

Covenants

The purpose of this information sheet is to assist applicants in understanding the meaning and impact of covenants.



What is a covenant?

A covenant, or restriction, is a private agreement between landowners and can be placed on your property title to either ensure you undertake a particular action or that you are restricted from undertaking certain actions in the way the land is used or developed. They are commonly applied when an owner subdivides land for sale and wishes to apply some restrictions on the future use and development of the lots.

Covenants can be used to ensure that the character of your neighbourhood is kept uniform. They are registered on the Certificate of Title and are not restricted to you personally. If you sell your property, the covenant remains and the new owner is then bound by the same requirements.

Sometimes a covenant can apply to a single lot, however in housing estates it is common for the developer to place a restrictive covenant on each lot in the estate.

Restrictive covenants and Planning

The City is not responsible for creating or enforcing restrictive covenants.

The City is only involved if there is an application to remove or vary a covenant.

If you apply for a planning permit to use or development your land and the proposed works breach the covenant, the City cannot approve the application.

There are 3 ways to remove or vary a restrictive covenant:

- Apply to the Supreme Court of Victoria
- Request to amend the planning scheme, or
- Apply for a Planning Permit to remove the covenant

You should obtain legal advice to determine whether any of the methods for removing the covenant are appropriate.

Notifying the beneficiaries of the restrictive covenant

As part of the planning application process, you must give notice of the application to the owners and occupiers of the benefitting land. The City will provide you with details of notices to be posted to the owners and occupiers and a sign is placed on the land. Notice is also required to be published in the local newspaper.

Determining the results of the application

You need to meet strict requirements to be granted a planning permit to remove or vary a restrictive covenant. The requirements are set out in sections 60(2) and (5) of the Act.

If the restrictive covenant was created after 25 June 1991, the City will only grant the permit if:

- the owner of benefitting land is unlikely to suffer financial loss, loss of amenity or loss arising from change to the character of the neighbourhood
- the owner of the benefitting land is unlikely to suffer any other material detriment.

If the restrictive covenant was created before 25 June 1991, the City will only grant the permit if:

- the owner of benefitting land is unlikely to suffer detriment of any kind (including perceived detriment), and
- any objections made by the benefitting owner are vexatious or in bad faith.

If a benefitting owner makes a valid objection to the granting of the permit or may suffer detriment, the City may not grant the permit.

What do I need?	Where can I get it/who can help?
A completed application for planning permit form	Download from our website
A copy of the Certificate of Title including any covenants or agreements (produced within the last 3 months)	Purchase a copy from https://www.landata.vic.gov.au/
Payment of the relevant application fee	Download a fee schedule from our website
A written response against any relevant policies from the Planning Scheme demonstrating how the proposal satisfies the relevant strategies.	Planning Consultant
Written confirmation of the existence of the covenant and indicate which other land and landowners have the benefit of the covenant. Include copies of all current titles and lots which benefit from the covenant. These title searches must be less than 3 months old.	Legal professional
A copy of the original Parent Title from which all the land in the subdivision was created and the dates of transfer of each lot from this title.	Legal professional
A copy of the original Plan of Subdivision.	Legal professional
A copy of the Title and Instrument of Transfer in which the covenant was created for the subject site.	Legal professional
A written statement outlining the reason for the removal or variation of the covenant and whether the removal or variation is likely to have a detrimental impact on the surrounding area.	Planning Consultant