

SECTION A. Location & details of the land where the building work is to be carried out

Unit/Street no.	<input type="text"/>	Street	<input type="text"/>		
Suburb	<input type="text"/>	State	<input type="text"/>	Postcode	<input type="text"/>
Lot	<input type="text"/>	Section no.	<input type="text"/>	DP no.	<input type="text"/>

SECTION B. Description of the building work or subdivision work to be carried out

Description of building work

SECTION C. Details of the Development Consent & Construction Certificate

DA No.	<input type="text"/>	Council	<input type="text"/>	Approval Date	<input type="text"/>
CC No.	<input type="text"/>	Certifying Authority	BuildCert Consultants Pty Ltd	Approval Date	<input type="text"/>

SECTION D. Details of person appointing PCA & providing notice of commencement

***An application may only be made by a person who has the benefit of the development consent. An application may NOT be made by 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 BuildCert Consultants Pty Ltd (Accreditation No - ABC 8) as the Principal Certifying Authority.
- (ii) I/we consent to the transfer of the PCA to another BuildCert Accredited Certifier if the original PCA ceases employment with BuildCert or becomes unable to fulfil their duties as the PCA for any reason.
- (iii) I/we declare that all the information provided is true and correct.
- (iv) I/We execute and agree to BuildCert Consultants' Contract for Certification Work Terms and Conditions.

Name(s)	<input type="text"/>		
Postal Address	<input type="text"/>		
Phone	Mobile	Email	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

Signature(s)

Date building work is intended to be commenced (Not less than 2 days from the date of this notice)

SECTION E. Details of Principal Contractor / Owner Builder (residential build work only)

<input type="checkbox"/> Principal Contractor	<input type="checkbox"/> Owner Builder	Builders or OB Licence Number	<input type="text"/>
Name	<input type="text"/>		
Address	<input type="text"/>		
Phone	Mobile	Email	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

SECTION F. PCA Details & Consent of Appointment (Office Use Only)

Name	<input type="text"/>		
Address	<input type="text"/>		
Accreditation Number	Phone	Email	
<input type="text"/>	<input type="text"/>	info@buildcertconsultants.com.au	

- (i) BuildCert Consultants Pty Ltd consent to being appointed as the PCA for the development, and confirm that all conditions of the above development consent that are required to be satisfied prior to the work commencing have been satisfied.
- (ii) BuildCert Consultants Pty Ltd execute and agree to BuildCert Consultants' Contract for Certification Work Terms and Conditions.

Signed / Executed

Date

AGREEMENT BETWEEN

The certifier and the client

PART 1. INTRODUCTION

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

1.2 The Client seeks to engage the Certifier to perform certification work on the terms set out in this Agreement.

PART 2. INTERPRETATION

2.1 Words and terms used in this Agreement are defined in Part 13 Definitions.

PART 3. PARTIES

3.1 The Certifier is BuildCert Consultants Pty Ltd (BPB 8) or as detailed in Section F the PCA Appointment Form.

3.2 The client is detailed in Section F of the Construction Certificate / Complying Development Application form or Section D of PCA Appointment Form

PART 4. ERECTION OF CONTRACT

4.1 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.

PART 5. INSURANCE DETAILS

5.1 Insurer: Lloyds of London via SRS Underwriting: Policy No:PI 13 0003636 Period: 25 May 2014 – 25 May 2015

PART 6. OBLIGATION OF THE CERTIFIER

6.1 Issuing of Construction Certificates or Complying Development Certificates

6.2 The PCA shall issue a Construction Certificate or Complying Development Certificate and endorse plans, specifications and other documentation used to determine the application:-

a) Once the Client pays the PCA any money owed for work associated with the issuing of a Construction Certificate or Complying Development Certificate.

b) The design and construction 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.

c) The designs comply with the BCA.

6.3 The PCA shall provide the Council with a Section 79D(2) Notice of Determination within 7 days of the determination.

6.4 When the PCA issues a Construction Certificate or Complying Development Certificate, the PCA may issue as many Certificates or statements from any Certifying Authority or any other party that the PCA considers necessary in addition to any Certificates listed in the Inspection Schedule.

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

6.6 The PCA shall issue an Occupation Certificate for the Building Works when the PCA 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) The Building does not pose any danger for the occupants in the case of an Interim Occupation Certificate.

6.7 The PCA shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.

PART 7. OBLIGATION OF THE CLIENT

7. The client shall:-

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

7.2 The set fees and charges for the determination of a development certificate must be paid to the Certifier before, or at the time, an application for the development certificate is lodged with the Certifier.

7.3 The set fees and charges for the carrying out the functions of the PCA must be paid to the Certifier before, or at the time of PCA appointment.

7.3 Ensure that the site is available for the PCA to carry out its contractual obligations.

7.4 Use Competent People for all aspects of the Building Works.

7.5 Provide the PCA 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 Work.

7.6 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 PCA.

7.7 Attend any meetings if required by the PCA to do so.

7.8 Comply with any Notices that the PCA issues.

7.9 Provide Compliance Certificates as requested by the PCA.

7.10 Provide all information that the client reasonably can obtain to enable the PCA to fulfil its contractual obligations.

7.11 Provide the PCA with the date of practicable completion.

7.12 Act in good faith, in accordance with the Act and in a cooperative fashion.

PART 8. CONTRACTUAL VARIATIONS

8.1 If the Building Works do not commence within 60 days from the date of the execution of this contract; or

8.2 If 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

8.3 If any part of the Building Works are redesigned by the Client or the client's representative; or 8.4 If 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

8.5 If additional Construction Certificates or Complying Development Certificates are required to be issued by the PCA other than those listed in the Schedule (which shall be determined by the PCA); or

8.6 If an amendment to the Act, the BCA or any other law that requires any aspect of the Building Works or the PCA's work to be varied; or

8.7 If the PCA is required to undertake more inspections than those listed in the Inspection Schedule; or

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

8.9 If any notice is issued by the PCA, then the PCA may:-

a) Vary this contract to the extent that the PCA will be able to carry out its contractual obligations; and

b) Increase the contract price, 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.

8.10 The variation will permit the PCA to claim all costs associated with that delay as reasonably determined by the PCA.

8.11 Notice must be given to the Client in writing when the PCA becomes aware that a variation or unforeseen contingencies within 21 days after the completion of that work.

PART 9. CONTRACTUAL TERMINATION

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

9.2 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 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

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

9.4 If the Construction Certificate or Complying Development Certificate is not capable of being issued 6 months from the date of execution of this contract; or

9.5 If the Building Works do not commence within 60 days from the date the Construction Certificate was issued, or

9.6 If the Client does not permit the private certifier to issue the Occupation Certificate within 60 days from the date of practicable completion, or

9.7 If the Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:-

9.8 The PCA 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.

9.9 If the PCA terminates the contract, then the PCA is entitled to payment of Termination Money.

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

9.11 If the PCA terminates the contract, the PCA is entitled to carry out a final to termination.

9.12 As from the date of final inspection, the Client must indemnify the PCA 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 Act on the part of the Client or any other contractors.

PART 10. DISPUTE RESOLUTION

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

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

10.3 The mediator must be appointed by the AIBS.

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

10.5 Both parties must attend the mediation and must co-operate with the mediator and each other and shall give the mediator whatever the mediator requests.

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

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

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

10.9 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.

PART 11. MISCELLANEOUS

11. Occupation Certificates

11.1 An Occupation Certificate must be applied for, and issued, within two years of the date of the construction approval.

Failure to comply with this requirement shall entitle the PCA to terminate the contract, or to charge additional fees for any inspections, including the Final inspection and issue of any Occupation Certificate.

11.2 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 PCA's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Act, the PCA 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.

11.3 If the nominated PCA, for the subject of this agreement, ceases employment with BuildCert Consultants or becomes unable to fulfil their duties as the PCA for any reason, the role of the PCA shall be transferred to another certifier employed by BuildCert whose level of accreditation allows him or her to accept the PCA Transfer. BuildCert shall not incur any liability that may result from any delay in the transfer of this role.

11.4 Upon an application being made for a construction certificate complying 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 Act against any claim or action in respect of breach of copyright (See-CI.129 EP&A Regulation 2000).

PART 12. ADDRESS FOR NOTICES

12.1 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 Construction Certificate or Complying Development Certificate, or to any other address that is notified in writing by the Client to the PCA.

PART 13. DEFINITIONS

Accredited certifier means the holder of a certificate of accreditation as an accredited certifier under the BP Act

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.

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.

BASIX means the Building Sustainability Index

BCA means the Building Code of Australia.

BP Act means the Building Professionals Act 2005

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 PCA.
- d) carrying out of inspections for the purposes of section 109E(3)(d) of the EP&A Act.

e) carrying out inspections under section 22 Swimming Pools Act 1992 and issuing certificates of compliance under that Act

Complying Development Certificate

means a Complying Development Certificate within the meaning of the Act.

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

EP&A Act means the Environmental Planning and Assessment Act 1979

EP&A Regulation means the Environmental Planning and Regulation 2000

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.

Occupation Certificate means an Occupation Certificate within the meaning of the Act.

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

PCA means a principal certifying authority appointed under section 109E of the EP&A Act

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 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 certificates and non-statutory certificates.

Certifying Authority means a Certifying Authority within the meaning of the Act.

Client means the owner or the owner's agent.

Construction Certificate means a Construction Certificate within the meaning of the Act.

Development Consent means a Development Consent within the meaning of the Act.

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.

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 PCA if the PCA 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 PCA if the contract had been totally completed.

End of Terms and Conditions

NEWCASTLE
02 4947 7422

HUNTER
02 4947 7422

CENTRAL COAST
02 49477422

MID NORTH COAST
02 6554 7648

SAPPHIRE COAST
02 64944 494

481 Pacific Highway BELMONT NSW 2280 | DX 12620-Charlestown | info@buildcertconsultants.com.au | www.buildcertconsultants.com.au

Copyright © 2015 BuildCert Consultants (Rev April 15)