

Restrictive Covenants

PLN Information Sheet No. 6

General

The Western Australian Planning Commission (WAPC) Planning Bulletin No. 91 states that a restrictive covenant is an agreement which restricts a landowner or the use or enjoyment of the landowner's land ("burdened land") for the benefit of other land ("benefited land") or for the benefit of a public authority.

A restrictive covenant is a document registered on the title of the land, which requires that it be used or not used in a specific way. A covenant may be expressed as being either positive or restrictive.

The existence of a restricting covenant may not be a relevant planning consideration in the determination of a development application except where the restrictive covenant arises from a planning decision.

Extinguishing or Varying Restrictive Covenants

The WAPC advises that subject to the provisions of any legislation under which a restrictive covenant is made, restrictive covenants may be extinguished or varied by:

- agreement between the parties having an interest in the covenant under section 129B of the *Transfer of Land Act 1893*;
- an order of the Supreme Court under section 129C of the *Transfer of Land Act 1893*;
- where a restrictive covenant was created under Part IVA of the *Transfer of Land Act 1893*, on the application to the Registrar of Titles by the landowner of either the burdened or the benefited land, or by the local government or public authority benefited, with the consent of all relevant persons;
- an application made to Landgate in accordance with section 129BB of the *Transfer of Land Act 1893* which provides a further mechanism whereby restrictive covenants in gross made under section 129BA of the *Transfer of Land Act 1893* may be extinguished or varied; or
- the provisions of a local planning scheme.

Town Planning Scheme Provisions

The City's Town Planning Scheme No.4 (TPS No.4) includes the WAPC's Model Scheme Text provisions for the extinguishment or varying of restrictive covenants.

Clause 5.4 of the City's TPS No.4 specifies the following:

“A restrictive covenant affecting any land in the local planning scheme area by which, or the effect of which is that, the number of residential dwellings which may be constructed on the land is limited or restricted to less than that permitted by the Scheme (including any covenant purporting to –
i) *limit or restrict subdivision, or*
ii) *limit or restrict the maximum area occupied by a dwelling),*
is hereby extinguished or varied to the extent that it is inconsistent with the provisions of the Residential Design Codes which apply under the Scheme.”

Application Requirements

Where an owner seeks the City's support for the extinguishment of a restrictive covenant or part of a covenant as per Clause 5.4 of the City's TPS No.4, the request to the City should be in writing and on the form entitled 'Request for Support of Removal of a Restrictive Covenant or Part of a Restrictive Covenant'. This form is found at the City of Armadale website: (http://www.armadale.wa.gov.au/services_and_facilities/planning/).

Refer to the City's Schedule of Fees and Charges at [http://www.armadale.wa.gov.au/Home/Services and Facilities/Planning](http://www.armadale.wa.gov.au/Home/Services_and_Facilities/Planning) for details of the required, non-refundable fee. Payment is required upon lodgement at the City.

The landowner(s) are then required to lodge documents at Landgate to progress the proposal. Further information on Landgate's processes and requirements can be obtained by contacting Landgate on (08) 9273 7373 or at their website (<http://www.landgate.wa.gov.au/>).

Further Information

1. WAPC Planning Bulletin 91 Estate Covenants: New Residential Subdivisions :
<http://www.planning.wa.gov.au/Plans+and+policies/Publications/1706.aspx>
2. The City's Town Planning Scheme No.4:
http://www.armadale.wa.gov.au/services_and_facilities/planning/town_planning_scheme_no4/
3. The City of Armadale's Online Mapping:
http://www.armadale.wa.gov.au/services_and_facilities/online_mapping/
4. Land Titles Registration Manual:
[http://www.landgate.wa.gov.au/docvault.nsf/web/PS_LTPM/\\$FILE/LTPM.pdf](http://www.landgate.wa.gov.au/docvault.nsf/web/PS_LTPM/$FILE/LTPM.pdf)

Please Note: The information contained in this brochure is intended as a guide only. It is recommended that the advice and assistance from the relevant authorities be sought prior to lodgement of the application. The City of Armadale disclaims any liability for any damages sustained by a person acting on the basis of this information.