

Checklist – Variation and Removal of Restrictive Covenants



An application for the variation and removal of restrictive covenants should be accompanied by the following information:

A current copy of Title and details of any registered restrictive covenant or Section 173 Agreement

A Copy of Title and associated restrictions can be accessed here www.landata.vic.gov.au The Title must be no older than 60 days old.

Written Submission

The written submission should detail:

- The reason for the variation or removal of the restriction;
- An assessment of the application against Section 60(2) or 60(5) of the Planning and Environment Act 1987.

Details of the amended restriction

If the restriction is to be amended, details of the amended restriction must be provided ie. amended building envelope or amended wording.

A list of properties which benefit from the restriction

Land benefitted by a restrictive covenant is land which has the identical restriction as the subject title. Identifying benefitting land can be difficult and a professional (lawyer, conveyancer, legal title searcher) must 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.

A completed Application for Planning Permit form

The form can be accessed

from <https://www.surfcoast.vic.gov.au/Property/Planning-and-building/Apply-for-a-planning-permit>

The type of licence sought should be included in the proposal section of the form.

The relevant fee

The fee schedule can be accessed

here <https://www.surfcoast.vic.gov.au/Property/Planning-and-building/Apply-for-a-planning-permit>

Important note

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.

In accordance with planning 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.

Fees will apply dependent on the scale of the above notification and you will be responsible for paying to place notices in the newspaper.

As a result of public notification, other parties (including other beneficiaries) may object to your application.

In accordance with the Planning and Environment Act 1987, if a beneficiary to the covenant objects to your application, Council is likely to refuse the application.

Further information about covenants and restrictions can be found

here <https://www.planning.vic.gov.au/legislation-and-regulations/restrictive-covenants>

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Disclaimer: Please note this checklist is for standard information required for lodgement. Additional information may be required by Council when assessing your application.