

Notice to Council / PCA of Intention to Commence Work & Appointment of Principal Certifier

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

NOTICE TO (insert council details and address)	NOTICE TO (insert PCA details and address)
Name <input style="width: 95%;" type="text"/> Address <input style="width: 95%;" type="text"/> <input style="width: 95%;" type="text"/> <input style="width: 95%;" type="text"/> <input style="width: 95%;" type="text"/>	Name <input style="width: 95%; border: 1px solid black;" type="text" value="Sydney Building Approvals Centre"/> Address <input style="width: 95%; border: 1px solid black;" type="text" value="PO Box 29"/> <input style="width: 95%; border: 1px solid black;" type="text" value="HOXTON PARK NSW 2171"/> <input style="width: 95%; border: 1px solid black;" type="text" value="Tel: (02) 9724-4404"/> <input style="width: 95%; border: 1px solid black;" type="text" value="Email: information@sbac.com.au"/> <input style="width: 95%;" type="text"/>
SECTION A. Development details	
Unit No / Street No <input style="width: 95%;" type="text"/> Street Name <input style="width: 95%;" type="text"/> Suburb or town <input style="width: 95%;" type="text"/>	Lot No. <input style="width: 95%;" type="text"/> DP No. <input style="width: 95%;" type="text"/> Postcode <input style="width: 95%;" type="text"/>
Description of the building work or subdivision work <input style="width: 95%; height: 20px;" type="text"/> <input style="width: 95%; height: 20px;" type="text"/>	
SECTION B. Construction Certificate (CC) <u>OR</u> Complying Development Certificate (CDC)	
Development No <input style="width: 95%;" type="text"/>	Date of consent <input style="width: 95%;" type="text"/>
CC Number / CDC Number <input style="width: 95%;" type="text"/>	Date of CC or CDC <input style="width: 95%;" type="text"/>
SECTION C. Details of Principal Contractor/Owner Builder	
<input type="checkbox"/> The work will be carried out by a Principal contractor <input type="checkbox"/> The work will be carried out by an Owner builder (Tick <input checked="" type="checkbox"/> one)	
The name of the principal contractor or the owner builder <input style="width: 95%;" type="text"/>	
Address of the principal contractor or the owner builder <input style="width: 95%;" type="text"/> <input style="width: 95%;" type="text"/>	
Principal contractor's builders licence No. (if applicable) or owner builders permit No. <input style="width: 95%;" type="text"/>	
Phone <input style="width: 95%;" type="text"/>	Email <input style="width: 95%;" type="text"/>

SECTION D. Notice of commencement

The building/subdivision work described above is intended to commence on*
Note*: Must be not less than 2 business days from the date of the notice

SECTION E. Details of person giving notice - Applicant 1

Name
(Must reflect the Title Search)

Address

Name & Position (If owned by a Company)

Mobile

Email

Signature

Date

SECTION E. – Continues Details of person giving notice - Applicant 2

Name
(Must reflect the Title Search)

Address

Name & Position (If owned by a Company)

Mobile

Email

Signature

Date

SECTION F. – Signatures The Principal Certifier must sign the notice

I acknowledge that I have seen evidence that the builder is licensed and insured, or that I have seen evidence that the building works are to be undertaken by a person with an owner-builder permit.

I acknowledge that all conditions of the relevant Complying Development/ Construction Certificate that are required to be satisfied before the work commences, have been satisfied.

I acknowledge that I have been appointed by the applicant to carry out the role of the Principal Certifier for this development.

Name

BPB

Signature

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

Information about registered certifiers - building surveyors and building inspectors GUIDELINE

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 Building Commission 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 Building Commission NSW).¹ This is the applicable document for certification work involving a certifier registered in the class 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 the Building Commission'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 Building Commissioner.

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.nsw.gov.au/departments-and-agencies/building-commission.

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 work² 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 work³ 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 on the Building Commission NSW website www.nsw.gov.au/departments-and-agencies/building-commission

Questions?

The Building Commission NSW website www.nsw.gov.au/departments-and-agencies/building-commission has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier.

The NSW Planning Portal website www.planningportal.nsw.gov.au provides information on the NSW planning and development certification system.

Note, although Building Commission NSW regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Building Commission NSW website for more information.

Contact us	
For more information please contact Building Commission NSW:	
T:	13 27 00
W:	nsw.gov.au and search 'Building Commission NSW'