



Have you  
**CHECKED**  
the **LIST?**

City of Darebin  
**Planning**  
8470 8850  
[www.darebin.vic.gov.au](http://www.darebin.vic.gov.au)

Restrictive covenants are most commonly applied when an owner subdivides land for sale and wishes to apply use and development restrictions over the lots to be created.

Some typical examples of restrictive covenants are those which:

- Prohibit the use of the land for quarrying operations
- Limit construction on the land to one dwelling
- Stipulate materials from which a dwelling on the land must be constructed

It is essential that you refer to your certificate of title to confirm the details of any covenant which may burden your title.

### **Removing or varying a restrictive covenant**

Council may not grant or amend a planning permit if anything authorised by the permit or amendment would result in a breach of a restrictive covenant.

A restrictive covenant can be removed or varied as follows:

- by an order of the Supreme Court of Victoria
- by an amendment to the Darebin Planning Scheme
- through the grant of planning permit

If your land is affected by a restrictive covenant you should obtain legal advice to determine whether any of these methods are appropriate.

### **How is the application assessed?**

If the restrictive covenant was created before 25 June 1991, Council must not grant a permit unless it is satisfied that:

- owners of land benefiting from the restrictive covenant will be unlikely to suffer any detriment of any kind (including perceived detriment)
- if a benefiting owner objects to the grant of the permit, that the objection is vexatious or not made in good faith

If the restrictive covenant was created on or after 25 June 1991, Council must not grant the permit unless it is satisfied that the owner of any benefitting land will be unlikely to suffer:

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

## CHECKLIST FOR APPLICATIONS

To ensure that we can process your application as quickly as possible, please read the following checklist carefully and ensure that you have provided all the necessary documentation. If you are unclear on any aspect of your application, we encourage you to contact Council on (03) 8470 8850.

### For all Planning Applications the following must be provided:

- an Application Form completed and signed
- a complete copy of Title for the land showing the Registered Search Statement and the Plan of Subdivision. The copy of Title must be clear and legible and have been produced within the previous three months
- full copy of the instrument and transfer, and a full, clear legible copy of the covenant
- the prescribed application Fee

In addition to the information required above for all planning applications, the following should be provided:

- a letter from a solicitor, land surveyor or similar professional confirming the existence of the covenant and indicating which land and landowners have the benefit of the covenant together with copies of relevant title documents
- a copy of a full search of the parent title of the land from which the subject lot was transferred that includes the list of transfer dates of each and every lot in the subdivision and the corresponding plan that shows which lots relate to the specific transfer number
- the list of transfer dates highlighted to indicate which properties were transferred after the transfer date of the site. These properties have the 'legal benefit' of the covenant
- a copy of the original plan of subdivision showing all properties that legally benefit from the covenant (as determined above). Council will then establish which of the original lots have been subdivided (if at all).



*(checklist continued from previous page)*

- a list of the property addresses which have the legal benefit of the restrictive covenant, with their corresponding
  - transfer number
  - volume and folio number
  - a clear and accurate description of how the covenant is to be varied, including reference to the relevant volume and folio and the instrument of transfer numbers

Please note that all title searches should be less than 3 months old.

## Disclaimer:

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

## Note:

Other controls in the planning scheme may affect your proposal. Please check the planning scheme requirements before submitting a planning application by visiting the City of Darebin website at [www.darebin.vic.gov.au/planning](http://www.darebin.vic.gov.au/planning) or contacting Council's Planning Team between 8:45am to 4:45pm, Monday to Friday on 8470 8850.

