

# Checklist

## Variation & Removal of Restrictive Covenants



**Brimbank City Council has a significant number of properties that contain restrictive covenants on their titles. In accordance with the Planning and Environment Act 1987 (Section 61(4)), Council cannot issue a planning permit or approve plans for use and development that is in breach of a covenant. Any use or development which is in breach of a covenant must be refused by Council, unless a planning permit to remove or vary the covenant is first granted.**

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### What is a restrictive covenant?

A restrictive covenant is a restriction registered on a title that limits the landowner from using or developing the land in a particular way. The most common restrictive covenants relate to restricting only one dwelling on a lot, limiting the height of buildings and the floor area of a dwelling, and the use of particular building materials on the lot. To find out whether your land is subject to a restrictive covenant you need to view a full copy of the title. A copy of Title can be obtained online at [www.landata.vic.gov.au](http://www.landata.vic.gov.au).

### Why a restrictive covenant?

Covenants are placed on the title by the developer at the time of subdivision. Restrictive covenants are often attractive to purchasers who are looking for a particular style and type of development in their future neighbourhood (i.e. single houses on a lot only). Council does not initiate or assist in the creation of restrictive covenants.

### Other land benefited by the restrictive covenant

Land benefited by a restrictive covenant is land which has the identical restriction as the subject title identifying benefiting land can be difficult and it is required that a professional (lawyer, conveyancer, legal title searcher) be used to obtain this information. Details of the methodology must be submitted to Council, together with the title search results. In some instances, there may be a large number of lots benefiting from the same covenant and could be some distance from the subject land. Nearby land may not benefit from the same restrictive covenant.

### Notification of application to remove or vary a restrictive covenant

In accordance with State Government law, the following notification of an application to remove or vary a restrictive covenant must occur:

- Send a letter to all property owners and occupiers of land shown to be benefited by the restrictive covenant.
- Send a letter to nearby property owners and occupiers.
- Place a public notice(s) on the land.
- Publish notice in a newspaper circulating in the area (*Brimbank and NorthWest Star Weekly*).

The application must be notified for a minimum of fourteen days and additional fees will apply dependent on the scale of the above notification. As a result of this, other parties (including other beneficiaries) may object to your application.



## Decision on application

In accordance with the Planning and Environment Act 1987, Council must not grant a permit to remove or vary a restrictive covenant, unless it is satisfied that;

- The owner of any land benefited by the restrictive covenant will be unlikely to suffer any detriment of any kind as a consequence of removing or varying the restrictive covenant. (Refer to Section 60(2) of the Planning and Environment Act 1987).

Therefore, if another beneficiary can show that they will be affected of any kind as a result of the removal or variation of this covenant, Council must refuse to remove or vary the restrictive covenant.

## Conclusion

If you intend to vary or remove a restrictive covenant from title, you should be aware that it may take considerable time and expense to do so. Further, making an application to remove or vary a restrictive covenant does not guarantee that a permit will be issued. Objections from other beneficiaries will result in a refusal of your application.

## Documents required for lodgement

You can apply online at [www.brimbank.vic.gov.au/forms/planning-permit-application-online-form](http://www.brimbank.vic.gov.au/forms/planning-permit-application-online-form) and pay the prescribed fee with your credit card.

You will need:

- A recent copy of the title of the land, together with confirmation that the present boundaries are the same as the title boundaries. A copy of Title can be obtained online at [www.landata.vic.gov.au](http://www.landata.vic.gov.au).
- Details of the registered restrictive covenant or S173 Agreement affecting the land. You will need to check both the plan of subdivision (if the land is a lot on a plan) for restrictions and the certificate of title for restrictive covenants registered or recorded on the title.
- Details of any other land benefited by the restrictive covenant. (This will involve the expertise of legal title searches or lawyers who will be required to carry out a title search to determine the beneficiaries, as well as providing details of the methodology used to complete the title search.)
- Any other relevant information to support your proposal.

**Disclaimer:** Please note this checklist is for standard information required for lodgement. Additional information may be required by the assessing planning officer after registration.