



# Building Newsflash

## Provision for changes to building assessment provisions – Water savings targets

### Purpose

The purpose of this Newsflash is to inform building certifiers of the availability of, and provide an outline of, the operation of section 37 of the *Building Act 1975*.

### Background

Water saving targets will apply to building development applications lodged for construction of new houses in the 24 local councils using South East Queensland water reserves from 1 January 2007 and to new houses in the remainder of Queensland from 1 July 2007.

Part 25 of the Queensland Development Code (QDC) sets out how the water saving targets can be met. New houses must be designed to incorporate the requirements of Part 25 to meet water saving targets. However, planning and contract documentation for some houses may have already been completed and application for these houses may not be lodged with a building certifier until after 1 January 2007.

The implementation timeframes for the changes to Part 25 of the QDC may make redesigning existing projects to comply with the new requirements difficult and costly in some circumstances. A contract may have been agreed between the builder and owner or significant planning work may have been done. The *Building Act 1975* provides some flexibility for certifiers approving building development applications in these circumstances.

### Legislation

**Section 37** generally provides certifiers with a discretion to apply the earlier version of building laws following an amendment to the building assessment provisions.

### Interpretation

Section 37 of the *Building Act 1975* provides for the assessment of building work following an amendment to the building assessment provisions if the building work -

- Started before an amendment commenced;
- Approval was given but work was not started before an amendment commenced;
- An application is made but not decided before an amendment commenced; or
- Planning started before an amendment and the building certifier is satisfied that replanning would impose financial hardship.

In these circumstances, certifiers have a discretion they may exercise on a case by case basis to allow building work to be lawfully carried out under the building assessment provisions in force immediately before the amendment.

Explanatory notes state, section 37 (originally s12 of the *Building Act 1975*) –

“ensures that no unnecessary hardship is placed on a person where amendments have been made to the Standard Building Regulation. The provisions of this section are necessary as amendments are made to the Building Code of Australia, which is called up by the Regulation, every six months. Otherwise it would be an unreasonable impost on industry for changes to be required after substantial planning or works have been completed”.

In relation to changes to Part 25 of the QDC building certifiers may consider such things as -

- The stage of project planning and the level of documentation of plans in place for the development approval;
- Whether or not a contract has been agreed to between the builder and owner for the building work and if the changes would impose a financial burden.

When exercising the discretion available under section 37 of the *Building Act 1975* certifiers should clearly document the circumstances of the decision for the building development approval.

### Contact Officer

Building Codes Queensland

Phone: (07) 3239 6369

Email: [buildingcodes@dlgp.qld.gov.au](mailto:buildingcodes@dlgp.qld.gov.au)

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