

CONTRACT TO PROVIDE BUILDING CERTIFICATION WORK



6. Owner / Applicant Declaration

As the owners or person having the benefit of the Development Consent or Complying Development Certificate stated on this form, I appoint Wollondilly Shire Council to provide the building certification works selected (as per Item 5) of this Contract.

- I declare that all the information provided within this Contract is, to the best of my knowledge, true and correct.
- I understand I am entering into a contract with Wollondilly Shire Council as required by Section 31 of the Building and Development Certifiers Act 2018. I have freely chosen to engage Wollondilly Shire Council to carry out all necessary building certification works relevant or related to the development.
- I have read, understood and accept the terms and conditions contained in this Contract and have read the documents accompanying this contract and understand the roles and responsibilities of both myself and Council (the Registered Certifier).

Signed by Owner(s) _____ Date _____

7. Service Fees and Charges

All fees and charges mentioned in this Agreement are based on Wollondilly Shire Council's Fees and Charges published on its website.

The fees for inspections and certification works are as quoted by Wollondilly Shire Council and are payable upon appointment and on lodgement of any Construction Certificate or Complying Development Certificate. All fees are inclusive of GST.

Additional inspections required due to staging of building works or variations in the construction sequence may attract an additional fee.

Re-inspections of works arising as a result of incomplete or unsatisfactory mandatory critical stage inspections, or other inspections, may attract an additional fee.

Where the Owner / Person having the benefit of the consent, the Principal Contractor or the Owner Builder, requests site meetings or site inspections, in addition to any mandatory critical stage inspection requirement, or other inspection requirement, Wollondilly Shire Council reserves its right to impose or require the payment of an additional fee.

Where the Principal Certifier becomes or is made aware of a matter that requires investigation or site visits not elsewhere dealt with by this Agreement, Wollondilly Shire Council reserves its right to impose or require the payment of an additional fee.

Where additional fees occur, payment is ordinarily required prior to provision of the service. Where the service is completed prior to payment, an invoice will be issued within twenty-one (21) days after the completion of that work.

In circumstances where Wollondilly Shire Council is appointed under this Agreement, and the requisite fee payment is not honoured, the Owner / Person having the benefit of the consent acknowledges and accepts liability for all or any unpaid fees and any associated debt recovery costs plus interest incurred from the time of the appointment.

The Owner / Person having the benefit of the consent acknowledges and accepts that Wollondilly Shire Council, may suspend its work where fees have not been paid.

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8. Registered Certifier Details

Name	Wollondilly Shire Council
Address	Frank McKay Building, 62-64 Menangle Street, Picton NSW 2571
Postal Address	PO Box 21, Picton NSW 2571
E-mail Address	council@wollondilly.nsw.gov.au
Contact Number	(02) 4677 1100

9. Council's Declaration

Once this contract is satisfactorily completed and signed by the Applicant / Owner, accompanied by the payment of the relevant fees, Wollondilly Shire Council considers this contract to be appropriately executed. The date on which the contract is made, will be the date of signature when signed by the Applicant / Owner OR the date of receipt of payment of fees for the selected Building Certification Work.

Signed on behalf of Council _____

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Terms and Conditions

This Appointment and Service Agreement (the Agreement) forms part of the Contract for Council to provide Building Certification Work in accordance with Section 31 of the Building and Development Certifiers Act 2018 and applies where the Owner or the Person having the benefit of a consent elects to appoint Wollondilly Shire Council to issue a Construction Certificate or Complying Development Certificate and / or act as the Principal Certifier in accordance with the Environmental Planning & Assessment Act 1979.

The functions under the Environmental Planning & Assessment Act 1979, which are to be carried out as part of this Agreement, relate to the nominated Development Consent, Construction Certificate or Complying Development Certificate, as issued by Wollondilly Shire Council, including all endorsed and referenced plans and documentation.

The Agreement also encompasses any subsequent Modifications to the abovementioned approvals, subject to payment of applicable fees and charges, and unless otherwise advised in writing

1. Errors and Omissions

1a - In the event of any negligent act or omission by the Owner / Person having the benefit of the consent, Wollondilly Shire Council shall be indemnified against and released from all liability, damages, compensation, actions, claims, disputes and suites of any kind which may arise before, during or after the period of the agreement in relation to the appointment of Wollondilly Shire Council.

2. Disclaimers

2a - The Owner / Person having the benefit of the consent acknowledges and agrees that the Certifier is not responsible for supervising and managing the Building Work / Project and is not responsible for ensuring the Building Work has been carried out in accordance with the terms and conditions of any contracts the Client has entered into with the Principal Contractor / Sub Contractors responsible for carrying out the building works or that Building Work has been completed free from any defects. The Certifier disclaims any and all liability for any loss or damage arising from any latent defects in the Building Work.

2b – The Owner / Person having the benefit of the consent acknowledges and agrees that the issue of any Occupation Certificate by the Principal Certifier does not constitute a representation by the Principal Certifier to the Owner / Person having the benefit of the consent, that the building is free from any latent defects.

2c – All inspections undertaken by the Principal Certifier are based on a visual inspection and do not comment therefore on aspects, faults or otherwise, which are below ground, covered up in any way, or which are not apparent at the time of the inspection, or any parts of the Building which are not apparent at the time of the inspection. Any part of the Building that have been or are cover, unexposed or inaccessible will not be inspected and therefore any notification of the result of an inspection will have no reference to those parts.

2d – The Building Certification Work may be totally or partially suspended by the Principal Certifier during any period in which the Principal Certifier may be prevented or hindered from performing the Services through any circumstances outside the Certifiers reasonable control or where such performance is rendered materially more expensive by such circumstances.

3. Who May Carry Out Certification Work

3a - The details, including name and registration number of the officers employed by Wollondilly Shire Council, any of whom may carry out certification work and inspections under this Agreement, can be found on the NSW Fair Trading's website.

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4. Appointment

4a - The Owner / Person having the benefit of the consent shall keep the Principal Certifier informed of any changes to the details of the Principal Contractor (Builder) and any relevant insurance required by the builder. Failure to meet this obligation shall result in the Owner/Person having the benefit of the consent indemnifying Wollondilly Shire Council against any losses suffered as a result of noncompliance with any legislative requirements.

4b - The Owner / Person having the benefit of the consent are responsible for ensuring that a copy of the Home Building Compensation Fund Certificate of Insurance or Owner Builder Permit is submitted to the Principal Certifier, prior to the commencement of building works, where required by the Home Building Act 1989. The commencement of the appointment as Principal Certifier will not occur until this requirement has been met.

4c – Wollondilly Shire Council shall not be responsible for any damages or costs associated with the Principal Certifier's inability to issue an Occupation Certificate due to, but not limited to, the following:

- Non-compliance with a condition of the Development Consent or Complying Development Certificate,
- Non-compliance with BASIX commitments,
- Missed or defective mandatory critical stage inspection, or other inspection,
- Occupation prior to final critical stage inspection being conducted.
- Non-compliance with Development Consent, Construction Certificate and Complying Development Certificate endorsed plans or documentation, and/or
- Failure to pay the required fees.

5. Structural Engineering and Other Specialist Details

5a - Any structural or other specialist engineering details relating to the building work shall be forwarded to the Principal Certifier, prior to commencement of building works. Such details are to confirm compliance with the relevant provisions of the Building Code of Australia and/or Australian Standards, to the satisfaction of the Principal Certifier.

6. Inspection Bookings / Requirements

6a - The Owner / Person having the benefit of the consent acknowledges that certain mandatory critical stage inspections, and other inspections of the building works, are required to be carried out by the Principal Certifier.

6b – Wollondilly Shire Council, where appointed as the Principal Certifier, shall notify the Owner / Person having the benefit of the consent of any mandatory critical stage inspection requirements, and any other inspection requirements, in accordance with of the Environmental Planning and Assessment Act 1979. The mandatory critical stage inspection requirements, and other requirements, are generally listed in the Construction Certificate or Complying Development Certificate approval documentation.

6c - The Principal Certifier will undertake inspections of the relevant building works during construction, and prior to the issue of an Occupation Certificate, so as to ascertain and confirm compliance with the relevant Council Approval, Building Code of Australia and/or other relevant or applicable standards for construction.

6d - The Owner / Person having the benefit of the consent authorise right of entry to the property, and any building works the subject of Development Consent and a Construction Certificate or Complying Development Certificate, by any certifying authority, registered certifier or other person, arranged by or employed by Wollondilly Shire Council to carry out any mandatory critical stage inspections, or other inspections, as deemed necessary or required by the Principal Certifier.

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6. Inspection Bookings / Requirements (continued)

6e - The Owner / Person having the benefit of the consent acknowledges that it is the Principal Contractor (Builder) or Owner Builder's responsibility pursuant to the Environmental Planning & Assessment Regulations 2021 to make suitable arrangements with the Principal Certifier to carry out any mandatory critical stage inspection, by calling Wollondilly Shire Council's Customer Service Department on 02 4677 1100, any business day before 4pm.

6f - The Owner / Person having the benefit of the consent acknowledges and accepts that building works must not and cannot proceed to any subsequent stage of construction prior to obtaining a satisfactory inspection result from the Principal Certifier for each relevant stage of construction.

6g - The Principal Certifier will provide confirmation of the outcome of any mandatory critical stage inspection, or other inspection, as soon as practical after the inspection has been completed.

6h - The Owner / Person having the benefit of the consent acknowledges and accepts that a failure to request the Principal Certifier to carry out a mandatory critical stage or other inspection may prejudice and possibly prevent the issue of an Occupation Certificate in respect of the building.

7. Third Party Certification of Works

7a - To ensure compliance with the Development Consent, Construction Certificate, Complying Development Certificate and/or Building Code of Australia, the Owner / Person having the benefit of the consent acknowledges that the Principal Contractor / Owner Builder may be required to submit third party certification from a suitably qualified person in a specific field (e.g. structural engineer) to the Principal Certifier demonstrating a specific matter or element of the building works complies with any relevant standard. The Principal Certifier will advise when this is required by inspection result or written documentation. Such certification is required to be prepared by a suitably qualified/experienced person and must reference the relevant provisions of the Building Code of Australia, Australian Standards and Development Consent, Construction Certificate or Complying Development Certificate endorsed plans and documentation. This certification is in addition to any mandatory critical stage inspection, or other inspection requirements required to be carried out by the Principal Certifier.

8. Missed Inspections

8a - Where a mandatory critical stage inspection, or other inspection, has been missed, the Principal Contractor / Owner Builder must, within two (2) days of becoming aware that the inspection has been missed, advise the Principal Certifier in writing as to the circumstances causing the inspection to be missed and must supply to the Principal Certifier, all or any documentation requested by the Principal Certifier concerning the unavoidably missed inspection. No further building work shall proceed until approval has been granted by the Principal Certifier.

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9. Occupation Certificate

9a - An Occupation Certificate can only be issued by the Principal Certifier.

9b - The Owner / Person having the benefit of the consent acknowledges and accepts that the occupation or use of the whole or any part of a new building, or change of an existing use/classification, must not occur unless an Occupation Certificate has been issued in relation to the building or part.

9c - The Owner / Person having the benefit of the consent acknowledges and accepts that the Environmental Planning & Assessment Act 1979 contains penalty provisions for use or occupation of a building absent a validly issued Occupation Certificate.

9d - Where legislation permits, and the Owner / Person having the benefit of the consent wishes to use or occupy a completed part of a building, an application may be made to the Principal Certifier for an Occupation Certificate. Applications will be considered in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Development Consent, Construction Certificate or Complying Development Certificate, Building Code of Australia and relevant Australian Standards.

9e - Wollondilly Shire Council's Occupation Certificate fees include or provide for the consideration and issue of one Occupation Certificate only. In circumstances where legislation permits, and the Owner / Person having the benefit of the consent applies for or is issued an Occupation Certificate for a completed part of a building, an additional fee will be payable for the additional Occupation Certificate. Inspections required to determine the Occupation Certificate may attract an additional fee. It is a requirement of the EP&A Act 1979 that an additional Occupation Certificate must be obtained within five (5) years of the issue of an Occupation Certificate for a completed part of a building.

9f - The Owner / Person having the benefit of the consent acknowledges and accepts that works that are not consistent with, or are carried out not in accordance with the relevant Development Consent, Construction Certificate, Complying Development Certificate, or the Building Code of Australia, may result in the Principal Certifier refusing to issue an Occupation Certificate.

10. Work, Health and Safety

10a - Work Health and Safety legislation imposes a duty to ensure the health and safety of all persons on a construction site (a workplace). The statutory obligation extends to the Owner / Person having the benefit of the consent / Principal Contractor / Owner Builder and Person(s) conducting a business, on a construction site under this Agreement. Wollondilly Shire Council requires, as part of this Agreement, that the Owner / Person having the benefit of the consent / Principal Contractor / Owner Builder and/or Person conducting a business, undertakes to take all steps reasonably practicable to ensure the health and safety of any certifying authority, registered certifier or other person, employed by or contracted to Wollondilly Shire Council, whilst that person is carrying out work on a construction site.

10b - The Owner / Person having the benefit of the consent acknowledges and accepts that Wollondilly Shire Council may suspend services where it believes that the health and safety of any certifying authority, registered certifier or other person employed by or contracted to Wollondilly Shire Council is at risk.

10c - The Owner / Person having the benefit of the consent acknowledges and accepts all liabilities that arise as a result of any duty imposed to ensure the health and safety of any certifying authority, registered certifier or other person, employed by or contracted to Wollondilly Shire Council, whilst that person is carrying out work on a construction site.

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11. Miscellaneous

11a - The Owner / Person having the benefit of the consent must notify the Principal Certifier in writing of any change in the details or address of the Principal Contractor / Owner Builder.

11b - This agreement and associated fee services shall expire two (2) years after the date of the agreement, where upon Wollondilly Shire Council may cancel the agreement.

11c - Wollondilly Shire Council may terminate this agreement or commence legal proceedings if there is a breach of the terms of this Agreement.

11d - The scope of works covered by the Agreement is limited to building works described in the Construction Certificate or Complying Development Certificate.

Privacy Policy

Any personal information provided by you on this form will be used by Wollondilly Shire Council or its agents to process this application. The provision of this information is voluntary, however, if you do not provide the information, Council will be unable to process your application. This information will be stored in Council's records management system. Once collected by Council, the information can be accessed by you and may also be available to third parties pursuant to Government information (Public Access) Act 2009.

Information about registered certifiers - building surveyors and building inspectors GUIDELINE

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 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).¹ 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.

¹ Visit 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 work² 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 work³ with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

² 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.

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 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

Questions?

The Building Commission NSW website 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 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:	
T:	13 27 00
W:	nsw.gov.au and search 'Building Commission NSW'