



Restrictive Covenants

Understanding restrictions on your land

What is a restrictive covenant?

A restrictive covenant is a private treaty or written agreement that runs with a parcel of land and restricts the way that land can be used or developed. A property that is subject to a restrictive covenant is known as the **'burdened land'** and the land with the corresponding ability to enforce the covenant is known as the **'benefited land'**.

What is a caveat?

A covenant should not be confused with a caveat. A caveat is a document that any person with a legal interest in a property can lodge at Land Use Victoria. After recording, a caveat note appears on the title giving anyone with interest notice that a third party claims rights over the property.

What is a Section 173 Agreement?

An agreement made under Section 173 of the *Planning and Environment Act 1987* may be registered on a title and restrict the way land is used or developed. This is an agreement made between Council and the landowner. A Section 173 Agreement is not a registered restrictive covenant.

How can I find out if a restrictive covenant applies to my land?

A registered restrictive covenant is recorded on the title of the burdened land however is not recorded on the title of the benefiting land. If the benefited land has been subdivided and re-subdivided an individual may need to search for the original plan of subdivision and earlier

titles to identify beneficiaries. Copies of title are not held by Council.

What are some common types of restrictions found in covenants?

Common types of restrictions which appear on covenants include:

- Type of building materials permitted
- Restrictions preventing further subdivision
- Restrictions on the number of dwellings on a lot

What happens if I apply for a planning permit for use or development that is prohibited by a restrictive covenant?

Council cannot grant a planning permit for something that would result in a breach of a registered restrictive covenant, unless a planning permit is also granted to remove or vary the covenant under Section 61 (4) of the Planning and Environment Act 1987.

What happens to a covenant when I subdivide my land?

A covenant is inherited from the parent lot to any subsequent lots created by subdivision. For example, if the covenant applying to an existing dwelling lot restricts more than one dwelling being created on a lot, then any vacant parcels created through subdivision will not be able to contain a new dwelling until the covenant is removed or altered.

Who is responsible for enforcing covenants?

The persons who benefit from a restrictive covenant are responsible for enforcing the covenant, not local Councils. Enforcement of a breach must be pursued against the owner of the burdened land through Court proceedings.

Can I remove or vary a covenant applied to my land?

Yes, however it should be noted that it is not a simple process. Lodging an application to remove or vary a covenant does not guarantee its approval. Clause 52.02 of the Golden Plains Planning Scheme requires that a planning permit be obtained for the removal or variation of a restrictive covenant. In order to remove or vary a restrictive covenant, Council must give notice of the application to all beneficiaries.

For restrictive covenants created after 25 June 1991, the application must satisfy the requirements of Section 60 (2) of the *Planning and Environment Act 1987*. This provision requires Council to be satisfied that no beneficiary will suffer financial loss, loss of amenity, loss arising from change of neighbourhood character or any other material detriment as a consequence of the variation.

This test does not apply to applications to remove or vary restrictive covenants created before 25 June 1991. When considering applications for covenant removal before 25 June 1991, officers must not grant a permit if any objections are received from beneficiaries citing perceived detriment.

I am interested in purchasing land which is subject to a restrictive covenant. Should I be deterred?

If you have any concerns regarding a restrictive covenant applying to your land or land that you may be interested in purchasing, it's recommended that you seek your own legal advice. As previously noted, the process of removing or altering a covenant is unpredictable and potentially costly.

Where can I go to find more information?

If you wish to find out more about restrictive covenants and their interpretation the websites listed below may be useful. It is also recommended that you seek your own independent legal advice.

Useful websites:

Department of Environment, Land, Water and Planning:
Restrictive Covenants

<https://www.planning.vic.gov.au/legislation-regulations-and-fees/restrictive-covenants>

Restrictive Covenants in Victoria FAQs

<https://restrictive-covenants-victoria.com/>