



Restrictive Covenants

Understanding restrictions on your land

What is a restrictive covenant?

A restrictive covenant is a written contract 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 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.

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 always recorded on the title of the benefited 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 benefited owners.

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 further preventing 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 the land restricts more than one dwelling being created on a lot, then the lots 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 land owners 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 the Courts.

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 for the removal or variation of a restrictive covenant.

For restrictive covenants created after 25 June 1991, the application must satisfy the requirements of Section 60

(2) of the *Planning and Environmental 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 pre-25 June 1991 covenant removal, officers must not grant a permit if objections are received from beneficiaries citing detriment.

The process of satisfying the Section 60 (2) test when considering objections from beneficiaries to a post 1991 covenant has proven difficult for decision makers.

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 may be of interest to you, you should always seek legal or planning advice in this instance. As previously noted, the process of removing or altering a covenant is unpredictable and potentially costly.

Where can I go to find more information?

There are many online resources to assist you with understanding restrictive covenants. If you wish to find out more about restrictive covenants and their interpretation:

Contact our Planning Department: 5220 7111

Email: enquiries@gplains.vic.gov.au.

Other resources:

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/>