

Contract for Certification Services

Introduction

- Council is a certifying authority and employs registered certifiers who are authorised to carry out certification services on behalf of Council.
- Section 31(1) of the *Building and Development Certifiers Act 2018* requires Council to enter a written contract in order to carry out certification services for a person.
- The Applicant appoints Council to carry out Certification Services on the terms set out in this Contract.

How to complete this Contract

- Ensure that all fields have been filled out correctly and fully.
- The Applicant must complete, sign and submit the completed and signed contract to Council.
- A builder or contractor undertaking the works cannot hold the benefit of the development consent unless they are the owner of the land.
- A builder or contractor undertaking the works may be authorised if specifically granted authority to appoint a PC by the owner of the land or by a person with the benefit of the development consent.
- Council will only commence certification work upon receipt of the completed and signed agreement and payment of the relevant fees and charges.

Part A - Parties to the Contract

1. Applicant

Name:

Company or Organisation (if applicable): ABN:

Applicant's Address:

Phone: Email:.....

2. Wagga Wagga City Council

Civic Centre
243 Baylis Street
WAGGA WAGGA, NSW, 2650 (PO Box 20)

Email address: council@wagga.nsw.gov.au

Phone: 1300 292 442

ABN 56 044 159 537

Applicant Authorisation

If the applicant is:

- ☐ The owner of the land; OR
☐ A person (other than the owner) having the benefit of the development consent;

Proceed to Part B

Note: Any person other than the landowner will be required to provide evidence that they have the benefit of the development consent to the satisfaction of the General Manager or their delegate.

Otherwise, if the applicant is:

- ☐ a person requiring a Written Authorisation by the
 - owner of the land; or
 - person (other than the owner) having the benefit of the development consent;

Complete the relevant Written Authorisation below for either the landowner OR person with the benefit of the development consent, before proceeding to PART B.

Written Authorisation – to be completed by the OWNER OF LAND described in Part D

I/we, ..., being the owner(s) of land described in Part D, give consent to the Applicant in Part A in respect of the development described in Part D of this contract to:

- ☐ make an application for Complying Development Certificate,
- ☐ make an application for Construction Certificate including consent for the applicant to appoint a Principal Certifier (PC)
- ☐ make an application for Occupation Certificate,
- ☐ to appoint a Principal Certifier (PC) for the development (inspections)

Signature of owner #1: Date:

Signature of owner #2: Date:

Written Authorisation – to be completed by the PERSON WITH BENEFIT OF THE DEVELOPMENT CONSENT described in Part D

I, ..., being the person with the benefit of the development consent described in Part D, give consent to the Applicant in Part A in respect of the development described in Part D of this contract to:

- ☐ make an application for Construction Certificate including consent for the applicant to appoint a Principal Certifier (PC)
- ☐ make an application for Occupation Certificate,
- ☐ to appoint a Principal Certifier (PC) for the development (inspections)

Note: Only the landowner can authorise the making of a CDC

Signature of person: Date:

Note: Any person other than the landowner will be required to provide evidence that they have the benefit of the development consent to the satisfaction of the Manager Development Assessment and Building Certification.

Part B - Certification services to be performed by Council

The Applicant appoints Council to perform the following certification services (select as applicable):

Determination of Applications for Development Certificates

- ☐ Determination of application for a Construction Certificate
- ☐ Determination of application for a Complying Development Certificate
- ☐ Determination of application for an Occupation Certificate

Undertaking the function of Principal Certifier (PC)

Appointment of Council as Principal Certifier (PC) under Section 6.5 of the EP&A Act for building works (critical stage inspections)

Part C - Modification of Complying Development Certificate, Construction Certificate

If a modification is sought, the Applicant agrees that upon lodging an application with Council to modify any of the above certificates, this Contract will apply to the modified development application and Council's Fees and Charges will be payable.

The Applicant acknowledges that modification applications under section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (modifications involving minor errors, misdescriptions or miscalculations, or modifications with no environmental impact) are subject to a 14-day determination period (calendar days) and may be deemed approved if not determined within that period, as provided by the Act. Council will use its best endeavours to process such applications within the statutory timeframe. This Contract applies to modified development in the same manner as to the original development.

Part D – Development Details

Description of development:

.....

Street Number and Street Name:

Locality: Postcode:

Legal Description (LOT & DP): Estimated cost of works:

Part E - Details of Approvals (where applicable)

A) Development Consent Number: **Date of determination:**

Name of consent authority:

B) Complying Development Certificate (CDC) Number: **Date of determination:**

Name of the Certifier that issued the CDC:

C) Construction Certificate Number: **Date of determination:**

Name of the Certifier that issued the CC:

Part F – The Certification Services

Council employs certifiers registered with Building Commission NSW under the *Building and Development Certifiers Act 2018*.

The certification work and required inspections under the *Environmental Planning & Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021*, and *Environmental Planning & Assessment (Development Certification and Fire Safety) Regulation 2021* may be undertaken by any Council employee listed on the Building Commission NSW register of certifiers.

Subject to availability and the relevant class of registration for the certification work required, the list of registered certifiers may be supplemented with external contractors who hold appropriate class of registration.

Part G – Fees and Charges

Fees and charges are specified in this Agreement as per Section 29 of the Building and Development Certifiers Regulation 2020.

Undertaking Certification Services

The Applicant must pay the fees for Certification Services, as determined by Council using the rates specified in Council's Schedule of Fees and Charges published on its website.

These fees must be paid in full at the time the application for certification work (including any relevant modification of a current certificate) is lodged with Council.

The following potential variations arising from unforeseen contingencies will be calculated using the rates specified in Council's Schedule of Fees and Charges or a regulatory body such as NSW Fire and Rescue:

- a) Council requires additional time or resources to assess application to what was initially quoted,
- b) application involves assessment of Performance Solution/s as defined under National Construction Code,
- c) Application requires Council to engage specialist third-party certifier or consultant to produce specialist report (including, but not limiting to fire safety engineering, access, energy efficiency, bushfires) not expressly included in the fixed fee,
- d) Statutory provisions provide that Council must refer an application to Fire and Rescue NSW and that Council must consider any fire safety report or comment,
- e) Assessment of Occupation Certificates, whether for whole or part of building, or for part of partially completed building where development is carried out in stages.
- f) Provision of Certification Services where Development Certificate has been issued more than two years from the date of this contract.

Undertaking the function of Principal Certifier (PC)

The Applicant must pay the Fees and Charges for Council to carry out the Certification Services of a PC for the Development as specified in Council's Schedule of Fees and Charges published on its website.

These Fees and Charges must be paid to Council in full at the time of lodging the PC Appointment Application via the NSW Planning Portal (after the certificate is issued) and before Council commences to carry out the Certification Services of a PC.

The quoted fees are for Council to carry out each critical stage inspection listed in the Terms and Conditions of this Contract based on Council's estimate. Additional fees may apply.

The following potential variations arising from unforeseen contingencies will be calculated using the rates specified in Council's Schedule of Fees and Charges:

- a) inspection required by Council to verify corrective action following a failed inspection. This is a re-inspection of building work due to non-compliance with development consent, the Building Code of Australia, or any other applicable requirement arising as a result of incomplete or unsatisfactory mandatory critical stage inspections, or other inspection.
- b) any additional inspection/s required by Council in order to confirm compliance of building works at any stage of construction with development certificate, in addition to any critical stage inspection.
- c) inspections relating to statutory requirement to obtain a final fire safety report and fire safety system report from the Fire Commissioner NSW,
- d) inspections arising from staging of building works or variations in the construction sequence,
- e) inspections arising from Applicant's or Principal Contractor's request for site meetings or site inspection,
- f) inspection where Council becomes aware of a matter that requires investigation or site visits not elsewhere dealt with by this Agreement,
- g) additional inspections or certification work required due to a change in law, development consent conditions, or approved plans after the date of this Agreement,
- h) site visits cancelled by the Applicant or principal contractor with less than 48 hours' notice (excluding weekends and public holidays),
- i) where the Applicant requests Council to investigate, review, or provide advice on matters relating to the development that are outside Council's standard Certification Services, Council may charge the Applicant for the time spent undertaking such investigations, reviews, or advice at the applicable hourly rate.

Where additional fees apply, Council will notify the Applicant before undertaking any additional Certification Services and will either provide an estimated fee before commencing the services or issue a payment notice to the Applicant within 21 days of completing those additional Certification Services. The fee payable will be based on those applicable on the day on which the service is provided.

Part H – Statutory Obligations

The following Information Sheets published by NSW Fair Trading are physically annexed to this Contract and form part of this Agreement. The Applicant acknowledges receipt of the physical Information Sheets annexed hereto. Hyperlinks are provided for convenience only and do not satisfy the requirement under the Building and *Development Certifiers Regulation 2020*, section 31 that the Information Sheets be physically annexed to this Contract.:

Information about registered certifiers - building surveyors and building inspectors:

<https://www.nsw.gov.au/sites/default/files/noindex/2025-09/information-about-registered-certifiers-building-surveyors-and-building-inspectors.pdf>

Information about registered certifiers – swimming pool inspections:

<https://www.nsw.gov.au/sites/default/files/noindex/2025-05/information-about-registered-certifiers-swimming-pool-inspections-may-2025.pdf>

Information about registered certifiers – fire safety: https://www.nsw.gov.au/sites/default/files/noindex/2025-03/Information%20about%20registered%20certifiers%E2%80%94fire%20safety_V4.pdf

Part I – Conditions of Contract

Prior to signing the Contract, please read Wagga Wagga City Council's Standard Terms and Conditions and ensure applicable attachments are included with that Contract.

Part J: Execution of Contract

Declaration

- a) I/we have freely chosen to engage Wagga Wagga City Council as the registered certifier for the Certification Work; and
- b) I/we have read this entire contract and all documents accompanying this contract (including the Information Sheets physically annexed to this contract) and understand the roles and responsibilities of the Applicant and the Council under this contract and under the *Building and Development Certifiers Act 2018* and the *Environmental Planning and Assessment Act 1979*.
- c) I/we understand that the Council is required to act in the public interest and in accordance with the Code of Conduct for registered certifiers

This Contract is executed as an agreement and is made on the date it is signed by Council:

Individual Applicant

Applicant's name:

Applicant's signature: Date:

Incorporated Company – as applicable

For company ownership, the following company officers must sign and must be accompanied by ASIC register search providing proof of company officers (visit <https://asic.gov.au/>)

- a) Two (2) directors of the company; or
- b) A director and a company secretary of the company; or
- c) For a proprietary company that has a sole director who is also the sole company secretary – that director

SIGNED by the Applicant in accordance with section 127 of the *Corporations Act 2001*:

Name:

Director / Secretary signature: Date:

By affixing my signature above, I confirm that the company information contained within the attached ASIC search is current and unchanged.

Authorised officer – for and on behalf of Wagga Wagga City Council ABN 56044 159 537

Note: When the Contract is received it will be signed by an authorised officer and a copy of the executed Contract will be emailed to you for your records.

Privacy

The information on this form is being collected to allow Council to process your application for a contract to be prepared and/or carry out its statutory obligations in accordance with *Privacy and Personal Information Protection Act 1998* (NSW). All information collected will be held by Council and will only be used for the purpose for which it was collected. An individual may view their personal information and may correct any errors by emailing council@wagga.nsw.gov.au.

Lodgement Details

This Contract must be submitted when your application is lodged through NSW Planning Portal and received by Council. For further information regarding your application please contact us by:

Phone: 1300 292 442

Email: council@wagga.nsw.gov.au

Part K – Terms and Conditions

1 Definitions

1.1 In this agreement:

Approval means any approval, certification, decision, or determination that Council may grant or make, as part of, or as a consequence of, performing the Certification Services in accordance with Council's professional duties;

BDC Act means the *Building and Development Certifiers Act 2018* (NSW), and BDC Regulations means the *Building and Development Certifiers Regulation 2020* (NSW);

Certifier means registered certifiers employed by Council and authorised to carry out certification services on behalf of Council, or other registered certifier authorised to carry out certification service on behalf of council;

Conflict of interest has the meaning in section 29 of the BDC Act.

Contract means the following documents, in order of precedence:

- (a) this Contract for Certification Services;
- (b) these General Conditions (including "Details" and "Execution" sections);
- (c) the information entered on the NSW Planning Portal application and contained in the PC Appointment Application;
- (d) any other information provided by the Applicant;

Certification Services means all of the certification work to be performed by Council identified in Part B as varied in accordance with these General Conditions.

Deliverables means any documents, certificates, declarations, materials or information which are necessary for Council to carry out the Certification Services including third party inspection reports and other documents.

Fees and Charges means the amount for the Certification Services calculated using Council's Schedule of Fees and Charges and as may be adjusted in accordance with this Contract including any disbursements.

Loss means any liabilities, losses, damages, expenses, and costs (including legal costs) of any kind or nature;

2 Certification Services

2.1 Council agrees to perform the Certification Services with Due Care and Skill, and in accordance with all requirements of the BDC Act and BDC Regulations, including the Code of Conduct prescribed therein, the *Environmental Planning and Assessment Act 1979* and National Construction Code of Australia.

2.2 The Certification Services specified in Part B will be performed by Council.

2.3 The Applicant acknowledges that any Approval is at Council's discretion, subject to Council exercising its discretion in good faith and in compliance with all Legislative Requirements.

2.4 The Applicant acknowledges and agrees that Council cannot perform any Principal Certifier functions unless and until it has been validly appointed as Principal Certifier by a person entitled to make that appointment under the *Environmental Planning and Assessment Act 1979* (NSW).

2.5 The Applicant acknowledges and agrees that Certification Services performed by Council do not constitute a warranty or guarantee under the *Home Building Act 1989* or otherwise does not guarantee the quality of building work, the suitability of materials or workmanship or compliance with non-statutory specifications or contractual building standards. Responsibility for the carrying out building work in accordance with all applicable legislation, approvals and standards remains with the builder, principal contractor or the owner-builder.

2.6 Council may subcontract all or part of its obligations under this agreement to another registered certifier, provided that Council remains liable for the performance of that subcontractor. Council will notify the Applicant in writing of the name and registration number of any subcontractor before that subcontractor carries out certification work under this Agreement. Council may engage additional or replacement subcontractors during the Term, provided Council gives written notice to the Applicant within 7 days of such engagement.

2.7 Council will take any steps considered appropriate to address any non-compliance with the development consent.

2.8 Council will record inspection outcomes in accordance with legislative requirements. Following an inspection, Council may confirm that the building work is satisfactory or identify non-compliance and require corrective action. Where the work is not satisfactory, Council may refuse to issue any relevant certificate.

2.9 The Applicant acknowledges that the Council's professional indemnity insurance policy may contain an exclusion for claims made in relation to cladding, as permitted by the, clause 19. Council will, upon request, provide details of any such exclusion to the Applicant.

3 Applicant's Obligations

3.1 The Applicant must, at its own cost, promptly:

- a) give Council safe access to the Development Address as and when Council requires, to enable Council to perform the Certification Services and,
- b) provide any documents, statutory plans, certificates or information which are necessary for Council to carry out Certification Services within time specified by Council,
- c) pay the agreed fees for certification services,
- d) coordinate other contractors or persons to allow council performance of Certification Services,
- e) notify Council of anything which the Applicant is aware of or becomes aware of which could materially affect Council's performance of the Certification Services,
- f) ensure that all critical stage inspections are booked as specified in the Annexure A Inspections,
- g) use suitably qualified or experienced contractors for all aspects of the building work,
- h) Comply with any request to rectify building work issued by Council,
- i) comply with all conditions of any development consent,
- j) apply for an Occupation Certificate and provide all necessary documentation to allow issue of Occupation Certificate authorising occupation of the building within two years of the date of the Development Certificate or one year since the last critical stage inspection.
- k) comply with all of the Applicant's obligations under the Work Health and Safety Law;
- l) otherwise cooperate with Council and do all other things reasonably necessary so that Council is able to perform the Certification Services.
- m) rectify the building work before proceeding further.
- n) Council is not liable for any Loss or delay resulting from the Applicant's failure to comply with this clause

4 Applicant Obligation – Licence and Owner-Builder Verification

4.1 The Applicant must, before any residential building work (as defined in the *Home Building Act 1989*) commences, provide Council with documentary evidence that:

- a) the principal contractor holds a current contractor licence under the *Home Building Act 1989* and is covered by the required insurances under that Act and is covered by the required insurances, or that an owner-builder permit has been issued, as required under the *Environmental Planning and Assessment Regulation 2021*, clause 96(1); or
- b) Design and Building Practitioners Act – If the Project involves a class 2 building (within the meaning of the Building Code of Australia), the Applicant must provide Council with evidence that the design practitioner and building practitioner are registered under the *Design and Building Practitioners Act 2020*, section 21, before Council issues a construction certificate or complying development certificate for the Project.
- c) if the building work is to be carried out by an owner-builder, an owner-builder permit has been issued under the *Home Building Act 1989* to the owner-builder.

4.2 Council may refuse to carry out any inspection or other PC function until this evidence is provided. Council will make a record of any such refusal as required by the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. Council will make a record of the matters ascertained under this clause as required by the *Environmental Planning and Assessment Regulation 2021*, clause 96(2)

5 Information provided to Council

5.1 The Applicant:

- a) acknowledges that Council, in performing the Certification Services, is relying upon the information provided by the Applicant being accurate but is not under any duty to verify accuracy of such information.
- b) warrants that any information provided to Council is accurate, current, unambiguous and complete in all respects.

6 PC Appointment Precondition

6.1 Notwithstanding any other provision of this Agreement, Council will not commence any PC-related certification work (including any inspection under the *Environmental Planning and Assessment Act 1979* or the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*) unless and until:

- a) a development consent or complying development certificate is in force for the development to which the Certification Work relates; and
- b) Council has been formally appointed as the Principal Certifier (PC) by a person eligible to do so under section 6.6 of the *Environmental Planning and Assessment Act 1979*. The Applicant warrants that it is such a person or has obtained the written approval of such a person to appoint Council as the PC.

6.2 A person eligible to appoint the PC is either the person with the benefit of the development certificate or with the approval of such a person.

6.3 The person having the benefit of a development consent does not include any contractor or other person who will carry out the building work unless the contractor or other person is the owner of the land on which the work is to be carried out.

7 Design Verification for Residential Apartment Development

- a) If the Project involves residential apartment development to which the *Environmental Planning and Assessment Regulation 2021*, clause 29 applies, the Applicant must provide Council with a statement by a qualified designer verifying that the proposed development achieves the design quality principles, as required under that clause.
- b) Council must not issue a construction certificate or occupation certificate for the development unless Council has received the design verification statement required under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, sections 15 and 43.

8 Fire Safety Reports – FRNSW Referrals

- a) If the Project involves building work to which the *Environmental Planning and Assessment Regulation 2021*, clause 137 (final fire safety report) or clause 147 (fire safety system report) applies, the Applicant acknowledges that Council, as principal certifier, is required to request those reports from the Fire and Rescue NSW Commissioner within 2 business days of receiving an application for an occupation certificate.
- b) The Applicant must provide Council with all information and documentation reasonably required to enable Council to make those requests in a timely manner. Council is not responsible for delays in the issue of an occupation certificate caused by the Fire Commissioner's response time.

9 DBP Regulation Compliance – Construction Certificate or Complying Development Certificate

9.1 If the Project involves a class 2 building (or a class 3 or 9c building to the extent required by law), the Applicant must ensure that, before Council issues a construction certificate or complying development certificate for the Project, Council has been provided with

- a) each design compliance declaration to which the building work relates that is required by Council in order to issue the certificate; and
- b) for each design compliance declaration, each regulated design in relation to which the design compliance declaration is made.

9.2 The Applicant acknowledges that, under clause 29 of the *Design and Building Practitioners Regulation 2021*, Council is prohibited from issuing a construction certificate or complying development certificate unless the documents referred to in subclause (1) have been provided to Council. Council will not issue such a certificate until the documents are provided.

Council is not responsible for verifying that documents have been lodged on the NSW planning portal under the *Design and Building Practitioners Regulation 2021*, including under regulations 16, 17, 18, 19 or 19A, unless expressly required to do so by law.

10 DBP Regulation Compliance – Occupation Certificate

10.1 If the Project involves a class 2 building (or a class 3 or 9c building to the extent required by law), the Applicant must ensure that, before Council issues an occupation certificate for the Project, Council has been provided with a building compliance declaration in relation to the building work.

10.2 The Applicant acknowledges that, under clause 30 of the *Design and Building Practitioners Regulation 2021*, Council is prohibited from issuing an occupation certificate unless a building compliance declaration has been provided to Council. Council will not issue an occupation certificate until the declaration is provided.

10.3 Council is not responsible for verifying that documents have been lodged on the NSW planning portal under the *Design and Building Practitioners Regulation 2021*, including under regulation 18, unless expressly required to do so by law.

10.4 For the avoidance of doubt, the obligations in clauses 9 and 10 apply to class 2 buildings in all cases. For class 3 and 9c buildings, the *Design and Building Practitioners Act 2020* and *Regulation 2021* apply only to the extent prescribed by law.

11 Out of Scope – Additional Exclusions

11.1 For the avoidance of doubt, the following are also excluded from the Certification Work unless expressly included in the quotation or a written variation agreed by Council:

- a) geotechnical, acoustic, bushfire, hydraulic, structural engineering or other specialist reports or investigations;
- b) verification of owner-builder permits or contractor licences beyond Council's obligations under the *EP&A Regulation 2021*, section 96(1)(a);
- c) assessment of existing buildings or structures not forming part of the approved plans and specifications for the Project;
- d) any certification work arising from the Applicant's failure to provide accurate, complete or timely information or documentation as required under this Agreement.

12 Ambiguities

12.1 In the event of any Ambiguity in or between the documents forming part of the Contract or comprised in the information provided by Applicant, Council may resolve the Ambiguity acting reasonably and having regard to the intent of the Contract and notify the Applicant accordingly.

13 Legislative changes

13.1 Each party must perform its obligations under this *Contract* in compliance with all *Legislative Requirements*.

14 Payment

14.1 Council is not obliged to issue any certificate until all outstanding Fees and Charges are paid in full.

14.2 The Applicant acknowledges that payment of the Fees and Charges does not guarantee or imply that any certification will be issued by Council and that Council can only provide certifications to the extent the conditions for certification are satisfied.

15 Potential Variations

15.1 The following are potential variations for the purposes of this Agreement and the definition of "Variation" under the Standard Conditions:

- a) any item listed as a contingency or potential variation in Section 7 of the Request (Fee Schedule);
- b) any additional certification work required as a result of:
 - i. a change in applicable legislation, the Building Code of Australia, or a development consent condition after the date of this Agreement
 - ii. the Applicant requesting changes to the scope of Certification Work after the date of this Agreement;
 - iii. third-party certification or reports required by Council that were not foreseen at the date of this Agreement;
 - iv. re-inspections or additional inspections resulting from non-compliance or missed inspection notices.

16 Time and Completion

16.1 Council agrees to commence the Certification Services promptly after payment is received in full and will endeavour to complete the Certification Services within a reasonable period of time.

16.2 Council is entitled to an extension of time for completing the Certification Services, if Council is delayed in performing the Certification Services by:

- a) an act, default, or omission of the Applicant,
- b) an Information provided by the Applicant not being accurate, or
- c) any change in Legislative Requirements;
- d) other matter beyond Council's reasonable control.

17 Indemnity and Exclusion of Liability

17.1 The Council indemnifies the Applicant and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, to the extent caused by the negligent act or omission of the Council in the performance of the Certification Work. This indemnity does not apply to any liability arising from the Applicant's own acts or omissions or the acts or omissions of any contractor engaged by the Applicant.

17.2 This indemnity is reduced by the extent to which the Applicant contributes to the event giving rise to the claim for the indemnity.

17.3 To the extent permitted by law, Council's aggregate liability to the Applicant arising in connection with this Contract, whether based in contract, tort (including negligence), by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the total Fees and Charges paid by the Applicant under this Agreement.

17.4 Notwithstanding any other provision in this agreement, the Council is not liable to the Applicant, nor is it required to indemnify the Applicant, for any loss or damage suffered by the Applicant or for any claim against the Applicant (howsoever arising) for economic, indirect or consequential losses of any kind whatsoever.

17.5 The Applicant indemnifies the Council and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Applicant, a breach by the Applicant of this agreement, a wilful unlawful or negligent act or omission of the Applicant, and any claim action or proceeding by a third party against the Council or its employees officers and contractors caused or contributed to by the Applicant.

17.6 The Applicant releases and holds harmless the Council against all claims, demands, expenses, loss or damage arising in connection with the Applicant's reliance on, or use of, any aspect of the Certification Work, including advice, given to the Applicant by the Council in a manner which is not contemplated or authorised by the Act or otherwise not in accordance with any exclusions or assumptions given by the Council.

18 Suspension

18.1 Council may suspend the Certification Services for so long as:

- a) Council considers that there is any risk to health or safety in providing the Certification Services or entering any areas of the Development Address required to perform the Certification Services (including because any persons on the Development Address are abusive or threatening);
- b) the Applicant fails to provide any information required by Council;
- c) the Applicant has not paid any amount by the time that it is due;

19 Confidential Information

19.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

- a) keep confidential;
- b) take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
- c) maintain proper and secure custody of; and
- d) not use or reproduce in any form, any Confidential Information belonging to the other party.

20 Termination

20.1 The Council may, at any time, terminate this contract if:

- a) the Applicant commits a material breach of this Agreement,
- b) the Applicant fails to remedy breach within reasonable period of time of receiving written notice from Council specifying the breach;
- c) the Applicant or any contractor or employee carrying works fails to give required notice to Council of a mandatory critical stage inspection (Annexure A) resulting in building work being covered, concealed or rendered inaccessible before the inspection was carried out which constitutes of a missed critical stage inspection,
- d) if a development certificate cannot be issued within six (6) months of the date of this Contract,
- e) if the building works have commenced without the issuing of a development certificate,
- f) fails to apply for an Occupation Certificate and provide documentation required to allow issue of Occupation Certificate within two years of the date of development certificate or one year since last critical stage inspection.
- g) the Applicant engages another registered certifier to carry out certification work that is substantially the same as the Certification Work under this Agreement in respect of the same development;
- h) Applicant fails to pay any amount owing by the due date;
- i) the Applicant becomes insolvent, enters into liquidation, or has a receiver or administrator appointed.
- j) the development consent or complying development certificate for the Project lapses, is suspended, or is revoked by a consent authority or court;
- k) Council is unable to perform the Certification Work due to a conflict of interest under the *Building and Development Certifiers Act 2018* or the *Building and Development Certifiers Regulation 2020*, irrespective of whether such conflict existed before or after entry into this *Contract*. or due to statutory disqualification;

- l) Council is prevented from lawfully completing the Certification Services in accordance with this Contract due to a change in the Legislative Requirements;

20.2 Council may also terminate this agreement on 30 days' written notice to the Applicant for any other reason, provided Council acts reasonably and in accordance with law. In the event of termination under this clause, the Applicant must pay Council for all Certification Work properly carried out up to the date of termination, calculated on a quantum meruit basis.

20.3 If Council has terminated the Contract - the Applicant must as soon as possible: appoint a replacement Principal Certifier to take over the certification role comprised in the Certification Services; advise Council of that replacement; and, where necessary notify all relevant authorities of that replacement.

21 Dispute Resolution

21.1 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

21.2 On receipt of that notice by the other party, the Applicant must meet with representatives of the Council to undertake genuine negotiations in good faith with a view to resolve the dispute.

21.3 If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

22 General

If an Occupation Certificate is not issued whether it be on account of disappearance of Applicant or the termination of the Contract, the Council's responsibilities under the Contract cease forthwith.

22.1 This agreement constitutes the entire agreement between the parties about its subject matter and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

22.2 A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

22.3 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

22.4 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

22.5 This agreement is governed by the law in New South Wales and is subject to the jurisdiction of the Courts in New South Wales.

22.6 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1987* (NSW) except to the extent permitted by those Acts where applicable.

22.7 Where the Applicant buys Certification Work as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

22.8 A notice, demand, consent, approval or communication under this agreement (Notice) must be in writing and signed by a person authorised by the sender and sent by mail or email to the recipient's address specified in Part A.

22.9 Each party must pay its own expenses incurred in connection with executing this *Contract*.

22.10 Survival. Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

23 Duty of Care under *Design and Building Practitioners Act 2020*

23.1 The parties acknowledge that Council, in issuing certificates or carrying out other certification work as part of this Agreement, may be a person who carries out "construction work" for the purposes of Part 4 of the *Design and Building Practitioners Act 2020*. To the extent that Council carries out such construction work, Council is subject to the duty under section 37 of that Act to exercise reasonable care to avoid economic loss caused by defects in or related to a building arising from that work.

23.2 The parties further acknowledge that under section 40 of that Act, any provision of an agreement that purports to exclude, restrict or modify the operation of Part 4 is void. Nothing in this Agreement excludes, restricts or modifies the duty of care under the *Design and Building Practitioners Act 2020*.

24 Future Legislation – Building (Approvals and Practitioners) Act 2026

24.1 The parties acknowledge that the *Building (Approvals and Practitioners) Act 2026* (the "2026 Act") has been passed by Parliament and may, on its commencement, repeal and replace the *Design and Building Practitioners Act 2020*, the *Building and Development Certifiers Act 2018*, and their associated regulations, and amend the *Environmental Planning and Assessment Act 1979*.

24.2 Upon commencement of the 2026 Act, references in this Agreement to legislation repealed by the 2026 Act will be read as references to the corresponding provisions of the 2026 Act.

24.3 The parties further acknowledge that, when the 2026 Act commences, Council's duties and liabilities as a certifier will be subject to the provisions of that Act, including any duty of care and any prohibition on contracting out of that duty. Nothing in this Agreement is intended to exclude, restrict or modify any mandatory duty of care imposed by the 2026 Act if and when that Act commences.

Annexure A

Inspections to be undertaken under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Notice for each inspection must be given to Council at least 2 business days before the day on which the building work will be ready for inspection, excluding the day the notice is given, as required by the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* clause 65.

Inspection	Occasion
Footings	After excavation for, and prior to the placement of, any footings
Slab	Prior to pouring any in-situ reinforced concrete building element
Fire Protection	Before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, And 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
Sub floor bearers and joists, Wall frame, Roof frame	Prior to covering of the framework for any floor, wall, roof or other building element.
Wet areas	Prior to covering waterproofing in any wet areas.
Stormwater	Prior to covering any stormwater drainage connections
Final	After the building work has been completed and prior to any occupation certificate being issued in relation to the building
Swimming Pool Footings/Coping	When the pool is in position and all reinforcement has been placed in position.
Swimming Pool Barrier	When the pool and all fencing, gates and locks have been completed.