



Occupation Certificate Application and Appointment Of Principal Certifying Authority

Made Under Section 109C Part 4A Environmental Planning and Assessment Act 1979 & Clause 149 Environmental Planning and Assessment Regulation 2000.

Select the type of Occupation Certificate Application

- Final Occupation Certificate
 Interim Occupation Certificate

Date of Receipt: _____

1. Applicants Details *(the applicant must be a person having the benefit of development consent & cannot be the builder unless the builder is the owner of the land)*

Applicant's Name: _____

Address: _____ Town: _____ Postcode: _____

Mobile No: _____ Email Address: _____

2. Owners Details - Owner 1

First Name: _____

Surname/Company Name: _____

Address: _____

Town: _____

State: _____ Postcode: _____

Contact No: _____

Owner 2

First Name: _____

Surname/Company Name: _____

Address: _____

Town: _____

State: _____ Postcode: _____

Contact No: _____

Other Owners?: Yes, please see attached No

3. Development Property

Address: _____ Town: _____

State: _____ Post Code: _____ Council Area: _____

Lot No: _____ Section No: _____ DP/SP No: _____

4. Description Of Building

Describe the building: _____

Building Code of Australia classification/s identified in the development consent or complying development application no.: _____



5. Owners Consent And Appointment Of Principal Certifying Authority

As the owner/s of the development property, I/we consent to an Occupation Certificate Application being made to Port City Certifiers.

I/we authorise the appointment of

David Fletcher (BPB2370) Paul Biron (BPB2353) as the Principal Certifying Authority (PCA).

I/we authorise the right of entry for any Certifying Authority arranged by Port City Certifiers to carry out inspections required by the PCA under the terms and conditions attached to this application.

I/we have read and agree to the "Terms And Conditions for Certification Work" provided by Port City Certifiers as set out below.

Owner 1: _____ Owner 2: _____

Signature: _____ Signature: _____

Refer to the attached letter for owners consent

6. List Of Documents Accompanying This Application



7. Terms And Conditions For Certification Work

EFFECT OF AGREEMENT

1. This agreement supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.

OBLIGATIONS OF THE AC/PCA

2. Regarding the issuing of Construction Certificates, Complying Development Certificates and Occupation Certificates.

2.1 The AC shall issue a Construction Certificate or Complying Development Certificate:-

2.1.1 Once the Client pays the AC any money owed for work associated with the issuing of a Construction Certificate or Complying Development Certificate; and
2.1.2 The design and construction of the Building Works comply with a relevant Development Consent and the Regulations or any prescribed complying development criteria by either the State Government or Local Council; and
2.1.3 The designs comply with the BCA.

2.2 The AC shall provide the relevant Consent Authority and/or Local Council with a Notice of Determination within 7 days of the determination.

2.3 When the AC issues a Construction Certificate or Complying Development Certificate, the AC may issue additional certificates or statements from any other AC or any other party as the AC considers necessary in the circumstances.

2.4 The PCA may carry out as many inspections as the PCA considers necessary in addition to any mandatory critical stage inspection.

2.5 Any inspections undertaken, and the notification of the result of any inspection that has been undertaken, in relation to the subject development are prepared and provided to the Owner/s solely for the purpose specified, for the Owner/s exclusive use in regard to the property identified only, and on the undertaking/condition that the Owner/s shall not communicate the contents of the notification of result to any third person who might act to his/her detriment on the basis of the notification. The Owner/s agrees to indemnify the accredited certifier and Kaleb Pty Ltd & The Trustee For Fletcher Family Trust T/A Port City Certifiers against any loss or damage suffered as a result of the Owner/s failure to observe this abovementioned clause. All inspections undertaken are based on a visual inspection and do not comment therefore on aspects, faults or otherwise, which are below ground level, covered up in any way, or which are not apparent at the time of inspection. No indication is given as to the adequate performance of any plumbing, hydraulic, gas or electrical appliance or fitting that may be installed or included in the building or on the site. Any notification of the result of an inspection is not intended to imply compliance or otherwise with any requirements of any Local Government Authority. Any parts of any structure that have been or are covered, unexposed or inaccessible will not be inspected and therefore any notification of the result of an inspection will have no reference to those parts.

2.6 The PCA shall issue an Occupation Certificate for the building works when the PCA is satisfied that:-

2.6.1 A Development Consent has been complied with, including any preconditions to the issue of an Occupation Certificate or a Complying Development Certificate is in force for the Building Works; and

2.6.2 The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and

2.6.3 The Building Works or parts do not pose any danger for the occupants in the case of an Interim Occupation Certificate.

2.6.3 The design and construction of the new building, or any part of the new building that is completed, are not inconsistent with the development consent in force with respect to the new building if the associated development consent was issued on or after 1 March 2013.

2.7 The AC/PCA shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.

2.7 The PCA may agree to another certifying authority to carry out any critical stage inspection on its behalf except for the last critical stage inspection.

OBLIGATIONS OF THE CLIENT

3. The client shall:-

3.1 Not engage any other PCA after the PCA appointed pursuant to this agreement has been engaged. Breach of this condition will entitle the PCA to recover any losses or costs of whatsoever nature that flow from such breach.

3.2 Pay the AC/PCA for the agreed amount when the Client submits an application for a Construction Certificate, Complying Development Certificate or Occupation Certificate.

3.3 Ensure that the site is available for the AC/PCA to carry out its obligations under this agreement.

3.4 Use Competent People for all aspects of the Building Works.

3.5 Provide the AC with evidence of Home Owners Warranty insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of the Building Works.

3.6 Provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the Development Consent, the Construction Certificate or Complying Development Certificate and any Occupation Certificate at the request of the AC.

3.7 Attend any meetings if required by the AC to do so.

3.8 Comply with any Notices that the AC issues.

3.9 Provide Compliance Certificates as may be requested by the AC.

3.10 Provide all information that the client reasonably can obtain to enable the AC to fulfil its obligations under this agreement.

3.11 Act in good faith, in accordance with the Act and in a cooperative fashion.

VARIATIONS TO THIS AGREEMENT

4. If:-

4.1 The Building Works do not commence within 60 days from the date of the execution of this agreement; or

4.2 Any Competent Person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or

4.3 Any part of the Building Works are re-designed by the Client or the client's representative; or

4.4 Any part of the Building is designed pursuant to a Deemed To Satisfy Provision and is subsequently changed by way of an Alternative Solution; or

4.5 More Certificates and / or Modified Certificates are required to be issued by the AC than those listed originally agreed to; or

4.6 An amendment to any statutory legislation that requires any aspect of the Building Works or the Certifying Authority's work to be varied; or

4.7 The AC is required to undertake more inspections than those listed in an Inspection Schedule; or

4.8 The Client does anything that causes a delay to the Building Works or does anything that delays the ability of the AC to carry out its obligations under this agreement; or

4.9 Any Notice is issued by the AC, then:-

4.10 The AC may:-

4.10.1 Vary this agreement to the extent that the AC will be able to carry out its obligations under this agreement; and

4.10.2 Increase the agreement price with such increase to be made by way of Notice to the Client stating the reason/s for the increase and the amount of the increase.

4.11 The variation will permit the AC to claim all costs associated with that delay as reasonably determined by the AC.

4.12 Notice must be given to the Client in writing when the AC becomes aware that a variation will be necessary.

TERMINATION OF AGREEMENT

5. If:-

5.1 The Client fails to pay any money owing to the AC/PCA after 7 days of that money becoming payable; or

5.2 The Client has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or

5.3 The Client breaches the agreement in any respect; or

5.4 A Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days or 6 months (whichever is the lesser) from the date of execution of this agreement; or

5.5 The Building Works do not commence within 60 days from the date a Construction Certificate or Complying Development Certificate was issued; or

5.6 The Client does not permit the PCA to issue any Occupation Certificate within 60 days from the date of practicable completion; or

5.7 The Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:-

5.8 The AC/PCA may terminate this agreement by sending a written Notice of Termination, stating the breach/s, to the Client. Termination will take effect as soon as the client receives the Notice of Termination.

5.9 If the AC/PCA terminates the agreement, then the AC/PCA is entitled to payment of Termination Money.

5.10 Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the Certifying Authority within 14 days of receiving a Notice of Termination.

5.11 If the AC/PCA terminates the agreement, the AC/PCA is entitled to carry out a final inspection, at the Client's expense, prior to termination.

5.12 As from the date of final inspection, the Client must indemnify the AC for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:-

5.12.1 The need to terminate this agreement or the Building Agreement;

5.12.2 Any matters of non-compliance with the Act on the part of the Client or any other contractors.

DISPUTE RESOLUTION

6. Any dispute of whatever nature to do with this agreement must be referred to mediation.

6.1 If either party believes there is a dispute under this agreement it must give Notice of the dispute to the other party.

6.2 The mediator must be appointed by the AAC.

6.3 The mediation will be invoked by either party serving Notice upon the AAC and the other party within 7 days of a party being notified of a dispute.

6.4 Both parties must attend the mediation and must cooperate with the mediator and each other and shall give the mediator whatever the mediator requests.

6.5 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.

6.6 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.

6.7 Both parties will remunerate the mediator on a 50 / 50 % basis, regardless of any alleged fault and regardless of the outcome.

6.8 The AAC may request mediation funds to be placed into an AAC trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

MISCELLANEOUS

7. Occupation Certificates

7.1 An Occupation Certificate must be applied for, and issued, within 24 months of the date of the construction approval. Failure to comply with this requirement shall entitle the AC to terminate the agreement, or to charge additional fees for any inspections, including the Final inspection and issue of any Occupation Certificate.

7.2 If, for whatever reason, an Occupation Certificate is not issued whether it be on account of the insolvency of the Client, the disappearance of the Client or the termination of the Agreement, the AC's responsibilities under the Agreement cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Act, the AC will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the Agreement occurred.

ADDRESS FOR NOTICES

8. Where any Notice is to be forwarded to the client, the address for such Notice shall be the address stated in the application for a relevant Certificate, or to any other address that is notified in writing by the Client to the AC/PCA.

DEFINITIONS

The Act means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the Act also mean amendment and references to the Regulations.

AAC means Association of Accredited Certifiers.

AC means Accredited Certifier within the meaning of the Act.

Alternative Solution has the same meaning as the term in the Building Code of Australia.

BCA means the Building Code of Australia including all applicable amendments.

Building Agreement means the agreement to construct the Building Works that the client enters into with the builder.

Building Works means any physical activity associated with the erection of a building.

Certificates mean statutory certificates and non-statutory certificates.

Client means the owner or the owner's agent.

Inspection Schedule means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.

Notice includes any notice issued under the Act or this agreement.

Practicable Completion means the date the builder has completed the Building Works in accordance with the Building Agreement.

PCA means Principal Certifying Authority within the meaning of the Act.

Termination Money means the money owing to the AC/PCA if the AC/PCA terminates the agreement in accordance with this agreement, being money for work done (with interest if applicable) and for cost incurred (with interest if applicable) and any money that the Client would have been bound to pay to the AC/PCA if the agreement had been totally completed.

8. Private Certifier Acceptance Of Terms And Conditions For Certification Work *(This part to be completed by Port City Certifiers)*

I David Fletcher (BPB2370) Paul Biron (BPB2353) accept the “Terms And Conditions For Certification Work” included above for the provision of Accredited Certifier services to the client.

Signature: _____

Name of Professional Indemnity Insurer:
Lloyds Of London & Berkley Insurance Company via Pen Underwriting Pty Ltd
Policy No.: PI 16 0003911
Period Of Cover: 1 May 2017 to 1 May 2018