APPOINTMENT OF PRINCIPAL CERTIFIER & NOTICE OF COMMENCEMENT

Section 81A (2)(b)(ii) or (c) or (4)(b)(ii) or (c), 86(1) and (2) of the Environmental Planning & Assessment Act 1979

DEVELOPMENT SITE DETAILS

Lot No.:	Section No.:	DP / SP No.:
Street Address:		
Suburb:		Postcode:

THE DEVELOPMENT

Description of Development:	

DEVELOPMENT CONSENT & CONSTRUCTION CERTIFICATE DETAILS

DA No.:	Council:	Approval Date:
CC / CDC No.:	Certifying Authority:	Approval Date:

PERSON APPOINTING THE PRINCIPAL CERTIFIER (PC)

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

i. I/We appoint Edward Gudaitis (Accreditation No – BDC 1844 as the Principal Certifier (PC) as outlined in the Environmental Planning and Assessment Act, 1979 (as amended).
ii. I/We consent to the certifying authority, or an accredited certifier, 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 where a regulatory inspection is required.
iii. 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.
iV. I/We agree to receive documentation via electronic communication.
V. I/We have freely chosen to engage Edward Gudaitis of Certibuild.
vi. We have read Certibuilds Contract of Certification Work (Annexure A) and understand the role and responsibilities of each party to the Contract. I/We agree to the execution of the Contract.
vii. By signing this agreement electronically, I/We agree to be legally bound by the terms of this agreement.

Name:			
Postal Address:		Suburb:	Postcode:
Phone:	Mobile:	Email:	
Signature:			Date:

COMMENCEMENT DATE

Date building work is intended to commence (not less than 2 days from the date of this notice):	Date:

PRINCIPAL CONTRACTOR DETAILS

☐ Licensed Builder	☐ Owner Builder	Builder or OB Licence Number:	
Name:			
Postal Address:		Suburb:	Postcode:
Phone:	Mobile:	Email:	

PRINCIPAL CERTIFIER CONSENT TO APPOINTMENT (Office Use Only)

Name:		
Address:		
Accreditation No.:	Phone:	Email:

i. Edward Gudaitis consent to being appointed as the Principal Certifier for the development, and confirms that all conditions of the above development consent that are required to be satisfied prior to the work commencing have been satisfied.
ii. Certibuild executes and agrees to Certibuilds Certification's Contract for Certification Work Terms and Conditions.

Signature:	Date:

CONTRACT FOR CERTIFICATION WORK Annexure A

EFFECT OF AGREEMENT

1.1 The client has engaged Edward Gudaitis BDC1844 as the Principal Certifier (PC) of this contract to perform certification work as perthe terms and conditions set out in this agreement.

1.2 The client is the owner as specified in the Certibuild application form.

1.3 If ownership of the property changes hands prior to completion of works, a contract with the new owner must be entered in to before any works continue past the date of sale.

1.4 This agreement 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.

1.5 The PC is an accredited certifier and is authorised to carry out the certification work which is the subject of this Agreement.

1.6 The Client agrees that the PC is a public authority in accordance with the Civil Liability Act 2002.

CONTRACT DOCUMENTATION

2.1 The contract will be formalised and executed on the date that the development certificate is issued. Plans and specifications forming part of the certificate will be endorsed with the related certificate number.

INSURANCE DETAILS

3.1 Insurer: Liberty Specialty Markets, Policy No. SY0003ZF0225MI-PI Period 5 Feb 2025 to 5 Feb 2026

OBLIGATIONS OF THE CERTIFIER

Issuing of Construction Certificates or Complying Development Certificates:

4.1 The PC or Certifier shall perform all work that is necessary to comply with relevant statutory requirements and to facilitate the timely determination of an application, to issue a development certificate to the Client, and to endorse plans, specifications and other documentation used to determine the application with a reference identifier number specific to the development:-

a) Once the Client pays the PC any money owed for work associated with the issuing of a development certificate;
b) Once design of the Building complies with the Development Consent and the Regulations or any prescribed Complying Development criteria by either the State Government or local Council; and
c) The design is capable of complying with the BCA

4.2 The PC shall provide copies of approval documentation to Council and any other relevant statutory authority within 2 days of the date of determination, as required by the EP&A Regulation.

4.3 The PC may request as many Certificates or statements from any Certifying Authority or any other party that the PC considers necessary in addition to any Certificates listed in the Certificates Schedule.

4.4 The PC shall carry out as many inspections as the PC considers necessary in addition to those nominated in the Inspection Schedule.

4.5 The PC shall issue an Occupation Certificate for the Building Works when the PC is satisfied that:-
a) A Development Consent has been complied with or a Complying Development Certificate is in force for the Building Works; and
b) The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and
c) Use of the Building does not pose any danger for the occupants.

4.6 The PC shall maintain an insurance policy in accordance with the B&DC Act and shall provide a copy of that policy to the client upon request.

OBLIGATIONS OF THE CLIENT

5. The client shall:-

5.1 Pay to the PC the agreed fees identified in Certibuilds formal fee agreement for determination of a development certificate, and/or PC services on or before the lodgement of the application, in accordance with Part 5, Cl 29 of the BDC Regulation.

5.2 The Certifier reserves the right to withhold the issue of any certificates until such time as all outstanding invoices have been paid in full. Any agreement to vary this must be writing.

5.3 Acknowledge that lodgement of an application with Certibuild confirms acceptance of the terms and conditions of Certibuild's fee agreement and certification contract.

5.4 Provide full disclosure as to any other PC appointed prior to entering in to this contract.

5.5 Not engage any other PC after the PC appointed pursuant to this contract has been engaged. Breach of this condition will entitle the PC to recover any losses or costs of whatsoever nature that flow from such breach.

5.6 Provide all relevant drawings, plans, statutory plans, and any other related information or documents reasonably requested by the PC to fulfil its obligations under this agreement.

5.7 Ensure that all documents and information provided by the Client are complete, current, accurate and unambiguous. The Client acknowledges that the PC is entitled to rely on information and documents provided by the Client, but is not under any duty to verify the accuracy or completeness of such information. The Client indemnifies the PC from any costs, expenses, losses, damages, claims, liability, demands, suits and proceedings suffered or incurred by, or made against, the PC in respect of the PC's reliance on the documents supplied by or on behalf of the Client, or in relation to any third party placing any reliance on the performance of the PC's services under this Agreement.

5.8 Ensure that a development certificate has been issued prior to the commencement of any works.

5.9 Provide the PC with all requested Pre-Commencement items to allow PC appointment at least 2 days prior to commencement of any works in regional areas, or 7 days in Category 1 metropolitan areas.

5.10 Ensure that all critical stage inspections are booked as specified in the Inspection Schedule.

5.11 Ensure that the site is accessible for the PC to carry out its contractual obligations.

5.12 Use suitably qualified or experienced contractors for all aspects of the Building Work.

5.13 Attend any site meetings if requested by the PC.

5.14 Comply with any Written Direction Notices that the PC may issue.

5.15 Ensure compliance with all conditions of any Development Consent, including those related to any demolition works.

5.16 Provide Compliance Certificates as requested.

5.17 Act in good faith, in accordance with the EP&A Act, and in acooperative manner.

5.18 Apply for, and provide all documentation required to allow the issue of an Occupation Certificate authorising full use of the development, within two years of the date of the development certificate. Failure to comply with this requirement shall entitle the PC to terminate the contract, or to charge additional fees to extend the contract.

VARIATIONS TO THIS AGREEMENT

6.1 If any part of the Building Works are re-designed by the Client or the Client's representative; or

6.2 If any part of the Building is designed pursuant to a Deemed To Satisfy provision of the BCA, and is subsequently changed by way of a Performance Solution; or

6.3 If the PC determines that additional development certificates are required to be issued; or

6.4 If a change in the EP&A Act or the BCA on or after the date of this agreement requires any aspect of the Building Works or the PC's work to be varied; or

6.5 If the PC is required to undertake additional inspections to those nominated in the fee agreement or invoice; or

6.6 If the PC is required to issue more Occupation Certificates than those nominated in the fee agreement or invoice; or

6.7 If the Client does anything that causes a delay to the Building Works or does anything that delays the ability of the PC to carry out its obligations under this contract, or

6.8 If any Notice is issued by the PC, then the PC may:-
a) Vary this agreement to the extent that the PC will be able to carry out its contractual obligations; and
b) Increase the contract price, such increase to be made by way of written notice to the Client stating the reason/s for the increase and the amount of the increase.

6.9 The variation will permit the PC to claim all costs associated with a delay as reasonably determined by the PC.

6.10 The PC reserves the right to charge the Client to investigate non-compliances where the Client has acted outside the scope of the conditions of the Development Consent at the hourly rate plus GST relevant to the level of accreditation required to undertake the work - Building Inspector - $150; Building Surveyor – restricted (Class 1 & 10 buildings) - $150; Notice must be given to the Client in writing when the PC becomesaware that a variation or any unforeseen contingencies occur, within 21 days after the completion of that work.

TERMINATION OF AGREEMENT

7.1 If the Client fails to pay any money owing to the PC after 7 days of that money becoming payable; or

7.2 If the Client has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends 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

7.3 If the Client breaches the contract in any respect; or

7.4 If it is not possible to issue the development certificate 6 months from the date of execution of this contract; or

7.5 If the Building Works have commenced without the issuing of a development certificate, then:-

7.6 The PC 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.

7.7 On receiving a Notice of Termination, the Client must take immediate action to appoint a replacement PC to take over the certification role; advise Edward Gudaitis of that replacement; and notify all relevant Authorities of that replacement.

7.8 If the PC terminates the contract, then the PC is entitled to payment of Termination Money.

7.9 Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the PC within 14 days of receiving a Notice of Termination.

7.10 If the PC terminates the contract, the PC is entitled to carry out a final inspection, at the owners' expense, prior to termination.

7.11 As from the date of final inspection, the Client must indemnify the PC for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:-
a) The need to terminate this contract or the Building Contract;
b) Any matters of non-compliance with the EP&A Act on the part of the Client or any other contractors.

DISPUTE RESOLUTION

8.1 Any dispute of whatever nature to do with this contract must be referred to mediation.

8.2 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.

8.3 The mediator must be appointed by the AAC.

8.4 The mediation will be invoked by either party serving Notice on the AAC and the other party within 7 days of a party being notified of a dispute.

8.5 Both parties must attend the mediation and must cooperate with the mediator and each other and shall give the mediator whatever the mediator requests.

8.6 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.

8.7 If mediation fails, either party may take action to resolve the dispute in a court of competent jurisdiction.

8.8 Both parties will remunerate the mediator on a 50/50 basis, regardless of any alleged fault and regardless of the outcome.

8.9 The AAC may request mediation funds to be placed into an AAC trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

LIMITATION OF LIABILITY

9.1 The PC's liability to the Client in any event is limited to the fees paid by the Client to the PC under this Agreement.

9.2 The PC's liability under this Agreement is reduced to the extent caused or contributed to by any wilful or negligent act or omission or default by the Client.

9.3 Neither party is liable to the other party for any economic or indirect or consequential losses and damages, loss of actual or anticipated revenue, profits, increased capital or financing cost, increase of operational cost or increased cost of borrowing, pure economic loss or exemplary or punitive damages.

9.4 The PC does not accept any liability, whether directly or indirectly, for any losses or damages associated with the inability to issue an Occupation Certificate due to, but not limited to, unapproved or illegal building works, non-compliance with the conditions of any approvals or consents, unsatisfactory final inspection, missed critical stage inspections, non-compliance with approved building plans or failure to pay any fees and charges to any authority or the PC under this Agreement.

9.5 Each party releases the other party from all further obligations or liability from the date which is 12 months after the final inspection by the Certifier, or where a final inspection has not been requested by the Client, the last inspection carried out by the Certifier, except for any claim or dispute that has been notified in writing before that date.

MISCELLANEOUS

10. Occupation Certificates

10.1 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 PC's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the EP&A Act, the PC 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.

10.2 Upon application being made for a development certificate, the Applicant (not being entitled to copyright) is taken to have indemnified all persons using the application and any accompanying documents in accordance with the EP&A Act against any claim or action in respect of breach of copyright.

COMPLIANCE FUNCTIONS

11.1 The PC must take any steps considered appropriate to address any non-compliances with the development consent. This may include, but is not limited to, attending the site to inspect any issue of concern relating to the development, and referring any matter of concern to any other relevant statutory authority.

11.2 Where any Written Direction Notice is to be forwarded to the Client, the address for such Notice shall be the applicant address stated in the Application for a development certificate, or to any other address that is notified in writing by the Client to the PC.

DEFINITIONS

The EP&A Act means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the EP&A Act also mean amendment and references to the Regulations.

AAC means the Association of Australian Certifiers.

Applicable environmental planning instrument means the State Environmental Planning Policy or the Local Environmental Plan nominated by the Client as the instrument against which an application for a Complying Development Certificate is to be assessed.

BCA means the Building Code of Australia including all applicable amendments.

B&DC Act means the Building and Development Certifiers Act 2018 (NSW). All amendments and references to the B&DC Act also mean amendment and references to the Regulations.

Building Contract means the contract to construct the Building Works that the Client enters into with the builder.

Building Works means the building works for which a Construction Certificate or Complying Development Certificate is to be issued in accordance with this contract and is referred to in the Address of the Building Works and the Title Particulars of the site.

Certificates mean statutory and non-statutory certificates.

Certification work means:
a) the determining of an application for a development certificate;
b) the issue of a development certificate;
c) carrying out the functions of a PC;
d) carrying out inspections for the purposes of Section109E(3)(d) of the EP&A Act.

Complying Development Certificate means a Complying Development Certificate within the meaning of the EP&A Act.

Certifier means any appropriately accredited person authorised by the PC to carry out any works in association with the determination of an application or inspection of works.

Construction Certificate means a Construction Certificate within the meaning of the EP&A Act.

Contractor licence means a licence issued under the Home Building Act 1989.

Development certificate means either a Complying Development Certificate or Construction Certificate.

Development Consent means a Development Consent within the meaning of the EP&A Act.

Inspection Schedule means the Inspection Schedule provided in the **Notice of Inspections** within the meaning of the EP&A Act.

Notice includes any notice issued under the EP&A Act or this contract.

Occupation Certificate means an Occupation Certificate within the meaning of the EP&A Act.

Owner-builder permit has the meaning given to it by the Home Building Act 1989.

PC means a principal certifier appointed under Section 109E of the EP&A Act.

Performance Solution has the same meaning as the term in the BCA.

Practicable Completion means the date the builder has completed the Building Works in accordance with the Building Contract.

Regulations means the Environmental Planning and Assessment Regulation 2000 (NSW) and all applicable amendments.

Residential building work has the meaning given to it by the Home Building Act 1989.

Termination Money means the money owing to the PC if the PC 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 PC if the contract had been totally completed.

END OF TERMS AND CONDITIONS - 2022

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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.

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