

Document last updated December, 2020.

This is a blanked out version of our contract, which is adapted from the standard industry BDAO contract. It is a two way contract to protect the designer and the client equally. In the spirit of full transparency, we offer up this contract in blank form on our website so that potential clients can be sure they will be happy signing this contract in advance. Any help, concerns or comments will be gratefully received, especially if it helps you feel comfortable.

Items shown in GREEN are notes - items in BLACK/RED are the contract

CONTRACT DOCUMENT EXPLANATION

Welcome to East Coast Building Design. It is our sincere wish to make your design and drafting experience as quick and painless as possible. The attached documents will explain clearly what we do, what is included and what is expected from you as the most important stake holder to ensure your projects comes out right.

The contract clearly spells out what happens if we default on our obligations, or if there are changes that fall outside of the original defined scope of works. We cannot rip you off and if we don't do what you ask, then you have the right to demand an immediate remedy, which we promise to carry out diligently.

Please take the time to review our "Five Way Guarantees" downloadable from our website.
<http://eastcoastbuildingdesign.com.au/guarantees/>

Why we have a contract:

It is a legal requirement within Australia to have a written "Contract" or "Agreement" for all building work, including building design work. A verbal or partial agreement can leave you unprotected or with no way to prove your case should your designer inadvertently make a mistake or give you wrong or incomplete advice.

Our Professional Indemnity insurers require us to have an approved contract. The attached "Contract of Engagement" and associated "Schedules" is a combination of the mandatory content from the Building Designers Assoc of Qld standard contract and other information often found in a client's project brief. The contract protects both the Designer and the Client in the event of a failure or problem, and ensures access to Professional Indemnity Insurance where there is a clear breach of the brief or agreement.

PI insurance is essential to protect both the designer & the client. "We are only human!"

What to do with the contract:

1. *Read it through and ask questions if you are not sure.*

We will happily explain it to you if you need help or just want to be sure of what you're signing.

If you need an extra meeting to go through the fine details, we are only too happy to come out.

2. *Fill in any blanks on the first page that are relevant.*

3. *Sign the first page of the contract, scan / photo, and email or sms it back to us.*

By signing the whole contract, you are NOT agreeing to the full scope of works. You still have the ability to vary the scope or opt out, by sending written notification – refer clauses 3.2 and 9.3.

*This contract is a living document, so all feedback will be gratefully received.
Our number one wish is that you are happy and comfortable to move forward.*

Thanking You,



Owen Batchelor
Principal Building Designer.

BUILDING DESIGNERS ASSOCIATION OF QUEENSLAND



CLIENT AND DESIGNER AGREEMENT

ECBDD P/L
Amended
1 April 2017

DETAILS & SCHEDULE 1

THIS AGREEMENT is deemed to be made on the date signed documents are received by the Designer.

BETWEEN:

The "Designer":

Name: ECBDD Pty Ltd T/as
East Coast Building Design & Drafting

Address: 7 Henschman Street
Nundah, Qld, 4012.

ABN: 86 101 135 077

QBCC Lic. No: 1010190

License Class: Building Design – Open Class.

Phone: (07) 3260 7880

Mobile 0408 751 755 (Owen)

AND:

The "Client":

Name:

Address

Mail Address

ABN:

Contact Person

Client Phone

Mobile

Mobile

Email

Email

Referred by

Name of Owner

(If different from client)

Address of owner

Phone no. of owner

Builder's Details (if known):

Name

Address

Phone

The Client is:

(Please check appropriate box/s)

- An owner of a property where the Project will take place
- A nominated representative of the owner of the property or a lessee
- A building contractor
- Other

List of Included Schedules:

- Schedule 1 – General project details
- Schedule 2 – Scope of Works
- Schedule 3 – Fee Proposal
- Schedule 4 – Consultants & Other Info

Optional schedules:

- Schedule 5 – Variations may be required during the period of this contract.
- Schedule 6 – Company Guarantor/s

SCHEDULE 1:

PROJECT DETAILS:

Project Address

Local Govt.

General Description

Project Budget

Name on Plans

SUMMARY OF APPROX. FEES FROM SCHEDULE 3:

Design & Drafting (Sketch / DA stage)	\$
Development Assessment (if req'd)	\$
Consultants (prelim stage)	\$
Design & Drafting (BA stage)	\$
Consultants (BA stage)	\$

(please refer to schedule 3 for full breakdown)

By executing this Agreement the Client and Designer agree to be bound by the Agreement which incorporates the Terms and Conditions (three pages) and all Schedules attached to this Agreement (listed above).

SIGNED by the *Client*:

Print Names

Signature:

Date:

SIGNED by the *Designer*:

Print Name Owen Batchelor for ECBDD Pty Ltd

Signature:

Date: 01 Dec, 2020

**CLIENT TO FILL IN ALL RELEVANT BLANKS ON THIS PAGE
PLEASE SEND BACK THIS PAGE ONLY, SIGNED WHERE INDICATED**



east coast BUILDING DESIGN ENVIRONMENTALLY SUSTAINABLE BUILDING DESIGN
ECBDD Pty Ltd t/as East Coast Building Design & Drafting ABN 86 101 135 077 OBSA LIC NO 1010190
A Level 1/7 Henschman St Nundah Q 4012 P 07 3260 7880 F 07 3260 7887
E info@eastcoastbuildingdesign.com.au W www.eastcoastbuildingdesign.com.au

SCOPE OF WORK

Issue Date.

Name of Client

Project Address

General Description:

General:

Desired Use
Details of Occupants / users
Special Site features
Local climate issues

Client Expectations:

Space requirements
Budget requirements
Building style requirements
Material preferences
Fittings & Fixtures
Access Requirements Yes / No disabled access required
(adaptable housing principals may be reasonably easy to incorporate if required)

Scope of Work:

Design and documentation:

- Provide design guidance, plans and construction drawings for the following client scope of works:
• Full brief yet to be established - the following is the clients wish list:
o Here I insert a reasonable list of the items that will be included in the drawings or design, and if possible, nominate the extent of the detail complexity of these items to ensure that there is a clear understanding of the brief for the project. This helps justify extras later and disputes if there are any during the project.
o Any notes about the brief can be included here as well.
o This section can become the brief if the client has provided enough information about what they want and expect from the completed project, however in most cases, the brief is not set in stone prior to commencement and often is negotiated out through the initial design phases. Whether the prices listed in Schedule 3 can be considered as a FIXED PRICE depends on the detail here and whether the scope changes or creeps.
• These items are not part of the scope of works unless specifically included above:
o Detailed design of Pool, landscaping, retaining, fences etc.
o Wet area elevations and detailing or other interior design works.
o Driveways, paths, fences, gates, etc. (apart from required information)
• Please note that this is not a proper brief, but is a guide established from a meeting or phone conversation.
• As the brief becomes fully known, the parameters of the work may change, and the scope of works may change.
• The fees quoted are based on the premise that the early sketch process will establish the design outcome, and that the outcome will be no more complex than scope of works listed above.
• The design shall conform to planning scheme constraints where reasonable and possible. Any non-compliance shall be discussed with the client during the initial design process, where reasonably known.

Prepare and manage applications:

- Refer to the description under stage two below for planning related advice.
- Refer to stage two for optional town planning services.
- Required application for building work assessable against planning scheme.
- Required boundary setback variation applications assessable against QDC.

- Coordinate Building Approvals, engineers, and associated consultants, where required, including electronic lodgement of documents for building permits. Refer advice section for further clarification on service inclusions.

- Assist client with project requirements, and advise only where appropriate.
- This firm generally does not get involved with full contract administration, project management, and we generally will not get involved with conditions of development approval unless specifically instructed.
- Limited builder introduction and liaison services are available with selected builders in the Brisbane region only.

Property Details



Property details and development history listed below are those that are currently available from Council's property and application management system.

7 HENCHMAN ST, NUNDAH

Details

Property Number: 453227
Lot/DP: 4RP34070
Land Number(s): 10677124
Description: L.4 RP.34070 PAR TOOMBUL
Ward: NORTHGATE

Status

CURRENT

Area

Area: 395 sq.m

Applications

There are no Development Assessment applications against this property

Zoning

QPP-MU2 - MIXED USE (CENTRE FRAME) ZONE

Neighbourhood Plans and Overlays

QPP-SHO - STREETSCAPE HIERARCHY OVERLAY
QPP-TNO - TRANSPORT NOISE CORRIDOR OVERLAY
QPP-TNNP-5 - TOOMBUL-NUNDAH NP - NUNDAH NORTH PRECINCT
QPP-CIO - CRITICAL INFRASTRUCTURE AND MOVEMENT NETWORK (CIMN) OVERLAY
QPP-AEO-PANS - AIRPORT ENVIRONS OVERLAY - PROCEDURES AIR NAV SERVICES-AIRCRAFT OPS SURFACES SUB-CATEGORIES
QPP-CIO-CIM - CRITICAL INFRASTRUCTURE AND MOVEMENT NETWORK (CIMN) OVERLAY - CIMN PLANNING AREA SUB-CATEGORY
QPP-AEO-S8 - AIRPORT ENVIRONS OVERLAY - BBS SUB-CATEGORIES - DISTANCE FROM AIRPORT 3-8KM SUB-CATEGORY
QPP-TAO - TRANSPORT AIR QUALITY CORRIDOR OVERLAY
QPP-AEO-LI - AIRPORT ENVIRONS OVERLAY - LIGHT INTENSITY SUB-CATEGORIES
QPP-TNNP - TOOMBUL-NUNDAH NEIGHBOURHOOD PLAN
QPP-AEO-OLS - AIRPORT ENVIRONS OVERLAY - OBSTACLE LIMITATION SURFACES (OLS) SUB-CATEGORIES
QPP-AEO-OCL - AIRPORT ENVIRONS OVERLAY - CONICAL LIMITATION SURFACE CONTOURS SUB-CATEGORY
QPP-ASSO-P - POTENTIAL AND ACTUAL ACID SULFATE SOILS OVERLAY-POTENTIAL AND ACTUAL ACID SULFATE SOILS SUB-CATEGORY
QPP-ASSO-L2 - POTENTIAL AND ACTUAL ACID SULFATE SOILS OVERLAY - LAND ABOVE 5M AHD AND BELOW 20M AHD SUB-CATEGORY
QPP-RHO - ROAD HIERARCHY OVERLAY
QPP-AEO - AIRPORT ENVIRONS OVERLAY
QPP-IAO - INDUSTRIAL AMENITY OVERLAY
QPP-AEO-BBS - AIRPORT ENVIRONS OVERLAY - BIRD AND BAT STRIKE ZONE SUB-CATEGORIES
QPP-AEO-L6 - AIRPORT ENVIRONS OVERLAY - WITHIN 6KM MAX INTENSITY OF LIGHT SOURCES 3 DEGREES ABOVE HORIZON SUB-CAT
QPP-IAO-A - INDUSTRIAL AMENITY OVERLAY - INDUSTRIAL AMENITY INVESTIGATION AREA SUB-CATEGORY
QPP-TNO-QD2 - TRANSPORT NOISE CORRIDOR OVERLAY - QUEENSLAND DEVELOPMENT CODE MP4.4 NOISE CATEGORY 2 SUB-CATEGORY
QPP-ASSO - POTENTIAL AND ACTUAL ACID SULFATE SOILS OVERLAY

Property details will be added to each proposal as required to suit the project.



Any constraints and problems identified will be described where necessary.

Designer's Comments and advice:

Character

- Not identified in a character area

Bushfire

- Not identified in a character area

Transport noise corridor overlays:

- Not identified in a transport noise corridor
- Does not apply to renovations / additions unless built 2010 or later

Waterway/Flooding/overland flow:

- Not identified in the hazard area

Other Planning Issues:

- The site is included in the "Low Density" residential does not have character controls.

General advice:

- Advice
- Advice
- advice

The comments section is a follow on from advice given during the design consultation phase or telephone interview. This section allows me to pass on my advice on such matters that may influence the design, and feedback on the client's specific requirements.

Sometimes clients have unrealistic expectations of budgets, building outcomes, or just are not aware of council regulations, and there may just be a simpler way of achieving the same outcome with reduced impact. This can be described in this section also.

This section often takes up a whole page, and is quite detailed in the descriptions.

Budget:

- Budgets have not yet been fully discussed and will be revisited as we get into the design process. \$100k will require careful consideration and staging. Before we commence stage 3 of this contract we will discuss what is to be included and vary the project costs to suit with a schedule 5 variation form.
- The designer will at all times endeavour to provide the most cost effective outcome within the defined brief.

Construction Cost Estimate:

- We take our obligation under the Competition and Consumer Act 2010 very seriously, and intend to work with you to provide a product that is "fit for purpose" and meets your expectation of finished product and budget.
- Often we are asked to estimate construction costs before we have drawn anything or to design a building to a specific budget, even though we might not fully understand how you will finish or fit-out the final product.
- For these reasons, the process of estimating the final construction budget can only be done once we have something tangible to estimate from and a good idea of the finished product. Early estimates should be considered possible indications, however, as we develop the design and work with the client, we can start to provide better guarantees of the final cost vs budget allowances.
- We take care to apply "gut-feel" estimates and rough square metre indications as we design, but the only true way to estimate building work is by breaking it down into parts and adding the costs up one by one. This is not part of the scope of works that this firm provides, however, we do pride ourselves on providing cost effect design work.

Budget Guarantee:

- To provide a budget guarantee will in most cases require the engagement of an interior designer, and somebody to accurately cost out the work, such as a builder or project estimator, etc. If a budget guarantee is required, please indicate this as part of the scope of works, and we will ensure that feedback is provided in the appropriate form at an appropriate time to enable proper monitoring.
- It will also be important for the client to provide a detailed description of what the budget will include, so that we can tailor the design outcome to suit the client's expectations.

I don't like disclaimers of this nature, but at the start of the project, we rarely have all of the facts needed to give accurate advice, and sometimes, the design process will need to be undertaken before any of us know what we are estimating the costs for. Very often what the client starts off wanting changes during the design process, meaning that the budget or scope of works needs to change or evolve accordingly.

On the other hand if we have a formal or detailed brief already, we can give relative guarantees to that set of documents, on the premise that they do not change, or that the client contributes to discussions regarding the impact on probable contract value.

REFER TO OUR WEBSITE FOR OUR GUARANTEES, INCLUDING BUDGET GUARANTEE, BRIEF SATISFACTION, SERVICE AND COMMUNICATION GUARANTEE, AS WELL AS INFO ABOUT THE "COMPETITION AND CONSUMER ACT 2010", OBLIGATIONS AND STATUTORY WARRANTY REQUIREMENTS.

Builder's Referrals:

- When we have sketch drawings and know the classification of building, we can help source a suitable builder.
- The builders we work with have been sourced after careful selection and often with multiple projects done.
- Most of my house builders are geared towards quality work, and therefore can be relied upon for a good finish.

We do not generally do contract administration. A simple referral implies that the client will do their own research and make their own informed decision. In general I only refer builders that have a track record on projects for my clients or that come from trusted sources. Or I will be open about the source of the builder that we refer.

Note that builder referral is not to be construed as a warranty that they will perform 100% every time. The owner must do their own research to determine whether these individuals will be suited to their project and personal requirements.

Explanation of Stages referenced in Document:

(For clarity of what is and is not included in the stages generally)

Stage 1: (Preliminary Works)

- Establish client's brief and discuss project accordingly.
- Site investigation and check measure of existing features on and surrounding the site.
- Measure and redraw the existing house in Revit format (as-constructed), where relevant to the project.
- A contour and detail survey is generally required prior to commencement of any drawings being completed. This information will include detailed topography as well as features, services and adjoining property information including locations of buildings and features which might impact or be impacted by the proposed development.
- **A full contour and detail survey will be required for this project prior to finalisation of sketches.**
- **A full identification survey may also be required prior to commencement of construction.**
- *It is very rare we do a job that does not need contours. Small jobs and elevated extensions notwithstanding.*
- We will start the design process with very rough outline sketches. From there we can work back and forth with you to provide a concept design that will suit your expectations and reflect the unique nature of the site, surrounding views and local weather patterns.
- On all projects, the design concepts will be delivered using "Autodesk REVIT" – 3D visualisation software, in varying levels of detail and completion. The initial concepts will be external shells with roof and floor plates shown, then we will progressively fill in the detail with your consultation at every step of the way. An example of these 3D visualisation tools are shown below for your consideration.
- When a reasonable concept is arrived at, you will have received a complete set of plans, external views and multiple 3D orbital and camera type views, which will hopefully show you every facet of the proposed works, such that there will be no surprises later in the process.
- External consultants should be engaged at this point, so the project flows quickly and smoothly.
- Any changes required at this stage will need to be considered against the original brief, and may trigger additional costs, where applicable.
- If budget constraints outweigh other requirements, feedback should be sought from a local builder or estimator at this stage, to ensure that the completed drawings will fit within budget expectations.
- We may also need to discuss the final configuration of any staging that may occur during the construction phase of the works, so that the construction drawings reflect the works to be carried out.

Examples of 3D visualisation tools:

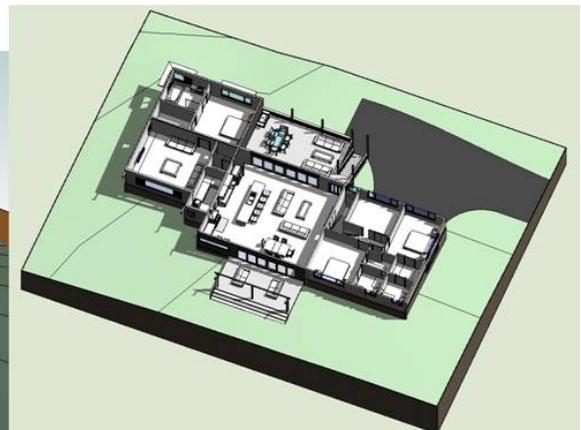
These drawings have been sampled from previous projects, and give you an idea of the benefit that the use of 3D software can bring to the consumer, for visualisation purposes. It is not intended to be a perfect representation, though with enough time (and money), perfect results can be obtained.



Above – finished concept – Bribie Island



Finished concept Warwick



Stage 2: (Development Approvals)

The property is zoned "Low Density Residential", and is not located in a traditional building character area.

In this section, we describe the town planning process, where applicable, and any obstacles we need to overcome.

The level of assessment will be "Self Assessment".

Assessment Requirements:

Basic Application – We will need to prepare full plans and elevations, streetscapes, reports, checklists, etc, to demonstrate how the proposed development will satisfy all the requirements of the various codes and planning policies, and where they don't, how the development will integrate satisfactorily into the neighbourhood. Code assessment applications do not require notification.

Advertising (Code Assessment) – This type of application does not require public notification. There may however be a requirement to approach neighbours for boundary setback relaxations under the Queensland Development Code, if the property is not a small lot.

Risks – Any application that requires planning assessment has an element of insecurity. Council can ask for any number of things to be altered or addressed differently, and often exercise this power. Additional works cannot reasonably be quoted in advance, therefore may incur additional costs, where required.

Relaxations – There may be a requirement to apply to council for a prescribed boundary setback variation under the "Queensland Development Code". This process will require the Client to approach neighbours that are affected and obtain their comments. This process is generally in addition to the D/A processes explained above, as they are assessed against different legislation.

Small lots are governed by the envelope requirements of the "Residential Design - Small Lot Code", however exempt elements such as a carport in front of the building will trigger a relaxation under almost all circumstances.

Appeals – Only an application that is Impact Assessable carries the right of appeal for all those that submit during the advertising process. Appeals that are frivolous can be awarded damages against them. The applicant has the right to appeal any decision by the council, if they feel the decision is not justified.

Risksmart Accredited Consultants – only qualified urban planners can be accredited by the council to provide this service. Effectively the consultant assesses the application, makes the decision and compiles the approval and conditions package on behalf of the council. Council then have to make sure it is all correct and sign off on the approval. This reduces the timeframe on what would normally be "Tick & Flick" approvals, and only applies to narrow band of specific things like character assessments, small lot subdivisions and minor structures ,etc.

We will take out items which are not relevant to the specific project.

Stage 3: (Building Approval)

Preparation of the final drawings ready for Building Approval and construction. The drawings supplied at this stage will have sufficient information for us to obtain the necessary building approvals, and detailed to a level for tradesmen to complete the works. If errors are found during the approval process, they will be rectified free of charge. I am available (when reasonable) for telephone support if problems are encountered during the approval and construction stages.

This firm uses proprietary design software, to design the structural timber framing elements, tie-down connections, and bracing elements of your building. Using this software increases the time it takes to produce a set of construction documents marginally, but vastly improves the accuracy of design, while also allowing us to manage and eliminate in many cases, excessive sag or bounce that might otherwise not be known if standard tabular information is relied upon. Engineer endorsed certificates from this software ensure compliance with codes and enable certifiers to confidently rely upon results.

Note that where a cost estimate is provided for stage 3 of the works, it will be based on the Designer's expectation of what will be involved to complete that work when the time comes, and may not be reflective of the actual work involved. We indicate these costs based on previous projects of a similar nature and 20 years of experience, however, no two projects are the same, and therefore we need to allow provision for stage 3 to be properly quoted at a time when we know the exact scope of works and drawing complexity to be addressed.

If percentage cost indicators have been provided in the initial quote, the designer will provide firm costs for stage 3 prior to commencement, which will then be based on the actual time and cost to deliver the completed documentation required.

Additional works, such as interior design, colour & finish selections, window & door schedules, electrical, landscape & pool design, and specific detailing of wet areas, kitchens and the like are normally considered separately. We have not included any of these items in our quotation at this stage, and will engage or advise of a suitable professional at the required time.

The following items will be required if selecting Service Level 4 or 5 for our services, and will be required at some stage before you commence building:

INTERIOR DESIGN, COLOUR & FINISHES SELECTIONS

The interior designer can provide a full interior design service, or simply help you to pull your ideas and colour selections together. Often the interior designer will save you more than their fees by recommending alternate suppliers and material selections.

SPECIFIC DETAILING OF KITCHENS, WET AREAS, ETC.

The interior designer will work with our basic wet-area layouts / designs and progress them into fully detailed plans, as well as adding interior views and details to ensure that both you and the tradesmen know exactly what is expected.

WINDOW AND DOOR SCHEDULES

The interior designer will do a take-off of the window sizes and general style of windows shown on the drawings, and add such things as lock / hardware and manufacturer information in the form of a schedule.

LANDSCAPE PLANNING, POOLS, WATER FEATURES, FENCES, ETC.

A landscape architect can work with you to design a garden and building surround that enhances the building and natural surrounds. It is often the landscaping that makes or breaks a home.

ELECTRICAL LAYOUTS OR SMART WIRING CONSULTANT.

A consultant can provide early input into requirements for wiring for security, automated lighting controls, home cinemas, integrated systems and a wide variety of custom electronic / electrical component design. This is best done before construction commences, to maximise the benefits of current and future requirements.

Basic electrical plans can be agreed between contractor and client, so for that purpose, the drawing set will include a generic black set of floor plans with an electrical legend to enable the client to rough up a design for quoting purposes.

These items are often included in an Architect's scope of works, and some builders will require these items. For the most part, these services would form a part of the scope of works for an interior designer, and do not have to be selected now. We will advise you when in the process these items should be commenced.

If you require any of these services, you should advise us before the completion of stage 1 of this proposal, so that where appropriate, we can introduce you to the right people at the appropriate time in the design process.

As a general rule, the works will follow the stages shown above, however this does not prevent a cross-over from occurring for any number of reasons to ensure the project flows smoothly for the client.

The following consultants may be engaged on your behalf.

As per clause 5 in the contract conditions, ECBDD cannot guarantee the performance of these consultants, though in most cases, we have worked with them many times before and have found them to provide a professional and prompt product. If you wish to use a different consultant then please let us know. See clause 5 of our Terms and Conditions.

INDICATION OF RECOMMENDED CONSULTANTS:

Preliminary works stages:

- SURVEYING (contour and detail) (if required) www.ajssurveys.com.au
- SURVEYING (natural ground & ht certs) www.ajssurveys.com.au
- SURVEYING (identification survey) by client later unless instructed up front
- ENGINEERING (soil testing) www.dnce.com.au (Newport Engineers)
- HYDRAULIC DESIGN (stormwater) ECBDD (in-house) or:
Sweet Hydraulic Engineering

Optional:

- LANDSCAPE ARCHITECT Paul Stein www.seedlandscapes.com
- INTERIOR DESIGN Sonya Harward www.harwardandbrown.com.au
- Smart Wiring (if required) Digital Residence www.d-res.com.au

Construction Approvals Stage:

- Engineer will be appointed based on availability and suitability to project nature.
- ENGINEERING (slab & footing design) Depends on the project
- ENGINEERING (structural design) An engineer will be nominated
- ENGINEERING (retaining design) and quote provided when needed
- ENGINEERING (Pools)
- ENERGY EFFICIENCY REPORTS (new rooms) www.greenatheart.com.au
- BUILDING APPROVALS (to be quoted when time comes)
- Residential approvals usually by www.pcggroup.net.au

During Construction:

- SURVEYING (identification survey) (recommended to be done up front)
- UPGRADE OF SERVICES (if required) usually by builder
- OPERATIONAL WORKS APPROVALS usually by Builder

Not all consultants above are needed for every project.

There may also be other consultants required along the way.

Our chosen consultants may change over time, depending performance and availability.

Surveying will be engaged immediately upon receipt of contract signing, where required.

Other consultants will be engaged on an as needed basis to suit the project progress.

The fee proposal is based on a selection of micro stages that are given values to represent the works involved, and at the end of each stage, a total is provided. Full transparency is provided in the quotations so that a client can see how even a small manipulation or change to the scope of works can ripple through the fee proposal. Where the scope of works have not been set or may be flexible, a percentage indicator may be used instead of a number. This will revert to a properly quoted number as soon as the scope of works and budget are known.

Changes and variations to the scope of works are always quoted in advance, most often using a Schedule 5 variation form. These contracts and conditions have been taken from the BDAQ standard industry contract of engagement, and while some clauses have been altered, it is still a full two way contract, protecting both the client and the designer equally. Note that the client always has rights to a remedy under the "Competition and Consumer Act 2010", irrespective of the contents of this document, and this document cannot over-ride common law rights.

The main purpose of a contract is to provide contractual certainty to both parties, and to set out what happens in the event of a change or default, and rest assured, we have been in business for over 30 years and have never once unfairly charged a client for something we have not been contracted to do, and let's face it, the client won't pay for something that is not fair and reasonable under the terms and conditions of the contract itself.

STATUTORY CONSUMER GUARANTEES:

Every client has a statutory right to a remedy if the product or service provided by any Australian business fails to meet consumer warranty obligations under *The Competition and Consumer Act 2010*.

www.fairtrading.qld.gov.au/guarantees-warranties-refunds.htm

We want you to tell us if the product we provide fails to meet any of the statutory consumer guarantees, so we can get it right for you:

You are guaranteed that the services you buy are:

- *Provided with due care and skill*
- *Fit for the intended purpose*
- *Completed within a reasonable time*

To assist with these guarantees, we need your help. We need you to actively participate in the design process, provide feedback and where these guarantees look like they are not meeting your expectations, to tell us promptly.

Having been a designer and draftsman in the industry for well over 25 years, I can guarantee that the drawings will be prepared with due care and skill, shall be checked and checked again, shall take into account legislation, planning constraints and where applicable, meet or exceed the industry code of practice for construction documentation.

Drawings will be fit for purpose, and will provide sufficient details, drawings and information for a competent builder to construct the project. If we do make an error or leave something out, we guarantee to fix it immediately. Listening to the client, meeting budget constraints, providing documentation that can be easily read and approved, and providing a finished product that will meet the client's expectation all go hand and hand.

Interestingly, the CSIRO conducted a study recently and found that approx 11% of building cost over-runs can be apportioned to improper or insufficient construction detailing and documentation. Goes to show there are a lot of designers out there not providing drawings that are "Fit for Purpose"?

Timeframes can sometimes be subjective. It sometimes takes time to create the right outcome, however, what we guarantee is that we will work diligently on the project to meet your expectations and deliver a product that you feel comfortable with. Spending enough time in the design phase to get the right outcome, and not rushing can often deliver a better outcome, but we will never leave you hanging week after week with no communication.

Communication is the key to all of these guarantees. Working together with you to provide an outcome that you feel meets your needs is the best way, to ensure we meet your consumer expectations. Happy customers tell their friends, so we want you to be completely happy throughout the entire process.



east coast
BUILDING DESIGN

ENVIRONMENTALLY SUSTAINABLE BUILDING DESIGN

ECBDD Pty Ltd t/as East Coast Building Design & Drafting ABN 66 101 135 077 QBSA LIC NO 1010190

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W www.eastcoastbuildingdesign.com.au

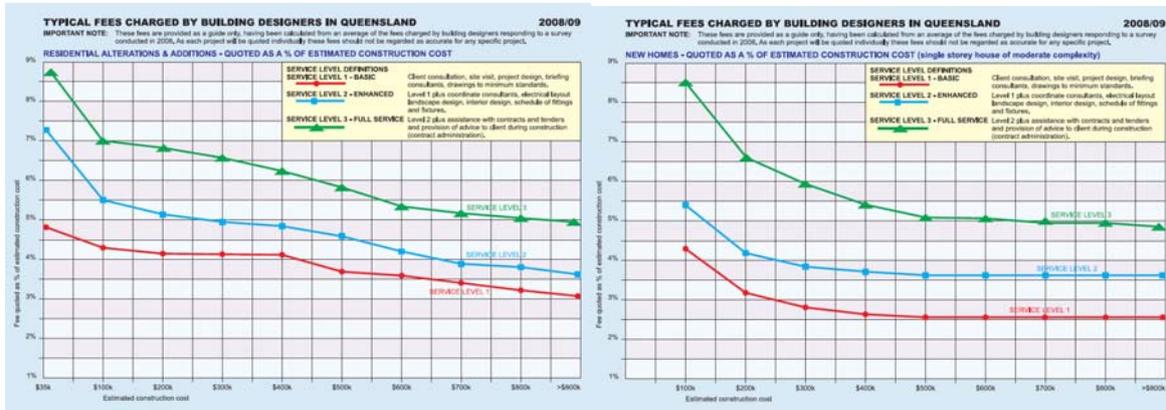
FEE PROPOSAL

Issue Date. date

Name of Client name

Project Address address

www.bdaq.com.au/select04.htm



Depending on the job, only one table will apply.

The table above has been copied from the website of the BDAQ – Building Designer’s Assoc of Qld, and was tabulated from a survey of members in 2008 to obtain an approx average of fees charged to the public. This table refers to homes of moderate detail level. On this basis, the average fee works out to around 4-5% of the construction costs, depending on the level of involvement.

*We don't charge a percentage based fee. The fees below are estimated based on 25 years of experience, estimating the time and consumables involved in making sure that your project comes out right. If a proper brief has been established and nothing changes, these estimates can be considered as **FIXED PRICE** fees.*

Please refer to the standard conditions of contract for clarity on when a legitimate variation may apply for works that are outside of the scope of works or where the scope of works may change.

Stage 1. (Preliminary Works)

Design Consultation	invoiced separately	\$
Facilitate surveying and soil testing (if needed)		\$
Administration, basic searches and file set-up costs		\$
Prepare 3D modelling program with required components and set up files		
Site Measure existing house layouts and re-assess structure		\$
Redraw existing house as it exists now in 3D (both levels fully)		\$
Allowance for design development stage (based on estimate of time to complete)		
<ul style="list-style-type: none"> • Allowance for client meetings, phone calls and email interactions • Prelim sketches estimated • Reworking and alterations • Completion of concept stage estimated 		\$

It's very hard to accurately estimate the time it will take to design a dwelling of this nature, because there may be options to consider and it will be an interactive process. I have assumed that we will work on a basic concept, and together take the project in a specific direction to reach a design that suits you, the land and optimises resale potential.

Client liaison - we allow for a few basic communications, emails, etc in our time allowances. If an extra-ordinary amount of time is consumed with back and forth communication, extra charges may apply.

Additional drawings where a council Development Assessment (DA) is required \$

Where a DA is required, we have to produce drawings to a specified level, with information that demonstrates compliance with certain codes. This always increases the drawing costs, however, the core drawings produced will be recycled into the construction drawings set later, reducing those costs to a degree

Facilitate boundary setback variation (relaxation) with council (\$250 if required)	\$
Obtain feedback and advice from certifier and builders	\$
Copying file materials and incidentals allowance	\$
Admin charges - typical	\$
Additional works will be charged at the nominated rate at the end of Schedule 3.	

East Coast Building Design:	\$\$\$\$\$
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Expected Time Frame Stage 1:	
From receipt of signed agreements	
Preliminary sketches	1 to 2 weeks
Completion to DA stage	1 to 2 weeks

Stage 2. (Development Assessment – by ourselves)

Lodge and manage D/A process with council
 Preparation of documents and reimbursements
 Dealing with information requests will be charged at the nominated hourly rate in Schedule 3.

BCC Fee –Assessment (house only)

East Coast Building Design & Drafting	\$ \$\$\$\$
Council Fees	\$ \$\$\$\$

Expected Time Frame Stage 2:	1 to 2 weeks
Reports are generally prepared at same time as drawings	
BCC code Assessment	4 to 6 weeks
BCC Impact Assessment	8 to 15 weeks
Information requests by council will delay this timeframe	
BCC Fees current till mid year – subject to quotation by BCC	
Stages 1 & 2 must be paid in full prior to lodgement of DA	

This proposal assumes at this stage that a DA will be conducted in house. Should this change through the design phase, a variation will be issued to suit.

Stage 3. (Construction Drawings)

At this early stage, we do not fully know the extent of detailing that will be required to properly document the proposed works. Once we have agreed upon a concept and any staging that may be required, this stage of the works may be adjusted or re-quoted. The following figures should be used as a guide only, based on our previous experience with this type of project.

Where percentage indicators are used on stage 3, they will be re-quoted properly prior to commencement of stage 3 to suit the actual project and complexity involved.

This clause allows the designer to re-quote stage 3 if the scope of works is different from the original scope of works, or if the level of detailing has changed. Clients want to know approx costs, but until we do a sketch, we may not know the actual work involved in fulfilling the contract.

Basic Construction Drawings (based on estimate of time to complete) (This includes the whole project which may be revised down at stage 3)	\$
Included costs to detail standard framing and bracing components and steelwork (Other designers often outsourced this part to engineers)	\$
Extra cost will apply if alts to existing building require special detailing at this stage	\$
Extra costs may apply if unapproved structures need detailing for approvals.	\$

It is important to make sure that the completed drawings leave no room for error or interpretation. Completeness of drawings means certainty in the contract price and limits variations and extras during the construction process and beyond. Drawings will be prepared to the level recommended by the BDAQ - Building Designers Association, as being the minimum standard for proper documentation.

The complexity is not yet fully known on this project and stage 3 will be requoted once the design is known. ie: if contemporary finishes require specific detailing outside the allowances

Checking, quality control and other processes	\$
Detailing required for features and other items provided by Interior / Landscape Designers	\$
Check compliance against BCA energy efficiency	by consultants
Construction Approval and consultant liaison allowance (B/A processes)	\$
Liaison with interior designers, landscape architect or builders	\$
Copying file materials and incidentals allowance	\$
Admin charges (typical)	\$

East Coast Building Design	\$\$\$\$\$
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Expected Time Frame Stage 3:
From client's instruction to proceed min 3 to 4 weeks
Consultants (engineers) will determine timeframes – pending availability
Council D/A conditions may also delay timeframes.
Stages 1 to 3 must be paid in full prior to lodgement of BA

Associated consultant's (approx):

Preliminary & DA Stage:

Pre-lodgement Meeting with council	\$
Surveyor – standard charge \$1815	\$
Identification survey at same time approx	\$
QDC Property Boundary Relaxation (\$732.00 if required)	\$

Other consultants (approx.)	\$ ***
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Construction Approval Stage:

Soil testing (standard charge \$500)	\$
Structural engineering (footings and slabs)	\$
Structural engineering (steel beam certifications)	\$
Engineer to certify complete construction drawings	not usually required
Building approvals (by Private Certifier)	\$
Plumbing approvals	by plumber on renovations
Energy Efficiency Reports (per each 265.00 if needed)	\$

Allowances and required consultants will vary from project to project, and wherever possible will be estimated in this section at the start of the project.

Other consultants (approx.) **\$** ***

***All external consultants' costs will be charged to the client at cost. The client may elect for written quotes to be obtained prior to engagement, and must request so in writing, prior to engagement of the required consultants. Surveying and soil testing are generally engaged immediately upon receipt of signed docs.

Figures shown are an indication of the expected fees that the consultant may charge, and shall not be relied upon solely as the means of determining the overall costs involved with this project.

ALL REQUIRED BA CONSULTANTS WILL BE QUOTED IN ADVANCE AND APPROVED BY THE CLIENT UNLESS OTHERWISE AGREED IN ADVANCE.

<u>Summary of Approx Totals:</u>	
Sketch / DA stage plans	\$
D/A Process	\$
DA consultants (estimated)	\$
	\$
BA stage plans	\$
<u>Other Consultants</u>	\$
	\$
Approx Total	\$

A project variation may be issued at any time, which may be triggered by one or more of the following reasons (but not limited to).

- Changes that fall outside of the allowances set in this proposal.
- Client instructed changes to the overall concept.
- Changes as a result of the council processes (by council or client).
- Changes that have resulted in a need for a higher than expected amount of detailing to be carried out within the allowances set for stage 3 of this proposal.

This variation will clearly state the reasons and the applicable extra costs associated, and in most cases will need to be signed and returned prior to the works progressing further or to the next stage. All variations shall take the form of a Schedule 5 Notice.

The following items may be required:

BCC Boundary Relaxation

Approvals to build over or near council pipes

Engineering (Struct cert of Const Drawings)

Surveyor - accurate location of boundaries

Engineer (BSA Subsidence policy checklist)

Please refer to the Building Services Authorities website www.bsa.qld.gov.au and discuss this with your Builder to see if he requires the Engineer to provide him a Subsidence Policy Checklist. From our experience some Builders do but most do not. This checklist is not mandatory.

Certifier – inspections during construction other than final are part of building contract

Engineer – inspections during construction if required by builder or certifier

Please note that there are things like engineer's inspections, height certificates, and other items, which are required during the construction stage of the works, which are not included in our scope of works, and must be addressed in the builder's contract.

Often there are other items identified by the building certifier as part of the building approval process, which result in conditions being placed on the approval. Similarly additional costs associated with these items are not included in our scope of works.

If you are in doubt about this proposal, please refer to the blank version of this agreement on our website, which also contains explanatory notes in blue to help you understand why certain things are included in this document. Please also note that we offer a five way guarantee on the services that we provide, in line with consumer guarantee legislation.

Note: nothing in this document can over-ride the consumer's rights under law:

www.fairtrading.qld.gov.au/guarantees-warranties-refunds.htm

Conditions associated with Schedule 3:

- 1) *East Coast Building Design & Drafting (ECBDD) charge rates may be applicable for situations where the quote does not extend or where a stage is terminated before completion: All work is carried out by a Senior Designer at \$250 per hour including design, drafting, & Coordination. Design work for other than houses, Town-planning services & specialised advice - \$300 per hour. Admin & clerical - \$55/hr.*
- 2) *An allowance has been made in the quote for a typical amount of copying, file materials and incidentals, based on previous experience, for the purpose of production and forwarding of designs, drawings and documentation as required to exercise the scope of works listed in this agreement. Where it can be reasonably known, any additional costs shall be quoted and approved by the client in writing prior to commencement of that additional item.*
- 3) *All outgoing plans and information will be provided in high quality PDF format. Photocopying of plans, professional printing and the like will be quoted upon application. Typically it will be much cheaper for the client to print from PDF instead and places like officeworks.*
- 4) *Files are archived on-site for approx 3 years after the agreement has been completed. During this time, files can be retrieved and re-filed with little time expenditure. After that time, files are boxed, sealed and archived. Where a file is required to be retrieved for a purpose not related to the agreement, an archive retrieval and return fee may be charged. The minimum fee is currently \$220.00 and any action regarding that file will be charged at current hourly rates.*
- 5) *Files older than 10 years may be scanned for archiving, but in general, will be destroyed at the expiration of the 10th anniversary of the file's inception. Some parts of the file are retained in electronic form indefinitely.*
- 6) *All fees quoted in this document are inclusive of GST (where applicable) unless noted otherwise. All fee proposals are valid for 90 days, unless there are legislative or code changes that necessitate the need to re-evaluate the fees quoted. This must be supported by appropriate evidence from the Designer. As per clause 2.3 of the conditions, where a project extends beyond a calendar year, the fees quoted will rise by an amount equivalent to 5% per annum or part thereof, unless a variation has been issued, in which case the rise may apply to part or all as applicable to the situation.*
- 7) *Timeframes indicated in the relevant sections of this agreement shall be read as those applicable to a straight forward project. They will not include the time it takes for clients to respond to requests by the Designer, and do not apply to extra works not covered by the initial scope of works, or additional works requested by the Client or Designer as a result of a Schedule 5 Variation. They also do not apply where a timeframe is dependent upon an external consultant or any other third party, whether that entity has been engaged by the Client or the Designer (as an agent of the client).*
- 8) *Fees quoted in this document have been reasonably estimated from the scope of works and / or from information provided by the client at the time. Should this information remain the same, East Coast Building Design agrees to abide by the quoted sums. However, the contract contains sufficient clauses to enable extra work or variations to be fairly charged or quoted as needed through the life of the contract. Generally a Schedule 5 Variation will be provided unless the sums are mutually agreed by email or in writing.*
- 9) *Pricing allowances for consultants have been estimated at the time of preparation of this document to show that there are additional costs, and may not reflect the actual costs for those consultants to complete the works. The actual costs can be quoted at the time they become required. The actual cost will be passed onto the client without mark-up or profit margin as an agent of the client. The Designer will not assume any responsibility for any short-falls that occur in this process or any reduction of profit margins experienced as a result of reliance upon these figures. Builders and developers should do their own research to ensure that allowances are sufficient for their project needs.*

Schedule 4 is a standard contract schedule, which clearly defines what each party is responsible for.

This can be over-riden by the scope of works or an email discussion in general if needed.

Schedule 5 is a standard contract variation schedule. A copy can be provided upon request, however, it basically sets out the changes or variations to the contract and costs involved and must be agreed to by both parties.

The contract may be amended from time to time to reflect changes in business. This info is correct at date of printing.

BUILDING DESIGNERS ASSOCIATION OF QUEENSLAND

CONTRACT OF ENGAGEMENT

SCHEDULE 4



ECBDD Pty Ltd t/as East Coast Building Design & Drafting ABN 86 101 135 077 QBSA LIC NO 1010190
 A Level 1/7 Henschman St Nundah Q 4012 P 07 3260 7880 F 07 3260 7887
 E info@eastcoastbuildingdesign.com.au W www.eastcoastbuildingdesign.com.au

CONSULTANCY SERVICES & OTHER INFORMATION REQUIREMENTS:

Issue Date. date

Name of Client name

Project Address address

Other Consultants to be engaged:		
Consultant:	Engaged by:	Stage:
Surveyor (contour & detail)	designer	1
Town Planning Consultant	designer (In-House)	1
Soil Tester	designer	1
Foundation Engineer	designer	3
Structural Engineer	designer	3
Energy Rating Assessor	designer	3
Building Certifier	designer	3
Consultants that may be required:		
Surveyor (boundary pegs)	usually by builder	n/a
Bushfire assess Consultant	n/a	
Hydraulics Designer	n/a	
Engineer (overland flow)	n/a	
Acoustic Engineer	n/a	
Fire Consultant	n/a	
Civil Engineer	n/a	
Traffic engineer	n/a	
Air Quality Consultant	n/a	
The client may also wish to engage the following:		
Interior Designer	client (if required)	
Quantity Surveyor	client (if required)	
Landscape Designer	client (if required)	
Security Consultant	client (if required)	
Electrical/smart wiring cons	client (if required)	
Contract Administration	client (if required)	
Asbestos Consultant	client (if required)	

Information required (where applicable) for completion of Work:		
Item Required:	Supply by:	Stg:
Reg. Plan/ Title Search	surveyor	1
Site Classification	soil tester	3
Flood Levels	designer	1
Council Sewer search	designer	1
Council Stormwater search	designer	1
Council Water Search	designer	1
Gas Supply/Service	designer	1
Elec. Supply Authority	designer	1
Telecommunications	designer	1
Energy efficiency checklist	designer	3
Measured Drawings	n/a	
As Constructed Roadwork	tba	
Items from client's records:		
Easements	client	1
Deeds of grant	client	1
Other encumbrances	client	1
Protection Orders	client	1
Resumptions	client	1
Contaminated Land Reg.	client	1
Main Roads Notifications	client	1
Combine Drain Plans	Client	1

Clause 3.2 of the engagement agreement allows the client to vary the services provided within this schedule, by providing a notice in writing.

BUILDING DESIGNERS ASSOCIATION OF QUEENSLAND



CLIENT AND DESIGNER AGREEMENT

TERMS AND CONDITIONS OF CONTRACT

1 THE SERVICES

- 1.1 The Designer must provide the Services for the Project.
- 1.2 If any Services have been provided by the Designer for the Project prior to the date of this Agreement, this Agreement applies to those Services retrospectively.
- 1.3 The Designer may begin the first stage of the Services outlined in Schedule 2. The Designer must obtain the Client's verbal approval before commencing work on each subsequent stage.
- 1.4 If the client does not agree that verbal approval is sufficient under clause 1.3, the Client may notify the Designer in writing of their preference at any time.

2 FEES AND EXPENSES

- 2.1 The Client must pay the Fees and Expenses to the Designer as set out in Schedule 3, or as varied within the bounds of this agreement.
- 2.2 For the avoidance of doubt, where the Client is a company, the person that signs the agreement agrees to guarantee payment for the services provided under this agreement. Unless a Schedule 6 guarantor is provided by the Client nominating another person, the signee shall be responsible for payment of all fees and expenses.
- 2.3 The Fees may be increased on each anniversary of this Agreement as outlined in Schedule 3. If no increase is stipulated in Schedule 3, the fees may be increased by an amount of five percent (5%).
- 2.4 All fees and expenses outlined in Schedule 3 are inclusive of GST. The Designer must provide to the Client a Tax Invoice when submitting claims for fees and expenses.
- 2.5 The Designer may submit claims for Fees and Expenses at the times and/or frequencies outlined in Schedule 3. If no times for the submission of a claim for Fees and Expenses is stipulated in Schedule 3, the Designer may submit a claim for Fees and Expenses at the practical completion of each nominated stage or at any point where the project stalls for more than 10 business days, or at any other time deemed reasonable by the Designer.
- 2.6 In addition to the fees payable to the Designer, the Client must pay to the Designer any expenses reasonably incurred by the Designer in providing the Services, including those incurred with third parties.
- 2.7 The client agrees that where payments are made by the Designer to third party consultants, government departments or other entities, that the Designer is acting as an agent of the Client, as determined under Tax Law. Any GST free amounts will be passed on to the client "at cost" with no mark-up or profit margin. On this basis, these amounts will remain GST free to the Client.
- 2.8 The Client must pay any fees claimed by the Designer within the period stated in Schedule 3. If there is no period stated in Schedule 3, all fees must be paid within five (5) Business Days from the Client receiving the claim from the Designer, or as otherwise agreed with the Designer.
- 2.9 If any fee outstanding is not paid in the time required by Clause 2.8, the Designer may charge interest on overdue payments at the rate stated in Schedule 3. If no amount shown in schedule 3, interest will be charged at the rate of 10% p.a. calculated daily.
- 2.10 The Client must advise of any dispute or error regarding the invoice within the time period shown in Clause 2.8, in order for the dispute to be valid, or to have any impact on clause 2 in general.
- 2.11 In addition to the interest charges shown in clause 2.9, the Designer may request that the Client also pay any reasonable costs involved in the recovery of amounts due through legitimate debt recovery channels. This may include (but not limited to) the cost of a debt recovery firm, lawyers, QCAT or court fees, and any additional costs and expenses incurred by the Designer throughout the debt recovery process.
- 2.12 If fees are not paid within the time frame stipulated in Clause 2.8, the Designer may suspend the provision of Services to the Client by providing written notice to the Client stating:
 - (a) that the account remains outstanding; and
 - (b) if the account is not paid within five (5) Business Days from the date of the notice, the provision of the Services will be suspended.
 - (c) Any Copyright license implied by clause 6.1 is deemed not granted where an invoice remains unpaid or unresolved as described by these conditions.

3 VARIATION TO THE SERVICES AND FEES

- 3.1 The Designer must inform the Client within a reasonable time of the Designer being made aware of circumstances that may change the Services. The Designer must inform the Client in writing of:

- (a) the circumstances necessitating the change to the Services and Fees; and
 - (b) any impact this change may have on the Project; and
 - (c) any additional fees that will be incurred by the Client.
- 3.2 The Client may provide written instruction to the Designer varying the Services. This may include a hold on works between stages, a variation to the scope of work, or any other variation.
 - 3.3 If the Services are to be varied in accordance with sub-clauses 3.1 and/or 3.2, the Designer may give a notice ("Variation Notice") in the form set out in Schedule 5 to the Client stating:
 - (a) the work required to carry out the variation;
 - (b) the additional fees (or reduction) that will be incurred for carrying out the variation;
 - (c) the likely impact, if any, on the Project; and
 - (d) if the Designer requests the variation, the reason for the variation.
 - 3.4 If the Client requests the variation, the Client must provide written notice to the Designer within five (5) Business Days of receiving the Variation Notice that it accepts the extra fees to carry out the variation. If the Client provides notice that it does not accept the fees the Designer shall not be required to carry out the variation.
 - 3.5 If the Designer requests the variation as a result of a requirement of an approval authority, or a circumstance that could not have reasonably been foreseen at the time of entering into the Agreement, the Designer shall be entitled to a reasonable fee for the variation to the Services.
 - 3.6 If the Designer has requested a variation for matters other than those outlined in sub-clause 3.5, the Client must provide written notice within five (5) Business Days of receiving the Variation Notice that it accepts the extra fees to carry out the variation. If the Client does not respond the Variation Notice within the five (5) Business Day period the variation and the extra fees payable will be deemed to have been accepted by the Client.
 - 3.7 The client may provide a written notice via email or fax, directly referencing the variation number and date, in lieu of signing and returning the actual variation.

4 CLIENT RESPONSIBILITIES

- 4.1 The Client must provide all relevant information regarding the project, including:
 - (a) details of the site outlining any encumbrances or easements relating to the Project site;
 - (b) any budgetary restraint requirements for the Project;
 - (c) any item required or mentioned under schedule 4
- 4.2 The Client warrants the accuracy and completeness of all information provided to the Designer and acknowledges that the Designer will rely upon the accuracy of information provided.
- 4.3 If the Designer considers that any information, documents or directions provided by the Client are incomplete, inadequate or ambiguous, the Client must provide clarification of that information as requested by the Designer in writing.
- 4.4 The Client must promptly respond to any request for information or approval by the Designer with respect to the Services.
- 4.5 Where the Client is a nominated representative of a property owner, company or trust, the designer will assume unless otherwise notified by the Client that the Client has sought and continues to have authority to make decisions for the Owner of the property.

5 ENGAGEMENT OF OTHER CONSULTANTS

- 5.1 The Client authorises the Designer to act as the Client's agent in relation to the Project in all matters set out or implied in this Agreement.
- 5.2 If the Client engages any other consultants for the Project the Client is responsible for those consultants and must pay their fees directly. Prior to engaging any other consultants, the Client must first obtain the Agreement of the Designer to engage that consultant.
- 5.3 If either the Client or the Designer engages and/or coordinates any consultants as outlined in Schedule 5, the Client indemnifies the Designer against any claims that may be made arising out of or incidental to such services provided by those consultants.

6 COPYRIGHT & INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Designer retains all Intellectual Property Rights as permitted by The Copyright Act 1968. Only upon completion of the entire agreement, and Subject to Clause 6.2, the Designer agrees to provide the Client with a royalty-free non-exclusive irrevocable license to use such Intellectual Property for any purpose for which this agreement relates. This license is not transferrable and in the event of early termination or partial completion of the agreement, no license implied or otherwise shall be granted.
- 6.2 The rights provided or implied by clause 6.1 are revocable by the Designer on the day after the date specified in Clause 2.8 if any payment required by this agreement is not received within the specified time period or as otherwise extended or agreed in writing by the Designer.
- 6.3 The Designer will only agree to assign his/her intellectual property rights to the Client upon payment of an agreed fee. In the event that a fee is not agreed upon in advance of this agreement being commenced, the fee shall be equal to five times the total fees applicable under this agreement for each assignment, or as otherwise agreed in writing with the Designer.
- 6.4 The Client is expressly forbidden from engaging third parties to prepare further drawings or to complete unfinished drawings without the express written permission of the Designer. Any permission and applicable fee payable must be provided in writing. If so agreed, a written waiver of liability must be provided to the Designer, in a format which is acceptable to the Designer, by and prior to the third party commencing their works. Where a third party is engaged by the Client under this clause 6.4, the license mentioned in clause 6.1 shall be deemed granted.
- 6.5 The Client grants a licence to the Designer to use and reproduce any of the documentation provided to the Designer for the express purpose of completing the Services.
- 6.6 The Client indemnifies and agrees to keep indemnified the Designer against any actions, claims or demands that may be brought against the Designer as a result of the Client providing information or documentation to the Designer by which copyright is not owned by the Client. Such indemnity includes legal costs on a solicitor and own client on an indemnity basis.
- 6.7 It is the property owner's responsibility under the Copyright Amendment Act 2000 to make a reasonable attempt to contact the original owner and/or author of any copyright works, and establish whether that person wishes to exercise the Moral Right provisions of the act for the said works, with regard to additions / alterations proposed in this agreement.
- 6.8 The Client acknowledges that if they use the drawings provided by the Designer in part or in whole for any project other than the site subject to this agreement, without prior written permission, that they will be deemed to have breached the clauses of this contract. Further the Client acknowledges that such a breach of this contract will result in court action, and that the penalty sought in such court action will be five times the total fees applicable to this agreement for each such breach of contract or each unauthorised use of material.
- 6.9 The Client grants permission for the Designer to use any images or material created for the purpose of marketing and promotion, including but not limited to website, facebook, magazine advertising.
- 6.10 The Client acknowledges that Revit files including all intellectual property used in creating Revit files will not be provided to the client or released for any purpose what so ever. Where a client or consultant or authorised third party requests Revit files, they must also purchase a copy of the template which is available for separate sale and enter into a valid EULA prior to receiving any files.
- 6.11 This Clause 6 does not merge on termination of this Agreement.

7 CONSTRUCTION COST ESTIMATES

- 7.1 If the Designer provides an Estimated Building Cost of the construction costs of the Project the Client agrees that these estimates are not warranties of the cost to complete the Project. The Estimated Building Costs are estimates only and must not be relied upon by the Client, unless verified by a qualified source.
- 7.2 The Client must instruct the Designer to engage a qualified person to provide a written estimate of the construction costs, if he or she wishes to rely on the estimated building cost during or after the design process.

8 EXTENT OF WARRANTY AND LIABILITY

- 8.1 The Designer does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement. If apart from this clause any warranty or liability would be implied by law, custom or otherwise, that warranty and liability is to the full extent permitted by law excluded. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of goods or services pursuant to this Agreement of all or any of the provisions of

the Competition and Consumer Act 2010 or any other regulation permitted by law.

- 8.2 If any liability is implied by law, custom or otherwise, the liability of the Designer to the Client arising out of the performance or non-performance of the Services in this Agreement shall be limited to the Fees and Expenses paid, unless a further liability is agreed to in a dispute resolution process involving Professional Indemnity Insurers as permitted by law.
- 8.3 The parties agree that all exclusions, indemnities or limitations of liability contained in this Agreement:
- shall survive termination of this Agreement; and
 - will apply regardless of the form of any action (direct or indirect) whether in contract, strict liability, tort or otherwise at law and be effective regardless of the negligence or breach of duty (contractual, statutory or otherwise) of any of the parties, sub-contractors or any member of a party's group.
- 8.4 The parties will enter into such further indemnity Agreements as are reasonably necessary to grant indemnities and allocate and limit liabilities in the manner specified in this Agreement.
- 8.5 The Designer's liability in respect of errors or omissions will not extend beyond the limit of services provided by this agreement. It is the responsibility of the Client through their appointed contract administrators and builders to report any and all errors or omissions to the Designer prior to commencement of construction / work.
- 8.6 Errors or omissions reported as per 8.5 above shall be rectified on the drawings by the Designer in a timely and diligent manner, so as not to interrupt the commencement of works unduly.
- 8.7 The Designer will not take any responsibility for any loss incurred by any party, how-so-ever-caused, arising from clause 8.5 above, unless otherwise required to by a law or regulation.
- 8.8 The Designer agrees to keep an adequate level of Professional Indemnity Insurance for the tasks engaged in, and provide a copy of any certificate of currency to the Client when requested.

9 TERMINATION BY CLIENT OR DESIGNER

- 9.1 If either party fails to comply with any of their obligations under this Agreement or is otherwise in substantial breach of this Agreement, the initiating party (Terminating Party) may give a notice ("the Termination Notice") to the party in breach. The Termination Notice must:
- specify the breach or breaches of the Agreement by the party in breach;
 - require the breach or breaches to be rectified within ten (10) Business Days of receiving the Termination Notice;
 - state that if the breach or breaches are not rectified within the requisite time period, the Terminating Party intends to terminate the Agreement.
- 9.2 If the party in breach fails to remedy the breach within ten (10) Business Days of receiving the Termination Notice, the Terminating Party may terminate this Agreement by giving further written notice to the party in breach.
- 9.3 Notwithstanding any other provision in this Agreement, either party may terminate this Agreement by giving five (5) Business Days notice to the other party.

10 TERMINATION FOR INSOLVENCY

- 10.1 Either the Designer or the Client may terminate this Agreement immediately on giving written notice to the other party, if the other party:
- becomes insolvent or financially unable to proceed with the Agreement;
 - becomes or is bankrupt or seeks to take advantage of the laws relating to bankruptcy;
 - makes a composition or other arrangement with its creditors;
 - assigns assets for the benefit of creditors generally;
 - being a company, enters into a Deed of Company Arrangement or has a controller, administrator or receiver appointed;
 - being a company, goes into liquidation or has a Court Order made for the winding up of that party or a resolution for its winding up is made;
- and as a consequence, that party is unable to perform its obligations under this Agreement.
- 10.2 In the event of insolvency by the Designer under clause 10.1;
- subject to any and all fees being settled and paid under clause 2, a license inferred under clause 6.1 will be deemed automatically provided to the Client.
 - Under this non-exclusive, perpetual, non-transferable, and royalty free license, the Client may use, modify, develop and exploit the design, drawings and documents as he/she feels necessary to expedite the works outlined in this agreement.
 - In this instance only, clauses 6.4 will also be deemed ineffective.

- (d) Clause 10.2 does not allow the Client to use this license for any purpose other than described, and only for the property described under "Project Details" in this agreement.

11 CONSEQUENCES OF TERMINATION

- 11.1 Upon termination, and without prejudice to the rights of either party:
- the Client shall pay to the Designer all amounts outstanding for Services rendered up to and including the date of termination. If the parties are unable to agree on the amount to be paid the amount shall be calculated by applying the hourly rate outlined in Schedule 3;
 - except where clause 10.2 applies, any licence granted by Clause 6.1 shall be deemed as not granted until clause 6.4 is satisfied, including payment of any required release fee.
 - nothing in this clause prejudices the right of either party to recover damages or exercise any other right or remedy under law.

12 ASSIGNMENT

- 12.1 Neither the Client nor the Designer shall assign or transfer this Agreement without the written consent of the other.
- 12.2 The Client shall not assign its licence in any intellectual property without the prior written consent of the Designer. The license shall not automatically transfer with any sale of the property / land.
- 12.3 Refer clauses 6.3 and 6.8 for prescribed penalty for misuse of materials.

13 GOVERNING LAW

- 13.1 This Agreement shall be governed by the laws of the State of Queensland and the Commonwealth of Australia as appropriate.

14 AMENDMENTS TO AGREEMENT

- 14.1 This Agreement may only be varied by prior written Agreement signed by both parties, or by exchange of written emails where both parties clearly agree on what is to be amended.

15 NOTICES

- 15.1 Any notice in relation to this Agreement must be delivered by:
- delivering it personally to the other party, in which case it will be deemed to have been served at that time; or
 - sending by pre-paid post to the address of the person to whom it is required to be given as specified in the Details Schedule, in which case it shall be deemed to have been served on the date of receipt, or in the case of registered post, two (2) clear Business Days after posting, whichever is the earlier.
 - Sending by confirmed email, where a response has been received to confirm said notice has been received.

16 GUARANTEE AND INDEMNITY

- 16.1 Where the Client is a company or trust, this Agreement may be conditional upon the directors of the company or trustees of the trust (and if the trustee is a company, the directors of that trustee company) executing the Guarantee and Indemnity in Schedule 6.
- 16.2 The client is responsible for advising ownership of the Site to the Designer where the Site is not owned by an individual or individuals, also being the Client.
- 16.3 The Designer reserves the right to waive clause 16 at its own discretion, where the dealings are clearly being undertaken by an individual, who is also a company director and / or trustee and the property owner, and / or where clause 2.2 has not been disputed prior to the commencement of the agreement.
- 16.4 If the Client undertakes to sign this agreement as a representative of another person or entity, and has not also signed a schedule 6 Director's Guarantee, it shall be taken that the person signing this agreement is assuming personal responsibility for payment of any outstanding invoices issued under this agreement to that company or entity with no extension of due date time frames.

17 DEFINITIONS

- 17.1 "Agreement" means these Terms and Conditions of Contract along with all Schedules attached to the Agreement.
- 17.2 "Business Day" means a day that is not a Saturday, Sunday or day that is wholly or partly observed as a Public Holiday throughout Queensland.
- 17.3 "Estimated Building Cost" means the estimated cost for construction of the Project as stipulated by the Designer.
- 17.4 "Fees and Expenses" means the fees and expenses calculated in accordance with Schedule 3.
- 17.5 "Project" means the construction work required by the Client as outlined in Schedules 1 & 2.
- 17.6 "Services" means the professional services to be provided by the Designer to the Client as described in Schedule 2.

18 INTERPRETATION

- 18.1 In this Agreement:
- headings and explanatory notes do not form part of and cannot be used in its interpretation;
 - words in the singular include the plural and vice versa;
 - words imparting a gender include every gender;
 - reference to a party includes its heirs, executors, administrators, permitted assignees and transferees;
 - references to a person, include an individual, firm or body (whether incorporated or unincorporated);
 - if the time for giving any notice, making any payment or doing any other act required or admitted by this Agreement falls on a day which is not a Business Day, then the time for giving the notice, making the payment or doing the other act shall be deemed to be the next Business Day.

19 SEVERABILITY

- 19.1 If any provision of this Agreement is held invalid by any Court, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision or part shall be deemed to be part of this Agreement as though originally included. The remainder of this Agreement shall not be affected by such modification.

20 JOINT AND SEVERAL OBLIGATIONS

- 20.1 If a party to this Agreement consists of more than one person, such party shall be bound by the obligations undertaken by them jointly and severally.

21 NON WAIVER

- 21.1 No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy shall constitute a general waiver of the same or any other condition, covenant, right or remedy.

22 PRIVACY

- 22.1 Private information collected by the Designer will only be distributed to third parties, for the purpose of executing this agreement. Personal details are retained as required for taxation and liability purposes. The information will be protected, as required under the privacy act 1988 and Information Privacy Act - 2009 Queensland.
- 22.2 The Designer will not disclose particulars of the client's dealings, methods, financial information, and related matters to any outside party, unless the client fails to meet its financial commitments in respect of this agreement, or otherwise authorises accordingly.
- 22.3 If the Client is in breach of any part of this contract, the Client is deemed to have waived their rights to privacy in all respects.

23 DISPUTE RESOLUTION

- 23.1 Objectives
- Nothing in this clause prevents either Party from exercising its rights under the Agreement, which may include commencement of court proceedings.
 - Subject to sub-clause 23.1(a), the Parties shall endeavour to resolve by negotiation any dispute that arises between them under this Agreement. The Parties shall also endeavour to conduct the dispute resolution process set out in this clause as efficiently and cost effectively as possible.
 - Each Party shall bear its own costs in relation to its participation in any dispute resolution process, unless otherwise agreed to by the parties during this process.
 - Nothing in this clause 23 prevents a court or tribunal from imposing costs against one or more parties where applicable.
- 23.2 Notification
- If a dispute arises (including a breach or an alleged breach) under the Agreement then the party disputing the issue shall provide the other party a written notice of the nature and details of the dispute. If the dispute is not resolved at an operational level or is sufficiently serious that it cannot be resolved at the operational level, the Parties shall endeavour to agree upon a resolution. The Parties acknowledge that it is in their respective interests to resolve disputes at this level within a period not exceeding 10 business days.
- 23.3 Continued Performance
- Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under this agreement, wherever practicable, and or where not otherwise agreed by the parties, or unless the agreement has been lawfully terminated under clause 9 or clause 10.
- 23.4 Failure to resolve dispute
- Should the dispute not be resolved within the 10 business days or such other period as agreed in writing between the parties, this agreement may be suspending pending the outcome of any hearings, tribunal, arbitration or court action.