



Property I.D.

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Date received

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OFFICE USE ONLY

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This contract meets the requirements of Clause 31 of the *Building and Development Certifiers Act 2018* and Part 5 of the *Building and Development Certifiers Regulation 2020* and must be lodged in conjunction with any Construction Certificate (CC) or Complying Development Certificate (CDC) application, prior to any works being undertaken.

This is a contract between the Applicant and Bellingen Shire Council (BSC), where BSC is appointed as the Principal Certifier (PC) to carry out certification work including the assessment & determination of a CC or CDC Application and/or Appointment as PC, and the determination of an application for an Occupation Certificate.

When engaging BSC to assess and determine an application for certification, you agree to provide the relevant information identified in the regulations and acknowledge if this information is not provided in a timely manner your application may be determined by way of refusal.

Certification work will commence upon receipt of this completed & signed agreement and payment of the relevant fees and charges.

**IMPORTANT:** This agreement may only be completed by the property owner or other person having the benefit of the development consent (or complying development consent) and excludes any person who will carry out building work (e.g., builder), unless that person is also the land-owner (section 6.6 Environmental Planning and Assessment Act 1979).

**1. APPLICANT DETAILS**

Name

Postal Address

Contact Telephone

Contact Email

**2. PROPERTY DETAILS**

Provide details of the site of development. Lot & DP numbers are found on the certificate of title or rates notice. Please note your property may or may not have a section number.

Lot No./s

Section No.

DP/SP No.

Address – number

Street

Address – suburb

Postcode

**3. DEVELOPMENT DESCRIPTION**

As detailed on the relevant approval.

**4. APPROVAL DETAILS**

If not available at the time of lodgement, the following information will be inserted by Council on determination.

DA (or CDC) No.

Date of determination

CC No.

Date of determination

Related plans, specifications or other documents are referred to in the relevant development consent, construction certificate or complying development certificate consent (as applicable).

**5. REGISTERED CERTIFIER**

Council will maintain the required insurance during the contract. Certifiers who are employees of Council are not required to hold separate individual insurance.

Name

BELLINGEN SHIRE COUNCIL

Address

33 HYDE STREET BELLINGEN NSW 2454

Email

council@bellingen.nsw.gov.au

Telephone

(02) 6655 7300

The details of the officers employed by Council as Building Certifiers, any of whom may carry out certification work and inspections under this contract, can be found on the NSW Fair Trading website at:

<https://applications.fairtrading.nsw.gov.au/bdcregister>



## RESPONSIBILITIES OF THE PRINCIPAL CERTIFIER (PC)

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### 6. Appointment as PC and certification work

Bellingen Shire Council (BSC), as the Principal Certifier (PC) for the development, will comply with all relevant statutory requirements, by:

- confirming either the principal contractor holds the relevant licence and insurance (when applicable) or an owner-builder permit has been issued, for residential building work
- reviewing the development consent or complying development certificate to ensure all pre-conditions have been met
- providing a list of inspections required for the proposal
- carrying out all critical stage inspections of the building work as prescribed by the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* and other identified inspections as required by the Certifier
- issuing an occupation certificate following a satisfactory final inspection and assessment.

### 7. Mandatory, critical stage inspections for building work

BSC, if appointed as PC, will carry out the necessary critical stage inspections and the other inspections in relation to the development. The following is a list of the inspections for each building class. Council will confirm the complete schedule of inspections on the issue of a construction certificate or complying development certificate.

**Class 1 & 10 buildings** (Single dwelling, Deck, Carport, Garage, Shed, Swimming pool, Retaining wall)

1. Footings inspection including pier holes (*after excavation for, and before the placement of, any footings*),
2. Slab and other steel e.g., retaining walls (*before pouring any in-situ reinforced concrete building element*),
3. Frames (*before covering the framework for a floor, wall, roof or other building element*),
4. Wet area waterproofing (*before covering waterproofing in a wet area*)
5. Stormwater (*before covering stormwater drainage connections*),
6. Final inspection prior to occupation or use (*after the building work is completed and before an occupation certificate is issued for the building*).

**Class 2, 3 or 4 buildings** (Apartment, Boarding House, Hostel, Residential part of (or dwelling within) School, Detention centre, Hotel/Motel)

1. Footing inspection including pier holes (*after excavation for, and before the placement of the first footing*),
2. Fire protection at service penetrations (*before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread*),
  - Please note inspection required 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.
3. Fire protection of construction elements (*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*),
  - Please note inspection required of at least 30% of sole-occupancy units, on each storey of the building containing sole-occupancy units.
4. Wet area waterproofing (*before covering waterproofing in a wet area, for at least 10% of rooms with a wet area in the building*),
5. Stormwater (*before covering stormwater drainage connections*),
6. Final inspection prior to occupation or use (*after the building work is completed and before an occupation certificate is issued for the building*).

**Class 5, 6, 7, 8 or 9 buildings** (e.g., Café, Office, Shop, Showroom, Carpark, Warehouse, Laboratory, Factory, Hospital, School, Church, Theatre)

1. Footing inspection including pier holes (*after excavation for, and before placement of, the first footing*),
2. Fire protection at service penetrations (*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*),
  - Please note inspection required 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

3. Stormwater (*before covering any stormwater drainage connections*)
4. Final inspection prior to occupation or use (*after the building work is completed and before an occupation certificate is issued for the building*).

### Swimming Pools and Spas

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.

### Other inspections

Any other inspections identified within the Development Consent or the Construction Certificate schedule.

### 8. Outcome of inspections

Council will provide confirmation of the inspection outcome as soon as practicable after the inspection has been completed. Council will indicate if the inspection was satisfactory or, if unsatisfactory will outline any additional works to be undertaken / completed before re-inspection.

Where a critical stage inspection has been missed, BSC will make a record and notify in accordance with cl.64 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

### 9. Issue of an Occupation Certificate (OC)

BSC will comply with all relevant statutory requirements with respect to the issue of an occupation certificate. This includes:

- carrying out a final inspection
- assess & ensure compliance with all BASIX requirements and obtaining any necessary BASIX completion receipt.
- assessment of any pre-conditions to the DA/CC prior to OC issue
- ensuring a compliance certificate is submitted, when there is an alternative solution for fire safety requirements, and
- whether the work is not inconsistent with the development consent.

The Certifier will ensure the application for an Occupation Certificate is accompanied by a final fire safety certificate and/or schedule in accordance with the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. Where required under the Act, the Certifier will apply to other authorities for a report or verification of compliance.

Following a satisfactory final inspection and assessment, the Certifier will issue an Occupation Certificate to the Applicant.

Please note that should the Applicant seek a *Partial* Occupation Certificate prior to completion of the development, a separate application must be lodged through the NSW Planning Portal and applicable fee paid to council. The PC must be satisfied that the partially completed building is not a hazard to the health or safety of the occupants of the new building.

### 10. Compliance

The Registered Certifier is responsible for ensuring works comply with the relevant conditions of development consent. Should a breach occur, the Certifier will investigate the matter and may result in the issue of a Notice of Intention to Issue an Order. Fees may apply for any administration costs.



REQUIREMENTS & RESPONSIBILITIES OF THE APPLICANT

11. Appointing Council as PC

When engaging Council to assess and determine an application for certification, you agree to provide the relevant information identified in the Regulations<sup>1</sup> and acknowledge if this information is not provided in a timely manner your application may be determined by way of refusal. Relevant information may include (but not limited to) structural or other specialist engineering details relating to the building. Such details are to confirm compliance with the relevant provisions of the Building Code of Australia and/or Australian Standards to the satisfaction of the PC.

- 1 Construction certificate - Section 8 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021
2 Complying Development Certificate - Section 121 of the Environmental Planning and Assessment Regulation 2021

12. Prior to commencement of building works

The Applicant must not commence work until:

- 1. the CC (or CDC) has been issued
2. this PC agreement is completed, signed and returned to BSC
3. the Notice of Commencement form is submitted, at least 48hrs prior
4. Builder licence details or Owner-builder permit is provided.
- The building contractor must also provide an insurance certificate under the Home Building Compensation (HBC) Scheme (formally known as home warranty insurance) if the contract is valued over \$20,000.
- An Owner-builder permit is required for any work, including supervision and coordination of the construction, alterations, repairs or additions to a single dwelling-house or secondary dwelling where the reasonable market cost (including labour + materials) exceeds \$10,000. If the work is valued at more than \$20,000, you must also provide evidence that you have completed the approved owner-builder course or satisfy the approved equivalent qualifications

13. During building work

All works must be carried out in accordance with the terms and conditions of Council's Development Consent and the Construction Certificate or Complying Development Certificate (as applicable), and relevant provisions of the Building Code of Australia.

Submission to the PC of third-party certification from a suitably qualified and experienced person in a specific field (e.g., structural engineer) may be required. The certification must reference the relevant provisions of the BCA, Australian Standards and approved drawings, and must demonstrate a specific matter complies with a relevant standard. The PC will advise when this is required as part of an inspection result.

Any modifications or variations from the Development Consent or approved CC/CDC documentation will require a new or modified Development Consent and Construction Certificate (or CDC as applicable) - these must be obtained prior to the commencement of any works relating to those changes.

If works are not completed in accordance with the development consent, construction certificate or complying developing certificate, Council may refuse to issue an occupation certificate. Council may also serve a Notice and Order for you to comply with the relevant consent or may institute legal proceedings.

You must notify Council in writing of any changes to the Principal Contractor or owner-builder, including any contact details.

14. Inspections

It is the principal building contractor or owner-builder's responsibility to make suitable arrangements with BSC to carry out the relevant mandatory critical stage inspections or re-inspections. Inspections must be booked at least 48 hours in advance (excluding weekends and public holidays).

Building works must not proceed to subsequent stages of construction prior to obtaining a satisfactory inspection from BSC for each relevant construction stage.

If a critical stage inspection or other mandatory inspection has been unavoidably missed, you must within two (2) days of becoming aware that the inspection has been missed, advise Council in writing as to the circumstances causing the inspection to be missed and must provide to Council a completed 'Missed critical stage inspection form' and all documentation requested by Council about the missed inspection. Failure to notify council may prejudice or prevent Council from issuing an occupation certificate in respect to the development.

15. Occupation Certificate (OC)

An OC must be approved and issued by the PC prior to occupation or use of a new building (or part of a building) or prior to the change of an existing building use or classification. Penalties apply under the Environmental Planning and Assessment

Act 1979 with penalty provisions for using or occupying a building without a validly issued Occupation Certificate.

An application for an OC may only be made by a person who is eligible to appoint a PC for the development and must be lodged online through the NSW Planning Portal either as:

- a. a related application via an online development application (DA) or complying development certificate (CDC) application or
b. a stand alone 'Post Consent Certificate' application e.g. your consent is outside of the NSW Planning Portal (related approval information will be required)

For class 2-9 developments, an OC authorising occupation or use of a new building or a change of building use for an existing building can only be issued if a final fire safety certificate has been issued for the building (or a fire safety certificate issued for the relevant part of the partially completed new building)

Council will not accept responsibility for any cost or damage associated with its ability to issue an occupation certificate due to (but not limited to) the following:

- a. Non-compliance with a condition of development consent
b. Non-compliance with construction certificate or complying development certificate approved plans or documentation
c. Unsatisfactory final inspection
d. Non-compliance with BASIX commitments
e. Missed critical stage inspections or other inspections
f. Failure to pay required inspection or occupation certificate fees.

16. Fees and payment

The fees and charges for Council's appointment as PC and carry out certification work are reviewed annually and published on its website. The fees payable will be at the published rate applicable at the time of application lodgement and before BSC commences those functions. (Note some may be by-quotation only).

Unforeseen contingencies

The fees to carry out certification work provide for BSC to carry out 1 (one) inspection for each critical stage inspection or other inspections of the building. BSC may charge you additional fees in the following circumstances:

- (i) Additional critical stage inspections or other inspections due to the staging of building works or variations in the construction sequence
(ii) Re-inspection of works as a result of the relevant stage of construction not being ready, incomplete or unsatisfactory
(iii) Additional on-site meetings
(iv) Compliance fees
(v) Application for a partial occupation certificate

In respect of any unforeseen contingency work provided for under this Agreement, BSC will calculate the fees based on its annual fees & charges; and provide you with an invoice within 21 days after completion of that work. Fees and charges for unforeseen contingencies must be paid within the invoice terms, except for Partial Occupation Certificate application fees, payable at lodgement.

Unpaid fees

In circumstances where Council is appointed as PC, and the fees are not paid in accordance with this contract, you acknowledge and accept liability for all or any unpaid fees and any associated debt recovery costs plus interest incurred from the time of appointment. You acknowledge and accept that Council, as PC, may suspend services where fees have not been paid, or remain outstanding.

17. Applicant's Signature

Important - Only the person/company having the benefit of the development consent or complying development certificate may appoint the PC. The builder may only appoint the PC where the builder is also the owner of the land.

I accept the terms and conditions of this contract including the associated payment of fees and:

- a. I have freely chosen to engage Bellingen Shire Council as the certifier.
b. I have read the contract and accompanying document and I understand my responsibilities and those of the certifier.

APPLICANT'S SIGNATURE

[Signature box]

DATED

[Date box]

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

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

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

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

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

### Obligations of registered certifiers

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

### Who does a registered certifier work for?

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

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

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

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

## Obligations of the applicant

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

As an applicant, you have the following obligations:

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

## What does a registered building surveyor do?

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

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

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

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

## What does a registered building inspector do?

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

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<sup>2</sup> Upfront fee payment is required for any work to determine an application for a development certificate or carry out a function of a principal certifier.

<sup>3</sup> Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

## Principal certifier enforcement powers

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

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

## Finding more information on certifiers

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

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

## Questions?

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

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

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

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