

Contract for Undertaking of Certification Work

This contract meets the requirements of Section 31 of the *Building and Development Certifiers Act 2018* (NSW) and Part 5 of the *Building and Development Certifiers Regulation 2020* (NSW).

This is a contract between the applicant and Tweed Shire Council, where Council will carry out certification work for the applicant and/or may be appointed as the Principal Certifier (PC) in relation to the subject development.

A1. Council

| | | | |
|--------------------------|---|-------|---|
| Company/ Organisation | <input type="text" value="Tweed Shire Council"/> | ABN | <input type="text" value="90 178 732 496"/> |
| Postal Address | <input type="text" value="PO Box 816 MURWILLUMBAH NSW 2484"/> | | |
| Telephone | <input type="text" value="(02) 6670 2400"/> | Email | <input type="text" value="tsc@tweed.nsw.gov.au"/> |

The details of the officers employed by Council as registered 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://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/finding-and-appointing-a-certifier>

A2. Details of Applicant

| | | | |
|--------------------------|----------------------|-----------------|----------------------|
| Surname/s | <input type="text"/> | Given Name/s | <input type="text"/> |
| OR | | | |
| Company/ Organisation | <input type="text"/> | ABN | <input type="text"/> |
| Postal Address | <input type="text"/> | | |
| Contact No | <input type="text"/> | Email | <input type="text"/> |

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A3. Details of Certification Works to be Undertaken

The following certification works are requested to be undertaken (please select):

- Construction Certificate under Part 6.8 of the *Environmental Planning & Assessment Act 1979* (NSW) ("EP&A Act")
- Appointment as the Principal Certifier under Part 6.6(1) of the EP&A Act for building works and completing inspections and relevant functions under 6.5 of the EP&A Act
- Occupation Certificate under Part 6.10 of the EP&A Act
- The determination of an application for a Complying Development Certificate under Part 4.28 of the EP&A Act

Council will undertake the certification work in a professional manner and in accordance with the requirements of the EP&A Act and the *Environmental Planning & Assessment Regulation 2000* (NSW).

A4. Insurance

For the purposes of Division 1 of Part 3 of the *Building and Development Certifiers Act 2018* (NSW) Registered Certifiers employed by Council exercising the certifying functions on Council's behalf are covered by insurance cover provided by Statewide Mutual policy number 000078 that has effect until 30 June 2022.

A5. Description of Site and Development Works to be Undertaken

Description of Development

Lot Number

Section

DP/NPP/SP

Unit/Street No

Street

Suburb/Town

Type of Approval

Consent Authority

Determination Number

Determination Date

Development Consent

Tweed Shire Council

DA

Complying Development Certificate

Tweed Shire Council

CDC

Construction Certificate

Tweed Shire Council

CC

A6. Plans, Specifications and Documents

Related plans, specifications or other documents. As referred to in the relevant development consent, issued with the consent or certificate. Construction certificate or complying development certificate.

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A7. Fees and Charges

Certification Work

Fees and charges for certification work will be charged in accordance with Council's Adopted Fees & Charges which are published on its website at www.tweed.nsw.gov.au

Contingencies

- a) The fees above provide for Council to carry out 1 (one) inspection for each critical stage or other inspections of the building or works.

Additional fees may be charged 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

- b) If Council carries out work as result of unforeseen contingencies, Council will:

- (i) Calculate the fee based on its adopted fees and charges; and
- (ii) Give you an invoice within 21 days after the completion of that work

A8. Payment

You must pay the fees and charges on or before the lodgement of the application for that certificate, excluding any fees and charges for work arising as a result of unforeseen contingencies. You must pay any fees and charges for unforeseen contingencies within the invoice terms.

Appointment as Principal Certifier

If the certification work relates to the functions of a PC, you must pay the fees and charges before Council commences those functions, excluding any fees and charges for work arising as a result of unforeseen contingencies.

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.

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A9. Declaration

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

I declare that I have freely chosen to engage Tweed Shire Council to carry out certification work and that I have read the contract and any documentation accompanying the contract and understand the roles and responsibilities of the registered certifier and my own role and responsibilities.

Council is subject to the *Government Information (Public Access) Act 2009* ("GIPA Act") under which it may be required to release information which you provide to it. Where you are the copyright owner of any material provided to Council you consent to Council reproducing or providing any copyright materials to any third person in accordance with the GIPA Act and will make no claim against Council for any alleged breach of copyright. Some information requested by Council for this contract constitutes personal information under the *Privacy and Personal Information Protection Act 1998* (NSW)

Note: All parties may sign this contract by electronic means in accordance with the *Electronic Transaction Act 2000* (NSW) and the *Electronic Transaction Act 1999*.

Applicant Signature

Date

Witness Signature

Date

A10. Council's Signature

Signed for and on behalf of Council by an authorised officer:

Officers Name

Officers Position

Officers Signature

Date

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A11. Statutory Obligations of Registered Certifiers and the Applicant

This contract must attach any document that addresses:

- a) The role and statutory obligations of registered certifiers;
- b) The role of the person for whom the certification work is carried out; and
- c) The types of information that can be found on the register of registrations and approvals maintained under Section 102 of the *Building and Development Certifiers Act 2018* (NSW);

that is published by NSW Fair Trading for the purpose of Clause 31 of the *Building and Development Certifiers Regulation 2020* (NSW) and available on its website.

Please refer to attachment 1 as applicable

Attachment 1 - Information about registered certifiers – building surveyors and building inspectors

Privacy & Personal Protection Notice

Some information requested by Council for this contract constitutes personal information under the *Privacy and Personal Information Protection Act 1998* (NSW).

Purpose of Collection: For Council to carry out certification work for an individual or organisation.

Intended Recipients: Council staff and approved contractors of Tweed Shire Council.

Supply: A Contract of Certification Work is required by law in order for Tweed Shire Council to carry out certification work. The contract must be correctly completed & signed for certification work to occur.

Right of Access / Correction: Contact Council (02) 6670 2400 or email tsc@tweed.nsw.gov.au

Storage details: Tweed Shire Council, 10-14 Tumbulgum Road, Murwillumbah NSW 2484

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.