



# “Ban the Banners” What Remains?

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The original “Ban the Banners” legislation was introduced in November 2009 with the bulk of the provisions commencing on 1 January 2010. It “banned” certain prohibitions, requirements and restrictions in “relevant instruments” (including contracts of sale, community management statements, building management statements and by-laws).

As a result of recent amendments (passed by the Queensland Legislative Assembly on 20 May 2010, assented to on 23 May 2010 and to commence on a date fixed by proclamation), some of the more objectionable provisions have been removed.

The following is a summary of what will remain following commencement of the recent amendments:-

## **Prohibitions. A relevant instrument cannot prohibit:-**

1. the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building, if using the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55;
2. the use in a prescribed building (a class 1a or 2 building or an enclosed class 10a building attached to a class 1a or 2 building) of a window that is energy efficient or the treatment of a window to ensure the window is energy efficient;
3. the installation of a solar hot water system or photovoltaic cells on the roof or other external surface of a prescribed building to the extent that the prohibition applies merely to enhance or preserve the external appearance of the building.

## **Requirements. A relevant instrument cannot require:-**

1. a minimum floor area for a class 1a building - although this does not extend to a requirement for a minimum frontage unless the requirement of a minimum frontage has the effect of construction of a less energy efficient building;
2. a minimum number of bathrooms or bedrooms for a class 1a building;
3. a class 1a building or an enclosed class 10a building attached to a class 1a building to be orientated on a parcel of land in a particular way, if orientating the building in the particular way would have the effect of construction of a less energy efficient building.

## **Restrictions. A relevant instrument cannot restrict:-**

1. the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building if using the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55 and use of the colour:-
  - (i) minimises potential adverse effects on the external appearance; and
  - (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building;
2. the use in a prescribed building of a window that is energy efficient or the treatment of a window in a prescribed building to ensure the window is energy efficient if the type of window to be used or the treatment:-
  - (i) minimises potential adverse effects on the external appearance of the building; and
  - (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building;
3. the location on the roof or other external surface of a prescribed building where a solar hot water system or photovoltaic cells may be installed if the restriction:-

- (i) applies merely to enhance or preserve the external appearance of the building; and
- (ii) prevents a person from installing a solar water system or photovoltaic cells on the roof or other external surface of the building.

**Withholding Consent. Where consent is required under a relevant instrument that consent cannot be withheld to:-**

1. the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building if use of the colour:
  - (i) achieves a solar absorptance value for the upper surface of the roof of not more than 0.55; and
  - (ii) minimises potential adverse effects on the external appearance of the building; and
  - (iii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.
2. The use in a prescribed building of a window that is energy efficient or the treatment of a window in a prescribed building to ensure the window is energy efficient if the type of window to be used or the treatment:-
  - (i) minimises potential adverse effects on the external appearance of the building; and
  - (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building;
3. installation of a hot water system or photovoltaic cells on the roof or other external surface of a prescribed building if consent is withheld merely to enhance or preserve the external appearance of the building.

**General Proviso for Solar Hot Water Systems and Photovoltaic Cells**

Notwithstanding the specific provisions mentioned above, it is provided that nothing allows a solar hot water system or photovoltaic cells to be installed on the roof or other external surface of a building in a way that unreasonably prevents or interferes with a person's use and enjoyment of any part of the building.

**Conclusion**

Whilst rumours of the death of building covenants may have been greatly exaggerated, there is now a need for careful consideration of the legislation at an early stage of projects and transactions. The legislation will affect a wide range of parties including:-

- Developers
- Body corporates
- Builders
- Owners of property subject to covenants
- Those looking to buy a property subject to covenants

All such parties should review their legal position as a result of this legislation.

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