

## Application for an Occupation Certificate

### Information for the applicant

- This form may be used to apply for:
  - a **whole occupation certificate** to authorise the commencement of occupation or use of a new building, or
  - an **part occupation certificate** to authorise the commencement of occupation or use of a partially completed new building.
- Once completed, submit this application form to the principal certifier (PC).

### SECTION A. Type of Occupation Certificate applied for (Tick one)

 **Part Occupation Certificate**
 **Whole Occupation Certificate**

### SECTION B. Details of the applicant\*

\*An application for an occupation certificate may only be made by a person who is eligible to appoint a PCA for the). An application may not be made by the person who will carry out the building work or subdivision work unless that person owns the land on which the work is to be carried out.

Mr  Ms  Mrs  Dr  Other:

First name

Family name

First name

Family name

Company (if applicable)

ABN (if applicable)

Unit/Street no.

Street name

Suburb or town

State

Postcode

Daytime telephone

Fax

Mobile

Email

### SECTION C. Details of building

Unit/Street no.

Street name

Suburb or town

Postcode

Lot no.

DP / SP No.

## Description of the building or part of building to which the application relates

If the application relates to a new use of the building or part of the building, also describe the new use.


## Building classification under the Building Code of Australia, as identified by the development consent

Existing classification

New classification (if changed)

## SECTION D. Attachments relating to the proposed development

1. Applicants must provide the documents listed below that are relevant to the type of development that is proposed. Please confirm that documents relating to the requirements below have been attached by placing a cross in the appropriate box(s).

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Development consent      | <input type="checkbox"/> Fire safety certificate | <input type="checkbox"/> Each BASIX certificate for the development. |
| <input type="checkbox"/> Construction certificate | <input type="checkbox"/> Compliance certificate  |  |

2. Does the development involve an alternative solution under the Building Code of Australia ("BCA") in respect of a fire safety requirement?

If YES, provide either or both of the following from a "fire safety engineer" (a private accredited certifier holding Category C10 accreditation):

- A compliance certificate (as referred to in s.109C(1)(a)(v) EP&A Act) that certifies that building work relating to an alternative solution that was the subject of a compliance certificate or report under clause or 144A(a) EP&A Regulation – (the first certificate or report) has been completed and complies with that alternative solution.
- A written report that includes a statement that the building work relating to the alternative solution that was the subject of the first certificate or report has been completed and is consistent with that alternative solution.

**Note:** The above requirement only applies to building work in respect of:

- a class 9a building that is proposed to have a total floor area of 2000 square metres or more
- any building (other than a class 9a building) that is proposed to have:
  - a fire compartment with a total floor area of more than 2000 square metres or
  - a total floor area of more than 6000 square metres

that involves an alternative solution under the BCA in respect of the requirements set out in EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 of the BCA.

3. Does the application relate to a residential flat development for which the development application was required under Clause 50(1A) of the EP&A Regulation to be accompanied by a design verification from a qualified designer?

If YES, provide a statement from a qualified designer which verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications on which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65-Design Quality of Residential Flat Development (SEPP No. 65)

**Note:** If the development application was also required to be accompanied by a BASIX certificate with respect to any building, the statement need not verify the design quality principles set out in SEPP No. 65 to the extent to which they aim to

- reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
- improve the thermal performance of the building.

## SECTION E. List of documents

Prepare and attach a list of all of the documents provided under SECTION D.

## SECTION F. Delivery of the application

Applications for occupation certificates must be delivered by hand, by post or transmitted electronically to the principal office of the certifying authority. Applications MAY NOT be sent by fax.

## SECTION G. Signature of applicant(s)

Signature: <input type="text"/>	Signature: <input type="text"/>
Name: <input type="text"/>	Name: <input type="text"/>
Date: <input type="text"/>	Date: <input type="text"/>

## SECTION H. Date of receipt of application

To be completed by the certifying authority immediately after receiving this Application.

This Application was received on  (insert date).

# Terms & Conditions

## EFFECT OF AGREEMENT

1. 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.

## OBLIGATIONS OF THE REGISTERED CERTIFIER

### 2. Issuing of Construction Certificates or Complying

#### Development Certificates:

2.1 The Registered Certifier shall issue a Construction Certificate or Complying Development Certificate:-

- once the Registered Certifier is satisfied that the design of the building work(s) complies with the Development Consent and the requirements of the Act and the Regulations and;
- once the Registered Certifier is satisfied that the design as depicted on the drawings and specification comply with the BCA and;
- once the Owner pays the Registered Certifier any money owed for work associated with the issuing of a Construction Certificate or Complying Development Certificate.

2.2 The Registered Certifier shall provide the Council with a Notice of Determination within two (2) days of the determination.

2.3 During the assessment of the application for a Construction Certificate or Complying Development Certificate, the Registered Certifier may request as many Certificates or statements from any Certifying Authority or any other party that the Registered Certifier considers necessary.

#### Inspections

3.1 The Principal Certifier shall carry out or arrange to be carried out as many inspections as the Principal Certifier considers necessary in addition to those nominated as mandatory by the *Environmental Planning and Assessment Act, 1979 (as amended)*.

3.1 Any inspections undertaken, and the notification of the result of any inspection that has been undertaken, in relation to the subject development are prepared and provided to the Owner/s solely for the purpose specified, for the Owner/s exclusive use in regard to the property identified only, and on the undertaking/condition that the Owner/s shall not communicate the contents of the notification of result to any third person who might act to his/her detriment on the basis of the notification. The Owner/s agrees to indemnify Sydney Building Approvals Centre against any loss or damage suffered as a result of the Owner/s failure to observe this abovementioned clause. All inspections undertaken are based on a visual inspection and do not comment therefore on aspects, faults or otherwise, which are below ground level, covered up in any way, or which are not apparent at the time of inspection. No indication is given as to the adequate performance of any plumbing, hydraulic, gas or electrical appliance or fitting that may be installed or included in the building or on the site. Any notification of the result of an inspection is not intended to imply compliance or otherwise with any requirements of any Local Government Authority. Any parts of any structure that have been or are covered, unexposed or inaccessible will not be inspected and therefore any notification of the result of an inspection will have no reference to those parts.

### 4. Issuing the Occupation Certificate

4.1 The Principal Certifier shall issue an Occupation Certificate for the Building Works when the Principal Certifier is satisfied that:-

- All conditions of a Development Consent or a Complying Development Certificate has been complied with;
- The building works are suitable for occupation or use in accordance with their classification under the BCA; and
- A Fire Safety Certificate has been issued (if required); and

· As at the date this agreement is executed, the building does not pose any danger for the occupants in the case of an Interim or Partial Occupation Certificate.

## 5. Insurance

5.1 The Registered Certifier shall maintain an insurance policy in accordance with *Division 1 of Part 3 of the Building and Development Certifiers Act 2018* and shall provide a copy of that policy to the Owner upon request:

5.2 The extent of any claim or otherwise against the policy held by the Registered Certifier or against the Registered Certifier in any way shall be limited to five times (5x) the value of the service fee paid to the Registered Certifier for the services provided and no more.

5.3 Consequential Loss Exclusion – Despite any other provision of this Agreement, neither Party will be liable to the other for, nor will any indemnity by either Party under this Agreement extend to, any Consequential Loss suffered by or Claimed against that other Party.

## 6 Building and Development Certifiers Act 2018

6.1 The Registered Certifier shall carry out all certification work in accordance with any standard or methodology specified in *Section 14 of the Building and Development Certifiers Act 2018*.

## OBLIGATIONS OF THE OWNER

### 6 The Owner shall:-

- By agreeing to these Terms and Conditions indemnify Sydney Building Approvals Centre Pty Ltd, against any action or liability whatsoever that may result from their appointment as to carry out certification work in relation to this project where they have been unduly influenced to make that appointment by the holder of a contractor licence in a manner described in Section 11C(2) of the Home Building Act 1989. Not engage any other Registered Certifier after the Registered Certifier appointed pursuant to this agreement has been engaged. Breach of this condition will entitle the Registered Certifier to recover any losses or costs of whatsoever nature that flow from such breach.
- Ensure that a Construction Certificate or Complying Development Certificate has been issued prior to the commencement of any works.
- Ensure that appointment of a Principal Certifier has been issued prior to the commencement of any works.
- Ensure that the site is available for the Registered Certifier to carry out its obligations under this agreement.
- Use competent people for all aspects of the building works.
- Provide the Registered Certifier with evidence of all professional indemnity and public liability insurances relative to the building work prior to the commencement of any works.
- Provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to any Development Consent, Complying Development Consent and/or any Certificate issued under the provisions of the Act at the request of the Registered Certifier.
- Attend any meetings if required by the Registered Certifier to do so.
- Comply with any Written Direction Notice issued by the Registered Certifier.
- Provide Compliance Certificates as requested by the Registered Certifier.
- Provide all information that the Owner reasonably can obtain to enable the Registered Certifier to fulfil its obligations under this agreement.
- Provide the Registered Certifier with the date of practicable completion.
- Act in good faith, in accordance with the Act and in a cooperative fashion.
- Ensure compliance with all conditions of the Development Consent relating to any demolition works prior to the issue of any Occupation Certificate.

· Not make any request of the Registered Certifier to carry out any certification work unless that work is in accordance with any standard or methodology specified in *Section 14 of the Building and Development Certifiers Act 2018*.

- 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

### 7. If:-

- The building works do not commence within 60 days from the date of the execution of this agreement; or
- Any competent person used by the Owner in respect of the building works causes a delay in the progress of the building works for more than 21 days; or
- Any part of the building works are re-designed by the Owner; or
- Any part of the building is designed pursuant to a Deemed To Satisfy Provision of the NCC and is subsequently changed by way of an Alternative Solution; or
- Additional Construction Certificates and/or Compliance Certificates are required to be issued by a Registered Certifier; or
- An amendment to the Act, the NCC or any other law that requires any aspect of the building works or the Registered Certifier's work to be varied; or
- Any amendment to the *Building and Development Certifiers Act 2018* that requires of the obligations of the Registered Certifier under that Act to be varied; or
- The Registered Certifier is required to undertake more inspections than those listed as critical stage inspections under the *Environmental Planning and Assessment Act, 1979 (as amended)*; or
- The Owner does anything that causes a delay to the building works or does anything that delays the ability of the Registered Certifier to carry out his/her obligations under this agreement; or
- A Written Direction Notice is issued by the Registered Certifier; or
- The Registered Certifier is notified of a complaint from the Department of Fair Trading or a representative from the Local Council with jurisdiction over the subject site, then:
  - vary this agreement to the extent that the Registered Certifier will be able to carry out his/her obligations under this agreement; and
  - increase the Contract price, such increase to be made by way of Notice to the Owner stating the reason/s for the increase and the amount of the increase.

7.1 The variation will permit the Registered Certifier to claim all costs associated with that delay as reasonably determined by the Registered Certifier.

7.2 Notice must be given to the Owner within seven (7) days from the date on which the Registered Certifier becomes aware that a variation will be necessary.

## TERMINATION OF AGREEMENT

### 8. If:-

- The person/s or Company responsible for making payment for this service fails to pay any money owing to the Registered Certifier after seven (7) days of that money becoming payable; or
- The person/s or Company responsible for making payment for this service 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, as an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or

- The Owner or the person/s or Company responsible for making payment for this service breaches the agreement in any respect; or
- The Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days or six (6) months (whichever is the lesser) from the date of application; or
- The building works do not commence within 60 days from the date the Construction Certificate or Complying Development Certificate was issued; or
- The failure of the Owner to complete any works and as a result does not permit the Registered Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion, occupation or use of the proposed development; or
- The Owner, for any other reason, does not permit the Registered Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion, occupation or use of the proposed development; or
- The Owner does not permit the Registered Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion; or
- The building works have commenced without the issuing of a Construction Certificate; or
- Within 2 years of the date of issue of the Construction Certificate or Complying Development Certificate, the Registered Certifier has not been advised by the owner, in writing, that the building works have been completed or if an Occupation Certificate has not been issued by the Registered Certifier, then:

8.1 The Registered Certifier may terminate this agreement by sending a written Notice of Termination, stating the breach/s, to the Owner. Termination will take effect as soon as the Owner receives the Notice of Termination.

8.2 If the Registered Certifier terminates the agreement then the Registered Certifier is entitled to payment of Termination Money.

8.3 Unless the Owner disputes the Notice of Termination, the Owner must pay all Termination Money to the Registered Certifier within 14 days of receiving a Notice of Termination.

8.4 If the Registered Certifier terminates the agreement, the Registered Certifier is entitled to carry out a final inspection, at the Owner's expense, prior to termination.

8.5 As from the date of final inspection, the Owner must indemnify the Registered Certifier for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:

- the need to terminate this agreement or the Certification Contract;
- any matters of non-compliance with the Act on the part of the Owner or any other contractors.

#### **DISPUTE RESOLUTION**

9. Any dispute of whatever nature to do with this agreement must be referred to mediation.

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

9.2 The mediator must be appointed by the AAC.

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

9.4 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.

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

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

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

9.8 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.

#### **MISCELLANEOUS**

10. If for whatever reason an Occupation Certificate is not issued whether it be on account of the insolvency of the Owner, the disappearance of the Owner or the termination of the agreement, the Registered Certifier's responsibilities under the agreement cease forthwith. With respect to any liabilities that may be occasioned under the Act the Registered Certifier 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 agreement occurred.

11. In the event that any Occupation Certificate is requested following a period greater than 12 months after the undertaking of the first Final Inspection an additional charge will be applied and charged to the Owner of the premises, as determined by the Registered Certifier in accordance with Sydney Building Approvals Centre Pty Ltd current Management Plan in place at the time of the request of any Occupation Certificate.

#### **ADDRESS FOR NOTICES**

12. Where any Notice is to be forwarded to the Owner the address and/or email address for such Notice shall be the address and/or email address stated in the Application Form or to any other address that is notified in writing by the Owner to the Registered Certifier.

#### **FEES AND CHARGES**

13. In accordance with the provisions of *Clause 28(g) of the Building and Development Certifiers Regulation 2020* the fees and charges to be paid for the certification work provided under this contract are specified in the Fees and Charges Schedule.

14. Any additional inspections will be charged in accordance with the current Fees and Charges Schedule.

15. Any additional Occupation Certificates will be charged in accordance with the current Fees and Charges Schedule.

#### **DEFINITIONS**

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

**AAC** means the Association of Australian Certifiers.

**DOP** means the Department of Planning.

**Alternative Solution** has the same meaning as the term in the BCA.

**BCA** means the Building Code of Australia 1996 including all applicable amendments.

**Building** means that which is the subject of the Building Works.

**Building Contract** means the contract to construct the Building Works that the Owner enters with the builder.

**Building Works** means the building works for which a Development Certificate is to be issued in accordance with this agreement and is referred to in the "Land to be Developed" section of the Application Form relating to the subject works.

**Certificates** mean statutory certificates and non-statutory certificates.

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

**Owner** means the owner or the owner's agent.

**Competent people** means people authorised to carry out any work associated with Building Works under the Act and includes contractors.

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

**Conflict of Interest** has the same meaning as the term defined by *Building and Development Certifiers Act 2018*.

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

**Deemed to Satisfy Provision** has the same meaning as the same term in the Building Code of Australia 2019.

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

**Fire Safety Certificate** means a Fire Safety Certificate within the meaning of the Act.

**Fire Safety Schedule** means a Fire Safety Schedule within the meaning of the Act.

**Inspection Schedule** means the mandatory inspections required under the Act.

**NCC** means the National Construction Code and includes the Building Code of Australia.

**Notice** includes any notice issued under the Act or this agreement and in respect of notices in this agreement must be made by pre-paid ordinary mail, electronic mail or notice by hand delivery to the Address for Notices in this agreement.

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

**Order** means an Order within the meaning of the Act.

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

**Registered Certifier** is a building practitioner as defined by the Act

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

**Schedule** means the Schedule in this agreement.

**Scope of Works** means obligations in this agreement and any other tasks set out in the Schedule.

**Statutory Notices** means those notices that are issued by the Registered Certifier in accordance with the Act.

**Termination money** means the money owing to the Registered Certifier if the Registered Certifier terminates the agreement in accordance with this agreement, being money for work done (with interest if applicable) and for costs incurred (with interest if applicable) and any money that the Owner would have been bound to pay to the Registered Certifier if the agreement had been totally completed.

**Unduly influenced** means those activities prescribed in *Section 11C(2) of the Home Building Act 1989*.

#### **End of Terms and Conditions**