



PERFORMANCE OF CERTIFICATION WORK CONTRACT OF AGREEMENT

Revision No. 12-09-2019

OFFICE USE ONLY
DA No:
CC No:
CDC No:
Parcel No:
Date:

PART A: INTRODUCTION

This is an Agreement between Bega Valley Shire Council (the Council) and the Client (as nominated below)

By virtue of the *Environmental Planning & Assessment Act 1979* Council is a certifying authority and employs accredited certifiers (the Certifier) who are authorised to carry out the Certification Work which is the subject of this Agreement on behalf of the Council.

The Client seeks to engage the Council to perform certain Certification Work on the terms set out in this Agreement *

* Refer to Part E for particulars of Certification Work.

PART B: PARTIES TO THE AGREEMENT *Client to complete*

1. THE COUNCIL

Name <i>Bega Valley Shire Council</i>			
Address	<i>Zingel Place</i>	PO Box	<i>492</i>
Suburb	<i>BEGA</i>	State	<i>NSW</i>
		Postcode	<i>2550</i>
Email	<i>council@begavalley.nsw.gov.au</i>		Telephone <i>(02) 6499 2222</i>

2. THE CLIENT *(For whom the Certification Work will be carried out)*

Name		Company	
Postal Address		PO Box	Telephone
Suburb	State	Postcode	Mobile
Email	Customer Reference		
<i>Please indicate by 'X' which of the following applies</i>		<input type="checkbox"/>	Client is the property owner
		<input type="checkbox"/>	Client is duly authorised by the Owner

Note: The person having the benefit of the Consent, so as to be able to appoint the PCA, may be the owner or an applicant authorised by the owner but may NOT be the builder, unless the builder is the owner.

PART C: DESCRIPTION OF DEVELOPMENT *Client to complete*

Provide details of development being certified (e.g. dwelling, garage, swimming pool)

Unit No	House No	Street
Suburb		
Lot(s)	Section	Deposited Plan (DP)
Other		Strata Plan (SP)

PART D: DETAILS OF DEVELOPMENT APPROVAL *Client to complete*

Do you have a development consent?	Yes	No
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If yes, please provide details below

Development Consent	----- . ----- (e.g 2000.100)	Date Issued:	___ / ___ / ___
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Details of any plans and specifications to which these approvals relate (e.g. Drw:SFR2345 dated 01/01/2000)	
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PART E: CERTIFICATION WORK TO BE PERFORMED *Client to complete*

This Agreement relates to the following Certification Work: *Please indicate by 'X' which of the following applies*

<input type="checkbox"/>	Determination of application for, and issue of, a Construction Certificate*
<input type="checkbox"/>	Determination of application for , and issue of, an Occupation Certificate*
<input type="checkbox"/>	Undertaking the functions of the Principal Certifying Authority (PCA) for the development <i>(Refer to Attachment A for description of PCA functions and responsibilities of the Client).</i>
<input type="checkbox"/>	Determination of application for, and issue of, a Complying Development Certificate*
<input type="checkbox"/>	Determination of application for, and issue of, a Compliance Certificate*
<input type="checkbox"/>	Carrying out of inspections under section 22 of the <i>Swimming Pools Act 1992</i> and issuing certificates of compliance under that Act.

** These certificates are "Development Certificates" for the purposes of this Agreement.*

PART F: CLIENT DECLARATION & SIGNATURE *Client to complete*

*I/We agree to pay all fees in accordance with Council's adopted fees and charges as detailed in **Attachment B** to this Agreement.*

Note: In respect of any unforeseen contingency work provided under this Agreement, the Council is to advise the Client what is required.

I/We acknowledge that the fees payable are calculated in accordance with Council's adopted Fees & Charges and are to be paid before, or at the time of the lodgement of an application for a Development Certificate and/or before the Council commences to carry out any of the functions as the PCA.

I/We agree to provide all documents that the Council may reasonably request for it to perform the function of the PCA and/or Certifier.

I/We agree to provide the Council with access to the development site.

I/We agree to notify Council of the appointment of the principal contractor. I/We agree to notify the principal contractor of any critical stage inspections required to be carried out in respect of the building.

I/We acknowledge that I/We have received and understand the description of services as outlined within this Agreement.

Client(s) Name	Date
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Client(s) Signature	
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PART G: THE CERTIFIER (Who will carry out the Certification Work)**Council to complete**

Council employs accredited certifiers who are currently accredited by the Building Professionals Board under the *Building Professionals Act 2005*.

The Client is advised that to the extent that any inspections are required to be carried out under the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000* for the Certification Work, those inspections may be carried out by any Council employees who have the necessary accreditation for that work.

PART H: DATE OF AGREEMENT**Council to complete**

This Agreement is made on _____ Date

PART I: COUNCIL SIGNATURE**Council to complete**

Name:

Date

Position:

Signed
on behalf of Bega Valley Shire Council

PRIVACY NOTIFICATION

Personal and private information supplied to Council is managed in compliance with the Privacy and Personal Information Protection Act 1998. The supply of this information is not voluntary, as it is required by law in order to process your application/request. The intended recipients of the personal information are Officers within the Council, agents/contractor of the Council and other statutory authorities. You may apply for access or amendment to your personal information held by Council. You may also request that Council suppresses your personal information from a public register. If you have any further enquiries concerning this matter, contact Council on (02) 6499 2222, or the Information and Privacy Commission 1800 472679 or email <mailto:ipcinfo@ipc.nsw.gov.au> or the website www.ipc.nsw.gov.au.

PART J: FEES AND CHARGES

1. The Council's fees and charges for the performance of the Certification Work are set out in **Attachment B**.
2. The fees and charges must be paid to the Council:
 - a. before, or at the time, an application for the Development Certificate is lodged with the Council; and/or
 - b. before the Council commences to carry out any of the functions as the PCA.
3. 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 **Attachment B**. In respect of any unforeseen contingency work provided for under this Agreement, the Council will advise the Client what is required.

PART K: STATUTORY OBLIGATIONS

An information brochure which is to include information about statutory obligations must accompany this Agreement, if one is published by the Building Professionals Board on its website. The Board is the statutory body that accredits the Certifier and administers the *Building Professionals Act 2005*.

Note: The Board has not published a brochure as at the date of the Agreement.

ATTACHMENT A: PRINCIPAL CERTIFYING AUTHORITY FUNCTIONS

1. INTRODUCTION

The *Environmental Planning and Assessment Act 1979 (EP&A Act)* requires the appointment of a Principal Certifying Authority (PCA) to be responsible for the carrying out of mandatory critical stage building inspections and subsequent issue of an Occupation Certificate (OC) prior to the use or occupation of a building.

Section 81A of the EP&A Act prohibits the commencement of the erection of a building in accordance with a development consent until:

- A construction certificate has been issued;
- A PCA has been appointed and the Client has notified the PCA that they will carry out the building work as an owner-builder (if that is the case),
- Where the Client is not carrying out the building work as owner-builder, the Client must have appointed a principal contractor for the building work who is the holder of a contractor licence (where residential building work is involved). The Client must notify the PCA of the appointment of the principal contractor and also notify the principal contractor of any critical stage inspections and other inspections required to be carried out for in respect of the building work,
- The PCA has, no later than 2 days before the building work commences, notified the consent authority of his or her appointment and notified the Client of any critical stage inspections and other inspections that are required to be carried out in respect of the building work, and
- The Client has given at least 2 days' notice to the Council (and the PCA if that is not the Council) of the person's intention to commence the erection of the building.

This Attachment sets out the responsibilities of the Client and the Council (when engaged by the Client to act as PCA).

2. DEFINITIONS

Principal Certifying Authority or PCA

The PCA is the authority appointed by 'the Client' (being the person having the benefit of the development consent or complying development certificate) under section 109E of the EP&A Act. A PCA may be either Council, or an accredited private certifier (except in certain circumstances).

NOTE

- a) Council Accredited Certifiers, as the PCA, cannot be involved in the design of the building/development works; but may offer advice for compliance with Deemed to Satisfy BCA matters.
- b) When Council has been appointed as the PCA, a change of PCA can only be undertaken upon agreement of Council or as determined by the Building Professionals Board.

Critical Stage Inspections

Clause 162A of the EP&A Regulation relevantly prescribes the following as critical stage inspections:

- (4) *In the case of a class 1 or 10 building, the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are:*
 - (a) *(Repealed)*
 - (b) *after excavation for, and prior to the placement of, any footings, and*
 - (c) *prior to pouring any in-situ reinforced concrete building element, and*
 - (d) *prior to covering of the framework for any floor, wall, roof or other building element, and*
 - (e) *prior to covering waterproofing in any wet areas, and*
 - (f) *prior to covering any stormwater drainage connections, and*
 - (g) *after the building work has been completed and prior to any occupation certificate being issued in relation to the building.*
- (4A) *However, in the case of a class 1 or 10 building, an inspection on an occasion described in subclause (4) (a)–(f) that occurs before 1 July 2005 is not prescribed for the purposes of section 109E (3) (d) of the Act if:*
 - (a) *the inspection is carried out by a person considered by the principal certifying authority to be suitably qualified to carry out the inspection (but who is not necessarily an accredited certifier) and employed, or nominated for the purpose of carrying out the inspection, by the principal certifying authority, and*
 - (b) *the person would not be disqualified by section 109ZG of the Act (except by subsection (1) (d) or (1A) of that section) from issuing a Part 4A certificate in relation to any aspect of the development concerned.*
 - (c) *the person makes a record of each inspection carried out by him or her, and provides a copy of that record to the principal certifying authority, as required by clause 162B for a critical stage inspection or any other inspection required by the principal certifying authority.*
- (5) *In the case of a class 2, 3 or 4 building, the occasions on which building work must be inspected are:*
 - (a) *(Repealed)*
 - (b) *prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and*
 - (c) *prior to covering any stormwater drainage connections, and*
 - (d) *after the building work has been completed and prior to any occupation certificate being issued in relation to the building.*
- (6) *In the case of a class 5, 6, 7, 8 or 9 building, the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are:*
 - (a) *(Repealed)*
 - (b) *prior to covering any stormwater drainage connections, and*
 - (c) *after the building work has been completed and prior to any occupation certificate being issued in relation to the building.*
- (7) *(Repealed)*
- (7A) *Inspections of building work must be made on the following occasions in addition to those required by the other provisions of this clause for the building work:*
 - (a) *in the case of a swimming pool, as soon as practicable after the barrier (if one is required under the [Swimming Pools Act 1992](#)) has been erected,*
 - (b) *in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, after the commencement of the excavation for, and before the placement of, the first footing.*

ATTACHMENT A: PRINCIPAL CERTIFYING AUTHORITY FUNCTIONS – Continued

Where Council is the PCA all of the critical stage inspections must be carried out by a Council Accredited Certifier or another accredited certifier upon prior arrangement. Failure to receive an inspection may result in Council being unable to issue an OC.

Requests for final inspections and/or OC's for "BASIX affected buildings" must be accompanied by a completed pre-final self-certification/form for applicants/builders/principal contractors. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.

Inspections involving works approved under the provisions of Section 68 of the Local Government Act 1993, as amended, can only be carried out by Council Officers (e.g. on-site wastewater management systems, manufactured homes, temporary structures and amusement devices).

Occupation Certificate (OC)

An OC is a certificate that authorises the occupation and use of a new building or a change of building use for an existing building. It is essentially a post-construction check on whether necessary approvals and certificates are in place, and that the building is suitable for occupation or use in accordance with its Building Code of Australia classification. An OC authorising the occupation or use of a new building and/or change of use of an existing building can only be issued by the PCA.

NOTE:

- a) An application form for an OC must be completed and submitted to Council including payment of the relevant fee as prescribed in Council's Fees & Charges schedule.
- b) The OC MUST be issued prior to a building being used or occupied. It is an offence to occupy a building without benefit of an OC.

3. SERVICE PROVIDED & RESPONSIBILITIES OF COUNCIL

Under the EP&A Act a PCA has a range of functions, including:

- (a) Ascertaining, before any building work commences, that a construction certificate or complying development certificate has been issued for the work;
- (b) Ascertaining, before any residential building work commences, that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the [Home Building Act 1989](#), unless the work is to be carried out by an owner-builder;
- (c) Where the work is being carried out by an owner-builder, ascertaining that the owner-builder is the holder of any owner-builder permit required under the [Home Building Act 1989](#), before an owner-builder commences on the site any residential building work;
- (d) Carrying out critical stage inspections of the building work as prescribed by the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation)* or required by the Certifier, or ensuring that the inspections are carried out by another certifying authority before issuing an occupation certificate for the building or work;
- (e) Ensuring that any preconditions required by a development consent or complying development certificate are met for the work before the issue of an occupation certificate.

Council, as the PCA, will:-

- 3.1 Carry out inspections 48 hours after notification. Inspections will be accepted by telephone (02) 6499 2222, or in person at the counter at Council's office.
- 3.2 Make a written record of the inspection.
- 3.3 Advise the Client of the details of the work the subject of an unsatisfactory inspection and the need (if any) to carry out a reinspection.
- 3.4 Notify the Client if any additional fees for inspection are required as a result of reinspection for incomplete or defective works. Reinspection fees will be levied and payable for all reinspections required as a result of work not being completely ready for the booked inspection or as a result of defective works.
- 3.5 Issue determinations for OC's on the prescribed form.

Note: Inspections will be carried out Monday to Friday (inclusive) only and excludes Public Holidays. Please contact Council's Customer Service to ascertain which days inspection can be carried out in your area.

4. RESPONSIBILITIES OF THE CLIENT

The Client, in appointing Bega Valley Shire Council as the PCA, agrees to:-

- 4.1 Pay all fees for services provided by the PCA or such fees and charges as required by another Authority, eg. NSWFB.
- 4.2 Ensure that arrangements are made for Council to carry out inspections of the building works at various stages indicated in Council's letter of acceptance of PCA appointment and the Construction Certificate.
- 4.3 Ensure that notification, as required in clause 3 above, is provided of all required inspections.
- 4.4 Ensure that building work is ready for inspection by 9.30 am on the day of inspection. Note: Should a specific inspection time or site access be required this may be arranged, subject to availability, by speaking with the relevant Council Accredited Certifier.

Where a reinspection is required as a result of defective or incomplete works the Client shall make payment of the appropriate reinspection fee as prescribed in Council's Fees and Charges.

ATTACHMENT A: PRINCIPAL CERTIFYING AUTHORITY FUNCTIONS – Continued

- 4.5 Where an inspection is required, the Client MUST ensure the relevant stamped approved plans and specifications, and other required details are on-site and/ or available to the Council Accredited Certifier. For example, where a timber floor, roof or wall frame inspection is required the relevant information must be provided such as roof truss specifications, tie-down and joint schedules, roof and wall bracing plans and specifications, wall insulation specifications, timber sizes schedules and the like.
- 4.6 Before booking a final inspection and/or Occupation Certificate for a “BASIX affected building” the Client MUST submit to Council a completed pre-final self-certification/form. It is the responsibility of the applicants/builders/principal contractors to ensure all of the BASIX commitments have been fully met.
- 4.7 Ensure that the erection of the building and/or works are in accordance with the development consent and construction certificate.

5. STAGES AND TYPE OF WORKS REQUIRING INSPECTION

Council, as the PCA, will confirm at what stages of construction inspections are to be carried-out. The schedule of inspections will be contained within the Schedule of Mandatory Critical Stage Inspections.

The type of inspection may include, but not be limited to:-

- 5.1 Inspections relating to the structural integrity of health and amenity of the building and its occupants (eg footings, slab, pre-lining framework, wet area flashing, final and the like).
- 5.2 Inspections associated with engineering works including car-parking, drainage and road construction.
- 5.3 Inspections of food premises fitout.
- 5.4 Inspections determining compliance with prescribed development conditions and other provisions prescribed in the *Environmental Planning & Assessment Act* and Regulation.
- 5.5 The mandatory critical stage inspections.

6 DISPUTE RESOLUTION

- 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 Any dispute of whatever nature to do with this contract must be referred in the first instance to Council’s Building Services Manager in writing.
- 6.3 If either party believes the dispute has not been resolved, then a Mediator must be appointed by mutual consent of both parties.
- 6.4 The mediation will be invoked by either party serving Notice to the other party within 7 days of a party being notified of a dispute.
- 6.5 Both parties must attend the mediation and must cooperate with the Mediator and each other and shall give the Mediator whatever the Mediator requests.
- 6.6 If the Mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and both parties.
- 6.7 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.
- 6.8 Both parties will remunerate the mediator on a 50 / 50% basis, regardless of any alleged fault and regardless of the outcome.
- 6.9 The Mediator may request that funds be placed into a trust account before the mediation commences and may request payment of additional monies from time to time until the mediation is concluded.

INFORMATION

For further information on this specification and matters relating to the booking of inspections, please contact Council’s Contact Centre on (02) 6499 2222.

ATTACHMENT B: FEES AND CHARGES

PARTICULARS OF FEES OR CHARGES	2019/2020 (GST Included)
Construction certificate & infrastructure SEPP compliance statements	
Cost i.e. the value/cost as determined by Council (using AIBS Building Cost Guide or other recognised industry costing guide) or the contract price if there is an all-inclusive contract.	
Not exceeding \$5,000	\$162.00 plus 0.7% for first \$5,000
Over \$5,000 to \$100,000	\$162.00 + 0.7% for first \$5,000 + 0.5% of the amount in excess of \$5,000
Over \$100,000 but not exceeding \$250,000	\$162.00 + 0.7% for first \$5,000 + 0.5% of next \$95,000 + 0.4% of the amount in excess of \$100,000
Cost exceeding \$250,000	\$162.00 + 0.7% for first \$5,000 + 0.5% of next \$95,000 + 0.4% of next \$150,000 + 0.2% of the amount in excess of \$250,000
Minor modification/amendment to Construction Certificate.	\$188.00
Major modification/amendment to Construction Certificate.	50% of original CC fee
Complying Development Certificates	
Cost i.e. the cost as determined by Council (using AIBS Building Cost Guide or other recognised industry costing guide) or the contract price if there is an all-inclusive contract.	
Not exceeding \$5,000	\$154.00 + 0.6% for first \$5,000
Over \$5,000 but not exceeding \$100,000	\$154.00 + 0.6% for first \$5,000 + 0.4% of the amount in excess of \$5,000
Cost exceeding \$100,000	\$154.00 + 0.6% for first \$5,000 + 0.4% of next \$95,000 + 0.3% for amount in excess of \$100,000
Minor modification/amendment to Complying Development Certificate.	\$154.00
Major modification/amendment to Complying Development Certificate	\$140.00 OR 50% of original CDC Fee
PCA Inspection Fees	
Dwelling, dwelling additions, garages, pools, dual occupancies	\$162.00
Units, villas, townhouses, (per unit)	\$162.00 per unit
Commercial buildings –	
Under 500 sq metres	\$162.00
Over 500 sq meters	\$188.00
Large residential, commercial and industrial complex developments involving multiple buildings	By quotation
Same day inspections (where available) – additional	\$111.00 additional
Inspection undertaken for Private Principal Certifying Authority	\$245.00
Re-inspection	\$162.00
Occupation Certificates	
Final or Interim Occupational Certificate	
Class 1 – Dwelling, alteration/addition,	\$162.00
Interim Occupation Certificate	\$162.00
Dual occupancies	\$162.00
Villas, townhouses, residential flats – up to 12 units	\$188.00
Villas, townhouses, residential flats – over 12 units	\$268.00
Plus for each additional unit	\$14.00 per unit
Class 5 and 6 for floor area up to 2,000 sq metres	\$250.00
Plus for each additional 1,000 sq metres	\$14.00
Class 7, 8 and 9 for floor area up to 2,000 sq metres	\$250.00
Plus for each additional 1,000 sq metres	\$14.00
Compliance Certificates in relation to:	
Construction Certificates	\$136.00
Complying Development	\$136.00
Assessments	
Building assessment of BASIX Certificate	\$136.00
Building assessment of fire engineering report	\$201.00
Asset & Environment Protection Fee (to be paid where value of work exceeds \$10,000)	\$95.00