

Contract for Council to Undertake Certification Work

Under Section 31 of the Building and Development Certifiers Act 2018 (NSW) and Clause 27 of the Building and Development Certifiers Regulations 2020 (NSW)

PART A – INTRODUCTION

1. The Council is a certifying authority and employs registered certifiers (the Certifier) who are authorised to carry out the certification work, which is the subject of this agreement, on behalf of the Council.
2. The Applicant seeks to engage the Council to perform certification work on the terms set out in this Agreement

PART B – PARTIES TO THE AGREEMENT

Council Details

The Council	MidCoast Council Yalawanyi Ganya 2 Biripi Way PO Box 482 Taree 2430
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Applicant Details

Name:	
Address:	
Email: (required)	
Phone:	

PART C – PROPERTY DETAILS FOR THE PROPOSED DEVELOPMENT

Lot:		DP/SP:		Section:	
Owner(s) Name (s):					
Address:					
If a New Subdivision – Details of Land before Subdivision (including Lot/DP)					
Description of the Proposed Development:					
Is a performance solution proposed for the Construction? If Yes please provide details:					

DP = Deposited Plan
SP = Strata Plan

If the application is yet to be determined, please leave this section blank.

Development Consent Details - Please provide the application reference number and date of consent.		
<input type="checkbox"/>	Development Consent granted by Consent Authority (DA)	
<input type="checkbox"/>	Development Consent given by the Issue of a Complying Development Certificate (CDC)	

<input type="checkbox"/>	<p>Part 6 Certificates issued under the Environmental Planning and Assessment Act 1979.</p> <p>Construction Certificate Compliance Certificate and Occupation Certificate</p>	
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PART D – CERTIFICATION WORK TO BE PERFORMED

<input type="checkbox"/>	Determination of Application for a Complying Development Certificate.
<input type="checkbox"/>	Determination of Application for a Construction Certificate.
<input type="checkbox"/>	Determination of Application for an Occupation Certificate.
<input type="checkbox"/>	Undertake the functions of the Principal Certifier for the development.

PART E – DECLARATION AND ENDORSEMENT BY OWNER/S

(*Note – All registered owners must sign)

I/we are the owners of the subject property declare that I/we:

- a) Have freely chosen to engage MidCoast Council to undertake the certification work for the application;
- b) Have read and agree to the contract and all documents and terms and conditions accompanying the contract;
- c) Understand my/our roles and responsibilities as the property owner and those responsibilities of the Certifier.

Signature of Owner:

Signature of Owner

Date Signed:

Date Signed:

PART F – CERTIFIERS DETAILS

Council proposes, at the date of this contract, that all certification work and inspections required under the *Environmental Planning and Assessment Act 1979*, will be carried out by one of the following certifiers:

- Aaron Green - BDC1149
- Adam Dean - BDC1501
- Adam Matlawski BDC1589
- Chad Vowles BDC1613
- Craig McWilliams BDC1420
- Cliona Dreelan BDC05015
- David Ryan BDC04903
- David Underwood BDC1217
- James Duval BDC1528
- James Muller BDC1395
- Jason De Celis BDC3193
- Kate Kennedy BDC3451
- Katie Jack BDC04883
- Lewis McDonald BDC3087
- Nick Green BDC1242
- Paul De Szell BDC1359

PART G – CERTIFIERS INSURANCE DETAILS

Council employees are covered by MidCoast Council's insurance for certification work done on behalf of the Council (refer to s.731 of the *Local Government Act 1993*).

PART H – FEES AND CHARGES

1. Determination of Applications for Development Certificates.
(Construction Certificates / Complying Development Certificates / Occupation Certificates).
 - a) Set fees and charges. Please contact Council customer service for a fee quote.
 - i. The applicant must pay the fees and charges for the determination of an application for a development certificate (including modification of a current certificate, where relevant) as specified in Council's Schedule of Fees and Charges.
 - ii. These fees and charges must be paid to Council before, or at the time, the application for a development certificate is lodged with Council.
 - b) Contingency fees and charges.
 - i. In the case of fees and charges payable for additional services arising from unforeseen contingencies, these fees and charges will be calculated as specified in Council's Schedule of Fees and Charges.
 - ii. Council will issue a tax invoice for any additional fees to the applicant, which must be paid prior to additional services being provided.
2. Undertaking the functions of Principal Certifier (PC)
 - (a) Set fees and charges. Please contact Council customer service for a fee quote.
 - i. The applicant must pay the fees and charges for Council to carry out the functions of a PC for the development as specified in Council's Schedule of Fees and Charges.
 - ii. These fees and charges must be paid to Council in full at the time of lodging the PC appointment form (after the construction certificate or complying development certificate is issued) and before Council commences to carry out the functions of PC.
 - (b) Contingency fees and charges
 - i. In the case of fees and charges payable for additional services arising from unforeseen contingencies, such as additional or urgent inspections, these fees and charges will be calculated as specified in Council's Schedule of Fees and Charges.
 - ii. Council will issue a tax invoice for any additional fees to the applicant, which must be paid prior to additional services being provided.

A copy of Council's Schedule of Fees and Charges can be viewed online on Council's website.

PART I – STATUTORY OBLIGATIONS

An information brochure, which is to include information about statutory obligations, must accompany this Agreement. The Department of Fair Trading has published a brochure, which is available to view on its website. The Department of Fair Trading is the statutory body that registers the Certifier and administers the Building and Development Certifiers Act 2018.

If you would like information about a Certifiers obligations and functions, visit:
<https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating>

Lodgement details

This form must be submitted in conjunction with your application via the NSW Planning Portal.

Administration and Customer Service Centre

Taree | Yalawanyi Ganya 2 Biripi Way | PO Box 482 | Taree 2430 | Mon-Fri 8.30am - 4.30pm
Tel: (02) 7955 7777

Regional Customer Service Points

Forster | 12 Little Street | Forster | Mon-Fri 8:30am - 4:30pm | **Tel:** 02 7955 7777

Gloucester | Service NSW and Services Australia agency | 89 King Street | Gloucester | Mon-Fri 9:00am - 4:00pm | **Tel:** 02 6538 5250

Stroud | 6 Church Lane | Stroud | Mon-Fri 9am - 12pm | **Tel:** 02 4994 5204

Tea Gardens | Myall Street | Tea Gardens | Mon-Fri 9am - 4pm | **Tel:** 02 4997 0182

Privacy Statement

The information you supply comprises part of a public register which may be viewed by anyone on request.

PART J – TERMS AND CONDITIONS

The Council Agrees to:

- A. Assess and determine the issue of Construction Certificates, Complying Development Certificates and Occupation Certificates under the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Building Code of Australia as amended from time to time.
- B. Conduct inspections, including mandatory critical stage inspections of certified development in accordance with the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000 as amended from time to time and as are set out in the Principal Certifier Agreement attached to your approval. The Principal Certifier Agreement forms part of this contract.
- C. Ensure the Certifier or Certifiers is/are registered certifiers in accordance with the Building and Development Certifiers Act 2018 to carry out the certification works which are the subject of this Agreement.
- D. Ensure that all inspections of the development site or the development required under the EPA Act, or the EPA Regulation will be carried out by a registered certifier employed or contracted by the Council.
- E. Removed - (Line to be deleted after draft document approved).
- F. Ensure that the development has been carried out in accordance with any issued Development Consent/Complying Development Certificate/Construction Certificate and any conditions contained therein as well as any subsequent modifications made to the development under the provisions of the EPA Act.

The Applicant Agrees to:

1. General:

- a. To provide the Certifier, all relevant, up-to-date and accurate information and documents relevant to the Services at the commencement, and during the term of, this Agreement. The Certifier may rely on information documents provided by the Applicant but are under no duty to verify their accuracy or completeness.
- b. The Certifier does not accept any liability, whether directly or indirectly, for any liability or loss suffered or incurred by any person or third party placing any reliance on the performance of the services or any documents, materials or advice arising from or in connection with the Services.
- c. That the Certifier not accept any liability, whether directly or indirectly, for any damages or costs associated with the inability to issue an Occupation Certificate due to, but not limited to unapproved/illegal building works, non-compliance with development consent conditions, unsatisfactory final inspection, missed critical stage inspections, non-compliance with approved building plans or failure to pay the required fees.
- d. To comply with any Directions, Notices or Orders issued by the Council under the EPA Act in the event that any breaches occur.
- e. To ensure that all development is carried out in accordance with the issued approvals, including any BASIX certificate.
- f. To ensure that all builders are provided with any conditions of consent applied to the Development Consent or Complying Development Certificate prior to construction works commencing.
- g. To not make any modifications to the development without modification approval.
- h. To ensure that where required all tradespersons on site working in accordance with the development are appropriately qualified and licensed.
- i. To ensure that all contractors builders and/or plumbers are made aware of the required inspections to be carried out under any issued Construction Certificate or Complying Development Certificate or s68 LGA Act approval.
- j. To provide all information that the Applicant reasonably can obtain to enable the Certifier to fulfil its obligations under the EPA Act.
- k. To act in good faith and in accordance with the EPA Act and EPA Regulations.
- l. To ensure that the Site is available and safe for the Certifying Authority to carry out its obligations under the EPA Act.
- m. To provide all relevant drawings, plans, statutory plans and documentations associated with but not limited to the Development Consent, the Construction Certificate or Complying Development Certificate and any Occupation Certificate at the request of the Certifier.
- n. To advise the Certifier of any changes to the details of the Principal Contractor (Builder) and any relevant insurances required by the Builder.
- o. That any dispute between the Applicant and the Certifier must be notified in writing by a party to the other party. If a dispute is to be notified, it must be delivered by hand or registered post, and adequately detail the dispute. Within seven days of service of a notice, senior representatives from each party with authority to settle the dispute must meet and use best endeavours to resolve the dispute. If the dispute is not resolved within seven days (or other period as agreed between the parties), either party may by written notice refer the dispute to a mediator appointed by both parties, or failing such agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia. If the dispute is not resolved by mediation, either party may commence legal proceedings or such alternative dispute resolution proceedings as agreed in writing by the parties. A party cannot commence legal proceedings unless it has issued a notice under this clause and the requirements of this clause have been complied with.

- p. To pay all contributions to Council where indicated on the Development Consent or Complying Development Certificate or in Council's s7.11 plan.
- q. That twelve (12) months from the date of a final inspection being undertaken or where a final inspection has not been requested by the Applicant, the last inspection undertaken by the Council, that each party releases the other from all current and future liability, save for any claims or dispute that has been notified in writing before that date.
- r. That twelve (12) months from the date of the Certifier's final inspection or where a final inspection has not been requested by the Applicant, the last inspection undertaken by the Certifier, this Agreement shall expire and have no binding effect on the Certifier to provide any further service and in particular to accept an application for an occupation certificate.
- s. The Certifier does not accept any liability, whether directly or indirectly, for any liability or loss suffered or incurred by any person or third party placing any reliance on the performance of the Services or any documents, materials or advice arising from or in connection with the Services.
- t. Should the construction of the project not be commenced within 6 months of approval of the Construction certificate, the contract for the services provided by the Principal Certifier will become null and void and new fees and contract documentation will need to be prepared and endorsed prior to work commencing.
- u. Should the construction of the project not be completed within 24 months of the date of Construction certificate approval, the contract for the services provided by the Principal Certifier will become null and void and updated fees and contract documentation will be required to be prepared and endorsed for the conclusion of the project.

2. **Before Commencement of Works:**

- a. Ensure that a Construction Certificate or Complying Development Certificate has been issued prior to the commencement of any works and that a Notice of Work Commencement is delivered to Council two (2) days before commencement of any works.
- b. Provide Council with evidence of Home Owners Warranty Insurance or Owner Builder Permit (if applicable) two (2) days before commencement of the works identified in the Development Consent.
- c. To ensure that all conditions of Development Consent have been satisfied with respect to environmental protection devices, including but not limited to, sediment and erosion controls and tree protection measures, where applicable.

3. **Inspections:**

- a. Give Council a minimum of 24 hours notice (excluding weekends and public holidays) to enable the critical stages of construction to be inspected.
- b. Inspections must be booked by contacting Council on 7955 7777 Monday to Friday prior to 3pm for next day inspection.
- c. To contact Council for all mandatory critical stage inspections, as stated in the approved construction certificate and indicated in the Principal Certifier Service Statement which forms part of this contract.
- d. Not proceed to the subsequent states of construction prior to obtaining approval from the PCA for each stages of construction specified in the approved Construction Certificate.
- e. To forward copies of documents prepared to statutory authorities as required by the EPA Regulation.
- f. To provide appropriate certification (at the relevant stage of construction), as detailed in the Principal Certifier Agreement forming part of this contract, verifying that specialist matters have been carried out in accordance with the relevant requirements of the Building Code of Australia (BCA) and Australian Standards by an appropriately qualified person.

- g. To advise Council in writing of any missed inspections within two (2) days of becoming aware of the missed inspection and submit within five (5) days of notification a Missed Inspection Form.

4. **Occupation Certificate**

- a. The EPA Act requires an Occupation Certificate to be issued by the Certifier prior to a building or part of a building being occupied, including an application for the “change of use” of a building.
- b. Council’s Certifiers have the discretion to issue an Occupation Certificate for a completed part of a partially completed building.
- c. Council’s Certifiers have the discretion to issue a Final Occupation Certificate. The decision will be dependent on compliance with all legislation requirements including but not limited to, completion of critical stage inspections, compliance with development consent and provision of any required documentation in support of the construction of the development.
- d. Council’s Certifiers may require written third-party certifications for various components of the building or development to enable the issuing of an Occupation Certificate.
- e. The issue of an Occupation Certificate may be refused where breaches to an approval have occurred including but not limited to, where critical stage inspections have been missed without substantial justification; where relevant HBCF Insurance or Owner Builder permits have not been obtained; where the construction is not in accordance with the approved plans and specifications; where suitable documentation has not been provided demonstrating compliance with a relevant standard or required works have not been completed.
- f. Additional fees may be payable where multiple inspections are made.

5. **Fees and Charges**

- a. Pay all fees and charges as set out in Council’s adopted Fees and Charges and available on Council’s website.
- b. A written fee quote schedule for Councils Certification services relating to a particular development may be requested and obtained from Council’s Customer Service.
- c. 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 Council’s adopted Fees and Charges schedule as an hourly rate.
- d. All fees are to be paid at the lodgement of the relevant application with Council.