



## Contract for Certification Work

Made Under Part 3 Building and Development Certifiers Act 2018  
& Part 5 Building and Development Certifiers Regulation 2020

### 1. Certifiers Details

Name: \_\_\_\_\_  
Business: Port City Certifiers Registration Number: BDC \_\_\_\_\_ Address: PO Box 43, Port Macquarie NSW 2444  
Mobile No: \_\_\_\_\_ Email Address: info@portcc.com.au

### 2. Details of Whom the Certification Work is to be Carried out for

Name: \_\_\_\_\_  
Other owners?: \_\_\_\_\_  
Address: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_  
Email Address: \_\_\_\_\_ Phone No: \_\_\_\_\_

### 3. Particulars of certification work to be carried out

Issuing CDC/CC, critical stage inspections and issue of occupation certificate/s

### 4. Proposed Work

Describe the proposed building work: \_\_\_\_\_  
\_\_\_\_\_

### 5. Address of Development Site

Street Address: \_\_\_\_\_  
Lot No: \_\_\_\_\_ Section No: \_\_\_\_\_ DP/SP No: \_\_\_\_\_

### 6. Approvals and Plans

Relevant Development Consent No (if already issued): \_\_\_\_\_ Date of determination: \_\_\_\_\_  
List of relevant plans and specifications:  Architectural Plans  Engineers Details  BASIX Certificate  Specification  
 Bushfire Report  Performance Solution Report  List of Fire Safety Measures Installed in Existing Building  
 Copy of Council Consents Other: \_\_\_\_\_

### 7. Other Certifiers

Inspections may also be carried out during construction by: \_\_\_\_\_  
of Port City Certifiers Registration Number: BDC \_\_\_\_\_

### 8. Fees and Charges

Fees applicable to the function of the registered Certifier are per the accepted quote and are to be paid at or before lodgement of the relevant application or certification work.



## 9. Contract For Certification Work

### EFFECT OF CONTRACT

1. This contract is made between the Registered Certifier and the Client.
- 1.2 The Registered Certifier is authorised to carry out the certification work which is the subject of this Contract.
- 1.3 The Client seeks to engage the Registered Certifier to perform certification work on the terms set out in this Contract.
- 1.4 Words and terms used in this Agreement are defined in the Definitions part of this Contract.
- 1.5 Critical stage inspections carried out under this contract may be completed by David Fletcher (Registration No. BDC2370) or Paul Biron (Registration No. BDC2353) except the final inspection before the occupation certificate must be completed by the Registered Certifier nominated as the Principal Certifier for the development.
- 1.6 The fees and charges for certification work completed under this contract are the fees and charges as set out in the Registered Certifiers quote/invoice accepted by the Client.
- 1.7 The Information Sheet required to be attached to this contract in accordance with Clause 31 of the Building Development Certifiers Regulation 2020 is attached.

### OBLIGATIONS OF THE REGISTERED CERTIFIER

2. Regarding the issuing of Construction Certificates, Complying Development Certificates and Occupation Certificates.
  - 2.1 The RC shall issue a Construction Certificate or Complying Development Certificate:-
    - 2.1.1 Once the Client pays the RC 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 RC 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 RC issues a Construction Certificate or Complying Development Certificate, the RC may issue additional certificates or statements from any other RC or any other party as the RC considers necessary in the circumstances.
  - 2.4 The RC may carry out as many inspections as the RC 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 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 thereon 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 RC shall issue an Occupation Certificate for the building works when the RC 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 hazard to the health and safety of the occupants.
  - 2.6.4 The design and construction of the new building, or any part of the new building that is completed, are consistent 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 RC shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.
  - 2.8 The RC 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 RC after the RC appointed pursuant to this agreement has been engaged. Breach of this condition will entitle the RC to recover any losses or costs of whatsoever nature that flow from such breach.
  - 3.12 The client must ensure the development is completed in accordance with the Development Consent and Construction Certificate, or Complying

Development Certificate.

- 3.2 Pay the RC 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 RC to carry out its obligations under this agreement.
- 3.4 Use Competent People for all aspects of the Building Works.
- 3.5 Provide the RC with evidence of Home Building Act 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 RC.
- 3.7 Attend any meetings if required by the RC to do so.
- 3.8 Comply with any Notices that the RC issues.
- 3.9 Provide Compliance Certificates as may be requested by the RC.
- 3.10 Provide all information that the client reasonably can obtain to enable the RC to fulfil its obligations under this agreement.
- 3.11 Act in good faith, in accordance with the Act and in a cooperative fashion.
- 3.12 The Client must ensure the development is completed in accordance with the Development Consent and Construction Certificate, or Complying Development Certificate

### VARIATIONS TO THIS CONTRACT

4. This contract may be varied 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 a Performance Solution; or
  - 4.5 More Certificates and / or Modified Certificates are required to be issued by the RC 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 RC 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 RC to carry out its obligations under this agreement; or
  - 4.9 Any Notice is issued by the RC, then:-
    - 4.10 The RC may:-
      - 4.10.1 Vary this agreement to the extent that the RC 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 RC to claim all costs associated with that delay as reasonably determined by the RC.
  - 4.12 Notice must be given to the Client in writing when the RC becomes aware that a variation will be necessary.

### TERMINATION OF CONTRACT

5. This contract may be terminated if:
  - 5.1 The Client fails to pay any money owing to the RC 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 RC 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 RC 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 RC terminates the agreement, then the RC 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 RC terminates the agreement, the RC 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 RC 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 contract 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 contract it must give Notice of the dispute to the other party.
  - 6.2 The mediator must be appointed by the RC.
  - 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 RC may request mediation funds to be placed into an RC 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 RC to terminate the contract, 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 Contract, the RC's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Parts 4 & 6 of the Act, the RC 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 Contract 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 RC.

### 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.
- 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.
- The Client** means the owner or person authorised by legislation to appoint a Registered Certifier.
- Certification Work** means work as defined in Section 4 of the Building and Development Certifiers Act 2018
- CDC** means a Complying Development Certificate
- CC** means a Construction Certificate
- 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.
- PC** means Principal Certifier within the meaning of the Act.
- Performance Solution** has the same meaning as the term in the Building Code of Australia.
- Practicable Completion** means the date the builder has completed the Building Works in accordance with the Building Agreement.
- Termination Money** means the money owing to the AC/PC if the AC/PC 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/PC if the agreement had been totally completed.

## 10. Certifier's Professional Indemnity Insurance Details

Name of insurer (Base Layer):	Address:
Policy no/identifier:	Period of insurance cover:
Name of insurer (Excess Layer):	Address:
Policy no/identifier:	Period of insurance cover:

## 11. Execution of Contract for Certification Work and Owners Consent

### Date of contract

This Contract is made on the: \_\_\_\_\_

### Declaration by the Client

I, the Client to this agreement:

- have freely chosen to engage the particular certifier, and
- have read the contract and any document accompanying the contract and understand my roles and responsibilities and those of the registered certifier
- give consent to the lodgement of the relevant application and appointment of the principal certifier

\_\_\_\_\_  
**Signed/executed by the Client**

**Name:**

\_\_\_\_\_  
**Signed/executed by the Client**

**Name:**

\_\_\_\_\_  
**Signature of Registered Certifier**

**Name:** \_\_\_\_\_

**Registration No:** \_\_\_\_\_

**Contact number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_