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REQUEST FOR POOL BARRIER INSPECTION

for issue of a Pool Barrier Certificate of Compliance (under the *Swimming Pools Act 1992*).

Subject Land

Address

Lot No & DP or Strata No

Owners Details & Consent

Name(s)

Signature(s)

Address.....

Contact TelMobile.....

Access Instructions

As owner / owners authorised agent of the land to which this application relates, consent to this application and authorise Certibuild staff to undertake all necessary inspections of the premises in order to properly assess the pool child-resistant barrier for the issue of a pool certificate of compliance.

POOL DETAILS (PLEASE CIRCLE)

Type of Property	Waterfront	Lot < 230sqm	Lot > 2 hectare	Other
Type of Pool	Above Ground / Inflatable	Outdoor In Ground	Indoor	Spa / Hot Tub
Year of Pool Construction	Pre 1 Aug 1990	1 Aug 1990 – 31 Aug 2008	1 Sept 2008 – 31 Mar 2013	After 31 Mar 2013

Is Property for Sale YES / NO

Is Property for Rent / Lease YES / NO

Is Pool Registered in NSW Swimming Pools Register YES / NO

Does the pool come under any of the following categories YES / NO

- Visitor or Tourist Accommodation, Serviced apartments, Short term rental
- Pool used by more than 2 – dwellings, sole occupancies, apartments

<u>OFFICE USE ONLY</u>	DATE RECEIVED :
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Agreement for the Performance of Certification Work



- The Client seeks to engage the Edward Gudaitis to perform certification work on the terms set out in this Agreement.
- The accredited certifier (the Certifier) is authorised to carry out the certification work which is the subject of this Agreement

Section A The Contractor / Certifier		
Name of the Contractor:	Edward Gudaitis	
Corporate Accreditation No.:	BPB 1844	
Business & Postal Address:	Suite 1.2/ 6 Reliance Drive / PO Box 3593 TUGGERAH NSW 2259	
Phone:	(02) 4353 3459	
Email:	info@certibuild.com.au	
Name of Insurer:	Tysers / 100% Certain Underwriters at Lloyd's	
Address:	1 st Floor 71 Fenchurch St London EC3A 4BS	
Policy No.:	MR202466	
Period of Insurance Cover:	From: 05 February 2020	To: 05 February 2021
Section B The Client		
Name of Applicant:		
Street Address:		
Suburb & Postcode:		
Phone / Mobile:		
Email:		
Section C The Development		
Description of the development:		
Property Address		
Title Particulars		
Section D Development Consent Details (tick appropriate box/s and complete)		
Development Consent granted by consent authority	Development Consent given by the issue of a Complying Development Certificate (CDC)	Part 4A Certificate issued
<input type="checkbox"/> YES / <input type="checkbox"/> NO	<input type="checkbox"/> YES / <input type="checkbox"/> NO	<input type="checkbox"/> YES / <input type="checkbox"/> NO
Name of Consent Authority:	Name of Certifying Authority:	Type of Part 4A Certificate Issued:
Development Consent No.:	CDC No.:	Name of Certifying Authority:
Date of Development Consent:	Date of CDC:	Certificate No.:
		Date of Certificate:
Section E Details of Approved Documents		
Details of plans, specifications and other documents approved by the Development Consent / CDC:	Details of plans, specifications and other documents the subject of any Part 4A Certificate:	

Section F Inspections	
Any inspections of the development site or the development required under the EP&A Regulation will be carried out as follows:-	
Inspections by:	Edward Gudaitis
Accreditation No.:	BPB 1844
<input checked="" type="checkbox"/> All Mandatory Critical Stage Inspections	
Section G Certification Work to be Performed (tick one or more boxes as appropriate)	
<input type="checkbox"/> Determination of an application for a Complying Development Certificate *	
<input type="checkbox"/> Determination of an application for a Construction Certificate *	
<input type="checkbox"/> Undertaking functions of Principal Certifying Authority for the development *	
<input type="checkbox"/> Determination of an application for an Occupation Certificate *	
* Refer to the relevant Attachment(s) which contain a Description of Services and the relevant Fees & Charges	
Section H Fees & Charges – Development Certificates / PCA Functions	
<ul style="list-style-type: none"> The fees and charges for the determination of an application for a development certificate and for the Contractor to carry out the functions as the PCA for the development are set out in the relevant attachment The set fees and charges for the determination of an application for a development certificate and for the carrying out of the functions as the PCA for the development, must be paid in full to the Contractor before, or at the time, an application is lodged & before the Contractor commences to carry out any of those functions In the case of fees and charges that may be payable for work arising from unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out in the relevant attachment In respect of any unforeseen contingency work provided for under this Agreement, the Contractor is to send an invoice to the Client within 21 days after the completion of any such work 	
Section I Statutory Obligations (C1.31, B&DC Reg 2020)	
An information brochure which is to include information about statutory obligations of the certifier, the applicant's role and information available on the online register of certifiers, must accompany this Agreement, if one is published by the NSW Fair Trading website.	
Section J Date of Agreement	
Date this Agreement is made on:	
Section K Signatures and Declaration (C1.30, B&DC Reg 2020)	
<p>I declare I have freely chosen to engage the registered certifier and I have read the contract and any accompanying documents. I also understand my role and responsibility as the applicant and that of the registered certifier.</p> <p>Signed / executed by or on behalf of the Client(s)</p>	
Signed / executed by or on behalf of the Certifier	

Certifying Authority Standard Contract



EFFECT OF CONTRACT

1. This contract supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.

OBLIGATIONS OF THE CERTIFYING AUTHORITY

2. Regarding the issuing of Construction Certificates, Complying Development Certificates and Occupation Certificates.
 - 2.1 The Certifying Authority shall issue a Construction Certificate, Complying Development Certificate or Occupation Certificate:-
 - 2.1.1 Once the Client pays the Certifying Authority any money owed for work associated with the issuing of a Construction Certificate, Complying Development Certificate or Occupation Certificate; and
 - 2.1.2 The design and construction of the Building Works comply with a relevant Development Consent and the Regulations or any prescribed complying development criteria by either the State Government or Local Council; and
 - 2.1.3 The designs comply with the BCA.
 - 2.2 The Certifying Authority shall provide the relevant Consent Authority and/or Local Council with a Notice of Determination within 7 days of the determination.
 - 2.3 When the Certifying Authority issues a Construction Certificate, Complying Development Certificate or Occupation Certificate, the Certifying Authority may issue additional certificates or statements from any other Certifying Authority or any other party as the Certifying Authority considers necessary in the circumstances.
 - 2.4 The Certifying Authority may carry out as many inspections as the Certifying Authority considers necessary in addition to any mandatory critical stage inspection
 - 2.5 The Certifying Authority shall issue an Occupation Certificate for the Building Works when the Certifying Authority is satisfied that:-
 - 2.5.1 A Development Consent has been complied with, including any preconditions to the issue of an Occupation Certificate or a Complying Development Certificate is in force for the Building Works; and
 - 2.5.2 The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and
 - 2.5.3 The Building Works or parts do not pose any danger for the occupants in the case of an Interim Occupation Certificate.
 - 2.6 The Certifying Authority shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.

OBLIGATIONS OF THE CLIENT

3. The client shall:-
 - 3.1 Not engage any other Certifying Authority after the Certifying Authority appointed pursuant to this contract has been engaged. Breach of this condition will entitle the Certifying Authority to recover any losses or costs of whatsoever nature that flow from such breach.
 - 3.2 Pay the Certifying Authority for the agreed amount when the Client submits an application for a Construction Certificate or Complying Development Certificate.
 - 3.3 Ensure that the site is available for the Certifying Authority to carry out its contractual obligations.
 - 3.4 Use Competent People for all aspects of the Building Works.
 - 3.5 Provide the Certifying Authority with evidence of Home Owners Warranty insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of the Building Works.
 - 3.6 Provide 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 the Certifying Authority.
 - 3.7 Attend any meetings if required by the Certifying Authority to do so.
 - 3.8 Comply with any Notices that the Certifying Authority issues.
 - 3.9 Provide Compliance Certificates as may be requested by the Certifying Authority.
 - 3.10 Provide all information that the client reasonably can obtain to enable the Certifying Authority to fulfil its contractual obligations.
 - 3.11 Pay the Certifying Authority in accordance with this contract or any signed agreement between the client and the Certifying Authority.
 - 3.12 Act in good faith, in accordance with the Act and in a cooperative fashion.

CONTRACTUAL VARIATIONS

4. If:-
 - 4.1 The Building Works do not commence within 60 days from the date of the execution of this contract; or
 - 4.2 Any Competent Person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or
 - 4.3 Any part of the Building Works are re-designed by the Client or the client's representative; or
 - 4.4 Any part of the Building is designed pursuant to a Deemed To Satisfy Provision and is subsequently changed by way of an Alternative Solution; or
 - 4.5 More Certificates and / or Modified Certificates are required to be issued by the Certifying Authority than those listed originally agreed to; or
 - 4.6 An amendment to any statutory legislation that requires any aspect of the Building Works or the Certifying Authority's work to be varied; or
 - 4.7 The Certifying Authority is required to undertake more inspections than those listed in an Inspection Schedule; or
 - 4.8 The Client does anything that causes a delay to the Building Works or does anything that delays the ability of the Certifying Authority to carry out its obligations under this contract; or
 - 4.9 Any Notice is issued by the Certifying Authority, then:-
 - 4.10 The Certifying Authority may:-
 - 4.10.1 Vary this contract to the extent that the Certifying Authority will be able to carry out its contractual obligations; and
 - 4.10.2 Increase the contract price with such increase to be made by way of Notice to the Client stating the reason/s for the increase and the amount of the increase.
 - 4.11 The variation will permit the Certifying Authority to claim all costs associated with that delay as reasonably determined by the Certifying Authority.
 - 4.12 Notice must be given to the Client in writing when the Certifying Authority becomes aware that a variation will be necessary.

CONTRACTUAL TERMINATION

5. If:-
 - 5.1 The Client fails to pay any money owing to the Certifying Authority after 7 days of that money becoming payable; or
 - 5.2 The Client 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
 - 5.3 The Client breaches the contract in any respect; or
 - 5.4 A Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days or 6 months (whichever is the lesser) from the date of execution of this contract; or
 - 5.5 The Building Works do not commence within 60 days from the date a Construction Certificate or Complying Development Certificate was issued; or
 - 5.6 The Client does not permit the Certifying Authority to issue any Occupation Certificate within 60 days from the date of practicable completion; or
 - 5.7 The Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:-
 - 5.8 The Certifying Authority may terminate this contract by sending a written Notice of Termination, stating the breach/s, to the Client. Termination will take effect as soon as the client receives the Notice of Termination.
 - 5.9 If the Certifying Authority terminates the contract, then the Certifying Authority is entitled to payment of Termination Money.
 - 5.10 Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the Certifying Authority within 14 days of receiving a Notice of Termination.
 - 5.11 If the Certifying Authority terminates the contract, the Certifying Authority is entitled to carry out a final inspection, at the Client's expense, prior to termination.
 - 5.12 As from the date of final inspection, the Client must indemnify the Certifying Authority for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:-
 - 5.12.1 The need to terminate this contract or the Building Contract;
 - 5.12.2 Any matters of non-compliance with the Act on the part of the Client or any other contractors.

DISPUTE RESOLUTION

6. Any dispute of whatever nature to do with this contract must be referred to mediation.
 - 6.1 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.
 - 6.2 The mediator must be appointed by the AIBS.
 - 6.3 The mediation will be invoked by either party serving Notice upon the AIBS and the other party within 7 days of a party being notified of a dispute.
 - 6.4 Both parties must attend the mediation and must cooperate with the mediator and each other and shall give the mediator whatever the mediator requests.
 - 6.5 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.
 - 6.6 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.
 - 6.7 Both parties will remunerate the mediator on a 50 / 50 % basis, regardless of any alleged fault and regardless of the outcome.
 - 6.8 The AIBS may request mediation funds to be placed into an AIBS trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

MISCELLANEOUS

7. **Occupation Certificates**
 - 7.1 An Occupation Certificate must be applied for, and issued, within 24 months of the date of the construction approval. Failure to comply with this requirement shall entitle the Certifying Authority to terminate the contract, or to charge additional fees for any inspections, including the Final inspection and issue of any Occupation Certificate.
 - 7.2 If, for whatever reason, an Occupation Certificate is not issued whether it be on account of the insolvency of the Client, the disappearance of the Client or the termination of the Contract, the Certifying Authority's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Act, the Certifying Authority will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the Contract occurred.

ADDRESS FOR NOTICES

8. Where any Notice is to be forwarded to the client, the address for such Notice shall be the address stated in the application for a relevant Certificate, or to any other address that is notified in writing by the Client to the Certifying Authority.

DEFINITIONS

- The Act** means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the Act also mean amendment and references to the Regulations.
- AIBS** means the New South Wales Chapter of the Australian Institute of Building Surveyors.
- Alternative Solution** has the same meaning as the term in the Building Code of Australia.
- BCA** means the Building Code of Australia including all applicable amendments.
- Building Contract** means the contract to construct the Building Works that the client enters into with the builder.
- Building Works** means any physical activity associated with the erection of a building.
- Certificates** mean statutory certificates and non-statutory certificates.
- Certifying Authority** means a Certifying Authority within the meaning of the Act including a Principal Certifying Authority and a body corporate.
- Client** means the owner or the owner's agent.
- Inspection Schedule** means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.
- Notice** includes any notice issued under the Act or this contract.
- Practicable Completion** means the date the builder has completed the Building Works in accordance with the Building Contract.
- Termination Money** means the money owing to the PCA if the Certifying Authority terminates the contract in accordance with this contract, being money for work done (with interest if applicable) and for cost incurred (with interest if applicable) and any money that the Client would have been bound to pay to the Certifying Authority if the contract had been totally completed.

Information about registered certifiers – swimming pool 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 class of **swimming pool inspector**. It does not apply to swimming pool inspections by a local council².

This document summarises the statutory obligations of the registered certifier who will assess your swimming pool or spa pool barrier and your obligations as the pool owner. 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 pool owner. 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'.

² Council officers who inspect pools do not have to be registered as certifiers by Fair Trading.

Obligations of the pool owner

As a pool owner, you have the following obligations:

- Visit the NSW Swimming Pool Register at www.swimmingpoolregister.nsw.gov.au to register your pool.
- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out. The certifier may refuse to issue a certificate of compliance until the fee is paid.
- Ensure your pool barrier continues to comply at all times. If needed, ask your council to see a copy of the Australian Standard that applies to your pool.

What does a registered certifier – swimming pool inspector do?

A registered swimming pool inspector is authorised to carry out all certification work under the *Swimming Pools Act 1992*, but not if the swimming pool achieves compliance with the performance requirements of the Building Code of Australia by means of a performance solution. They cannot issue certificates under the *Environmental Planning and Assessment Act 1979* for newly-constructed pools.

Registered building surveyors (a different type of certifier) also certify pool barriers. Only a building surveyor may certify a pool that has a performance solution under the Building Code of Australia.

A swimming pool inspector may issue a certificate of compliance if the pool barrier complies with requirements under the *Swimming Pools Act*. A certificate of compliance is valid for three years and may be required in order to sell or lease the property.

If the swimming pool is non-compliant, the certifier may issue a certificate of non-compliance and a notice of non-compliance setting out the defects.

Notes about swimming pool certificates of compliance

- A certificate of compliance is not an occupation certificate and does not certify that the pool meets all conditions of its original development consent
- A certificate of compliance becomes invalid if the council issues a direction requiring compliance with the *Swimming Pools Act*.

Non-compliant pool barrier

If a swimming pool is non-compliant, you will need to address the defects set out in the certifier's notice, then contact the certifier (or another certifier or the council) for a reinspection.

If you do not obtain a certificate of compliance within six weeks of the first inspection, the certifier must send the notice of non-compliance to the council, which may take enforcement action.

If the certifier deems the pool to be a significant risk to public safety they must notify the council immediately and the six-week period will not apply.

Minor repairs to pool barriers

Some certifiers can do minor repairs to a non-compliant pool barrier that they have inspected, but only if:

- they are licensed or authorised under the *Home Building Act 1989* to construct a swimming pool or structural landscaping, and
- the repairs cost no more than \$1,000 including materials and labour, and
- the repairs are for the purpose of issuing a certificate of compliance.

You can check if a certifier is authorised to do minor repairs by checking their *Home Building Act* licence or certificate number at www.service.nsw.gov.au (search 'builder licence').

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?

Visit www.swimmingpoolregister.nsw.gov.au and follow the 'information' or 'inspections' tabs for more information and swimming pool safety and certification.

You can also visit www.fairtrading.nsw.gov.au and search '[concerns with development](#)' for information about how to resolve concerns about a certifier.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate councils carrying out their functions under the *Swimming Pools Act*. Visit the Fair Trading website for more information.