



David Whitwell

Building Certification & BCA Assessor

0467 347 218 2/20 Tompson Street PO Box 537, Wagga Wagga NSW 2650
david@davidwhitwell.com.au davidwhitwell.com.au

Office use only:

Date received:

Application No:

Certificates and Notices Sought – please indicate.

☐ Construction Certificate, or

☐ Complying Development Certificate (SEPP);

SEPP relied upon for CDC Application: (Detail) _____

☐ and Appointment as Principal Certifier (Inspections)

Details – Applicant (cannot be the builder)

Full Name/s:
(Print)

Signature/s:

Date:

Business Name (if applicable):

Applicants Address

Unit:

Street N:

Street:

Suburb:

Postcode:

Contact Details

Mobile:

Home phone:

Email:

Development Site Details

Unit/Street No:

Street:

Suburb:

Postcode:

Legal Description – please complete.

Lot

Section

Deposited Plan

Note: Signatures of the Owners are required on pages 2, 7 and 13.

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PROFESSIONAL STANDARDS LEGISLATION



Member
Australian Institute of Building Surveyors
Professional Standards Scheme

Development Details.

Description of Development

Value of Works

(must be similar to value detailed on the HOW & LSL Receipt/s): \$

Construction Certificate Applications Only: (Please complete)

Has a Development Consent been issued	Yes	No	Date of Consent and reference.
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(Please provide copy if Development Consent & Approved Plans)

Development Consent Description of Works:

Complying Development Certificate Only: (Please complete)

SEPP (specify)

SEPP design and numerical requirements assessed by Applicant prior to lodgment Yes No

Principal Contractor Details.

Name:

Address:

Phone No:

License No:

Note: Please provide a copy of the Home Owners Warranty Insurance with your Application. Value of the HOW should mirror the cost of construction and that noted on the Long Service Levy Receipt.

Owners Details

As the owners of the above property:

- I/we consent to this application;
- I/we authorise the appointment of David Whitwell Building Certification as the Principal Certifier (PC) for the required inspections to be completed;
- I/we consent to the Principal Certifier to enter the subject property at any reasonable time for the purposes of carrying out an inspection in connection with the assessment of this application;
- I/we confirm that the building works have not commenced. I/we understand that building works are to commence in not less than two business days from the date of appointment of the PC and Notice of Commencement being issued;
- I/we execute and agree to David Whitwell Building Certification contract for certification work terms and conditions.

Note: All property owners are required to sign below.

Signed by Owner/s

Date:

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Materials to be used please mark the relevant parts:

Walls	Roof	Floor	Frame
11 Double brick	10 Tiles	20 Concrete/slate	40 Timber
11 Brick veneer	20 Concrete/slate	40 Timber	60 Steel
20 Concrete/stone	30 Fibre cement	80 Other	70 Aluminium
30 Fibre cement	60 Steel	90 Not specified	80 Other
40 Timber	70 Aluminium		90 Not specified
50 Curtain glass	80 Other		
60 Steel	90 Not specified		
70 Aluminium			
80 Other			
90 Not specified			

Particulars of the proposal – Please complete

All new buildings and alterations and additions

How many storeys will the building have?	
Gross floor area of the existing building (m ²)	
Gross floor area of the new building (m ²)	
Gross site area (m ²)	

Residential buildings only

What are the current uses of all parts of the building/land (if vacant site)	
Number of existing dwellings on the property	
Number of dwellings to be demolished	
Number of new dwellings proposed	
Will the new building be attached to the existing building? Yes/No	
Does the site contain a dual occupancy? Yes/No	



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Office use

Date received:

Application No:

Notice of Commencement of Building or Subdivision Work and Appointment of PC

Subject Land

Street No		Street Name		
Suburb			Postcode	
Lot/Deposited Plan			Local Government Council	

Proposed Work

Description	
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Development Consent (CC Application only)

Reference No.		Approval Date	
---------------	--	---------------	--

Complying Development Certificate (CDC Application only)

Reference No.		Approval Date	
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Statement of Compliance

☐ Have all the conditions that must be addressed Prior to the Commencement of Works been satisfied (please tick)

Date work is to commence (2 business days notice is required prior to work commencing on site)

Date:	
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Principal Contractor

Name:		Licence No.	
Address		Phone No:	

A copy of the Home Owners Warranty Insurance has been supplied to the PC as required by the Home Building Act 1989

PC Consent

I **David Whitwell** Building Certifier BDC No. 3007 of Suite 2, 20 Tompson St Wagga Wagga agree to the appointment to PC for the above project

Signature		Date:	
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Owners Consent

As the Owners of the land specified on this form, I/we hereby consent:
to this application; to the PC to enter the subject land at any reasonable time for the purpose of carrying out an inspection with the assessment of the application; that building works have not commenced; understand that works have not commenced less than 2 business days from the date of appointment of the PC and Notice of Commencement being issued; have sighted and agreed to the terms and conditions as set out in the PC Terms (attached).

As the Owners of the land specified on this form, I/we hereby consent:
that the plans and supporting documentation presented for an Application for a Construction Certificate has remained unaltered from that issued with the relevant development consent approval, or, that any changes subsequently made that DWBC have been notified accordingly in writing specifically detailing each change.

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PC Service Agreement/Contract Conditions

1. General Terms and Conditions	
a.	The Owner agrees to the Attachment B General Terms and Conditions as detailed in the relevant Fee Proposal..
2. Principal Certifier (PC) Obligations	
	Issuing of a Construction Certificate/Complying Development Certificate. The PCA shall issue a CC/CDC:
a.	Once the Owner pays the PC any monies owed for work associated with the issuing of the CC/CDC as set out in the DWBC Fee Proposal and Invoice attached to same;
b.	Once the design of the building/s comply with the development consent and any associated conditions including the payment of monetary contributions required; and
c.	Once the design complies with the Building Code of Australia;
d.	Once the design complies with the requirements of the relevant SEPP provision (for CDC only)
e.	The PC does not accept responsibility for any damages or costs related to the inability to issue Certification due to (but not limited to) the following factors: inability to comply with the development consent, BCA or legislation; noncompliance with development consent condition/s; unsatisfactory final inspection; missed critical stage inspections; non-compliance with approved building plans or failure to pay required inspection and/or Occupation Certificate fees.
f.	DWBC accepts no liability for those aspects that are the responsibility of other parties. Certification and information from consultants, contractors and third-parties is reviewed, but is expected to have been issued correctly and with appropriate competence from that third party. DWBC accepts no liability for engineering design, plans or related information.
g.	An Application made to DWBC appoints a licensed builder and does not involve or include any portion being an Owner Builder development.
3. Inspections	
	The PC agrees to carry out mandatory critical stage inspections during the course of construction of the proposed building work (where applicable) as follows:
a.	In accordance with clause 61 of the EP&A (Development Certification and Fire Safety) Regulation 2021 Critical stage inspections are for Class 1 and 10 <ul style="list-style-type: none"> (a) After excavation, and prior to the placement of any footings, (b) Prior to the pouring of any in situ reinforced concrete building elements, (c) Prior to covering any of the framework for any floor, wall, roof or other building element, (d) Prior to covering of any waterproofing in any wet areas, (e) Prior to covering any stormwater drainage connections, (f) After the building works have been completed and prior to any occupation certificate being issued in relation to the building OR as separately detailed in clause 61 of the EP&A (Development Certification and Fire Safety) Regulations 2021 for Class 2-9 Buildings.
h.	Any other inspections as considered necessary in addition to those nominated which may be required from time to time to enable the issuing of a Final Occupation Certificate.
I	Inspections are limited to a visual inspection only, with no testing or destructive inspections/testing undertaken
J	Structural Certification is not included as part of the DWBC's PCs inspections. Structural design of the project must be certified by the project design engineer. The design engineer will inspect the structural framework during the course of the project and certify compliance for such inspection via an approved inspection report.
K	Australian Standard Compliance and Certification and Local Government Requirements for roads, carparking, entrances and the like are not included as part of the DWBC PC Inspection. This must be certified by the respective professional and approved via an approved inspection report. This is separate from the requirement by DWBC and falls to the Applicant to ensure that this has been done at the required constructions points.
4. Issuing the Occupation Certificate	
	The PC shall issue an occupation certificate for the building works when the PC is satisfied that:
a.	All conditions of the development consent or a CDC have been complied with.
b.	All necessary/required compliance certificates have been supplied from the appropriate installer as is the case.
c.	The building works are suitable for occupation or use in accordance with their building classification under the BCA.
d.	As at the date this agreement is executed, the building does not pose any danger for the occupants in the case of an Interim Occupation Certificate.
e.	A Fire Safety Certificate has been issued (if required).
f.	If the building is occupied before an OC has been granted this can result in an OC being unable to be issued.
5. Insurance	

	The PC shall maintain an insurance policy in accordance with the Building Development Certifiers Act and the associated Regulations and shall be provided a copy of that policy to the Owner upon request.
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6.	Principal Contractor
a.	The principal contractor must provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the Development Consent, Construction Certificate and any Occupation Certificate at the request of the PC;
b.	The principal contractor and the Owners must not allow any occupation of the building to be permitted without first obtaining an Occupation Certificate from the PC;
c.	Before the commencement of any residential building work the principal contractor must provide the PC with Home Warranty Insurance pursuant to the Home Building Act 1989;
d.	The principal contractor must notify the PC of a date and time for the carrying out of each mandatory critical stage inspection, and the PC agree to same, and shall pay the PC the scheduled fee;
e.	The principal contractor must rectify any defects identified by the PC during the course of each inspection to the satisfaction of the PC before the principal contractor carries out any further building work or at such other time as may be agreed to by the PC;
f.	The principal contractor must ensure that a Construction Certificate or Complying Development Certificate and Notice of Commencement has been issued prior to the commencement of any works;
g.	The principal contractor must engage tradespeople with the relevant licences and experience to carry out all aspects of the building works not directly carried out by the principal contractor. No portion may be Owner Builder;
h.	The principal contractor must attend any meetings if required by the PC to do so and advise the Applicants;
i.	The principal contractor must comply with any notices/orders that the PC issues;
j.	The principal contractor must provide Engineering Certification for any missed inspections where structural components were to have been inspected. Statutory Declaration and photographs can not be accepted for inspections which have been missed. Unavoidably missed inspections must provide documentation for the reason why the principal contractor missed the inspection. Miscommunication is not acceptable for the unavoidable inspection.
k.	The principal contractor must provide certification for various components of the works and materials used during the course of construction in the format specified by the PC.
	It is the responsibility of the Principal Contractor/Applicant to advise of each inspection as they progress to that schedule of the build. Within a 30km radius from DWBC Office a minimum of 48 hours notice is required for the above inspections to be completed as set out in Clause 65 of the EP&A (Development Certification and Fire Safety). Outside that area a minimum of 48 hours notice is required and, for all commercial, industrial developments and those expressly detailed in the respective documentations entered into with DWBC a minimum of not less than 72 hours (excluding any weekend/s or Public Holidays) must be provided.
7.	Owner Obligations
a.	The owner agrees to pay all fees and charges at the time of the application, in accordance with any invoice attached to the fee proposal issued.
b.	The owner agrees to pay any unforeseen charges within 14 days of the charge occurring and prior to the PC undertaking the Final Inspection.
c.	The owner must ensure that the subject property is accessible for the PC to carry out the PC's obligation under this agreement.
d.	The owner must not occupy the building until an Occupation Certificate has been issued by the PCA.
e.	The owner agrees to pay any charges that may be incurred due to further inspections, modifications and the like prior to the issue of the Occupation Certificate.
f.	It is the responsibility of the Principal Contractor/Applicant to advise of each inspection as they progress to that schedule of the build. Within a 30km radius from DWBC Office a minimum of 48 hours notice is required for the above inspections to be completed as set out in Clause 65 of the EP&A (Development Certification and Fire Safety). Outside that area a minimum of 48 hours notice is required and, for all commercial, industrial developments and those expressly detailed in the respective documentations entered into with DWBC a minimum of not less than 72 hours (excluding any weekend/s or Public Holidays) must be provided.
g.	The owner agrees to provide all relevant drawings, plans and documentation to which the development is to rely upon and that the details are accurate, true and correct.
h.	The Certificate issued by the PC does not remove the responsibilities of the owner to ensure that all other legal requirements are adhered to. In this regard, matters affected by, but not limited to utilities, the Conveyancing Act 1919, the Roads Act 1993 or the like will remain the owners' obligation. Any cost incurred as a result of a failure to meet these requirements will be the responsibility of the owner.
8.	Termination of Agreement
	This agreement may be terminated if any of the following occurs:
a.	Building works are commenced prior to the issue of a Construction Certificate or Complying Development Certificate and a Notice of Commencement;
b.	The owner or the principal contractor fails to provide Home Warranty Insurance pursuant to the Home Building Act 1989 if the building works are residential building work and is so required;

c.	The Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days from the date of application;
d.	The owner does not permit the accredited certifier issue the Occupation Certificate within 60 days of practical completion.
e.	Failure to call for a Critical Stage Inspection and proceeding without such an inspection being carried out by DWBC may give rise to the Agreement being terminated by DWBC. A Certificate, from a suitably qualified person is to be furnished to the satisfaction of DWBC, confirming the missed portion of work has been completed. This is to be supplied within 24 hours of being notified of the missed inspection.
F	DWBC may inform in writing of intended cessation of acting as the PC in the matter. A period of 30 days will be provided in which an alternative PCA is required to be appointed by the Applicant. During this time no further works should be undertaken which would be classified as a critical stage inspection. Any issues or matters which have been stated by DWBC in writing or otherwise as problematic and the cause of the intended cessation must be rectified or made good.
9. Replacing the PCA	
a.	The appointed PC can only be changed or replaced by another PC with the approval of the NSW Fair Trading or by mutual agreement of the appointed PC and proposed PC.
10. Miscellaneous	
a.	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 PC's responsibilities under the agreement ceases forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Environmental Planning and Assessment Act 1979, the PC will not be held accountable.
Signed by Owner/s Date:	
Signed by David Whitwell Building Certification Date:	



Acceptance of Terms

- Acceptance of the proposal is in accordance with the terms of this fee proposal / contract, unless otherwise agreed in writing, and also specifically agrees that DWBC will be exclusively engaged for the agreed scope of services.
- In the absence of any other formal contract this fee proposal is accepted in conjunction with, and on the basis of the provisions of AS4122 (int) 2010 – General Conditions of Engagement of Consultants, varied as required by the statutory obligations, including under the provisions of the EP & A Act 1979 and Regulations 2000.
- The agreement is between ‘the client’ being the person with the benefit of the development consent and David Whitwell Building Certification (DWBC)) (formal entity – All 3 W Pty Ltd t/a David Whitwell Building Certification).
- The contract is issued specifically subject to the requirements of Clause 73A “Requirements relating to contracts for certification work” and Clause 19A “Requirements relating to the contract for certification works” of *The Building and Development Certifiers Act 2018*. For the purposes of clarity, the contract relates to:
 - a. The development as described in this fee proposal / contract, the approved Development Consent & Construction Certificate Application lodged by the client to DWBC.
 - b. The address and formal particulars of the title, of the site of the development as described in this fee proposal / contract, the approved Development Consent & Construction Certificate Application lodged by the client to DWBC.
 - c. The plans, specifications, other documents, development consent &/or any Part 4A Certificate (including the name of the consent authority or certifying authority and dates) - are those described in this fee proposal / contract, the approved Development Consent & Construction Certificate Application lodged by the client to DWBC.
 - d. The contract must be signed or appropriately executed by the parties to the contract.
- The PC does not accept responsibility for any damages or costs related to the inability to issue Certification due to (but not limited to) the following factors: inability to comply with the development consent, BCA or legislation; noncompliance with development consent condition/s; unsatisfactory final inspection; missed critical stage inspections; non-compliance with approved building plans or failure to pay required inspection and/or Occupation Certificate fees.
- DWBC accepts no liability for those aspects that are the responsibility of other parties. Certification and information from consultants, contractors and third-parties is reviewed, but is expected to have been issued correctly and with appropriate competence.
- DWBC’s inspections are limited to a visual inspection only, with no testing or destructive inspections/testing undertaken.
- Structural Certification may not be included as part of the DWBC’s PC’s inspections. Structural design of the project must be certified by the project design engineer. The design engineer will inspect the structural framework during the course of the project and certify compliance for such inspection via an approved inspection report.
- Australian Standard Compliance and Certification and Local Government Requirements for roads, carparking , entrances and the like may not be included as part of the DWBC PC Inspection. This must be certified by the respective professional and approved via an approved inspection report.
- DWBC may inform in writing of intended cessation of acting as the PC in the matter. A period of 30 days will be provided in which an alternative PC is required to be appointed by the Applicant. During this time no further works should be undertaken which would be classified as a critical stage inspection. Any issues or matters which have been stated by DWBC in writing or otherwise as problematic and the cause of the intended cessation must be rectified or made good.
- Certifier's intellectual property:
 - a. Subject to the Client complying with its obligations under the Agreement, the Certifier grants to the Client a non-exclusive, royalty-free, revocable license to use the intellectual property in any document which the Certifier gives to the Client (that was prepared by the Certifier created solely for the benefit of, or solely and specifically in relation to, the Services) for the purpose of completing the Project.
 - b. Ownership of the intellectual property rights in the documents referenced under clause 11 vests in the Certifier.

Payments

- The Client must pay the Certifier the Contract Sum within 2 Business Days of entry into this Agreement and in any event, prior to the Certifier commencing the Services.
- The Certifier must issue a valid tax invoice to the Client in respect of the Contract Sum.
- The Certifier reserves the right to withhold the issue of any certificates until such time as all outstanding invoices have been paid in full.
- The Certifier reserves the right to keep all monies paid where a Construction Certificate Approval is unable to be granted 90 days after the Application has been lodged through the NSW Planning Portal.
- The Certifier reserves the right to keep all monies paid where a Construction Certificate Approval has been issued via the NSW Planning Portal but no works have commenced within 12 months of the date of that Approval or where an Occupation Approval has not been granted within 24 months of the date of the Construction Certificate.
- The Client acknowledges that payment of the Contract Sum does not guarantee or imply that any certification will be issued by the Certifier; rather the Certifier can only provide certifications to the extent the conditions for certification are satisfied.
- Any contractual relationship between the Client and their Builder in relation to payments is between the parties and is separate to this Agreement with the Client.

Client/Developer/Builder Obligations + Expectations

- All information supplied by the Client on DWBC's Application Forms, and its supporting plans and document is expected to be accurate and correct. Intentional or unintentional errors, anomalies or omissions by the client, or any other third party, on Construction Certificate/Occupation Certificate applications are the responsibility of the client and DWBC can not be held accountable for such errors. All such errors, anomalies or omissions are to be rectified by the Client at their cost in an expeditious manner. The Client:
 - i. acknowledges that the Certifier, in performing the Services, is relying upon the Client Deliverables being Accurate;
 - ii. warrants to the Certifier that the Client Deliverables are Accurate;
 - iii. has No Claim against the Certifier (or any employee of the Certifier), in relation to or connection with any risks, Losses and delays suffered or incurred by the Client as a result of the Client Deliverables not being Accurate, including where that inaccuracy results in some defect or non-compliance in the Services;
 - iv. accepts all risks, Losses and delays associated with any Ambiguity in relation to the Client Deliverables.
- In the event of any Ambiguity in or between the documents forming part of the Agreement or comprised in the Client Deliverables:
 - i. the order of precedence set out in the definition of "Agreement" will apply;
 - ii. otherwise, the Certifier may resolve the Ambiguity in whichever way the Certifier considers appropriate in its absolute discretion, and notify the Client accordingly, in which case:
 - to the maximum extent permitted at law, the Client will have No Claim in relation to the resolution of the ambiguity referred to in subclause (b) above; and
 - the Certifier will be entitled to a deemed Variation to the extent that the resolution of the Ambiguity results in any increase, decrease, amendment, or modification to the Services which the Contractor did not anticipate as at the date of this Agreement.
- Client's intellectual property:
 - i. The Client grants the Certifier an unrestricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Certifier to perform the Services.
 - ii. The Client warrants that all information contained in the Client Deliverables is Accurate will not infringe any intellectual property rights of any person. The Client indemnifies and holds harmless the Certifier against any Loss arising from a breach of the warranty.
- b. Each party agrees:
 - i. to keep the other party's confidential information confidential; and
 - ii. to not disparage the other party.
- All Application made to DWBC appoints a licensed builder and does not involve or include any portion being an Owner Builder development.

- The Client/Applicant is responsible for payment of all fees and charges issued or required to be issued by any third party, such as Council, which relates to the development.
- The Client / Applicant is to appoint one person as the point of contact for the duration of the project. All emails, telephone calls and the like are to be filtered through the appointed person for the Client / Applicant. The Client/Applicant must liaise directly with their appointed person.
- The Client / Applicant or their appointed person/ Builder must advise DWBC of critical stage inspections at least 48 hours before they are required (or the client must ensure the builder advises DWBC of such inspections).
- The client must at its own cost
 - i. give the Certifier safe access to the Site as and when the Certifier requires, to enable the Certifier to perform the Services (and notify the Certifier of any changes to that access); and
 - ii. provide the Client Deliverables to the Certifier;
 - iii. coordinating other contractors or persons involved in the Project so as not to impede the Certifier's performance of the Services;
 - iv. notify the Certifier of anything which the Client is aware of or becomes aware of which could materially affect the Certifier's performance of the Services, including any Authority requirements, any design changes, or any defects in the works the subject of the Services;
 - v. comply with all of the Client's obligations under the WHS Legislation;
 - vi. notify the Certifier if the Client anticipates that there is a material risk of it being the subject of an Insolvency Event, or otherwise being unable to perform this Agreement; and
 - vii. otherwise cooperate with the Certifier and do all other things reasonably necessary so that the Certifier is able to perform the Services.

The Certifier is not liable for any Loss or delay that may result from the Client's failure to comply with this clause.

- Missed Inspections will require payment of the appropriate fee and a 3rd party Compliance Certificate, from a suitably qualified and practising person as well as documentation as to why the inspection was unavoidable missed. Statutory Declarations and photographs are not able to be accepted by DWBC as suitable compliance with the plans and legislative requirements.
- The Client / Applicant must notify DWBC of the details of any proposed Principal Contractor (Builder) as well as any relevant licenses and insurance the Principal Contractor (Builder) requires. The client must also notify DWBC of any changes to the Principal Contractor. If this obligation is not adhered to the Client / Applicant will be required to cover the PC against any losses or suffering as a result of non-compliance with legislative requirements.
- The Client / Applicant is responsible for payment of all and any fees associated with preparation of documents by DWBC or any additional third party resulting in a lodgment of complaint to the NSW Fair Trading, Land and Environment Court, civil court matter or any other investigation or the like.
- Where relevant, prior to the issue of any Construction Certificate, the Client / Applicant must provide the PC with a copy of the Principal Contractors License detail and Home Owners Warranty. Acceptance of the appointment of PC will not occur until this requirement has been satisfied.
- Incomplete / Piecemeal Construction Certificate Applications will not be accepted. All information should be submitted together as one CC Application Package. A maximum of two (2) bulk submissions will be accepted. Further charges apply if this requirement is not met.
- Any proposed changes to design or construction must be disclosed to DWBC for consideration and instruction prior to undertaking those changes. If required an amendment to the Construction Certificate or lodgment of a Development Application or modification to the Development Consent with the relevant Local Government Council must be lodged and approved prior to undertaking the changes as required.
- No works are to commence on site until such time as the Construction Certificate Approval, and documentation as detailed and stamped, have been received by the client/appointed person and the Notice of Commencement has commenced.

Suspension

- The Certifier may suspend the Services for so long as:
 - i. the Certifier considers that there is any risk to health or safety in providing the Services or entering any areas of the Site required to perform the Services (including because any persons on the Site are abusive or threatening);
 - ii. the Client fails to provide any Client Deliverables required by the Certifier;
 - iii. the Client has not paid any amount by the time that it is due;
 - iv. the parties are in dispute in relation to a Variation (and that dispute has not resolved by a final and binding form of dispute resolution).
- The Client indemnifies and holds harmless the Certifier for any additional costs or expenses the Certifier incurs in relation to a suspension under this clause, if the suspension was not caused solely by an act or omission of the Certifier.

Termination

The Certifier may terminate this Agreement if the Client:

- (a) breaches a material term of this Agreement;
 - (b) breaches a term of this Agreement and fails to remedy that breach within a reasonable period of time of the Certifier's notice to so rectify;
 - (c) becomes or is likely to become subject to any Insolvency Event, and fails to provide proof of its ability to comply with all of its future obligations under the Agreement including with respect to payment (which proof shall include a current asset liability statement, profit loss statement and declaration of ability to pay by a current director or other officer), or is unable to pay its debts when they fall due;
 - (d) fails to pay any amount owing by the date due; or
 - (e) ceases to carry on business,
- or if the Certifier:
- (f) is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Applicable Laws; or
 - (g) becomes aware of any conflict of interest, which conflict may prevent the Certifier from complying with relevant laws or regulations if the Certifier continues to perform the Services, irrespective whether such conflict existed before or after entry into this Agreement;
 - (h) gives the Client 30 days notice that the Certifier wishes to terminate for the Certifier's convenience.
- The Client may terminate this Agreement by giving the Certifier written notice to that effect if the Certifier fails to remedy a substantial breach of a material term of this Agreement within 30 days of being requested by notice in writing to do so by the Client.
 - If the Certifier has an entitlement to terminate the agreement it may exercise that right with or without notice, in the Certifier's absolute discretion.
 - If the Client receives a notice from the Certifier that:
 - (i) the Certifier has terminated the Agreement - the Client must as soon as possible: appoint a replacement certifier to take over the certification role comprised in the Services; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement;
 - (j) the Certifier will terminate the Agreement - the Client must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement certifier to take over the certification role comprised in the Services from the date of termination of the Agreement; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement.
 - On termination of this Agreement:
 - (k) any amounts owing to the Certifier in respect of the Services up to and including the date of termination (together with any other amounts which the Certifier would be entitled to, but for the termination, for work performed up to and including the date of termination) become immediately due and owing. There is no refund of fees from those paid to the Certifier.
 - (l) if the termination is effected under clauses (a) – 16.1(h), the Certifier is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit; and
 - (m) Both parties must destroy or return (at the relevant disclosure's request) any confidential information held by the other party.

Force Majeure

- The Services may be totally or partially suspended by the Certifier during any period in which the Certifier may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside the Certifier's reasonable control or where such performance is rendered materially more expensive by such circumstances.
- Circumstances beyond the Certifier's reasonable control include strikes, lockouts or other labour difficulty, inability to obtain any necessary materials or services on usual terms, failure of software, hardware or communication network, or pandemic.
- The Certifier incurs no liability to the Client in respect of such suspension.

Exclusions

This proposal excludes any works not outlined in the "Services Offered" section, but specifically excludes the following:

- Consultant Reporting, including BCA, Detailed Accessibility, Energy Efficiency, Bushfire, Food Premises, Acoustic, Fire Engineering, Alternative Solutions etc which all require the engagement of specialist consultants to provide expert reports. Please contact DWBC who can provide recommended contacts for these services.
- Assistance with any application for Unjustifiable Hardship for Disabled Access.
- The fee does not include ongoing BCA & DDA Consulting Services during construction, including assessment of design changes, shop drawings or otherwise.
- Engineering assessments including structural, mechanical, hydraulic, stormwater, traffic etc. Where relevant to the development, these aspects will require specialist engineers to be engaged. This also includes missed inspections where a 3rd party Certification is required.
- Plumbing Code of Australia and plumbing and related works. Where relevant to the development these aspects will require the relevant water authority or other specialist persons to be engaged.
- Engagement or sub-engagement of any other consultants.
- Assessment or issue of any subdivision certification, or subdivision approval. A separate accredited surveyor must be engaged for these services, if required.
- Payment of any levies, charges, bonds or third party application fees that are required by (including but not limited to) the Development Consent, NSW Fire Brigades or other regulatory bodies.
- Payment of the long service levy to the Long Service Corporation (mandatory payment to the NSW State Government) that may be due for the project.
- Payment of any s.94/94A Contributions, s.64 Contributions or any other contribution or fees that is levied to the project.
- Fees associated to and in association to a referral to the NSW Fair Trading, Land and Environment Court, civil court matter, regulatory authority or any other investigation or the like.
- Fees associated with the NSW Planning Portal lodgment of Applications

Further Information on the Obligations of Certifiers

- An information brochure which is to include information about statutory obligations is accompany this Agreement and has been uploaded to the NSW Planning Portal or separately emailed if the application has not yet been lodged on the Portal.
- Information about the statutory obligations of certifiers can be found on the NSW Fair Trading Website,

Schedule of Inspections

- As PC for the building works the following critical stages inspections are required to be undertaken by David Whitwell Building Certification before the issuing of an occupation certificate for the works.
 - In accordance with clause 61 of the EP&A (Development Certification and Fire Safety) Regulation 2021 Critical stage inspections are for Class 1 and 10
 1. After excavation, and prior to the placement of any footings,
 2. Prior to the pouring of any in situ reinforced concrete building elements,
 3. Prior to covering any of the framework for any floor, wall, roof or other building element,
 4. Prior to covering of any waterproofing in any wet areas,
 5. Prior to covering any stormwater drainage connections,
 6. After the building works have been completed and prior to any occupation certificate being issued in relation to the building
- OR** as separately detailed in clause 61 of the EP&A (Development Certification and Fire Safety) Regulations 2021 for Class 1 and 10, 2-9 Buildings.
- It is the responsibility of the Principal Contractor/Applicant to advise of each inspection as they progress to that schedule of the build.
 - Within a 30km radius from DWBC Office a minimum of 48 hours notice is required for the above inspections to be completed as set out in Clause 65 of the EP&A (Development Certification and Fire Safety). Outside that area a minimum of 48 hours notice is required and, for all commercial, industrial developments and those expressly detailed in the respective documentations entered into with DWBC a minimum of not less than 72 hours (excluding any weekend/s or Public Holidays) must be provided. Bookings can be made by calling/texting 0467 347 218 between the hours of 8.30 am to 5 pm Monday to Friday. It is requested that the approval number is quoted at the time of booking to assist with the booking process.
 - The Inspection Report/s is based on information supplied by the builder or the Applicant in the form of other parties reports, plans, details, certificates or similar. Any changes in the design must be verified with other parties and if appropriate modify the Approval before those works commence.
 - Missed critical stage inspection/s as listed above may lead to an Occupation Certificate unable to be issued. If an inspection is missed, an occupation certificate can only be issued if the inspection was 'unavoidably missed', if the Certifier agrees that it was unavoidably missed and the work is otherwise satisfactory. This decision is made by the principal certifying (PC), based on evidence given by the builder or other party (refer to clause 64 of the EP&A (Development Certification and Fire Safety) Regulation 2021).
 - Inspections as listed above must be carried out by David Whitwell and not any other third party.
 - The Inspection Report/s issued is intended for the express use of the principal contractor and the Applicant of the Application only. The use of these report/s by any other third party is not permitted without the expressed written permission of DWBC. Should site conditions be changed from the day of the inspection as noted in the Inspection Report, then the Report becomes invalid and further inspection will be required by DWBC.

Signed by Owner/s

Date:

**LIABILITY LIMITED BY A SCHEME APPROVED UNDER
PROFESSIONAL STANDARDS LEGISLATION**



Member
Australian Institute of Building Surveyors
Professional Standards Scheme

Generic Checklist for Application

This checklist may vary depending upon the development, approvals and site conditions.

Plans & Documents
Signed and completed form for CC or CDC by all property owners
Signed and date last page of PC Service Agreement (last page)
Sign and complete DWBC fee proposal and invoice paid
Architectural/Designer Plans including floor plan, elevations and section view
Structural Engineer plans signed by a structural engineer
Building Specifications
Basix Certificate (where relevant) & Nathers (If applicable)
Development consent and DA stamped plans as issued by Council (for construction certificate only)
Home Owners Warranty Certificate of Insurance
Proof of Ownership of the land (Rates Notice or letter from Solicitor)
Payment
Fee proposal signed by the owner/s and Invoice paid
7.11 payment receipt issued by Council, s.64 and s.68 receipts and Certificates
Relevant Water Authority headwork charges payment receipt
Long Service Levy payment receipt for works over \$25,000 issued by the Long Service Corporation
Other Certificate
10.7 Certificate issued by the relevant Local Government Council.
Bushfire Attack Level (BAL) Certificate is required for all building works on Bushfire Prone Land from either Council or an accredited Bushfire Assessor confirming the BAL is 29Kw/m ² or below.
Clarification
Any modifications sought to the approved CDC or CC will need to be formally submitted with payment of fees, and approved, prior to the commencement of works to that part. Failure to do so will result in a Building Certificate Application to be submitted to Council for approval. Please discuss any modifications prior to lodgment of an application so as to avoid any delays or applications to Council.
The Construction Certificate or Complying Development Certificate and Notice Of Commencement cannot be issued until such time as all requirements are met, receipts for payments are received and the fee proposal is signed, completed and Invoice from DWBC is paid.
All documents, plans, receipts and the like are to be lodged on the NSW Planning Portal as required by legislation
All CDC or CC Application or modification to same, must be made via the NSW Planning Portal.
Approvals, Notice of Commencement, approved plans, documents and the like are uploaded to the NSW Planning Portal once approved by DWBC. No documents in relation to the Approvals, including the OC, will be forwarded via email. These remain for transmission through the Portal system.
A copy of the Approval and approved documents will be lodged with the relevant Local Government Authority to be held as part of their records for development by DWBC via the Portal system.