

# PERFORMANCE OF CERTIFICATION WORK - CONTRACT OF AGREEMENT

1. Tick the boxes and fill out all sections as appropriate. Failure to do so may result in delays in your application.
  2. Fees must be paid at the time of lodgement. Quote may be obtained by phone or at Council offices.
  3. Applications can be lodged in person at one of Council's offices during business hours, or by post.
- For further information please contact Council's Environmental Services Department on (02) 6540 1136 during business hours, 8.30am - 4.30pm Monday to Friday.

## 1. Introduction

This is an Agreement between Upper Hunter Shire Council (the Council) and the Client (as nominated below).

By virtue of the Environmental Planning & Assessment Act 1979 Council is a certifying authority and employs accredited certifiers (the Certifier) who are authorised to carry out the Certification Work which is the subject of this Agreement on behalf of the Council.

The Client seeks to engage the Council to perform certain Certification Work on the terms set out in this Agreement.

In accordance with section 31 (2) of the Building and Development Certifiers Act 2018 and clause 31 of the Building and Development Certifiers Regulation 2020 an attached information sheet for registered certifiers - building surveyors and building inspectors has been provided with this contract.

\*Refer to Section 5 for particulars of Certification Work.

## 2. Parties to the Agreement

1. The Upper Hunter Shire Council
2. **The Client (For Whom the Certification Work will be carried out)**

Name

Postal Address

Contact Name  Phone

Email Address

☐ Client is the property owner ☐ Client is duly authorised by the owner

**Note:** The person having the benefit of the Consent, so as to be able to appoint the Principle Certifier, may be the owner or an applicant authorised by the owner but may NOT be the builder, unless the builder is the owner.

## 3. Description of Development

Provide details of development being certified (e.g. dwelling, garage, swimming pool)

Lot No/s.  Section No.  DP/SP No.

Street No.  Street Name

Town/Village/Locality

### OFFICE USE ONLY

Application No.  Date received  Quote No.  Lodgement Officer

Upper Hunter Shire Council

Post: PO Box 208, Scone NSW 2337 | Phone: 6540 1100 | Email: council@upperhunter.nsw.gov.au

UPPERHUNTER.NSW.GOV.AU

#### 4. Details of Development Approval

Do you have development consent? ☐ No ☐ Yes (If yes, please provide details below)

Development Consent / Complying Development Consent

Date issued

Consent Authority

Details of any plans and specifications to which these approvals relate (e.g. Drw:SF2345 dated 01/01/2000)

#### 5. Certification Work to be Performed

This Agreement related to the following Certification Work:

- ☒ Undertaking the functions of the Principal Certifier for building or subdivision works.  
(Refer to Attachment A for description of PC functions and responsibilities of the Client)
- ☒ Determination of application for, and issue of, an Occupation Certificate\*.  
(\*these certificates are 'Development Certificates' for the purpose of this Agreement)

#### 6. Client Declaration & Signature

I/we agree to pay all fees in accordance with Council's adopted fees and charges as detailed in Attachment B to this Agreement.

Note: In respect of any unforeseen contingency work provided under this Agreement, the Council is to send an invoice to the Client within 21 days after the completion of any such work.

I/we acknowledge that the fees are payable are calculated in accordance with Council's adopted fees and charges and are to paid before or at the time of the lodgement of an application for a Development Certificate an/or before the Council commences to carry out any of the functions as the PC.

I/we agree to provide all documents that the Council may reasonably request for it to perform the function of the PC and/or Certifier.

I/we agree to provide Council with access to the development site.

I/we agree to notify Council of the appointment of the principal contractor. I/We agree to notify the principal contractor of any critical stage inspections required to be carried out in respect of the building or subdivision work.

- i) I/we have freely chosen to engage the particular certifier, and
- ii) I/we acknowledge that I/we have received and understand the description of services as outlined within the Agreement.

Client(s) Name

Client(s) Signature

Date




#### 7. The Certifier (who will carry out the certification work)

Council employs accredited certifiers who are currently accredited by NSW Fair Trading under the Building and Development Certifiers Act 2018. The employee that Council proposes, at the date of Agreement, to carry out the Certification Work is nominated by the below list.

The Client is advised that to the extent that any inspections are required to be carried out under the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000 for the Certification Work; those inspections may be carried out by any one of the Council employees listed below who has the necessary accreditation for that work.

##### Council's Accredited Certifiers

Name

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BDC

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## 8. Date of Agreement *Council to complete*

This Agreement is made on

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## 9. Council Signature *Council to complete*

Nominated Certifier: UPPER HUNTER SHIRE COUNCIL

Signed  
on behalf of  
Upper Hunter  
Shire Council

Date

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## 10. Fees and Charges

1. The Council's fees and charges for the performance of the Certification Work are set out in Attachment B.
2. The fees and charges must be paid to the Council:
  - a. before, or at the time an application for the Development Certificate is lodged with the Council; and/or
  - b. before the Council commences carrying out any of the functions as the PC.
3. In the case of fees and charges that may be payable for work arising from unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out in Attachment B. In respect of an unforeseen contingency work provided for under this Agreement, the Council will send an invoice to the Client within 21 days after the completion of any such work.

## Privacy Notice

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998. Any personal information supplied or collected will only be stored and processed for lawful purposes directly related to the functions and activities of Upper Hunter Shire Council.

Council will display some plans and reports (which may be subject to copyright law) online on its DA Tracking portal. In addition, plans and reports may be inspected at Council's Administration Building. No personal information will be displayed. The Environmental Planning and Assessment Act 1979 (NSW) requires Council to make applications and accompanying information, including plans, publicly available during any required notification period.

# Attachment A: Principal Certifier Functions

## 1. Introduction

The Environmental Planning and Assessment Act 1979 (EP&A Act) requires the appointment of a Principal Certifier (PC) to be responsible for the carrying out of mandatory critical stage building inspections and subsequent issue of an Occupation Certificate (OC) prior to the use or occupation of a building.

- Division 6.3 of the EPA&A Act prohibits the commencement of the erection of a building in accordance with a development consent until:
- A construction certificate has been issued;
- A PC has been appointed and the Client has notified the PC that they will carry out the building work as an owner-builder (if that is the case),
- Where the Client is not carrying out the building work as owner-builder, the Client must have appointed a principal contractor for the building work who is the holder of a contractor licence (where residential building work is involved). The Client must notify the PC of the appointment of the principal contractor and also notify the principal contractor of any critical stage inspections and other inspections required to be carried out for in respect of the building work,
- The PC has, no later than two days before the building work commences, notified the consent authority of his/her appointment and notified the Client of any critical stage inspections and other inspections that are required to be carried out in respect of the building work, and
- The Client has given at least two days' notice to the Council (and the PC if that is not the Council) of the person's intention to commence the erection of the building.

Similar requirements apply to the commencement of subdivision work.

This Attachment sets out the responsibilities of the Client and the Council (when engaged by the Client to act as PC).

## 2. Definitions

### Principal Certifier (PC)

The PC is the authority appointed by 'the Client' (being the person having the benefit of the development consent or complying development certificate) under section 6.6 of the EP&A Act. A PC may either be Council or an accredited private certifier (except in certain circumstances).

### Note:

1. Council accredited Certifiers, as the PC cannot be involved in the design of the building/ development works; but may offer advice for compliance with Deemed to Satisfy Building Code Australia (BCA) matters.

2. When Council has been appointed as the PC, a change of PC can only be undertaken upon agreement of Council or as determined by the Building Professionals Board.

### Critical Stage Inspections

Clause 162A of the EP&A Regulation relevantly prescribes the following as critical stage inspections:

- 4) In the case of a class 1 or 10 building, the occasions on which building work for which a Principal Certifier is first appointed on or after 1 July 2004 must be inspected are:
  - c) (Repealed)
  - d) After excavation for and prior to the placement of any footings, and
  - e) Prior to pouring any in-situ reinforced concrete building element, and
  - f) Prior to covering of the framework for any floor, wall, roof or other building element, and
  - g) Prior to covering waterproofing in any wet areas, and
  - h) Prior to covering any stormwater drainage connections, and
  - i) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- 4A) However, in the case of a class 1 or 10 building, an inspection on an occasion described in sub-clause (4) (a)-(f) that occurs before 1 July 2005 is not prescribed for the purposes of section 6.5 of the Act if:
  - a) The inspection is carried out by a person considered by the Principal Certifier to be suitably qualified to carry out the inspection (but who is not necessarily an accredited certifier) and employed or nominated for the purpose of carrying out the inspection, by the Principal Certifier, and
  - b) The person would not be disqualified by section 109ZG of the Act (except by subsection (1) (d) or (1A) of that section) from issuing a Part 4A certificate in relation to any aspect of the development concerned.
  - c) The person makes a record of each inspection carried out by him/her and provides a copy of that record to the Principal Certifier as required by clause 162B for a critical stage inspection or any other inspection required by the Principal Certifier.
- 5) In the case of a class 2, 3 or 4 building, the occasions on which building work must be inspected are:
  - a) (Repealed)
  - b) Prior to covering of waterproof in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and

- c) Prior to covering any stormwater drainage connections, and
  - d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- 6) In the case of a class 5, 6, 7, 8 or 9 building, the occasions on which building work for which a Principal Certifier is first appointed on or after 1 July 2004 must be inspected are:
- a) (Repealed)
  - b) Prior to covering any stormwater drainage connections, and
  - c) After the building work has been completed and prior to any occupation certificate being issued in relation to the building
- 7) (Repealed)
- 7A) Inspections of building work must be made on the following occasions in addition to those required by the other provisions of this clause for the building work:
- a) In the case of a swimming pool, as soon as practicable after the barrier (if one is required under the Swimming Pools Act 1992) has been erected,
  - b) In the case of a class 2, 3, 4, 5, 6, 7, 8, or 9 building, after the commencement of the excavation for and before the placement of, the first footing.

Where council is the PC all of the critical stage inspections must be carried out by a Council Accredited Certifier or another accredited certifier upon prior arrangement. Failure to receive an inspection may result in Council being unable to issue an OC.

Requests for final inspections and/or OC's for "BASIX affected buildings" must be accompanied by a completed pre-final self-certification/form for applicants/builders/principal contractors. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.

Inspections involving works approved under the provisions of Section 68 of the Local Government Act 1993, as amended, can only be carried out by Council Officers (e.g. on-site wastewater management systems, manufactured homes, temporary structures and amusement devices).

### **Occupation Certificate (OC)**

An OC is a certificate that authorises the occupation and use of a new building or a change of building use for an existing building. It is essentially a post-construction check on whether necessary approvals and certificates are in place and that the building is suitable for occupation or use in accordance with its Building Code of Australia classification. An OC

authorising the occupation or use of a new building and/or change of use of an existing building can only be issued by the PC.

Note:

- c) An application form for an OC must be completed and submitted to Council including payment of the relevant fee as prescribed in Council's Fees and Charges schedule.
- d) The OC MUST be issued prior to a building being used or occupied. It is an offence to occupy a building without benefit of an OC.

### **3. Service provided and responsibilities of Council**

Under the EP&A Act a PC has a range of functions, including:

- a) Ascertaining, before any building work has or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work;
- b) Ascertaining, before any residential building work commences, that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989, unless the work is to be carried out by an owner-builder;
- c) Where the work is being carried out by an owner-builder, ascertaining that the owner-builder is the holder of any owner-builder permit required under the Home Building Act 1989, before an owner builder commences on the site of any residential building work;
- d) Carrying out critical stage inspections of the building work or subdivision work as prescribed by the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) or required by the Certifier, or ensuring that the inspections are carried out by another certifying authority before issuing an occupation certificate or subdivision certificate for the building work;
- e) Ensuring that any preconditions required by a development consent or complying development certificate are met for the work before the issue of an occupation certificate or subdivision certificate.

#### **Council, as the PC will:**

- 3.1 Carry out inspections within 48 hours of notification (excluding applications pre-2009). Such notification for inspection must be lodged at the Council by the Client; before 3.00pm inspections will be accepted by facsimile (02) 6545 2671, telephone (02) 6540 1100 or in person at the Help and Information service counter at Council's office.
- 3.2 Carry out inspections on Tuesdays and Thursdays only.

- 3.3 Make a written record of the inspection and provide a copy to the relevant owner and/or applicant.
- 3.4 Advise the Client of the details of the work the subject of an unsatisfactory inspection and the need (if any) to carry out a re-inspection.
- 3.5 Notify the Client if any additional fees for inspection and required as a result of re-inspection for incomplete or defective works. Re-inspection fees will be levied and payable for all re-inspections required as a result of work not being completely ready for the booked inspection or as a result of defective works.
- 3.6 Issue determinations for OC's and subdivision certificates on the prescribed form.

Note: Inspections will be carried out Monday to Friday (inclusive) only and excludes public holidays.

#### **4. Responsibilities of the Client**

The Client, in appointing Upper Hunter Shire Council as the PC agrees to:

- 4.1 Pay all fees for services provided by the PC or such fees and charges as required by another Authority, e.g. NSWFB.
- 4.2 Ensure that arrangements are made for Council to carry out inspections of the building works at various stages indicated in Council's letter of acceptance of PC appointment and the Construction Certificate notice of inspections.
- 4.3 Ensure that notification, as required in clause 3 above, is provided of all the required inspections. The Client acknowledges that pre-2010 applications require a minimum of 72 hours notice to be given to Council in order to retrieve relevant files from storage.
- 4.4 Ensure that building work is ready for inspection by 9.30am on the day of inspection.

Note: Should a specific inspection time of site access be required, this may be arranged, subject to availability by speaking with the relevant Council Accredited Certifier between 9.00am and 9.30am on the day of the inspection.

Where a re-inspection is required as a result of defective or incomplete works, the Client shall make payment of the appropriate re-inspection fee as prescribed in Council's Fees and Charges at Council's office.

- 4.5 Where an inspection is required, the Client MUST ensure the relevant stamped approved plans and specifications and other required details are on-site and/or available to the Council Accredited Certifier. For example, where a timber floor, roof or wall frame inspection is required, the relevant information must be provided such as roof truss specifications, tie-down and joint schedules, roof

and wall bracing plans and specifications, wall insulation specifications, timber sizes and the like.

- 4.6 Before booking a final inspection and/or Occupation Certificate for a "BASIX affected building" the Client MUST submit to Council a completed pre-final self-certification/form. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.
- 4.7 Ensure that the erection of the building and/or works are in accordance with the development consent and construction certificate.

#### **5. Stages and type of works requiring inspection**

Council as the PC, will confirm at what stages of construction inspections are to be carried-out. The schedule of inspections will be contained within the Construction Certificate or Complying Development Certificate or within Council's letter of acceptance of PC appointment.

The type of inspection may include, but not be limited to:

- 5.1 Inspections relating to the structural integrity of health and amenity of the building and it's occupants (e.g. footings, slab, pre-lining framework, wet area flashing, final and the like).
- 5.2 Inspections associated with engineering works including car-parking, drainage and road construction.
- 5.3 Inspections of food premises fit-out.
- 5.4 Inspections determining compliance with prescribed development conditions and other provisions prescribed in the Environmental Planning and Assessment Act and Regulation.
- 5.5 The mandatory critical stage inspections.

#### **Information**

For further information on this specification and matters relating to the booking of inspections, please contact Council's Customer Service Department on 02 6540 1100.

## Attachment B: Fees and Charges 2023/2024 (GST included)

Building Information Certificate Div. 6.7 (BIC)		
Residential - per dwelling unit		\$450.00
Other	Less than 200m²	\$520.00
	200 - 2000m²	\$520.00
	(plus \$0.50 per each additional m²)	\$0.50
	More than 2000m²	\$1400.00
	(plus \$0.010 per each additional m²)	\$1.00
Re-inspection for building information certificates		\$180.00
Additional copies of building certificates	per copy	\$15.00
Certified copy of a document, map or plan	each	\$62.00
Compliance inspection certificate (Critical Point Inspections - i.e. pre-commencement, internal drainage, footings/piers, slab/piers, frame, wet areas, external drainage, stormwater, occupation)		\$180.00
Inspections where works have been found to be unsatisfactory		\$180.00
Certificate Section 121ZP (EPAA)		\$108.00
Certificate 735(a) (LGA)		\$108.00
Construction Certificate		
Value of development up to \$10,000	Class 1	\$270.00
	Class 2-9	\$340.00
	Class 10	\$221.00
Value of development \$10,001 up to \$1,000,000	PLUS - an additional \$2.00 for each \$1,000 (or part of \$1,000) of the estimated costs exceeding \$10,000	
Value of development exceeding \$1,000,001	Quote to be confirmed by Director Environmental & Customer Services	Quote
	PLUS - an additional \$2.00 for each \$1,000 (or part of \$1,000) of the estimated costs exceeding \$1,000,000	
Complying Development Certificate		
Value of development up to \$10,000	Class 1	\$340.00
	Class 2-9	\$405.00
	Class 10	\$270.00
Value of development \$10,001 up to \$1,000,000	PLUS - an additional \$2.00 for each \$1,000 (or part of \$1,000) of the estimated costs exceeding \$10,000	
OR		
Full cost recovery for service where referred to external party for determination		Full Cost
Occupation Certificate (Class 1 building)		\$158.00
Occupation Certificate (Class 2-9 building)		\$203.00
Occupation Certificate (Class 10 building)		\$140.00
Construction/Occupation Certificate - private certifier		\$36.00
Amended Construction Certificate	Modification to a Construction Certificate	\$140.00
	Resubmission of a Construction Certificate following previous refusal	50% of original fee
Amended Complying Development Certificate	Modification to a Complying Development Certificate	\$134.00
	Resubmission of a Complying Development Certificate following previous refusal	50% of original fee
Engineering Inspection/Subdivision work		\$180.00
Subdivision Works Certificate - per lot		\$307.00



# Information about registered certifiers - building surveyors and building inspectors GUIDELINE

*Important: this is a summary document only.*

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Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Building Commission 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 Building Commission NSW).<sup>1</sup> This is the applicable document for certification work involving a certifier registered in the class 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 the Building Commission'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 Building Commissioner.

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.

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<sup>1</sup> Visit [www.nsw.gov.au/departments-and-agencies/building-commission](http://www.nsw.gov.au/departments-and-agencies/building-commission).



## 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<sup>2</sup> 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<sup>3</sup> 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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<sup>2</sup> 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.

<sup>3</sup> 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 on the Building Commission NSW website [www.nsw.gov.au/departments-and-agencies/building-commission](http://www.nsw.gov.au/departments-and-agencies/building-commission)

## Questions?

The Building Commission NSW website [www.nsw.gov.au/departments-and-agencies/building-commission](http://www.nsw.gov.au/departments-and-agencies/building-commission) has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier.

The NSW Planning Portal website [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au) provides information on the NSW planning and development certification system.

Note, although Building Commission NSW regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Building Commission NSW website for more information.

Contact us
For more information please contact Building Commission NSW:
<b>T:</b> 13 27 00
<b>W:</b> <a href="http://nsw.gov.au">nsw.gov.au</a> and search 'Building Commission NSW'