

Certification Appointment and Service Agreement

Hills Certifiers is a business initiative of *The Hills Shire Council* that provides efficient, quality and cost effective building inspection, approval and certification services to its clients.

Hills Certifiers comprise industry accredited, professional building surveyors, who will provide expert advice and guidance in relation to compliance with relevant statutory requirements and building/construction works generally.

TERMS and CONDITIONS

This Appointment and Service Agreement (the Agreement) forms part of the contract for certification work in accordance with Section 31 of the Building and Development Certifiers Act 2018 and applies where a person having the benefit of a consent elects to appoint (the appointer(s)) *Hills Certifiers* to issue a Construction Certificate or Complying Development Certificate and/or act as the Principal Certifier (PC) in accordance with the *Environmental Planning & Assessment Act 1979*.

The functions under the *Environmental Planning & Assessment Act 1979*, which are to be carried out as part of this Agreement, relate to the nominated Development Consent, Construction Certificate or Complying Development Certificate, as issued by *The Hills Shire Council* and *Hills Certifiers*, including all endorsed and referenced plans and documentation.

The Agreement also encompasses any subsequent modifications to the abovementioned approvals, subject to payment of applicable fees and charges, and unless otherwise advised in writing.

The person having the benefit of a Development Consent for development involving building work or a Complying Development Certificate, for development involving building work, must appoint a PC, however, the appointment of a PC may not be made by any person, contractor or the like who will carry out the building work (e.g. builder or sub-contractor) unless that person is also the owner of the land on which the work is to be carried out.

1. Errors and Omissions

- 1.1. *The Hills Shire Council* and *Hills Certifiers* do not accept responsibility for any damages, loss or delay suffered by the appointer(s) or any other related party arising as a result of any omission or error contained within the agreement or any failure of the appointer(s) to comply with all terms and conditions of the agreement.
- 1.2. In the event of any negligent act or omission by the appointer(s), *The Hills Shire Council* and *Hills Certifiers* shall be indemnified against and released from all liability, damages, compensation, actions, claims, disputes and suites of any kind which may arise before,

during or after the period of the agreement in relation to the appointment of *Hills Certifiers*.

2. Scope

- 2.1. The scope of works covered by the Agreement is limited to building works described in the Construction Certificate or Complying Development Certificate.

3. Who May Carry Out Certification Work

- 3.1 The details, including name and registration number of the officers employed by *The Hills Shire Council*, any of whom may carry out certification work and inspections under this Agreement, can be found on the NSW Fair Trading's website [click here](#), or as listed from time to time on *Hills Certifiers'* website www.hillscertifiers.com.au.

4. Appointment

- 4.1. All information provided by the appointer(s) shall be taken to be accurate and correct. *The Hills Shire Council* and *Hills Certifiers* shall not accept any responsibility for any intentional or unintentional error or omission made by the appointer(s).
- 4.2. The appointer(s) confirms or verifies that no building works, the subject of a relevant Development Consent for development, Construction Certificate or Complying Development Certificate, have commenced prior to the appointment of *Hills Certifiers* under this Agreement.
- 4.3. Where building works have commenced prior to the appointment of *Hills Certifiers*, the appointment shall be deemed invalid.
- 4.4. The appointer(s) shall keep the PC informed of any changes to the details of the Principal Contractor (builder) and any relevant insurance required by the builder. Failure to meet this obligation shall result in the appointer(s) indemnifying *The Hills Shire Council* and *Hills Certifiers* against any losses suffered as a result of noncompliance with any legislative requirements.
- 4.5. The appointer(s) are responsible for ensuring that a copy of the Home Building Compensation Fund Certificate of Insurance or Owner Builder Permit is submitted to the PC prior to the commencement of building works, where required by the Home Building Act 1989. The commencement of the appointment as PC will not occur until this requirement has been met.
- 4.6. *The Hills Shire Council* and *Hills Certifiers* shall not accept responsibility for any damages or costs associated with the PC's inability to issue an Occupation Certificate due to, but not limited to, the following:-

- Noncompliance with a condition of the Development Consent or Complying Development Certificate,
- Unsatisfactory final inspection,
- Noncompliance with BASIX commitments,

- Missed mandatory critical stage inspection, or other inspection,
- Noncompliance with Development Consent, Construction Certificate and Complying Development Certificate endorsed plans or documentation, and/or
- Failure to pay the required fees.

5. Structural Engineering and Other Specialist Details

- 5.1. Any structural or other specialist engineering details relating to the building work shall be forwarded to the PC prior to commencement of building works. Such details are to confirm compliance with the relevant provisions of the Building Code of Australia and/or Australian Standards, to the satisfaction of the PC.

6. Inspections

- 6.1. The appointer(s) acknowledges that certain mandatory critical stage inspections, and other inspections of the building works, are required to be carried out by the PC.
- 6.2. *Hills Certifiers*, where appointed as PC shall notify the appointer(s) of any mandatory critical stage inspection requirements, and any other inspection requirements, in accordance with of the *Environmental Planning and Assessment Act 1979*. The mandatory critical stage inspection requirements, and other inspection requirements, will generally be listed in the Next Step document provided with the Construction Certificate or Complying Development Certificate.
- 6.3. The PC will undertake inspections of the relevant building works during construction, and prior to the issue of an Occupation Certificate, so to ascertain and confirm compliance with the Development Consent, Construction Certificate, Complying Development Certificate, Building Code of Australia and/or other relevant or applicable standards for construction.
- 6.4. The appointer(s) authorise right of entry to the property, and any building works the subject of Development Consent and a Construction Certificate or Complying Development Certificate, by any certifying authority, registered certifier or other person, arranged by or employed by *The Hills Shire Council* or *Hills Certifiers* to carry out any mandatory critical stage inspections, or other inspections, as deemed necessary or required by the PC.
- 6.5. The appointer(s) acknowledges that it is the Principal Contractor (builder) or Owner Builder's responsibility pursuant to the *Environmental Planning & Assessment Regulations 2000* to make suitable arrangements with the PC to carry out any mandatory critical stage inspection, by calling *The Hills Shire Council/Hills Certifiers* on 9843 0431 in accordance with the Next Step document provided with the Construction Certificate or Complying Development Certificate.

- 6.6. The appointer(s) acknowledges and accepts that building works must not and cannot proceed to any subsequent stage of construction prior to obtaining a satisfactory inspection result from the PC for each relevant stage of construction.
- 6.7. The PC will provide confirmation of the outcome of any mandatory critical stage inspection, or other inspection, as soon as practical after the inspection has been completed.
- 6.8. The appointer(s) acknowledges and accepts that a failure to request the PC to carry out a mandatory critical stage or other inspection may prejudice and possibly prevent the issue of an Occupation Certificate in respect of the building.

7. Third Party Certification of Works

- 7.1. To ensure compliance with the Development Consent, Construction Certificate, Complying Development Certificate and/or Building Code of Australia, the appointer(s) acknowledges that the Principal Contractor/Owner Builder may be required to submit third party certification from a suitably qualified person in a specific field (e.g. structural engineer) to the PC demonstrating a specific matter or element of the building works complies with any relevant standard. The PC will advise when this is required by inspection result or written documentation. Such certification is required to be prepared by a suitably qualified/experienced person and must reference the relevant provisions of the Building Code of Australia, Australian Standards and Development Consent, Construction Certificate or Complying Development Certificate endorsed plans and documentation.

This certification is in addition to any mandatory critical stage inspection, or other inspection requirements required to be carried out by the PC.

8. Missed Inspections

- 8.1. Where a mandatory critical stage inspection, or other inspection, has been missed, the Principal Contractor/Owner Builder must, within two (2) days of becoming aware that the inspection has been missed, advise the PC in writing as to the circumstances causing the inspection to be missed and must supply to the PC, all or any documentation requested by the PC concerning the unavoidably missed inspection.

9. Occupation Certificate

- 9.1. An Occupation Certificate can only be issued by the PC.
- 9.2. The appointer(s) acknowledges and accepts that the occupation or use of the whole or any part of a new building, or change of an existing use/classification, must not occur unless an Occupation Certificate has been issued in relation to the building or part.
- 9.3. The appointer(s) acknowledges and accepts that the *Environmental Planning & Assessment Act 1979*

contains penalty provisions for use or occupation of a building absent a validly issued Occupation Certificate. The appointer(s) acknowledges and accepts that liability for occupation or use of the whole or any part of a new building, or change of an existing use/classification, rests with the appointer(s).

- 9.4. Where legislation permits, and the appointer(s) wishes to use or occupy a completed part of a building, an application may be made to the PC for an Occupation Certificate. Applications will be considered in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, the Development Consent, Construction Certificate or Complying Development Certificate, Building Code of Australia and relevant Australian Standards.

- 9.5. *Hills Certifiers'* Occupation Certificate fees include or provide for the consideration and issue of one Occupation Certificate only. In circumstances where legislation permits, and the appointer(s) applies for or is issued an Occupation Certificate for a completed part of a building, an additional fee will be payable for the Final Occupation Certificate. Inspections required to determine the Occupation Certificate may attract an additional fee.

It is a requirement of the EP&A Act 1979 that a final Occupation Certificate must be obtained within five (5) years of the issue of an Occupation Certificate for a completed part of a building.

- 9.6. The appointer(s) acknowledges and accepts that works that are not consistent with, or are carried out not in accordance with the relevant Development Consent, Construction Certificate, Complying Development Certificate, or the Building Code of Australia, may result in the PC refusing to issue an Occupation Certificate.

10. Service Fees

- 10.1. All fees and charges mentioned in this Agreement are based on *The Hills Shire Council's* current Schedule of Fees and Charges published on its website.
- 10.2. The fees for inspection and certification services are as quoted by *Hills Certifiers* and are payable upon appointment and on lodgement of any Construction Certificate or Complying Development Certificate. All fees are inclusive of GST.
- 10.3. The fees quoted provide for the PC to carry out one (1) inspection in relation to each inspection listed in the Next Step document provided with the approval.
- 10.4. Additional inspections required due to staging of building works or variations in the construction sequence may attract an additional fee.
- 10.5. Reinspections of works arising as a result of incomplete or unsatisfactory mandatory critical stage inspections, or other inspections, may attract an additional fee.

- 10.6. Where the appointer(s), the Principal Contractor or the Owner Builder, requests site meetings or site inspections, in addition to any mandatory critical stage inspection requirement, or other inspection requirement, *The Hills Shire Council* and *Hills Certifiers* reserves its right to impose or require the payment of an additional fee.

- 10.7. Where the PC becomes or is made aware of a matter that requires investigation or site visits not elsewhere dealt with by this Agreement, *The Hills Shire Council* and *Hills Certifiers* reserves its right to impose or require the payment of an additional fee.

- 10.8. The appointor(s) agree that all fees and costs that *The Hills Shire Council* and *Hills Certifiers* incur directly or indirectly by providing/receiving reports, submitting documentation, inspections, or the like, with external parties such as Rural Fire Service, Fire & Rescue NSW, will be paid to *The Hills Shire Council* and *Hills Certifiers* in accordance with this Service Agreement.

- 10.9. Where additional fees occur, payment is ordinarily required prior to provision of the service. Where the service is completed prior to payment, an invoice will be issued within twenty one (21) days after the completion of that work.

- 10.10. In circumstances where *The Hills Shire Council* and *Hills Certifiers* is appointed under this Agreement, and the requisite fee payment is not honoured, the appointer(s) acknowledges and accepts liability for all or any unpaid fees and any associated debt recovery costs plus interest incurred from the time of the appointment.

- 10.11. The appointer(s) acknowledges and accepts that *The Hills Shire Council* and *Hills Certifiers*, may suspend its services where fees have not been paid.

11. Work Health and Safety

- 11.1 Work Health and Safety legislation imposes a duty to ensure the health and safety of all persons on a construction site (a workplace). The statutory obligation extends to the appointor(s)/principal contractor/owner builder and person(s) conducting a business, on a construction site under this Agreement. *The Hills Shire Council* and *Hills Certifiers* requires, as part of this Agreement, that the appointor(s)/principal contractor/owner builder and/or person conducting a business, undertakes to take all steps reasonably practicable to ensure the health and safety of any certifying authority, registered certifier or other person, employed by or contracted to *The Hills Shire Council* or *Hills Certifiers*, whilst that person is carrying out work on a construction site.

- 11.2 The appointor(s) acknowledges and accepts that *The Hills Shire Council* or *Hills Certifiers* may suspend services where it believes that the health and safety of any certifying authority, registered certifier or other

person employed by or contracted to *The Hills Shire Council* or *Hills Certifiers* is at risk.

11.3 The appointor(s) acknowledges and accepts all liabilities that arise as a result of any duty imposed to ensure the health and safety of any certifying authority, registered certifier or other person, employed by or contracted to *The Hills Shire Council* or *Hills Certifiers*, whilst that person is carrying out work on a construction site.

12. Miscellaneous

12.1. The appointer(s) must notify the PC in writing of any change in the details or address of the Principal Contractor/Owner Builder.

12.2. This agreement and associated fee services shall expire two (2) years after the date of the agreement, whereupon *The Hills Shire Council* and *Hills Certifiers* may cancel the agreement.

12.3. *The Hills Shire Council* and *Hills Certifiers* may terminate this agreement or commence legal proceedings if there is a breach of the terms of this Agreement

12.4. *Hills Certifiers* recommends that the appointer(s) reviews the Development Consent conditions and ascertain whether the Building Contract covers all additional requirements under the Development Consent. It is common that some conditions of consent are not covered under the Building Contract and may be the responsibility of the owner/s to fulfil such conditions prior to obtaining an Occupation Certificate. *Hills Certifiers* recommends that you familiarise yourself with such post-contract requirements and responsibilities.

*** End ***