water supply lines
- The appointed Principal Certifier/Registered Certifier is to ensure the development has been carried out in accordance with any issued Development Consent/Complying Development Certificate/Construction Certificate and any relevant conditions contained therein.
- The scope of works covered by the Agreement is limited to building works described in the Construction Certificate or Complying Development Certificate and associated documents.
- This agreement covers any subsequent modifications made to a development under the appropriate provisions of the *EPAAct*.
- Council's Registered Certifiers may issue written Direction Notices under the *EPAAct* upon a building owner(s) should any approval breaches occur.
- The appointed Registered Certifiers will provide the appropriate Principal Certifier signage on site.

2.0 Owner(s) Responsibilities

- The owner(s) is/are to ensure no construction works have commenced until all necessary approvals are obtained and Council has been appointed as the Principal Certifier/Registered Certifier for the development and a Construction Certificate or Complying Development Certificate has been issued by Council.
- Owners are to ensure all development is carried out in accordance with the issued approvals, including any issued BASIX certificate and modifications to the development are not to be made without the necessary prior approvals being in place.
- The building or building part is not to be occupied until an Occupation Certificate has been issued by the Principal Certifier/Registered Certifier.
- The owner(s) is/are to ensure the required Home Builder's Compensation Fund (HBCF) insurance or Owner Builder permit are in place where required under the Home Building Act prior to any construction works commencing.
- The owner(s) is/are to ensure all tradespersons working on the development are appropriately qualified and licensed where required.
- Building owners/applicants are to ensure their Contracted Builders/Plumbers are made aware of the required inspections to be carried out as required under any issued Construction Certificate or Complying Development Certificate or Section 68 LGA approval.
- The building owner(s) is/are to advise Council in writing/electronic email of any missed mandatory critical stage inspection within two days of becoming aware of the missed inspection, detailing the circumstances as to why the inspection had been missed.
- The owner(s) is/are to notify Council of any changes to the Principal Building Contractor for a development and provide a copy of any required HBCF insurance prior to works proceeding further.
- Any required structural engineering details including footings, slab, pool steel, retaining wall, timber framing bracing/tie down construction, designed in accordance with the BCA/NCC and relevant Australian Standards are to be submitted to Council where requested by the Principal Certifier/Registered Certifier.
- The owner(s) is/are to familiarise themselves with any conditions of consent applied to a Development Consent or Complying Development Certificate prior to construction works commencing. The owner(s) is/are to provide copies of the relevant consents to any Contracted Builder prior to works commencing.
- The building development site is to be secured and remain in a safe and healthy condition during the construction phases and any required sedimentation erosion barriers are to remain in place throughout the construction to completion.

3.0 Inspections

- Council's Building Services section is to be contacted to request the above inspections a minimum 24 hours before the required inspection, phone 02 6686 1415.
- Council's Registered Certifiers are generally available for inspections between the hours of 8.15am - 4.30pm weekdays
- Access to the site is to be made available to enable Council's Registered Certifiers to carry out inspections where required.
- Council's Registered Certifiers may direct certain matters to be rectified by the Contracted Builder or owner(s). Where a reinspection may be required prior to works proceeding further, additional inspection fees may apply.
- Council's Registered Certifiers will notify the relevant builder, plumber or owner/builder regarding the result of each inspection.
- Council's Registered Certifiers may require written third party certifications for various components of the building or development during construction including, however not limited to, engineering certification for foundations/footings/slab construction or surveyor verification on required fill/floor levels.
- Council's Registered Certifiers accept no responsibility for the inspection of building components that have been covered or hidden from view or where areas are not generally accessible.
- The inspection process only relates to those mandatory critical stage inspections as required under the *EPAA* and does not include all building components.
- Failure to have the mandatory critical stage inspections carried out may prevent the issue of an Occupation Certificate.

4.0 Occupation Certificates

- The *EPA Act* requires an Occupation Certificate to be issued by the Principal Certifier prior to a building or part of a building being occupied, including an application for the “change of use” of a building.
- Council’s Registered Certifiers may issue a Part Occupation Certificate for part of a building to be occupied with certain matters to be finalised, prior to the issue of an Occupation Certificate for the whole building.
- Council’s Registered Certifiers will issue a whole Occupation Certificate once all mandatory inspections are completed and the development is completed in accordance with any issued Development Consent/ Complying Development Certificate/Construction Certificate and any conditions contained therein.
- Council’s Registered Certifiers may require written third party certifications for various components of the building or development to enable the issue of an Occupation Certificate.
- The issue of an Occupation Certificate may be withheld where breaches to an approval have occurred or where relevant HBCF insurances or Owner Builder permits have not been obtained, or required works have not been completed.
- Additional fees may be payable where multiple final inspections are made or where a final inspection is requested five years after the Council endorsement of this agreement.

Note: The term ‘building’ also refers to ‘part of a building’.

5.0 Certification Service Fees and Charges

- Council’s certification fees and charges are contained within our annual Fees and Charges booklet available for viewing on Council’s website. These fees are reviewed annually by the Council following public exhibition.
- A written fee quote for Council’s Certification services relating to a particular development will be provided by the Building Services section on request.
- All certification fees are to be paid at the lodgement of a Construction Certificate or Complying Development Certificate application with Council.
- Where an application is withdrawn, refused, or otherwise not issued, or where the appointment of Council as the Principal Certifying authority is changed during the course of the development, Council’s Registered Certifier(s) will determine the proportion of fees, if any, that may be refunded based on the certification and administration work that has been carried out in relation to the development to that point.

See next pages ‘Information about registered certifiers - building surveyors and building inspectors’

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.

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