



ENGAGEMENT OF A PRIVATE CERTIFIER – BUILDING ACT 1975 (QLD)

<p><u>Part A</u></p> <p>Applicant (person paying the bill): _____</p> <p>Applicant Signature: _____ Date: _____</p> <p>Registered Owner (owner of the property): _____</p> <p>Email Address: _____</p> <p>Postal Address: _____</p> <p>Phone Number: _____</p> <p>Owners Signature: _____ Date: _____</p> <p>Private Certifier ALL CONSTRUCTION APPROVALS Authorised Representative: _____ Date: _____</p> <p>The applicant agrees to engage All Construction Approvals to undertake the Assessment specified in Part C upon the following terms of engagement.</p> <p style="text-align: center;">TERMS OF ENGAGEMENT</p> <p><u>Part B – Nature of Assessment</u></p> <p>Services provided by All Construction Approvals:</p> <p>1. Assess the Application (attached as Annexure 1) for the following “Works”:</p> <p><input checked="" type="checkbox"/> building work:</p> <p>exercising the powers of Assessment Manager under Part 2 Division 2 of the <i>Building Act 1975</i> in respect of the following premises:</p> <p>Address: _____</p> <p>Local Government: _____</p>	<p>2. Provide the Applicant with a Decision Notice (in accordance with the <i>Building Act 1975</i>) containing the outcome of All Construction Approvals’ assessment of the Application.</p> <p>3. If the Application is approved, and subject to the conditions of the resulting Development Approval, All Construction Approvals will:</p> <p>(a) Conduct all necessary assessments to assess whether any work performed pursuant to the Development Approval complies with the following applicable codes:</p> <p style="margin-left: 20px;">i) Standard Building Regulation;</p> <p style="margin-left: 20px;">ii) any “standards and requirements” contained in:</p> <p style="margin-left: 40px;">(A) The Planning Scheme for the Balance of the City of Cairns; or</p> <p style="margin-left: 40px;">(B) The Planning Scheme for Part of the City of Cairns; or</p> <p style="margin-left: 20px;">iii) other :(specify): _____</p> <p>(b) Conduct the following inspections of any Works performed pursuant to the Development Approval:</p> <table style="margin-left: 20px; border: none;"> <tr><td>Footing/Slab</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Bond Beam</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Frame</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Final</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Other</td><td style="text-align: center;"><input type="checkbox"/></td></tr> </table> <p><u>Part C</u></p> <p>1. In addition to the obligations of an Applicant under the <i>Building Act 1975</i>, the applicant agrees to:</p> <p>(a) supply to All Construction Approvals all existing Development Approvals and applications for Development Approvals not yet issued;</p> <p>(b) advise All Construction Approvals if the Applicant or any other person is engaged in any litigation in respect of the subject premises, and if so the nature of the litigation;</p>	Footing/Slab	<input type="checkbox"/>	Bond Beam	<input type="checkbox"/>	Frame	<input type="checkbox"/>	Final	<input type="checkbox"/>	Other	<input type="checkbox"/>	<p>(c) advise All Construction Approvals whether the subject premises is subject to any Show Cause Notice, Enforcement Notice or any other notice (including a Notice under a Local Law) from either the relevant Assessment manager or the State;</p> <p>(d) ensure that access is available to the site by All Construction Approvals;</p> <p>(e) disclose whether the subject premises is:</p> <p style="margin-left: 20px;">i) listed on the Contaminated sites Register of the Environmental Management Register;</p> <p style="margin-left: 20px;">ii) is the subject of an Environmental Management Plan or Program;</p> <p>(f) Disclose whether the development is proposed to be used for or in conjunction with an Environmentally Relevant Activity.</p> <p><u>Part D – Certification Fee</u></p> <p>1. The Assessment specified in Part A will be carried out by All Construction Approvals for the sum of \$ _____ +GST (“the Certification Fee”).</p> <p>2. In addition to the Assessment Fee, any inspections included and in addition to those specified in 3(b), will be charged at a rate of \$ _____ +GST per inspection.</p> <p>3. The Applicant must pay the Certification fee to All Construction Approvals, even if All Construction Approvals does not approve the Application or certify the works because of non-compliance with any applicable codes or other valid reason for refusing approval or certification.</p> <p>4. The fees and charges payable for the Development Application Assessment services are as per schedule listed below and payment must be made withing 5 business days unless otherwise arranged with All Construction Approvals.</p> <p>Additional Fees (if applicable):</p> <table style="width: 100%; border: none;"> <tr><td>• Lodgement fee with local government</td><td style="text-align: right;">\$ _____</td></tr> <tr><td>• Plumbing application</td><td style="text-align: right;">\$ _____</td></tr> <tr><td>• Water application</td><td style="text-align: right;">\$ _____</td></tr> <tr><td>• Siting Variation/Amenity and Aesthetics Assessment</td><td style="text-align: right;">\$ _____</td></tr> <tr><td>• Operational works/Landscaping</td><td style="text-align: right;">\$ _____</td></tr> <tr><td>• TOTAL – Including GST</td><td style="text-align: right;">\$ _____</td></tr> </table>	• Lodgement fee with local government	\$ _____	• Plumbing application	\$ _____	• Water application	\$ _____	• Siting Variation/Amenity and Aesthetics Assessment	\$ _____	• Operational works/Landscaping	\$ _____	• TOTAL – Including GST	\$ _____
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Development Application Assessment Services:

1.1 The Development Application Assessment Services include, as relevant for the project:

- 1.1.1 assessment of a Development Application for the project against the National Construction Code and the Queensland Design Code;
- 1.1.2 inspections required by the project by the act or otherwise before, during construction and at completion;
- 1.1.3 determining a Development Application for the project in accordance with the Building Act 1975.
- 1.1.4 providing regulatory advice on the project;
- 1.1.5 managing a Development Application for the project.

1.2 Development Application Assessment Services exclude:

- 1.2.1 building design or advice for the project beyond Development Application management and regulatory advice;
 - 1.2.2 drafting plans or any other documents required for the application;
 - 1.2.3 matters pertaining to building quality;
 - 1.2.4 any guarantee by the Building Certifier that the project will obtain certification under the Act;
 - 1.2.5 any act or activity deemed by the Building Certifier to be contrary to the requirements of the Act, the *Planning Act 2016* (QLD) or other legislation as relevant to the project.
- 1.3 The Client acknowledges that the Building Certifier is subject to the requirements of the Act and the code of conduct for the building certifiers adopted under the Act. This means the Building Certifier is always obligated by law to act in the public interest and must assess the project on its merits and in strict accordance with the law. As a result, the client understands that the Building Certifier's obligations are to assess the project and comply with the Act, and this means that the Building Certifier cannot guarantee the project will be approved and that the Building Certifier may be required to act against the Client's interests.
- 1.4 The Client acknowledges that the Building Certifier may engage in any other business, occupation or activity during the term of engagement, provided it does not detrimentally affect the performance of the Development Application Services.
- 1.5 If the Client engages another person to provide services substantially the same as the Development Application Assessment Services in respect of the project, then the Building Certifier may terminate this agreement.
- 1.6 The Client acknowledges and agrees that any instructions received by the Building Certifier for the supply of the Development Application Services constitutes acceptance of the terms and conditions contained in this agreement.

2. Delivery of the Development Application Assessment Services

The Building Certifier may subcontract or licence all or part of its obligations under this agreement without prior notice to the client.

3. Fee

- 3.1 The fees and charges payable for the Development Application Assessment Services are as per the schedule in Part D.
- 3.2 The Building Certifier reserves the right to change the fee in the event of a variation to the scope of work for the Development Application Assessment Services. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to the Building Certifier in the cost of materials and labour) will be charged for on the basis of the Building Certifier's fee proposal and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 Payment of an invoice is required within 5 business days of issue unless otherwise arranged with All Construction Approvals.
- 3.4 Payment will be made by cash, cheque, bank cheque, direct deposit, EFTPOS or credit card, or by any other method as agreed to between the Client and the Building Certifier.
- 3.5 Receipt by the Building Certifier of any form of payment other than cash does not constitute payment until the payment has been honoured, cleared or recognised by the Building Certifier.
- 3.6 GST, other taxes, duties, disbursements and applicable government and council fees and charges will be added to the fee other than where they are expressly included in the fee.

4. Intellectual Property and Data

- 4.1 Nothing in this agreement affects the intellectual property rights of either party, except as set out in this clause.
- 4.2 The Client grants the Building Certifier an unrestricted, royalty free licence to use and manipulate all intellectual property rights in any data which the Client provides to the Building Certifier to the extent reasonably necessary for the Building Certifier to perform the Development Application Assessment Services.
- 4.3 The Client warrants that any data provided by it to the Building Certifier will not infringe the Intellectual Property rights of any person. The Client indemnifies the Building Certifier against any direct loss, costs, expenses, demands or liability arising out of a claim by a third party against the Certifier alleging such data infringes any such Intellectual Property rights.

5. Mutual Warranties

Each party represents and warrants to the other that as of the date of this Agreement:

- 5.1 all actions, conditions and things required to be taken, fulfilled and done by it in order to enable it to enter into, exercise its rights and perform its obligations under this agreement have been done; and
- 5.2 all Authorisations required for its entry into, exercise of its rights under and performance of its obligations under this agreement have been obtained.

6. Client Warranties and Obligations

- 6.1 The Client warrants:

- 6.1.1 that any data provided to the Building Certifier is accurate and complete in all respects;
 - 6.1.2 that, in performing the Development Application Assessment Services the Certifier acts with the Client's authority;
 - 6.1.3 that no other person has been appointed to perform the Development Application Assessment Services in relation to the project.
- 6.2 The Client must:
- 6.2.1 provide all information required by the Building Certifier within the time specified by the Building Certifier to enable the Building Certifier to perform the Development Application Assessment Services;
 - 6.2.2 give the Building Certifier such access to the project and any relevant site as it is required by the Building Certifier to perform the Development Application Assessment Services.

7. Termination

- 7.1 This agreement can only be terminated in accordance with section 144 of the Act.
- 7.2 Notwithstanding any other provision of this agreement, the Client must pay the Building Certifier the fee within 5 days of the termination of this agreement, or such part of the fee which is, at that time, unpaid.
- 7.3 Termination of this agreement under this clause does not affect any accrued rights or remedies to either party.

8. Confidential Information

Subject to the Act, each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purpose of and in the manner contemplated by this agreement.

9. Indemnity and Exclusion of Liability

- 9.1 The Client indemnifies the Building Certifier and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Client, a breach by the Client of this agreement, a wilful unlawful or negligent act or omission of the Client, and any claim action or proceeding by a third party against the Building Certifier or its employees, officers and contractors caused or contributed by the Client.
- 9.2 The Client releases and holds harmless the Building Certifier against all claims, demands, expenses, loss or damage arising in connection with the Client's reliance on, or use of, any aspect of the Development Application Assessment Services, including advice, given to the Client by the Building Certifier in a manner which is not contemplated or authorised by the Act or otherwise not in accordance with any exclusions or assumptions given by the Building Certifier.

10. Miscellaneous

This agreement:

- 10.1.1 constitutes the entire agreement between the parties about its subject matter;
- 10.1.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.