

# Contract for Certification Work

- Section 31 of Building and Development Certifiers Act 2018 and
- Section 6.6 of the Environmental Planning and Assessment Act 1979

## Instructions

The Applicant is to read all parts of this Agreement, complete the Particulars of Certification Works to be carried out under this Agreement, and Parts A and B. If the Applicant agrees to be bound by the Agreement, the Applicant is to sign below, sign the declaration at Part B and send the Agreement to Maitland City Council.

If accepted, Maitland City Council will complete Part C and send the signed Agreement and fee estimate to the Applicant.

**FOR OFFICE USE ONLY: Date lodged:**

**Application number:**

## THE AGREEMENT

**PARTIES:** This agreement is made between the Applicant named in Part A and Maitland City Council ('Agreement').

## BACKGROUND

**Purpose:** Maitland City Council employs registered certifiers to carry out certification work as defined in section 4 of the Building and Development Certifiers Act 2018. The purpose of this Agreement is for the Applicant to appoint Maitland City Council to carry out the functions of certifier (including principal certifier) as outlined in section 6.5 of the Environmental Planning and Assessment Act 1979 in relation to the property and development described in Part A.

**Use:** This Agreement is to be used:

- a. once the Development Consent and the Construction Certificate have been issued or
- b. once the Complying Development Certificate has been issued or
- c. if the Applicant wishes to change the Principal Certifier from a Private Principal Certifier to Maitland City Council.

**Particulars of certification work to be carried out under this Agreement** (Certification Work):  
Applicant to tick as applicable.

Determination of Application for Development Certificate\*.

Determination of Application for a Complying Development Certificate.

Determination of Application for Construction Certificate.

Determination of Application for Subdivision Works Certificate.

Determination of Application for Compliance Certificate.

Determination of Application for Occupation Certificate.

Undertaking the function of Principal Certifier (PC)

**\*Note:** Development Certificates include a Construction Certificate, Complying Development Certificate or Subdivision Certificate.

**IT IS AGREED**

1. The Applicant requests that Maitland City Council carry out the Certification Work for the consent described in Part A of this Agreement on the Terms and Conditions outlined in Part D.
2. Maitland City Council accepts the appointment as certifier for the consent described in Part A of this Agreement on the Terms and Conditions outlined in Part D.
3. The Applicant agrees to pay to Maitland City Council the fees and charges as detailed in Part D of this Agreement in consideration for its performance of the functions of certifier.
4. Parts A, B, C, D and E of this Agreement form part of the Agreement.
5. All plans, specifications and related documentation issued in connection with the consent described in Part A of this Agreement, including any subsequent modifications, form part of this Agreement.

**DATE**

The date of this Agreement is the date upon which it is executed by Maitland City Council.

**EXECUTED AS AND AGREEMENT**

**Executed by the Applicant:**

Signature:

Name of applicant:

Witness signature:

Name of witness:

Date:

**Executed by the Applicant:**

Signature:

Name of applicant:

Witness signature:

Name of witness:

Date:

**Notes:** If there is more than one Applicant, every Applicant must sign. If the Applicant is a company the Agreement must be executed in accordance with section 127(1) of the Corporations Act 2001.

**Executed on behalf of Maitland City Council (ABN 11 596 310 805) by its authorised representative:**

**Executed by the Applicant:**

Signature:

Name of applicant:

Witness signature:

Name of witness:

Date:

**Executed by the Applicant:**

Signature:

Name of applicant:

Witness signature:

Name of witness:

Date:

## PART A

APPLICANT DETAILS*			
Full name(s)			
Postal address			
Suburb		Postcode	
Phone		Mobile	
Email			

**\*Note:** An application may only be made by a person who has the benefit of the development consent. This is generally the owner of the land. An application may NOT be made by person who will carry out the building work unless that person owns the land on which the work is to be carried out.

PROPERTY DETAILS			
Unit/Street number		Street name	
Suburb		Postcode	
Lot & DP number			

APPROVED DEVELOPMENT			
Development Consent number		Approval date	
Construction Certificate number OR Complying Development number		Approval date	
Name/s of Consent Authority/ Registered Certifier that issued any of the above:			
Description of Building Works (the development)			

## PARTICULARS OF PLANS, SPECIFICATIONS, OR OTHER DOCUMENTS

Details of plans, specifications and other documents approved by development consent / CDC:

Details of plans, specifications and other documents the subject of a Certificate issue under Part 6 of the *Environmental Planning and Assessment Act 1979*.

## PRINCIPAL CONTRACTOR / OWNER BUILDER DETAILS

Principal Contractor	Owner Builder	Builder/ OB License Number:
Name		
Address		
Email		
Phone		Mobile

## PART B

### APPLICANT DECLARATION

I/We declare that:

- I/We have freely chosen to engage Maitland City Council as the registered certifier.
- I/We have read this Agreement, including Part A, B, C, the Terms and Conditions at Part D, the Information Sheet at Part E and understand the roles and responsibilities of me/us as 'the person' and Maitland City Council as 'the registered certifier'.
- The information I/we have provided is true and correct to the best of my/our knowledge.

Name of applicant:

Applicant signature:

Date:

**Note:** If there is more than one Applicant, every Applicant must make this declaration. If the Applicant is a company the declaration must be executed in accordance with s127(1) of the Corporations Act 2001.

## PART C

### REGISTERED CERTIFIER DETAILS

Name:

ABN:

Address and place of business:

Email:

Phone:

Date\*:

\*This is the date on which the contract is made as per section 28 of the Building and Development Certifiers Regulation 2020.

The following officers are currently employed by Maitland City Council as registered certifiers and may carry out certification work for the consent and development that is the subject of this contract:

REGISTERED CERTIFIER NAME	REGISTRATION NUMBER
Andrew Ashton	BDC1384
Murray Freeman	BDC1049
Chris Thompson	BDC1047
Colin Garlick	BDC1048
Daniel Beckett	BDC1609
David Whyte	BDC1962
Heidi McLoughlin	BDC05529
Tom Wroblewski	BDC1471
Reid Alchin	BDC05002
Elise Saccaro	BDC05283

*For the purposes of Section 28 (f) (v) of the Building and Development Certifiers Regulation 2020, the above registered certifiers can undertake the inspections required to be carried out under the*

*Environmental Planning and Assessment Act 1979. The officers employed by Maitland City Council as registered certifiers may change from time to time. An updated list can be obtained by contacting Maitland City Council using the above contact details.*

## **PRIVACY**

This Agreement may contain information that is personal information (identifies a person, etc.) for the purposes of the *Privacy and Personal Information Protection Act 1998*. The purpose of collecting this information is to enable Maitland City Council to consider the Agreement, assess the proposal, accept the Agreement to perform certification works or not and other associated activities. All personal information will be stored, accessed, disclosed, used, retained and disposed of by Maitland City Council in accordance with its Privacy Management Plan, available on its [website](#).

## **PART D**

### **TERMS AND CONDITIONS: CONTRACT FOR CERTIFICATION WORK**

In these terms and conditions Maitland City Council and any registered certifier employed by Maitland City Council are referred to as 'MCC'.

#### **Responsibilities of the Applicant**

1. The Applicant agrees to:
  - a. Provide all documents and information that MCC may reasonably request to facilitate the performance of the functions of registered certifier (including principal certifier).
  - b. Provide MCC with reasonable and safe access to the development site.
  - c. Notify MCC of the appointment of the principal contractor.
  - d. Notify the principal contractor of any critical stage or other mandatory inspections to be carried out in respect of the building work.
  - e. Authorise MCC to forward to the principal contractor copies of correspondence relating to critical stage and other mandatory inspections conducted by MCC.
  - f. Provide MCC with evidence of Home Owners Warranty Insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of building work.
  - g. Provide MCC with all relevant drawings, plans, statutory plans and documentation associated with but not limited to the Development Consent, the Construction Certificate or Complying Development Certificate and any Occupation Certificate at the request of MCC.
  - h. Notify MCC, in writing, of any change in the details or address of the Applicant or principal contractor.
  - i. Notify MCC of any changes that may affect the issuing of any certificates relevant to this Agreement.
  - j. At all times act in good faith, lawfully and in a cooperative fashion.
2. The Applicant acknowledges and agrees:
  - a. No building works commence in relation to this Agreement until:

- i. the Construction Certificate has issued,
    - ii. this Agreement has been signed by MCC, and
    - iii. builder/principal contractor requirements have been submitted, where applicable (owner- builder permit or home warranty insurance).
  - b. All works will be carried out in accordance with the terms and conditions of the Development Consent and the Construction Certificate or Complying Development Certificate (as applicable) and relevant provisions of the Building Code of Australia.
  - c. A new or modified Development Consent and a construction Certificate or Complying Development Certificate (as applicable) must be obtained for any modifications or variations to the development, prior to the commencement of any works relating to those changes.
  - d. Building works will not proceed to the subsequent stages of construction prior to obtaining a satisfactory inspection from MCC for each relevant stage of construction.
  - e. Where a critical stage inspection is missed, this may affect the issue of an Occupation Certificate.
  - f. An Occupation Certificate must be obtained from MCC before the occupation or use of a new building (or part of a building) or prior to the change of an existing building use/classification.
  - g. That MCC retains the right to not issue an Occupation Certificate where three (3) years has elapsed since the most previous inspection of the development, or where no inspections have taken place since the issue of the Construction Certificate or Complying Development Certificate.
  - h. Where the development is modified, necessitating the issue of another certificate under Part 6 of the Environmental Planning and Assessment Act 1979, these Terms and Conditions will continue to apply.
3. Where the Applicant is also the owner of the property, the Applicant grants consent for MCC's registered certifiers to enter the subject property for the purposes of undertaking the requested certification work during reasonable work hours.
4. Where the Applicant is not the owner of the property:
- a. It warrants that it has obtained the consent of the owners of the property for MCC's registered certifiers to enter the property for the purposes of undertaking the requested certification work during reasonable work hours; and
  - b. It indemnifies MCC in the event that MCC incurs any loss or damage in relying on the warranty in (a).

### **Responsibilities of MCC**

- 5. MCC agrees to comply with all relevant statutory requirements.
- 6. MCC will carry out the certifier and inspection services requested by the Applicant in a professional manner and in accordance with Maitland City Council's Code of Conduct.
- 7. MCC will undertake the critical and other mandatory inspections of the work during construction and prior to issuing an Occupation Certificate to ascertain compliance of specified stages of construction with the Development Consent, Construction Certificate, Building Code of Australia

and relevant standards of construction.

8. MCC will notify the Applicant in writing of the critical stage and other mandatory inspections and any other inspections.
9. If required, MCC will provide written confirmation to the Applicant of the inspection results and indicate if satisfactory or if additional works are required prior to reinspection.
10. MCC will create and maintain all required records in accordance with Part 7 of the Building and Development Certifiers Regulation 2020.
11. MCC does not undertake detailed quality control inspections or provide the level of supervision required to ensure that minimum standards and tolerances are achieved, as this is the role of the principal contractor or owner/builder.

### **Fees and Charges**

12. The fees and charges for the certification works that form part of this Agreement will be calculated in accordance with MCC's current Fees and Charges document which is available on the [Maitland City Council website](#) or upon request.
13. The total fees and charges to be paid for the certification work requested to be undertaken by MCC under this Agreement will be set out in a quotation that will be sent to the Applicant after MCC assesses the request.
14. If the certification work involves the determination of an application for a development certificate, all fees and charges payable for the determination (excluding any fees and charges for works arising as a result of contingencies or unforeseen contingencies) must be paid to MCC on or before the application for the development certificate is lodged.
15. If the certification work involves the carrying out of functions of a Principal Certifier, all fees and charges payable for carrying out those functions in respect of the subject development (excluding any fees and charges for works arising as a result of contingencies or unforeseen contingencies) must be paid before the functions are carried out.
16. MCC reserves the right to charge additional fees (under the relevant Fees and Charges document in force at the time of determination under this clause) where the Applicant has not contacted MCC for a period in excess of two (2) years or, where construction proceeds for more than two (2) years from the date of commencement of works.
17. MCC may suspend services where any fees and charges have not been paid or remain outstanding.
18. MCC may recover any amount owing as a debt due and payable to MCC.

### **Contingencies and Unforeseen Contingencies**

19. Additional fees and charges may be payable in some circumstances that arise as a result of contingencies or unforeseen contingencies. Those circumstances are determined by MCC's registered certifiers and include (but are not limited to):
  - a. Additional critical stage inspections or other inspections are required due to staging of building works or variations in the construction sequence;
  - b. Re-inspection of works as a result of the relevant stage of construction not being ready, incomplete or unsatisfactory; or
  - c. Modifications or variations to a Development Certificate and associated plans and documentation and additional on-site meetings; or
  - d. Performance solutions need to be assessed.

20. The fees and charges for work carried out by MCC as a result of contingencies or unforeseen contingencies will be calculated based on MCC's current Fees and Charges document which is available on the [Maitland City Council website](#) or upon request.
21. Within 21 days after the completion of the work that has arisen as a result of any contingencies or unforeseen contingencies, MCC will give the Applicant an invoice for any fees and charges that have been incurred.
22. The Applicant will pay the fees and charges for the contingencies or unforeseen contingencies in accordance with the terms specified in the invoice.

### **Termination**

23. MCC may terminate the Agreement by giving fourteen (14) days written notice if the Applicant:
  - a. Permits building works to commence without the issuing of a Construction Certificate/Complying Development Certificate
  - b. Fails to give notice of commencement at the appropriate time, or
  - c. Fails to pay any money owing to MCC after thirty (30) days of that money becoming payable; or
  - d. Has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or
  - e. Breaches the Agreement in any respect; or
  - f. Ownership of the site changes, the identity of the principal contractor changes or a person stated on this contract is no longer involved with the subject development; or
  - g. The development is altered unlawfully to the extent that the development is no longer generally consistent with the relevant Development Consent, Construction Certificate, or Complying Development Certificate and the accompanying supporting documentation; or
  - h. Does not make contact with MCC for a period of more than five (5) years.
24. In the written notice of termination outlined in the preceding paragraph, MCC will explain to the Applicant the reason for the termination.
25. The Applicant may terminate the Agreement by giving fourteen (14) days written notice.
26. If the Agreement is terminated by either party:
  - a. MCC is entitled to carry out an inspection ('Final Inspection') prior to the termination date to determine the state of the development.
  - b. A Final Inspection will give rise to fees and charges that will be calculated as per MCC's current Fees and Charges document which is available on the [Maitland City Council website](#) or upon request.
  - c. The Applicant will pay all monies that remain outstanding at the time of the termination.

- d. The Applicant will be entitled to a refund for certification works not yet completed, but any amounts refundable will be less any administration charges or costs incurred by MCC up to the termination date.
27. From the date of the Final Inspection, the Applicant indemnifies MCC for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:
- a. The need to terminate this Agreement or the Building Contract; or
  - b. Any matters of non-compliance with the law on the part of the Applicant or any contractors retained by the Applicant with respect to the subject development.

### **Term**

28. This Agreement is valid for a period of five (5) years from the date of signing/execution by MCC.

### **Information brochure**

29. An information brochure, including information about statutory obligations, must accompany this Agreement as per section 31 of the Building and Development Certifiers Regulation 2020.
30. The current applicable information brochure is attached at Part E of this Agreement.

## **PART E**

[Click here](#) for more information including fact sheet about registered certifiers – building surveyors and building inspectors.