

# Building Note 112

## Application of New Regulations

### Purpose

This building note provides guidance for building certifiers on the operation of Section 51 of the [Building Act 1993](#) (the Act), as it relates to requirement for a new regulation or amendment to apply to building work, particularly with regard to application of section 51(2).

This building note will also assist building industry practitioners to understand how transitional arrangements apply to new and amended regulations.

### Section 51 of the *Building Act 1993*

#### Section 51(1)

Section 51(1) provides that a regulation or amendment to a regulation does not apply to building work for which a building permit is granted under the Act before the commencement of the regulation or amendment.

#### Section 51(2)

Section 51(2) provides that a regulation or amendment to a regulation does not apply to building work in respect of which a building certifier has certified in writing that substantial progress was made on the design of the building before the commencement of the regulation or amendment.

#### Section 51(3)

Section 51(3) provides that despite subsection (1) and (2), a building certifier and the owner of a building may agree that a regulation or amendment to a regulation is to apply to building work referred to in those subsections and, if an agreement is made, the regulation or amendment applies accordingly.

### Key considerations for application of section 51(2)

#### Documentation

Under section 51(2), the building certifier has discretion to determine what constitutes substantial progress in relation to the particular building work. The decision, and the basis for the decision, is to be documented in writing and contained in the relevant building permit records.

#### Substantial progress

In general, substantial progress on a design may be evidenced by:

- building designs have progressed to a point which would enable a builder to provide a quote for the proposed building work;

- the progress of the building is evidenced by designs, including the history of drawings over time such as the number of revisions and dated before the commencement of the new regulation or amendment;
- an application for a building permit was made before the new regulation or amendment commenced, although the building permit had not yet been granted; or
- a formal agreement or contract has been entered into by the relevant parties relating to a particular design on a particular allotment.

## Demolished buildings

Section 51(2) of the Act is not considered to apply to a design for a building on an allotment which was previously built and then demolished, even if the intention is to reuse the original design on the same allotment. Substantial progress on the design is not considered to have occurred as the original design has already been the subject of building certification and construction completed (and subsequently demolished).

## Stock designs

In the case of 'stock' or 'standard' designs, the relevant building certifier should not certify that substantial progress has been made on the design unless:

- a) the 'stock' or 'standard' design relates to the particular allotment on which the building is proposed to be constructed; and
- b) is evidenced by –
  - i. a contract having been signed to have the building of that design constructed on the allotment; or
  - ii. by a deposit having been paid for the construction of a building of that design on the relevant allotment prior to the commencement of the regulation or amendment.

## One-off designs

In the case of an individual 'one-off' design, the relevant building certifier must be satisfied that the design relates to the proposed building to be constructed on the relevant allotment and that substantial progress was made on the design prior to the commencement of the new regulation or amendment. This may be evidenced by:

- a) the dating mechanism used by architects and draftspersons on their drawings; or
- b) by a payment for a completed stage of design development.

## Transportable or relocatable buildings

The date of construction of a transportable or relocatable building can be evidenced by a compliance plate permanently affixed to an accessible part of the building. The compliance plate should specify the name of manufacturer, the unique identification number for the building, the month and year of construction, and design wind speed of the building. The compliance plate should be supported other relevant documentation such as design drawings, structural certification etc.

## Design changes

If a minor design change is made after the building permit is issued that does not materially impact on the relevant building certifier's decision previously given under section 51(2), that minor design change can be accepted without further consideration.

Where a substantial design change is proposed that would facilitate the issue of a new building permit, the relevant building certifier should reconsider if it is appropriate to apply section 51(2) to the building permit having regard to this building note.

## Change of builder

Where the builder named in the residential building contract (and where there is a building permit, named on the building permit) is proposed to be replaced, including in the case of insolvency, there is no change to the discretion of the relevant building certifier under section 51(2).

## Owner approval

The owner of the proposed building or the land concerned, or a person acting on behalf of the owner may apply to the relevant building certifier to consider certifying in writing that a design is substantially progressed. The relevant building certifier should not certify a request to apply section 51(2) without supporting authorisation signed from the relevant owner or applicant with authority to act on the owner's behalf which confirms they are requesting to apply section 51(2).

## Further information

Contact Building Advisory Services for further information:

- Email: [bas@nt.gov.au](mailto:bas@nt.gov.au)
- Phone: 08 8999 8985



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