

Building services certification appointment and service agreement

Overview

MidCoast Council Building Certifiers provides efficient, quality and cost effective building inspection, approval and certification services to its clients. MidCoast Council Building Certifiers are 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 73A of the Building Professionals Act 2005 and applies where a person having the benefit of a consent elects to appoint (the appointer(s)) MidCoast Council to issue a Construction Certificate or Complying Development Certificate and/or act as the Principal Certifier 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 MidCoast Council, 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 Principal Certifier, however, the appointment of a Principal Certifier 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 MidCoast Council 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), MidCoast Council 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 MidCoast Council.

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 of the officers employed by MidCoast Council, any of whom may carry out certification work and inspections under this Agreement, can be found on the Building Professionals Board's website www.bpb.nsw.gov.au

4. Appointment

- 4.1 All information provided by the appointer(s) shall be taken to be accurate and correct. MidCoast Council 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 MidCoast Council under this Agreement.
- 4.3 Where building works have commenced prior to the appointment of MidCoast Council, the appointment shall be deemed invalid.
- 4.4 The appointer(s) shall keep the Principal Certifier 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 MidCoast Council against any losses suffered as a result of non-compliance 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 Principal Certifier prior to the commencement of building works, where required by the Home Building Act 1989. The commencement of the appointment as Principal Certifier will not occur until this requirement has been met.
- 4.6 MidCoast Council shall not accept responsibility for any damages or costs associated with the Private Certifier's inability to issue an Occupation Certificate due to, but not limited to, the following:-
- Non-compliance with a condition of the Development Consent or Complying Development Certificate,
 - Unsatisfactory final inspection,
 - Non-compliance with BASIX commitments,
 - Missed mandatory critical stage inspection, or other inspection,
 - Non-compliance 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 Principal Certifier 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 Principal Certifier.

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 Principal Certifier.
- 6.2 MidCoast Council, where appointed as Principal Certifier shall notify the appointer(s) of any mandatory critical stage inspection requirements, and any other inspection requirements, in accordance with [section 6.5 of the Environmental Planning and Assessment Act 1979](#), and [162A of the Environmental Planning and Assessment Regulation 2000](#). The mandatory critical stage inspection requirements, and other inspection requirements, will generally be listed in the Confirmation of Appointment document provided with the Construction Certificate or Complying Development Certificate.
- 6.3 The Principal Certifier 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, accredited certifier or other person, arranged by or employed by MidCoast Council to carry out any mandatory critical stage inspections, or other inspections, as deemed necessary or required by the Principal Certifier.
- 6.5 The appointer(s) acknowledges that it is the Principal Contractor (builder) or Owner Builder's responsibility pursuant to clause 163 of the Environmental Planning & Assessment Regulations 2000 to make suitable arrangements with the Principal Certifier to carry out any mandatory critical stage inspection, by calling MidCoast Council on 6591 7222.
- 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 Principal Certifier for each relevant stage of construction.
- 6.7 The Principal Certifier 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 Principal Certifier 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 Principal Certifier demonstrating a specific matter or element of the building works complies with any relevant standard.

The Principal Certifier will advise when this is required by inspection result or written documentation. Such certification is required to be prepared by an accredited certifier or other 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 Principal Certifier.

8. Missed Inspections

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

9. Occupation Certificate

- 9.1 An Occupation Certificate can only be issued by the Principal Certifier.
- 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 the appointer(s) wishes to use or occupy an incomplete development or building, an application may be made to the Principal Certifier for a Part Occupation Certificate. Applications for Part Occupation Certificates 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 The appointer(s) acknowledges and accepts that works 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 Principal Certifier refusing to issue an Occupation Certificate.

10. Service Fees

- 10.1 All fees and charges mentioned in this Agreement are based on MidCoast Council's current Schedule of Fees and Charges.
- 10.2 The fees for inspection and certification services are as quoted by MidCoast Council 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 Principal Certifier to carry out one (1) inspection in relation to each inspection.
- 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, MidCoast Council reserves its right to impose or require the payment of an additional fee.
- 10.7 Where the Principal Certifier becomes or is made aware of a matter that requires investigation or site visits not elsewhere dealt with by this Agreement, MidCoast Council 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 MidCoast Council 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 MidCoast Council 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 MidCoast Council 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 MidCoast Council 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. MidCoast Council 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, accredited certifier or other person, employed by or contracted to MidCoast Council, whilst that person is carrying out work on a construction site.
- 11.2 The appointor(s) acknowledges and accepts that MidCoast Council may suspend services where it believes that the health and safety of any certifying authority,

accredited certifier or other person employed by or contracted to MidCoast Council 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, accredited certifier or other person, employed by or contracted to MidCoast Council, whilst that person is carrying out work on a construction site.

12. Miscellaneous

- 12.1 The appointer(s) must notify the Private Certifier in writing of any change in the details or address of the Principal Contractor/Owner Builder.
- 12.2 MidCoast Council may terminate this agreement or commence legal proceedings if there is a breach of the terms of this Agreement
- 12.3 MidCoast Council 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. MidCoast Council recommends that you familiarise yourself with such post-contract requirements and responsibilities.