Contract for Certification Services

Under section 31 of the Building and Development Certifiers Act 2018 and clause 31 of the Building and Development Certifiers Regulation 2020.

About this Contract for Certification Services (contract)
Council must not carry out certification services for a person unless it has entered into a written contract with that person. You must therefore complete and sign this Contract for Certification Services.

The four key steps for appointing a Registered Certifier are set out in the process steps attached to this Contract.

If there are any terms that you do not fully understand please seek independent legal advice.
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. The Contract comprises the following documents:

a. this Contract;

b. the General Conditions attached to this Contract; and

c. the information entered on the NSW Planning Portal application and contained in the Principal Certifier Appointment Application and as updated from time to time.

Any conflict between the documents listed above will be resolved by giving precedence to the documents in the above order or as agreed by the parties in writing

Part A: Parties to this contract

1. Applicant

Applicant Name:	
Company Name:	
Applicant's Address:	
Preferred contact number:	
Email address:	

2. Principal Certifier (PC) Details

ABN: 33 984 256 429
HILLTOPS COUNCIL
189-205 Boorowa St,
Locked Bag 5,
YOUNG NSW

Phone: 1300 445 586
Email: mail@hilltopsnsw.gov.au;

Part B: Introduction

- Council is a certifying authority and employs registered certifiers (Employee Certifiers) who are authorised to carry out certification services on behalf of Council.
- Section 31(1) of the Building and Development Certifiers Act 2018 (BDC) 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.

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Part C: Application Type

3. **I am the applicant described in the attached Application made under the NSW Planning Portal for**:

   ☐ **Complying Development Certificate Application**
   (Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)

   ☐ **Construction Certificate Application** (Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)

   ☐ **Subdivision Works Certificate Application** (Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)

   ☐ **Occupation Certificate Application** (Note: you may also elect to appoint Council as Principal Certifier: see below and Part E)

   ☐ **Council as Principal Certifier (PC)** to undertake inspections and issue an occupation certificate:

   - If you wish to use Council as your PC tick this section in Part D to make this service part of the contract.
   - Refer to the Process Steps attached to this contract for further information about the PC functions and formal appointment

4. The information contained in the certificate applications and PC Appointment Application from the NSW Planning Portal are incorporated into this Contract.

Part D: Certification Services to be performed by Council

5. . The Applicant appoints Council to perform the following certification services:

Determination of Applications for Development Certificates

☐ Determination of application for a Complying Development Certificate

☐ Determination of application for a Construction Certificate

☐ Determination of application for a Subdivision Works Certificate

☐ Determination of application for an Occupation Certificate

Undertaking the function of Principal Certifier (PC)

Appointment of Council as Principal Certifier (PC) - see Part E

Note: If you select Council to be your PC you will also need to formally appoint Council as the PC (through the NSW Planning Portal) to carry out inspections and to issue an Occupation Certificate. You must also pay the inspection fees prior to Council accepting the PC appointment. A letter confirming Council's appointment and the terms of its appointment will then be issued by Council.

Part E: Subsequent Appointment of Council as Principal Certifier (PC)

6. Particulars of the Certification Services to be carried out by Council under the Contract can be found on Council's website or provided by Council on receipt of a written request.

Note: This Part E only applies to determination of an application for certificates set out in Part C.

7. If the Applicant selects Council as PC for the Development, upon lodgement of the PC Appointment Application through the NSW Planning Portal, the Applicant agrees that:

a. this Contract will also apply to the subsequent appointment of Council as PC for the Development; and

b. the Fees and Charges in Part I will apply.

Part F: Modification of Complying Development Certificate, Construction Certificate or Subdivision Works

NOTE: This Part F only applies to an application to modify an existing determination for a:

- Complying Development Certificate
- Construction Certificate
- Subdivision Works Certificate

8. After entering into this Contract, the Applicant may seek to modify any of the above certificates for the Development.

9. If a modification is sought, upon lodgement of the application with Council to modify any of the above certificates the Applicant agrees that:

a. this Contract will also apply to any modification to the application for the Development;

b. the information contained in the application form will be automatically incorporated into this Contract; and

c. the Fees and Charges in Part I will apply.

Contract for Certification Services

Part G: Development details

10. a. the development site is located at:

		Lot and DP No.	

b. the development can be described as (e.g.: single storey dwelling

c. the following development consent/certificate details apply

☐ Development consent granted by consent authority

Development consent no./ identifier	Date of development consent

☐ Development consent given by the issue of a Complying Development Certificate (CDC)

Name of certifier that issued the CDC

CDC no. / identifier	Date of CDC

Part H: Certification Services

11. Council proposes, at the date of this Contract, the Employee Certifier whose details are entered at Part K will carry out the Certification Services stated in Part D.

12. If Council later decides (in its discretion) to have a different Employee Certifier carry out the Certification Services any one of the following Employee Certifiers will carry out these functions:

The details of the officers employed by Council as Building Certifiers, any of whom may carry out certification work and inspections under this contract, can be found on the NSW Fair Trading website at: https://applications.fairtrading.nsw.gov.au/bdcregister

Part I: Fees and Charges

Undertaking Certification Services

13. The Applicant must pay the fees and charges for Certification Services for the determination of an application for certification work (including modification of a current certificate, where relevant) calculated by Council using the rates specified in Council's Schedule of Fees and Charges (see paragraph 19) and notified to the Applicant.

14. These fees and charges must be paid in full to Council at the time the application for Certification Services is lodged with Council.

15. In the case of fees and charges payable for Certification Services arising from unforeseen

contingencies, such as the assessment of performance solutions under the Building Code of Australia or an application to modify an existing determination, such fees and charges will be calculated using the rates specified in Council's Schedule of Fees and Charges. For the fees for such additional Certification Services:

a. Council may issue an estimate before commencing the additional Certification Services; and
b. Council will issue a payment notice to the Applicant requiring fees to be paid before commencing the additional Certification Services.

Undertaking the function of Principal Certifier (PC)

16. 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 (see paragraph 19).

17. 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.

18. In the case of Fees and Charges payable for Certification Services not included in the original fee arising from unforeseen contingencies, such as additional inspections, these Fees and Charges will be calculated using the rates specified in Council's Schedule of Fees and Charges. Council will issue a payment notice to the Applicant within 21 days after the completion of such additional Certification Services and the Applicant must pay by the due date specified on the payment notice. If payment is not received in full by the due date all Certification Services including inspections will cease and Council may terminate the Contract. Termination of the Contract will require the Applicant to formally appoint an alternative PC for the Development.

Part J: Information

19. Council's Schedule of Fees and Charges can be obtained from Council's website.

20. The Development and Building Certifiers Regulation 2020 requires an information brochure containing details about the statutory obligations of certifiers, published by Fair Trading NSW to be made available as attached to this Contract.

Part K: Execution of Contract

Declaration:

1. I have freely chosen to engage Council; and
2. I have read the Contract including the General Conditions and the attached information brochure and understand my responsibilities and those of Council.

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

Individual Applicant SIGNED:

Applicant's name (printed):	Applicant's signature

Date:

Contract for Certification Services

Authorised Officer SIGNED **
for and on behalf of the Council of Hilltops ABN 33 984 256 429 by its duly Authorised officer:
** This section will be completed by the Building Certification Services team after lodgement.

Name of Authorised Officer (printed):	Authorised Officer Signature (electronic):

Date:

Contract for Certification Services

Part L: General Conditions

1.Certification Services

1.1. 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.

1.2. The Certification Services specified in Part D will be performed by Council.

1.3. 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. Entry into, or performance of any act or obligation under, this Contract must not be construed as confirmation that any Approval that may be granted or made by Council, will be made.

2. Applicant Obligations

2.1. 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 notify Council of any changes to that access); and
(b) provide the Applicant Deliverables to Council;
(c) coordinate other contractors or persons involved in the Development so as not to impede Council's performance of the Certification Services;
(d) 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, including any authority requirements, any design changes, any non-compliances, or any defects in the works then subject of the Certification Services;
(e) comply with all of the Applicant's obligations under the WHS Law;
(f) notify Council if the Applicant anticipates that there is a material risk of it being the subject of an Insolvency Event, or otherwise being unable to perform this Contract; and
(g) otherwise cooperate with Council and do all other things reasonably necessary so that Council is able to perform the Certification Services.

2.2 Council is not liable for any Loss or delay resulting from the Applicant's failure to comply with this clause 3.

3. Applicant Deliverables

3.1 The Applicant:
(a) acknowledges that Council, in performing the Certification Services, is relying upon the Applicant Deliverables being Accurate;
(b) warrants to Council that the Applicant Deliverables are Accurate;
(c) has No Claim against Council (or any employee of Council), in relation to or connection with any risks, Losses and delays suffered or incurred by the Applicant as a result of the Applicant Deliverables not being Accurate, including where that inaccuracy results in some defect or noncompliance in the Certification Services;
(d) accepts all risks, Losses and delays associated with any Ambiguity in relation to the Applicant Deliverables.

4. Ambiguities

4.1 In the event of any Ambiguity in or between the documents forming part of the Contract or comprised in the Applicant Deliverables:
(a) the order of precedence set out in the definition of Contract will apply; (b) otherwise, Council may resolve the Ambiguity in whichever way Council considers appropriate in its absolute discretion, and notify the Applicant accordingly, in which case: (i) to the maximum extent permitted at law, the

Applicant will have

No Claim in relation to the resolution of the ambiguity referred to in subclause (b) above; and (ii) Council will be entitled to a deemed Variation to the extent that the resolution of the Ambiguity results in any increase, decrease, amendment, or modification to the Certification Services which Council did not anticipate as at the date of this Contract.

5. Legislative changes

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

5.2 Subject to clause

5.3, if there is a change in Legislative Requirements on or after the date of this Contract, and that change requires a Variation in order for the Certification Services to be performed in accordance with this Contract, then:

(a) Council is entitled to a deemed Variation and shall notify the Applicant of the additional Variation Sum which the Applicant must then pay; and

(b) once the Applicant pays in full the Variation Sum referred to in the previous subparagraph, Council will perform the Variation;

(c) to the maximum extent permitted at law, the Applicant will have No Claim in relation to the change in Legislative Requirements other than for breach of the obligation referred to in subclause (b) above.

5.3 The Applicant will have No Claim against Council as a result of or in any way connected with any change in Legislative Requirements, which occurs after Council has ceased to perform the Certification Services.

6. Payment

6.1 The Applicant must pay Council the Fees and Charges within two (2) Business Days of entry into this Contract and in any event, prior to Council commencing the Certification Services.

6.2 Council will issue a receipt when payment in full of the Fees and Charges is received. Council will issue a tax invoice on receipt of a written request.

6.3 Council reserves the right to withhold the issue of any certificates until such time as all outstanding payments have been paid in full.

6.4 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.

7. Variations and Variation Sum

7.1 If, in Council's reasonable opinion, a Variation has occurred or is required, Council must provide the Applicant written notice of such Variation. Any Variation to the Certification Services must be performed in accordance with and subject to this Contract and once issued to the Applicant is deemed to be incorporated into this Contract.

7.2 Within five (5) Business Days of the date Council provides notice under the previous subclause, the Applicant must provide written notice to Council if it disputes the Variation, and the reasons for that dispute. 7.3 If there is any dispute about a Variation Council may suspend the Certification Services under clause 10.1(d) until the dispute is resolved in accordance with clause 13.

7.4 The Applicant acknowledges that Variations may include those specified in Part E and Part F.

7.5 If, in the Applicant's reasonable opinion, a Variation is required, the Applicant must provide Council with written notice providing details of the proposed Variation to Council, at least five (5) Business Days prior to Council being required to perform work in relation to the Variation. If Council agrees that a Variation is required, the Council will issue a notice in accordance with clause 7.1.

7.6 Council is entitled to charge the Applicant the Variation Sum for work performed under any Variation, and shall issue a payment request in respect of the Variation Sum to the Applicant.

7.7 The Applicant must pay Fees and Charges issued for a Variation Sum within the time specified on the relevant payment request or if no such time is stated, within ten (10) Business Days from the date of the payment request.

8. Time and Completion

8.1 Council must 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.

8.2 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, its agents, employees, or any other party associated

with the Development (including a suspension or Variation); (b) any change in Legislative Requirements; (c) any Applicant Deliverable not being Accurate; or (d) any other act, matter, event or thing beyond Council's reasonable Control.
8.3 Council is not liable for any delay to the Development caused by Council completing the Certification Services in accordance with this clause 8.

9. Liability Limit

9.1 Council's aggregate liability to the Applicant arising in connection with this Contract, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of: (a) the amount of the Fees and Charges; and (b) $100,000.00.
9.2 If, and to the extent that, clause 10.1 is void as a result of section 64A of the Australian Consumer Law under Schedule 2 of the Competition and Consumer Act 2010 (Cth), then Council's liability for a breach of a condition or warranty is limited to: (a) the supply of the relevant Certification Services again; or (b) paying the reasonable cost of having the Certification Services supplied again.
9.3 Council's liability to the Applicant is excluded in relation to any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any other indirect or consequential losses or damages arising in connection with the Contract.
9.4 Clauses 9.1 and 9.3 do not limit or exclude Council's liability in respect of claims, actions, costs, losses, damages or liability arising due to: (a) liability which cannot be limited at law; or (b) fraudulent or criminal conduct.

10. Suspension

10.1 Council may suspend the Certification Services for so long as: (a) Council considers that there is any risk to health or safety including matters subject to the WHS Law 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 Applicant Deliverables required by Council; (c) the Applicant has not paid any amount by the time that it is due; (d) the parties are in dispute in relation to a Variation (and that dispute has not resolved by a final and binding form of dispute resolution).
10.2 The Applicant indemnifies and holds harmless Council for any additional costs or expenses Council incurs in relation to a suspension under this clause 11, if the suspension was not caused solely by an act or omission of Council.

11. Confidentiality, privacy and public access

11.1 Where either party (Recipient) receives or otherwise possesses confidential information of the other party (Discloser), the Recipient must: (a) keep it confidential; (b) only use it where required to exercise its rights or perform its obligations under this Contract; (c) not disclose it to anyone other than: (i) with the prior consent of the Discloser and on the condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements as specified in this Contract; (ii) where required by any Legislative Requirement which may require the Recipient to publish or disclose certain information regarding this Contract.
11.2 Neither party will issue any press release or make any other public statement regarding this Contract without the prior written consent of the other, except as required by a Legislative Requirement.
11.3 Without limiting its obligations at law with respect to privacy and the protection of Personal Information, Council will; (a) comply with the Privacy Law; and (b) notify the Applicant on becoming aware of any unauthorised access, modification, disclosure or use of Personal Information or privacy breach in relation to any Personal Information.
11.4 No publicity The Applicant must not use Council's name, trade mark or logo in any advertisement, media release, public statement, promotional materials or announcement relating to this Contract or the Certification Services without Council's prior written approval.
11.5 Public Access to Government Information (a) The Applicant acknowledges and agrees that Council is subject to the Government Information (Public Access) Act 2009

(NSW) (GIPA Act). To the extent the GIPA Act applies, Council may disclose information in this Contract (including the entire Contract) on its nominated website established for GIPA Act disclosures.
The Applicant irrevocably consents to Council acting in accordance with this clause.

12. Termination

12.1 Council may terminate this Contract: (a) at any time and for any reason, in its sole discretion, by giving to the Applicant not less than ten (10) Business Days' prior written notice; or if the Applicant: (b) breaches a material term of this Contract; (c) breaches a term of this Contract and

fails to remedy that breach within a reasonable period of time of Council's notice to so rectify; (d) becomes or is likely to become subject to any Insolvency Event, and fails to provide proof of its ability to comply with all of its future obligations under the Contract including with respect to payment (which proof shall include a current asset liability statement, profit loss statement and declaration of ability to pay by a current director or other officer),or is unable to pay its debts when they fall due; (e) fails to pay any amount owing by the date due; or (f) ceases to carry on business, or if Council: (g) is prevented from lawfully completing the Certification Services in accordance with this Contract due to a change in the Legislative Requirements; or (h) becomes aware of any conflict of interest, which conflict may prevent Council from complying with relevant laws or regulations if Council continues to perform the Certification Services, irrespective of whether such conflict existed before or after entry into this Contract.
12.2 The Applicant may terminate this Contract by giving Council written notice to that effect if Council fails to remedy a substantial breach of a material term of this Contract within twenty (20) Business Days of being requested by notice in writing to do so by the Applicant. 12.3 If the Applicant receives a notice from Council that: (a) 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; (b) Council will terminate the Contract, the Applicant must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement Principal Certifier to take over the certification role comprised in the Certification Services from the date of termination of the Contract and advise Council of that replacement; and, where necessary notify all relevant authorities of that replacement.
12.4 On termination of this Contract: (a) any amounts owing to Council in respect of the Certification Services up to and including the date of termination (together with any other amounts which Council would be entitled to, but for the termination, for work performed up to and including the date of termination) become immediately due and owing; (b) if the termination is effected under clauses 12.1(a) - 12.1(h), Council is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit; (c) the Applicant must return or destroy (at the Council's request) any confidential information held by the Applicant; and (d) the Council must, subject to any Legislative Requirement, return or destroy (at the Applicant's request) any confidential information held by the Council.

13. Dispute Resolution

13.1 Notice of dispute (a) If a dispute between the parties arises out of, or in any way in connection with, the subject matter of this Contract, then either party may, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute. (b) Notwithstanding the existence of a dispute, the parties must, subject to clause 12, continue to perform the Contract.
13.2 Negotiation Within ten (10) Business Days after receiving a notice of dispute, the Applicant must meet with representatives from the senior management of the Council to undertake genuine negotiations with a view to resolving the dispute.
13.3 This clause 13 will survive termination, completion, or expiration of this Contract.

14. GST

14.1 Terms used in this clause 14 which are not defined in the Contract, but which are defined in the GST Law, have the meanings given to them in the GST Law.
14.2 Except where express provision is made to the contrary, any amount that may be payable for the Fees and Charges (and Variation Sum, if relevant) under this Contract is exclusive of any GST. The applicable GST amount payable must be added to the Fees and Charges (and the Variation Sum, if relevant).

15. General

To the extent permitted by law, this Contract constitutes the entire Contract between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.
15.2 The Applicant agrees that, other than as expressly stated in this Contract, in entering into the Contract it has not relied upon any representation, warranty, or inducement by Council nor is any representation, warranty or thing made or done by Council to be inferred, incorporated or implied into the Contract.
15.3 This Contract may only be varied by a document signed by or on behalf of each party.
15.4 The Applicant must not assign or novate this Contract without Council's prior written consent.
15.5 This Contract may be executed electronically and in counterparts and by the parties on separate counterparts. Each counterpart comprises the

Contract of each party who has executed and delivered that counterpart, The parties acknowledge and agree to this Contract being executed electronically, and in counterparts, in accordance with the Electronic Transactions Act 2000 (NSW).
15.6 A party's rights and obligations do not merge on completion of any transaction under this Contract.
15.7 If any provision or part of a provision of this Contract is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.
15.8 Without limiting any other provision of this Contract, the parties agree that: (a) each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract; and (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.
15.9 Without limiting any other provision of this Contract, the parties agree that: (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Contract; (b) a waiver given by a party under this Contract is only effective and binding on that party if it is given or confirmed in writing by that party; and (c) no waiver of a breach of a term of this Contract operates as a waiver of another breach of that term or of a breach of any other term of this Contract.
15.10 This Contract is governed by the law in force in New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts in New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract.
15.11 Nothing in this Contract will fetter, limit or restrict in any way the discharge by Council of its obligations or rights under any Legislative Requirements or as an authority.
15.12 The Applicant will deal with Council as it would any other authority with respect to obtaining any permits, approvals or licences.
15.13 Notices
(a) A notice, consent, direction or other communication under this Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by addresses) specified in Part A. (b) A notice, consent or other communication that complies with this clause is regarded as given and received: (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address; (ii) if it is sent by mail, five (5) Business Days after it is posted; or (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
15.14 Liability for expenses
Each party must pay its own expenses incurred in connection with executing this Contract.
15.15 Survival
Clauses 1.1 (Due Care and Skill), 6 (Payment), 10 (Overdue Amounts), 12 (Insurance - to the extent it relates to professional indemnity insurance), 9 (Liability Limit), 11 (Confidentiality and privacy), 11.4 (obligations on termination), 13 (Dispute Resolution) and this clause 14.5 survive the expiry or earlier termination of this Contact, together with any other term which by its nature is intended to do so.

Contract for Certification Services

PO Box 972
Parramatta NSW 2124
Tel: 02 9895 0111 TTY: 1300 723 404
ABN 81 913 830 179
www.fairtrading.nsw.gov.au

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 work[2] is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

What does a registered building surveyor do?

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

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

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

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

What does a registered building inspector do?

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

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[2] Upfront fee payment is required for any work to determine an application for a development certificate or carry out a function f 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 fenc

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.

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