



Registered Restrictive Covenant Fact Sheet

What is a covenant

A **registered restrictive covenant** is recorded on the Certificate of Title and is a private agreement between land owners which can restrict the way land can be used and developed.

The land where the covenant applies is called the **burdened** land. The land that benefits from the covenant is called the **benefited** land.

The planning system is only involved if an application is lodged to remove or vary a covenant. Council cannot approve a planning permit application in breach of a covenant.

Covenants are complex

Covenants can be hard to interpret, and independent legal advice should be sought.

Enforcement

Council is not responsible for preparing, writing or enforcing covenants. This is done by the land owners who benefit from the covenant, usually through the Supreme Court.

Selling burdened land

When the burdened land is sold, the new land owners are encumbered by the covenant.

Identifying benefited land

Covenants are recorded on the Certificate of Title of the burdened land but are not recorded on the Certificate of Title of benefited land. If the benefited land has been subdivided and re-subdivided, you will need to search the original Plan of Subdivision and previous Certificate of Titles to identify all the benefited owners.

To obtain Certificate of Titles and Plan of Subdivisions refer to landata.vic.gov.au

A qualified professional in the field of property law can further assist with this process.

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Remove or vary

There are four ways to remove or vary a covenant:

1. Apply to the Supreme Court for an order under section 84 of the *Property Law Act 1958*.
2. By Deed of Consent under the *Transfer of Land Act 1958*.
3. Amend the planning scheme under Part 3 of the *Planning and Environment Act 1987*.
4. Apply for a planning permit under Part 4 of the *Planning and Environment Act 1987*.

If a covenant was created **before 25 June 1991**, Council must have regard to section 60(2) of the *Planning and Environment Act 1987* and cannot grant a permit unless it is satisfied that it is unlikely to cause:

- financial loss
- loss of amenity
- loss arising from change to the character of the neighbourhood
- any other material detriment

If a covenant was created **after 25 June 1991**, Council must have regard to section 60(5) of the *Planning and Environment Act 1987* and cannot grant a permit unless:

- the owner of any land benefited by the restriction (other than an owner who, before or after making the application must not more than three months before it making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction, and
- if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

In summary, notification of all beneficiaries is required, and Council must refuse a permit if there is a possibility that detriment will result.

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Notice of an application

Notice of an application to remove or vary a covenant must be:

- given to all owners and occupiers of land who benefit from the restrictive covenant (subject to some conditions in section 47(2) of the *Planning and Environment Act 1987*)
- placed on the site subject to the application, and
- published in the local newspaper.

Objections

A planning permit **must not** be granted by Council to remove or vary a covenant if:

- a benefited land owner has lodged a formal objection
- a benefited land owner may incur detriment (even if a formal objection has not been lodged).

See 'Remove or vary' for further information.

Review of decision

If Council issues a refusal, an appeal can be lodged at the Victorian Civil and Administrative Tribunal (VCAT) to review the decision.

If Council grants a permit, and a person has objected to the proposal (who is not a benefited land owner), the objector can lodge an appeal at VCAT to review the decision.

Contact

To discuss whether a planning permit is required, please contact the Council's Planning Department on (03) 5624 2411.

If a planning permit is required, please refer to the covenant removal/variation checklist to determine the relevant information required to accompany the planning permit application.

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