

PRINCIPAL CERTIFYING AUTHORITY AGREEMENT

THE ROLE OF THE PRINCIPAL CERTIFYING AUTHORITY

The information given here is to assist those involved in the project in understanding the roles and responsibilities of a Principal Certifying Authority (PCA).

A PCA is essentially a semi-regulatory role whereby it is the duty of the PCA to ensure the project is constructed and completed in accordance with:

- the plans and associated documentation and Conditions under the Development Consent issued by the Consent Authority (generally the Local Council), or the pre-determined criteria for a Complying Development Certificate, and
- the relevant building regulations, more particularly the Building Code of Australia and referenced Australian Standards.

The choice of PCA, is made by the owner(s) of the property that is being developed. There are essentially two options for the choice of a PCA, these being either an Accredited Private Certifier or the Local Council.

Private Certifiers are accredited individually on the basis of their knowledge and experience by the NSW State Government, or recognised bodies or associations, these include Planning NSW and Planner's and Engineer's professional associations. Local Council Certifiers do not need to be accredited, but rather the accreditation is given to Council 'as a whole'. Private Certifiers in New South Wales are given a graded Level of Accreditation, these being:

Level 1 or Fire Engineer: At this level the Certifier can approve any construction in accordance with the 'deemed to satisfy' provisions of the Building Code of Australia or provide an alternative solution to the Code which is judged by peer review. Alternative solutions may reduce building costs where the current provisions of the Building Code of Australia may be excessive for the type of building proposed,

Level 2 Certifier: This level allows the Certifier to certify any size or type of building so long as it is in accordance with the 'deemed to satisfy' provisions of the Building Code of Australia. Level 2 Certifiers can provide alternative solutions to the Code apart from fire safety, and

Level 3 Certifier: This level allows Certifiers to certify buildings in accordance with the 'deemed to satisfy' provisions of the Building Code of Australia, subject to the buildings being no higher than three (3) storeys or over 2,000 m² in floor area.

One of the main advantages of having the choice of a PCA is that the owner can decide which PCA is the most capable of handling their project on the basis of experience and knowledge relating to previous similar projects.

In most cases the PCA will be responsible for the initial approval of the construction which will allow work to commence. Such approval is the issue of a Construction Certificate or Complying Development Certificate.

Before a Construction Certificate can be issued, it is the responsibility of the Certifier to ensure that:

- the conditions under the Development Consent relating to the issue of the Construction Certificate are met, and
- that the building, when completed, will comply with the provisions of the Building Code of Australia.

Assessment of a building for Compliance with the Building Code of Australia will include the following:

- structural integrity,
- fire safety and construction,
- access and egress, including disabled access,
- services and equipment, including fire detection and suppression equipment,
- health and amenity, including light, ventilation and sanitary facilities.

To ensure the building will comply with the Building Code of Australia, the Certifier will rely on the design plans, specifications and other documentation as necessary such as structural engineer's details.

Once construction is under way it will be the responsibility of the PCA to ensure that the development is continuing to meet the Conditions of Development Consent as well as compliance with the Building Code of Australia. The Certifier may rely on certification of certain stages or building components during construction, such as a Surveyors Certificate for correct floor level heights, to ensure continued compliance. The role of the PCA is *not a Quality Assurance responsibility*, though it is expected that work will be completed in a tradesman-like manner.

Prior to occupation of the building, the Certifier must issue an Occupation Certificate. An Occupation Certificate can only be issued once the conditions of Development Consent are met as well as compliance with the Building Code of Australia. Again, the Certifier will rely on the certification of a number of building components before the Occupation Certificate will be issued, including:

- structural members,
- termite prevention methods,
- glazed assemblies including windows,
- any fire safety feature including smoke detectors, fire hose reels, emergency lighting, exit signs and the like,
- wet-area water-proofing, and
- mechanical exhaust or air-conditioning systems.

Once sufficient certification is received, and after a final inspection has been carried out, the Certifier may issue an Occupation Certificate. Where relatively minor works are still to be completed, an Interim Occupation Certificate with a Schedule of Works may be issued, and these works are to be carried out prior to the issue of the Occupation Certificate.

Whilst it is acknowledged that, in the whole scheme of things, the PCA pays a relatively minor role, it is an essential role, and the correct choice of PCA will assist in the smooth running of a project.

In addition to Certification, Accredited Certifiers are able to provide, on a professional basis, compliance reports for projects at early or schematic design stages which will expedite the eventual issue of the Construction Certificate once Development Consent has been issued. A certifier is not allowed to design or assist in the preparation of plans and specifications, but is able to advise on issues which do not comply with the Building Code of Australia or where compliance cannot be determined. The correcting of these issues at the earliest design stages will minimise time delays further down the approval path.

Disclaimer:

The above advice is meant as general assistance in understanding the role and responsibilities of the Principal Certifying Authority and Accredited Certifiers, specific advice should be sought for specific projects.

CONDITIONS OF AGREEMENT

DEFINITIONS:

The Act:	The Environmental Planning and Assessment Act, 1979 (NSW)
BCA:	Building Code of Australia
Building:	That which is the subject of the proposed works
Building Contract:	The contract to construct the building works that the client enters with the builder
Certificates:	Statutory certificates and non-statutory certificates
Certifying Authority:	Certifying authority within the meaning of the Act
Client:	The owner or the owner's agent
Competent People:	People authorised to carry out any work associated with building works under the Act and includes contractors
Complying Development Certificate:	A Complying Development Certificate within the meaning of the Act
Construction Certificate:	A Construction Certificate within the meaning of the Act.
Deemed to Satisfy Provision:	The same meaning as the same term in the Building Code of Australia 1996
Development Consent:	A Development Consent within the meaning of the Act
Disbursements:	May include any of the following fees, but shall not be limited to: <ul style="list-style-type: none"> ▪ Recording & Archiving ▪ Council Fees ▪ Bushfire Protection ▪ EE or BASIX ▪ Property Identification searches ▪ Specifications
Fire Safety Certificate:	A Fire Safety Certificate within the meaning of the Act
Inspection Schedule:	The inspection schedule in this agreement
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, facsimile transmission or notice by hand delivery to the address for notices in this agreement
Occupation Certificate:	An Occupation Certificate within the meaning of the Act
Order:	An order within the meaning of the Act
Practicable Completion:	The date the builder has completed the building works/proposed works in accordance with the Building Contract
Principal Certifying Authority:	A building practitioner as defined under the Environmental Planning and Assessment Act, 1979 (NSW)
Regulations:	The Environmental Planning and Assessment Regulations 2000 (NSW) and all applicable amendments
Schedule:	The Schedule in this agreement
Scope of Works:	Obligations in this agreement and any other tasks set out in the Schedule
Statutory Notices:	Those notices that are issued by the PCA in accordance with the Act
Termination Money:	The money owing to the PCA if the PCA 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 client would have been bound to pay to the PCA if the agreement had been totally completed.

SCHEDULE:

1. EFFECT OF THE AGREEMENT:

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.

2. OBLIGATION OF THE PCA:

The PCA agrees to:

- a) Issue a Construction Certificate/Complying Development Certificate when:
 - i) the client pays the PCA any money owed for work associated with the issuing of the Construction Certificate/Complying Development Certificate;
 - ii) the design and construction of the building complies with the Development Consent and the Regulations;
 - iii) the design complies with the BCA
- b) Provide Council with a Section 79D(2) Notice of Determination within 2 days of the determination.
- c) Advise on requirements relating to the Home Building Act 1989.
- d) Arrange for the builder/applicant to give notice for inspections.
- e) Carry out all required mandatory inspections.
- f) Issue an Interim Occupation Certificate if required by the applicant.
- g) Issue the Occupation Certificate when:
 - i) the Development Consent/Complying Development Certificate conditions have been complied with;
 - ii) the building works are suitable for occupation or use in accordance with their BCA classification;
 - iii) any specific works are to be completed or consent conditions are satisfied;
 - iv) a Fire Safety Certificate has been issued if applicable.
- h) Shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.
- j) Advise on any conflict resolution arrangements between the client and the PCA.
- k) Act in a professional manner consistent with the Act.

3. OBLIGATIONS OF THE CLIENT:

The client agrees to:

- a) Not engage any other PCA after the PCA appointed pursuant to this agreement has been engaged. Breach of this condition will entitle the PCA to recover any losses or costs that flow from that breach.
- b) Use competent people for all aspects of the building works.
- c) Supply copies of all required documentation including insurance.
- d) Attend any meetings if required by the PCA.
- e) Comply with any Notices or Orders that the PCA issues.
- f) Provide compliance Certificates as requested by the PCA.
- g) Pay in full within fourteen (14) days of the issue of the tax invoice, or prior to the first inspection whichever occurs first.
- h) Notify the builder of all inspections required by the PCA.

1. AGREEMENT VARIATIONS:

- 1.1 The PCA may vary this agreement in order to:
 - a) carry out their agreement obligations and/or
 - b) increase the agreement price by way of Notice to the Client if:
 - i) the client redesigns the proposed works; or
 - ii) if any part of the proposed work that is pursuant to a Deemed to Satisfy provision is changed; or
 - iii) additional Construction or Compliance Certificates are required to be issued by the PCA other than those listed in the Schedule; or
 - iv) any part of any Act or Code requires any aspect of the proposed work to be varied; or
 - v) additional inspections are required other than those listed in the Schedule; or
 - vi) any unnecessary delays are caused by the client that obstruct the PCA's agreement obligation; or
 - vii) any Notice or Order is issued by the PCA.
- 1.2 Provision is made for the PCA to claim any costs associated with any variation or unnecessary delay.
- 1.3 The client must receive notice within 7 days from the PCA that a variation is necessary.

2. AGREEMENT TERMINATION:

- 2.1 The PCA may terminate this agreement if:
 - a) there is a failure to pay in full within fourteen (14) days of the issue of the tax invoice, or prior to the first inspection whichever occurs first or
 - b) the client breaches the agreement in any way; or
 - c) within 6 months from the date of this agreement a Construction Certificate/Complying Development Certificate is not able to be issued; or
 - d) within 60 days of completion the client does not permit the PCA to issue the Occupation Certificate; or
 - e) proposed/building works have commenced without a Construction Certificate/Complying Development Certificate being issued; or
 - f) the client has or becomes;
 - i) liquidated
 - ii) an Official Manager, Receiver, Administrator or Provisional Liquidator appointed
 - iii) a mortgagee take possession of any part of its property
 - iv) insolvent or bankrupt
 - v) an execution levied against it
 - vi) an attempt or intention to make a composition or scheme of arrangement with creditors
 - vii) a winding up order made against it
- 2.2 If the agreement is terminated the PCA must send a Notice of Termination to the client stating any breach of agreement.
- 2.3 Termination of the agreement is effective immediately when the client receives the Notice of Termination.
- 2.4 The PCA is entitled to any money owed including Termination Money if the agreement is terminated. The Termination Money must be paid within 14 days of the Notice of Termination unless the client disputes the Notice of Termination.
- 2.5 The PCA is entitled to carry out a final inspection prior to termination at the client's cost if the PCA terminates the agreement.
- 2.6 The client must indemnify the PCA for any liabilities as from the final date of inspection that are a result of the need to terminate this agreement and any matter of non-compliance with the Act on the part of the Client or an other contractor.

3. DISPUTE RESOLUTION:

- 3.1 All is resolved by mediation a written agreement must be signed by both parties and the mediator.
- 3.2 If disputes to do with this agreement must be referred to mediation.
- 3.3 Notice of the dispute must be given to the other party.
- 3.4 Both parties must attend the mediation at a mutually convenient time and place.
- 3.5 If the dispute mediation fails, either party may begin court proceedings in a court of competent jurisdiction.
- 3.6 The parties will pay 50% each of the mediator's fee.

4. MISCELLANEOUS:

- 4.1 If for any reason an Occupation Certificate is not issued the PCA's responsibilities under the agreement cease forthwith. Any liabilities that are 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 of the act that caused the termination of the agreement.
- 4.2 If an Occupation Certificate is not issued within six (6) months from the date of this agreement the client agrees to pay any monies payable for the Transfer of the PCA Agreement to the Building Professionals Board or any other relevant accreditation body.
- 4.3 The client agrees to pay any fines associated with the proposed works that become payable for the duration of this agreement.

SIGNED BY:

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Signature of Owner/s

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Date

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Signature of Certifier

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Date