

Covenants

Many residential lots have titles which contain restrictive covenants. Covenants can restrict the use of land in various ways and therefore may cause some difficulties if the landowner wishes to develop their land.

Covenants were placed on titles many years ago, usually at the time of the original subdivision. The reason for doing so was to create some certainty about the type/s of development that would occur on the land within the subdivision, in the future.

The most common restrictions of covenants are, for example:

- Not more than one dwelling house and associated out buildings may be erected
- Only single story dwellings may be erected
- Constructing a dwelling in brick or any other approved (specified) material
- The roof of any buildings must be slate or tiles (as opposed to metal deck)
- The size of the dwelling must not be less than a specified floor area
- No sand or earth may be removed from the land or no quarrying on the land.

How to find out if a covenant exists

If a covenant exists on the land it will be noted on the Certificate of Title. The full details of the covenant will be explained in a document called the Instrument of Transfer.

As the covenant is on the land, when the land is sold the covenant remains, and each and every purchaser of the land is required, by law, to respect and adhere to it.

A covenant does not necessarily exist on every lot in a subdivision and a qualified legal professional will be able to determine which lots it applies to.

Amending or removing a covenant

Generally, up to three methods exist for amending or removing a covenant:

1. Application through the Supreme Court;
2. Application via a Planning Permit; or
3. Application to amend the Local Planning Scheme.

A variation of a restrictive covenant is often preferred as it requires a narrower expansion of a development, rather than a complete removal of the covenant, which could possibly allow any sort of development permitted by the planning scheme.

Complex legal or planning procedures are involved for covenant variations or removals, and it is strongly recommended (if land owners or developers are considering a removal or variation) that a solicitor or planning consultant submits the application on their behalf.

Councils & covenants

The Council is not allowed to grant a permit (or amend a permit) if that results in a violation of a registered restrictive covenant. However, if a permit is (or was) granted to allow the removal or variation of the covenant an exception is made BUT the permit would become conditional (ie. not to come into effect) until the covenant is removed or varied. For any Planning Permit application Council must be supplied with a copy of the restrictive covenant details at the time of applying.