CD Certification Pty Ltd
1/8 Teamster Close
Tuggerah NSW 2259
(p) 02 4332 6888
ABN 146 142 248 96
Web: www.cdcertification.com.au

APPLICATION FORM and CERTIFICATION CONTRACT

Issued under Division 4.5, Sections 4.27 & 4.28 of the Environmental Planning & Assessment Act 1979

Application Type and NSW Planning Portal Reference

☐ Complying Development Certificate (CDC) ☐ Construction Certificate (CC)	Portal Reference No:

Details of the Applicant/s

Name of Applicant / Company Name and Authorised Contact (Director/Secretary)	ABN (if applicable)

Address	Email	Phone/Mobile **(Private for CD Certification Use)**

Phone/Mobile **(Public)** for use with CDC Applications Only: *(Provide a Contact Number for inclusion in the Neighbour Notification Letters which are required to be issued under the SEPP Code. There is no obligation to discuss this application with your neighbours but we are required to provide contact details for this purpose. If a number is not provided we will use the Phone/Mobile number (Private for CD Certification Use).*	**Office Use Only** **Date Application Received**

Complying Development – The application is to be assessed under:- **(Leave this section blank if applying for a Construction Certificate)**

☐ State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 *(nominate which part if known)*

☐ Part 3 ☐ Part 3a ☐ Part 3b ☐ Part 3c ☐ Part 3d ☐ Part 4 ☐ Part 4A ☐ Part 5 ☐ Part 5a ☐ Part 7 ☐ Part 8

☐ State Environmental Planning Policy (Housing) 2021

☐ State Environmental Planning Policy (Transport & Infrastructure) 2021

Development Application Consent Details **(Leave this section blank if applying for a Complying Development Certificate)**

Development Consent No.	Approval Authority: (Name of Council)	Date of Determination.

Development Site Details

Address	Local Council Authority

Lot No.	Section No.	DP/SP No.

The Development

Classification of Building/s under the Building Code of Australia: (if known)

Description of Building Work to be carried out: (e.g. *New Dwelling, Alterations & Additions, Shed, Dual Occupancy, Swimming Pool, Deck etc.)*

Estimated Cost of the Development: *(The Contract price or, if there is no contract, a genuine and accurate estimate for all labour and material costs with all demolition and construction required for the development including the cost of construction of any building and the preparation of a building for the purpose for which it is to be used (such as the costs of installing plan, fittings, fixtures and equipment. GST is to be included)*

$

Asbestos: *Advise if any bonded asbestos material or friable asbestos material will be disturbed, repaired or removed when carrying out the development and, if yes, advise the estimated amount in m² format.*	☐ N/A ☐ ________m²

Owners Consent/Applicants Agreement and Declaration

(Please note that this section <u>must</u> be signed and consented to by all registered owner/s of the property)

By signing this agreement, you consent and agree to:

1) I/We hereby apply for a Construction Certificate (CC); Complying Development Certificate (CDC); Occupation Certificate (OC) or any other application or modification required or related to this development.
2) We consent to the principal certifier (PC), or an accredited certifier, or consent authority, entering the subject property at any reasonable time, for the purpose of carrying out any mandatory critical stage inspection as required by the Act, or a regulatory inspection where required.
3) Where a Complying Development application requires neighbour notification in accordance with the Environmental Planning & Assessment Regulation 2021, I/we agree to allow Chris Dan Certification Pty Ltd T/as CD Certification to notify occupants of neighbouring properties of the subject site with the applicant name, address, phone number and notification plan (pre-approval notification – Clause 134), and/or details of the approved development (pre-construction notification – Clause 148).
4) I/We acknowledge that I/we must comply with all relevant DA or CDC conditions and/or pre-conditions of consent nominated in the approval documentation prior to works commencing, and that the PC can't be appointed until all pre-conditions have been complied with.
5) I/We advise that building works have not commenced, and will not commence, until 2 days after the Appointment of PC and Notice of Commencement have been provided to Council.
6) I/We declare that all the information provided is true and correct. I/We also understand that, if incomplete, the application may be delayed or rejected, and further information may be requested.
7) I/We agree to receive approval documentation via electronic communication. Hard copy approval documentation can be provided on request.
8) I/We have freely chosen to engage Cristinel Dan (Chris Dan) BDC2471 or Alistair Hume BDC04929 as nominated on the Principal Certifier Services Agreement.
9) I/We have read Chris Dan Certification Pty Ltd T/as CD Certification Fee Proposal and Contract for Certification Work comprising this Contract, Annexure A – Scope of Services, Annexure B – Development Certification Services Agreement and Annexure C – Prescribed Information Sheet issued by NSW Fair Trading) and understand the role and responsibilities of each party to the Contract.
10) I/We consent and provide permission to Chris Dan Certification Pty Ltd to update any discrepancies in the NSW Planning Portal.
11) I/We agree to the execution of the Contract.
12) By signing this agreement electronically, I/we agree to be legally bound by the terms of this agreement.

Owner 1 *Sign/Print Name*		Owner 2 *Sign/Print Name*	
Print Name:	Date:	Print Name:	Date:
Owner 3 *Sign/Print Name*		Owner 4 *Sign/Print Name*	
Print Name:	Date:	Print Name:	Date:

Applicant/s Consent

Name of applicant/s

Signature of applicant/s Date

Development Statistics

(Please tick the appropriate Box and answer the following questions)

✓	Walls	Code	✓	Roof	Code	✓	Floor	Code	✓	Frame	Code
☐	Brick (double)	11	☐	Tiles	10	☐	Concrete / Slab	20	☐	Timber	40
☐	Brick (veneer)	12	☐	Concrete / Slate	20	☐	Timber	40	☐	Steel	60
☐	Concrete / stone	20	☐	Fibre Cement	30	☐	Other	80	☐	Aluminium	70
☐	Fibre Cement	30	☐	Steel	60	☐	Not Specified	90	☐	Other	80
☐	Timber	40	☐	Aluminium	70				☐	Not Specified	90
☐	Curtain Glass	50	☐	Other	80						
☐	Steel	60	☐	Not Specified	90						
☐	Aluminium Cladding	70									
☐	Timber/ Weatherboard	40									
☐	Other	80									
☐	Non Specified	90									

Gross site area (m^2):		Number of dwellings to be demolished:	
Gross floor area of existing building (m^2)		Number of dwellings to be constructed:	
Gross floor area of new building work (m^2)		Is the building attached, detached (i.e. free standing) or semi-detached?	
Number of pre-existing dwellings on the site:		Does the site contain a dual occupancy:	
What are the current uses of the building (if vacant state vacant):		How many stories will the building have:	
What will be the new building uses (if changed):			

ANNEXURE A: SCOPE OF SERVICES

1. **Definitions**

   Unless otherwise defined in this Annexure A, capitalised words have the same meaning as defined in the General Terms.

   BCA means the Building Code of Australia under the National Construction Code.

   EP&A Act means the Environmental Planning and Assessment Act 1979 (NSW);

   EP&A Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW);

   Fee Proposal means any proposal of services and associated costs, that may be broken down into the service components, that the Certifier provided to the Client, or any other document or forming the background to the Contract Sum;

   PCA means the Client certifier under the BDC Act, and the EP&A Act, as applicable.

2. **Description of Services**

   The Certifier will perform all work that is necessary to comply with relevant statutory requirements, including:

   (a) No later than two days before any building work or subdivision work commences, and subject to receipt of the necessary notifications and paperwork from the Client, the Certifier will:
      (i) Notify the consent authority and/or the Council of the Certifier's appointment as PCA, and
      (ii) Notify the Client of all inspections that are required to be carried out of the building work or subdivision work.

   (b) Determine applications for construction certificates, complying development certificates or subdivision certificates (subject to separate terms under this Agreement).

   (c) Ascertain, before any building work or subdivision work commences, that a construction certificate has been issued for the work.

   (d) Ascertain, before any residential building work commences, that either:
      (i) The Client contractor is the holder of a license under the Home Building Act 1989 and is covered by appropriate insurance, or
      (ii) Where the work is to be carried out by an owner-builder, that an owner-builder permit has been issued under the Home Building Act 1989.

   (e) The Certifier will either carry out all critical stage inspections of the building work or subdivision work prescribed by the EP&A Regulation or required by the Certifier, or ensure that the inspections are carried out by another certifying authority. In that instance, certain inspections may be sub-contracted to other entities. However, the Certifier will personally carry out the last critical stage inspection that is prescribed for the building.

   (f) The Certifier will make a record as required by the EP&A Regulation of all inspections that he or she carries out and will ensure that any other certifying authority that has carried out an inspection also prepares a report and supplies it to the Certifier.

   (g) The Certifier will determine whether any inspection (other than the last critical stage inspection) has been not carried out due to circumstances that were unavoidable, and whether the work that would have been inspected was satisfactory. The Certifier will make a record of any such missed inspection as required by the EP&A Regulation and provide a copy to the Client. The Certifier will also notify the Client contractor or owner-builder of the missed inspections as required by the EP&A Regulation.

   (h) Determine applications for occupation certificates or subdivision certificate (subject to separate terms under this Agreement).

3. **Compliance Functions**

   (a) The Certifier will take such steps as he or she considers appropriate to address any of the following matters relating to the development;
      (i) Non-compliance with the development consent
      (ii) The carrying out of work without development consent
      (iii) An unauthorised use of a building
      (iv) A breach of a law relating to the carrying out of work or the use of land
      (v) A threat to the safety of a person or a person's property
      (vi) Any other matter the Certifier considers to be in the public interest to address.

   (b) Without limiting the actions that the Certifier may take, the Certifier may:
      (i) Attend the Site or nearby properties to inspect any issue of concern relating to the development
      (ii) Confer with any person in relation to any issues of concern
      (iii) Cause correspondence to be issued to any person
      (iv) Refer any matter of concern to such persons or authorities as the Certifier considers appropriate, including the consent authority, the council, NSW Fair Trading or an environmental protection agency.
      (v) Issue notices under Section 6.31 (previously s 109L) of the EP&A Act.

4. **Variations to the Services**

   The following may result in a Variation under the Agreement:

   (a) conceptual design changes made subsequent to the Commencement Date;
   (b) allowances reasonably estimated in the Fee Proposal for particular parts of the Services being significantly exceeded;
   (c) design amendments necessary subsequent to the issue of a s4.55 Modification of the Development Consent by Council requiring a revised Construction Certificate to be assessed and issued will incur an application fee of $500 + GST and a Certificate Registration Fee of $47 (No GST);
   (d) staging of Occupation Certificates not already allowed for as part of the Fee Proposal will incur an application fee of $250.00 + GST and a Certificate Registration Fee of $47 (No GST);
   (e) re-inspections arising from non-compliance work, works not commenced or inspections booked but not cancelled the day prior may incur a reinspection fee of $250 + GST;
   (f) time associated with any correspondence or other communications required by the Certifier in relation to any queries or complaints which may be made by neighbours or other members of the public to the Certifier in the Certifier's capacity as PCA;
   (g) an Occupation Certificate sought more than 12 months from the date the Services were completed (the date of the final inspection) will incur an archive retrieval/administration review fee of $300 + GST;
   (h) a pre-commencement inspection more than 4 weeks prior to the issue of the Construction Certificate. If there is a delay in the program or in the issue of required documentation to the Certifier that causes this time frame to be missed, the Certifier may carry out another pre-commencement inspection and charge the Client;

   NB: <u>**Minor**</u> modifications to structural plans will not be required to be issued under a CC or CDC unless they relate to major design changes.

5. **Certifications and other reports to be provided**

   (a) Significant alterations, extensions, or new works to key fire services must have both the design and completed works certified as compliant to the Certifier's satisfaction by the relevant Accredited Fire Services Designer if required by the regulations, or else by a Building Services Engineer listed on the Engineer's Australia NPER Register. Key fire services includes any active systems listed on the building's fire-safety schedule. The exact nature of certification required should be clarified prior to the issue of the Construction Certificate and prior to the letting of contracts or sub-contracts.

(b) Any works which involve alterations, extensions or new works to loadbearing elements of a building (including balustrades and façade works) must have both the design and completed installation certified as compliant to the Certifier's satisfaction by a Structural Engineer listed on the Engineer's Australia NPER Register.

(c) Unless otherwise agreed, the final certification must be submitted in the format identified in any project certification schedule the Certifier may have issued on submission of the notice of commencement form. If certificates do not meet the agreed requirements then any consequent work may be subject to a Variation.

(d) In order to clarify site-specific compliance requirements, a report or reports may be required from specialist consultants detailing the exact method of compliance of the bounding construction of walls, and sealing or protecting of penetrations in those walls, particularly for multi-residential projects.

6. **Out of scope**

(a) The preparation of documentation associated with alternative solutions to the Deemed-to-Satisfy requirements of the BCA is not included within the scope of work. However, the assessment of submitted alternative solutions or fire-safety engineering report is included within the scope of work where applicable.

(b) The issue of Compliance Certificates is not allowed for in the Contract Sum. Where Compliance Certificates are required a separate Fee Proposal may be submitted and if accepted, will constitute a Variation.

(c) Where wet area inspections are required to be undertaken in residential buildings, the inspection is limited to a visual inspection and to an assessment of the minimum requirements of the BCA. Note that additional waterproofing measures may be necessary due to Site or product characteristics.

(d) Any other inspections undertaken are limited to a visual, non-destructive inspection and to an assessment of the minimum requirements of the BCA. Only those matters able to be determined by such an inspection will be reported.

(e) Investigation of the detailed requirements of Australian Standards referenced in the BCA is outside the scope of work. Certification and/or advice from specialist consultants is generally required in relation to those requirements. Exact details of the required certification will be advised once an assessment is made.

END OF ANNEXURE A – SCOPE OF SERVICES

ANNEXURE B: Development Certification Services Agreement

1. Definitions and interpretation

Accurate means:

(a) accurate, complete, correct and suitable for use by the Certifier;

(b) free from any Ambiguity and compliant with all Applicable Laws; and

(c) prepared and issued by a person or persons competent, experienced, qualified and suitable;

Agreement means the following documents, in order of precedence:

(a) these General Terms (including "Details" and "Execution" sections);

(b) Agreement Items means the Fee Proposal, Application Form and Certification Contract and PC Agreement.

(c) Development Particulars means the details provided on the Application Form.

(d) Scope of Services means Annexure A to this Contract.

(e) Information Sheet means Annexure C to this Contract; and

(f) any other Contract Documents attached.

Ambiguity means error, omission, inconsistency, ambiguity, discrepancy or other defect;

Applicable Laws means:

(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works or the particular part thereof is being carried out;

(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works, including any construction certificates and development approvals issued by Council;

(c) applicable standards issued by Standards Australia (whether voluntary or mandatory) and the National Construction Code (including the Building Code of Australia);

(d) requirements of any government, statutory or other Authority having jurisdiction over the Works or the Site;

Approval means any approval, certification, decision, or determination that the Certifier may grant or make, as part of, or as a consequence of, performing the Services in accordance with the Certifier's professional duties;

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, statutory authority, local authority, tribunal or agency;

BDC Act means the *Building and Development Certifiers Act 2018* (NSW), and **BDC Regulations** means the *Building and Development Certifiers Regulation 2020* (NSW);

Business Day means any day other than: a Saturday, Sunday or public holiday in New South Wales, or 27, 28, 29, 30 or 31 December;

Client Deliverables means all information, documents, and other particulars which the Certifier requires the Client to provide (or which the Client provides, or which is provided to the Certifier on behalf of the Client by any person) which are necessary for the Certifier to carry out the Services including third party inspection reports and other documents as requested by, or provided by or on behalf of the Client to, the Certifier from time to time;

Commencement Date means the date specified on the Application Form and Certification Contract.

Contract Sum means the amount specified in the Fee Proposal issued to the Client.

Due Care and Skill means such skill, care, and diligence as is generally exercised by competent members of the consulting profession performing services of a similar nature to the Services, at the time the Services are provided;

Insolvency Event means:

(a) the Client informs the Certifier in writing, or creditors generally, that the Client is insolvent or is financially unable to proceed with the Agreement;

(b) execution is levied against the Client by a creditor;

(c) if the Client is an individual person or a partnership including an individual person, and if that person:

(i) commits an act of bankruptcy;

(ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

(iii) is made bankrupt;

(iv) makes a proposal for a scheme of arrangement or a composition; or

(v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing the Agreement; or

(d) if the Client is a corporation and if:

(i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

(ii) it enters a deed of company arrangement with creditors;

(iii) a controller or administrator is appointed;

(iv) an application is made to a court for its winding up and not stayed within 14 days;

(v) a winding up order is made in respect of it;

(vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

(vii) a mortgagee of any of its property takes possession of that property;

Item means an agreement item in the Application Form and Certification Contract;

Loss means any liabilities, losses, damages, expenses, and costs (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature;

No Claim means no claim on any basis whatsoever, whether contractual, tortious (including in negligence), statutory or pursuant to any other principle of law or equity, and includes any claim for moneys (including under quantum meruit);

Project means the project specified in the Application and Contract Form.

Registered Body Corporate, Registered Certifier and Registered Individual each have the same meanings as are given to those terms under the BDC Act*;*

Services means all of the work to be performed by the Certifier identified in the Scope of Services in Annexure A to this Contract as varied in accordance with the these General Conditions;

Site means the location specified in the Application and Contract Form, and includes any other area or location that the Certifier may reasonably require access to in order to perform the Services;

Variation means any increase, decrease, amendment, or modification to the Services determined by the Certifier to be necessary for completing the Services (or any delay or disruption to the Services due to an event for which the Certifier is entitled to an extension of time), including those identified as potential variations under the Scope of Services.

Variation Sum means the amount the Certifier charges the Client for work performed as a result of a Variation plus Disbursements and any other amounts as otherwise reasonably determined by the Certifier (and including a reasonable amount of at least 10% for profit and overheads in respect of any Variations which increase the amount payable by the Client, and no amount for profit and overheads for any Variations which decrease the amount payable by the Client).

WHS Legislation means all law relating to work health and safety (including the *Work Health and Safety Act 2011* (NSW) (**WHS Act**), *Work Health and Safety Regulation 2011* (NSW) ("**WHS Regulations**") and any code of practice approved under the WHS Act.

In this Contract:

(a) words herein denoting persons shall also denote companies, and words denoting the singular shall include the plural;

(b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(d) a reference to "includes", "including" and "include" is to be read as if followed by the words "without limitation". A reference to a person include an individual, firm or a body, corporate or unincorporated. A reference to a party is a reference to a party to this Contract;

2. Services

2.1 The Certifier agrees to perform the Services with Due Care and Skill, and in accordance with all requirements of the BDC Act and BDC Regulations, including the Code of Conduct prescribed therein.

2.2 The Services will be performed by the Registered Certifier (or Registered Body Corporate and Registered Individual) specified in the PC Agreement.

2.3 The Client acknowledges that any Approval is at the Certifier's discretion, subject to the Certifier exercising its discretion in good faith and in compliance with all Applicable Laws. Entry into, or performance of any act or obligation under, this Agreement must not be construed as confirmation that any Approval that may be granted or made by the Certifier, will be made.

2.4 If the Services involve carrying out functions under the *Environmental Planning and Assessment Act 1979* (NSW), particulars of the relevant development are provided in the Application Form and Certification Contract.

3. Client Obligations

3.1 The Client must, at its own cost, promptly:

(a) give the Certifier safe access to the Site as and when the Certifier requires, to enable the Certifier to perform the Services (and notify the Certifier of any changes to that access); and

(b) provide the Client Deliverables to the Certifier;

(c) coordinating other contractors or persons involved in the Project so as not to impede the Certifier's performance of the Services;

(d) notify the Certifier of anything which the Client is aware of or becomes aware of which could materially affect the Certifier's performance of the Services, including any Authority requirements, any design changes, or any defects in the works the subject of the Services;

(e) comply with all of the Client's obligations under the WHS Legislation;

(f) notify the Certifier if the Client anticipates that there is a material risk of it being the subject of an Insolvency Event, or otherwise being unable to perform this Agreement; and

(g) otherwise cooperate with the Certifier and do all other things reasonably necessary so that the Certifier is able to perform the Services.

3.2 The Certifier is not liable for any Loss or delay that may result from the Client's failure to comply with this clause 3.

4. Client Deliverables

4.1 The Client:

(a) acknowledges that the Certifier, in performing the Services, is relying upon the Client Deliverables being Accurate;

(b) warrants to the Certifier that the Client Deliverables are Accurate;

(c) has No Claim against the Certifier (or any employee of the Certifier), in relation to or connection with any risks, Losses and delays suffered or incurred by the Client as a result of the Client Deliverables not being Accurate, including where that inaccuracy results in some defect or non-compliance in the Services;

(d) accepts all risks, Losses and delays associated with any Ambiguity in relation to the Client Deliverables.

5. Ambiguities

5.1 In the event of any Ambiguity in or between the documents forming part of the Agreement or comprised in the Client Deliverables:

(a) the order of precedence set out in the definition of "Agreement" will apply;

(b) otherwise, the Certifier may resolve the Ambiguity in whichever way the Certifier considers appropriate in its absolute discretion, and notify the Client accordingly, in which case:

(i) to the maximum extent permitted at law, the Client will have No Claim in relation to the resolution of the ambiguity referred to in subclause (b) above; and

(ii) the Certifier will be entitled to a deemed Variation to the extent that the resolution of the Ambiguity results in any increase, decrease, amendment, or modification to the Services which the Contractor did not anticipate as at the date of this Agreement.

6. Legislative changes

6.1 Each party must perform its obligations under this Agreement in compliance with all Applicable Laws.

6.2 Subject to clause 6.3, if there is a change in Applicable Laws on or after the date of this Agreement, and that change requires a Variation in order for the Services to be performed in accordance with this Agreement, then:

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

(b) once the Client pays the Variation Sum referred to in the previous subparagraph, the Certifier will perform the Variation;

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

6.3 The Client will have No Claim against the Certifier as a result of or in any way connected with any change in Applicable Laws, which occurs after the Certifier has ceased to perform the Services.

7. Intellectual property and Confidentiality

7.1 Certifier's intellectual property:

(a) Subject to the Client complying with its obligations under the Agreement, the Certifier grants to the Client a non-exclusive, royalty-free, revocable license to use the intellectual property in any document which the Certifier gives to the Client (that was prepared by the Certifier created solely for the benefit of, or solely and specifically in relation to, the Services) for the purpose of completing the Project.

(b) Ownership of the intellectual property rights in the documents referenced under clause 7.1 vests in the Certifier.

7.2 Client's intellectual property:

(a) The Client grants the Certifier an unrestricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Certifier to perform the Services.

(b) The Client warrants that all information contained in the Client Deliverables is Accurate will not infringe any intellectual property rights of any person. The Client indemnifies and holds harmless the Certifier against any Loss arising from a breach of the warranty in clause 7.2(b).

7.3 Each party agrees:

(a) to keep the other party's confidential information confidential; and

(b) to not disparage the other party.

8. Payment

8.1 The Client must pay the Certifier the Contract Sum within 7 Business Days of entry into this Agreement and in any event, prior to the Certifier commencing the Services.

8.2 The Certifier must issue a valid tax invoice to the Client in respect of the Contract Sum.

8.3 The Certifier reserves the right to withhold the issue of any certificates until such time as all outstanding invoices have been paid in full.

8.4 The Client acknowledges that payment of the Contract Sum does not guarantee or imply that any certification will be issued by the Certifier; rather the Certifier can only provide certifications to the extent the conditions for certification are satisfied.

9. Variations and Variation Sum

9.1 If, in the Certifier's reasonable opinion, a Variation has occurred or is required, the Certifier must provide the Client written notice of such Variation.

9.2 Within 2 Business Days of the date the Certifier provides notice under the previous subclause, the Client must provide written notice to the Certifier if it disputes the Variation, and the reasons for that dispute.

9.3 If there is any dispute about the Variation, then the Client may either approve the Variation pending the outcome of any dispute resolution process, or the Certifier may suspend the Services under clause 15.1(d).

9.4 The Client acknowledges that Variations may include those specified in the Fee Proposal / Scope of Services.

9.5 If, in the Client's reasonable opinion, a Variation is required, the Client must provide the Certifier with written notice providing details of the proposed Variation to the Certifier, at least 5 Business Days prior to the Certifier being required to perform work in relation to the Variation. If the Certifier agrees that a Variation is required, the work required in relation to the Variation is deemed to form part of the Services.

9.6 The Certifier is entitled to charge the Client the Variation Sum for work performed under any Variation, and shall issue an invoice in respect of the Variation Sum to the Client.

9.7 The Client must pay invoices issued for a Variation Sum within the time specified on the relevant invoice or if no such time is stated, within 7 days from the invoice date.

10. Disbursements

10.1 The Certifier may invoice the Client for the cost of any disbursements, plus a reasonable margin for profit and overheads, including as listed in the Fee Proposal / Scope of Services.

10.2 The Client must pay invoices issued for a disbursement within the time specified on the relevant invoice or if no such time is stated, within 7 days from the invoice date.

11. Overdue Amounts

If the Client does not pay the Certifier in accordance with this Agreement then, without prejudice to any other rights or remedies the Certifier may have:

(a) the Certifier may charge the Client interest from the day after the relevant invoice's payment due date, until payment is made, at the rate specified in CBA's unsecured personal overdraft rate plus 2% per annum;

(b) the Client indemnifies the Certifier for its costs and expenses in recovering.

12. Time and Completion

12.1 The Certifier must commence the Services by the Commencement Date, and complete them within a reasonable period of time.

12.2 The Certifier is entitled to an extension of time for completing the Services, if the Certifier is delayed in performing the Services by:

(a) an act, default, or omission of the Client, its agents, employees, or any other party associated with the Project (including a suspension or Variation);

(b) any change in Applicable Laws;

(c) any Client Deliverable not being Accurate; or

(d) any other act, matter, event or thing beyond the Certifier's reasonable Control.

12.3 The Certifier is not liable for any delay to the Project caused by the Certifier completing the Services in accordance with this clause 12.

13. Insurance

The Certifier must, maintain the insurances specified, for any amounts and periods specified. Copies of the policies are available on request.

Insurance	Policy Details
Professional Indemnity	Policy No: B0572MR20QI03-0650, Quanta Insurance Group Pty Ltd on behalf of Certain Underwriters at Lloyd's of London, Expiry Date: 20/09/2025
Public Liability	Policy No: SPI567798645, AAI Limited T/as Vero Insurance, Expiry Date: 20/09/2025.

14. Liability Limit

14.1 The Certifier's aggregate liability to the Client arising in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of:

(a) the amount of the Contract Sum; and

(b) $100,0000.

14.2 If, and to the extent that, clause 14.1 is void as a result of section 64A of the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth), then the Certifier's liability for a breach of a condition or warranty is limited to:

(a) the supplying of the relevant Services again; or

(b) paying the cost of having the Services supplied again.

14.3 The Certifier's liability to the Client is excluded in relation to any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any other indirect or consequential losses or damages arising in connection with the Agreement.

14.4 Clauses 14.1 and 14.3 do not limit or exclude the Certifier's liability in respect of claims, actions, costs, losses, damages or liability arising due to:

(a) liability which cannot be limited at law;

(b) fraudulent or criminal conduct; or

(c) any matters listed in the policy.

15. Suspension

15.1 The Certifier may suspend the Services for so long as:

(a) the Certifier considers that there is any risk to health or safety in providing the Services or entering any areas of the Site required to perform the Services (including because any persons on the Site are abusive or threatening);

(b) the Client fails to provide any Client Deliverables required by the Certifier;

(c) the Client has not paid any amount by the time that it is due;

(d) the parties are in dispute in relation to a Variation (and that dispute has not resolved by a final and binding form of dispute resolution).

15.2 The Client indemnifies and holds harmless the Certifier for any additional costs or expenses the Certifier incurs in relation to a suspension under this clause 15, if the suspension was not caused solely by an act or omission of the Certifier.

16. Termination

16.1 The Certifier may terminate this Agreement if the Client:

(a) breaches a material term of this Agreement;

(b) breaches a term of this Agreement and fails to remedy that breach within a reasonable period of time not to of the Certifier's notice to so rectify;

(c) becomes or is likely to become subject to any Insolvency Event, and fails to provide proof of its ability to comply with all of its future obligations under the Agreement including with respect to payment (which proof shall include a current asset liability statement, profit loss statement and declaration of ability to pay by a current director or other officer),or is unable to pay its debts when they fall due;

(d) fails to pay any amount owing by the date due; or

(e) ceases to carry on business,

or if the Certifier:

(f) is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Applicable Laws; or

(g) becomes aware of any conflict of interest, which conflict may prevent the Certifier from complying with relevant laws or regulations if the Certifier continues to perform the Services, irrespective whether such conflict existed before or after entry into this Agreement;

(h) gives the Client 30 days notice that the Certifier wishes to terminate for the Certifier's convenience.

16.2 The Client may terminate this Agreement by giving the Certifier written notice to that effect if the Certifier fails to remedy a substantial breach of a material term of this Agreement within 30 days of being requested by notice in writing to do so by the Client.

16.3 If the Certifier has an entitlement to terminate the agreement it may exercise that right with or without notice, in the Certifier's absolute discretion.

16.4 If the Client receives a notice from the Certifier that:

(a) the Certifier has terminated the Agreement - the Client must as soon as possible: appoint a replacement certifier to take over the certification role comprised in the Services; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement;

(b) the Certifier will terminate the Agreement - the Client must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement certifier to take over the certification role comprised in the Services from the date of termination of the Agreement; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement.

16.5 On termination of this Agreement:

(a) any amounts owing to the Certifier in respect of the Services up to and including the date of termination (together with any other amounts which the Certifier would be entitled to, but for the termination, for work performed up to and including the date of termination) become immediately due and owing;

(b) if the termination is effected under clauses 16.1(a) - 16.1(f), the Certifier is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit; and

(c) both parties must return or destroy (at the relevant discloser's request) any confidential information held by the other party.

17. Force Majeure

17.1 The Services may be totally or partially suspended by the Certifier during any period in which the Certifier may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside the Certifier's reasonable control or where such performance is rendered materially more expensive by such circumstances.

17.2 Circumstances beyond the Certifier's reasonable control include strikes, lockouts or other labour difficulty, inability to obtain any necessary materials or services on usual terms, failure of software, hardware or communication network, or pandemic.

17.3 The Certifier incurs no liability to the Client in respect of such suspension.

18. Dispute Resolution

18.1 If a dispute or difference (**Dispute**):

(a) arises in respect of any fact, matter or thing arising out of, or in any way in connection with, this agreement, or the conduct of a party in relation to the subject matter of this agreement at any time; and

(b) is not required to be determined in accordance with a procedure in another clause in this agreement,

the Dispute must be determined in accordance with the procedure in this clause 18.

18.2 If a Dispute arises, any party may give the other(s) a notice (**Dispute Notice**) specifying:

(a) particulars of the Dispute; and

(b) the position which the party believes is correct.

18.3 If a Dispute Notice is given, the parties must procure that their respective nominated representative holding the position specified in the Application and Contract Form meet and undertake genuine and good faith negotiations with a view to resolving the Dispute specified in that Dispute Notice.

18.4 If the Dispute specified in a Dispute Notice is not resolved within 10 Business Days after the date on which the parties receive that Dispute Notice, the Certifier may elect that the Dispute must be referred to mediation in which case:

(a) the mediation will be in accordance with, and subject to, the Mediation Rules of the Resolution Institute;

(b) the parties must participate in the mediation genuinely and in good faith.

18.5 This clause 18 will survive termination, completion, or expiration of this Agreement.

19. GST

19.1 "**GST Law**" has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

19.2 Words or expressions used in this clause 19 which are defined in GST Law have that defined meaning unless otherwise provided.

19.3 Except where express provision is made to the contrary, any amount that may be payable for the Contract Sum (and Variation Sum, if relevant) under this Agreement is exclusive of any GST. The applicable GST amount payable must be added to the Contract Sum (and the Variation Sum, if relevant).

20. General

20.1 To the extent permitted by law, this Agreement constitutes the entire Agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

20.2 The Client agrees that, other than is expressly stated in this Agreement, in entering into the Agreement it has not relied upon any representation, warranty, or inducement by the Certifier nor is any representation, warranty or thing made or done by the Certifier to be inferred, incorporated or implied into the Agreement.

20.3 This Agreement may only be varied by a document signed by or on behalf of each party.

20.4 The Client must not assign or novate this Agreement without the Certifier's prior written consent.

20.5 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

20.6 This Agreement may be executed electronically and in a number of counterparts and by the parties on separate counterparts. Each counterpart comprises the Agreement of each party who has executed and delivered that counterpart.

20.7 A party's rights and obligations do not merge on completion of any transaction under this agreement.

20.8 If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

20.9 Without limiting any other provision of this Agreement, the parties agree that:

(a) each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement; and

(b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

20.10 Without limiting any other provision of this Agreement, the parties agree that:

(a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement;

(b) a waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and

(c) no waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

20.11 This Agreement is governed by the law specified in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state or territory and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement, and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue is in accordance with the provisions of this clause 20.11.

END OF ANNEXURE B – GENERAL CONDITIONS

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

Information about registered certifiers – building surveyors and building inspectors

Important: this is a summary document only.

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)[1]. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of $110,000 and/or two years imprisonment.

[1] Visit www.fairtrading.nsw.gov.au and search 'certification contracts'.

Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979.*

As an applicant, you have the following obligations:

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

What does a registered building surveyor do?

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

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

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

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

What does a registered building inspector do?

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

[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 at www.fairtrading.nsw.gov.au:

- Details of registered certifiers (or search ‘appointing a certifier’ from the homepage)
- Disciplinary actions against certifiers (or search ‘certifier disciplinary register’ from the homepage).

Questions?

The Fair Trading website www.fairtrading.nsw.gov.au has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search ‘what certifiers do’ for information about a certifier’s role and responsibilities.
- Search ‘concerns with development’ for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at www.planningportal.nsw.gov.au provides information on the NSW planning and development certification system.

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