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COVENANTS

Many properties are affected by restrictions as to their use which are often referred to as covenants. These are often an obligation requiring a land owner to refrain from doing some act (such as not to use certain building materials). Less commonly, a covenant can require the doing of an act (known as a positive covenant).

Covenants are often put in place to create a situation where a certain standard or requirement is set and are usually aimed at maximising the value of the land or adjoining land and giving piece of mind to present and future land owners.

However it is not widely known that these covenants are often not legally binding on local councils and in fact council's may have the power to neutralise them, giving unexpected results.

The State Government's Environmental Planning and Assessment Act allows local councils to put a provision in the council's Local Environmental Plan (LEP) to say that

covenants can be ineffective or overridden by normal development application.

Thus, if a council approves a development application which contravenes a covenant, the covenant that would otherwise restrict the development may be held not to apply.

Many Council's have these guidelines written into their LEP provisions and accordingly care should be taken by all interested parties when dealing with any covenants to check the effect of the local council's LEP.

Of course the effect of the council LEP may in some cases be handy when the property owner does not wish to comply with the covenant.

Wagga Wagga

Glen Lollback
Matt Fox
Lyn Strutt

glen.lollback@comminshendriks.com
matthew.fox@comminshendriks.com
lynette.strutt@comminshendriks.com

Coolamon

Bill Thompson
Tammy Holzheimer

coolamon@comminshendriks.com
tammy.holzheimer@comminshendriks.com

Junee

Michael Commins

michael.commins@comminshendriks.com

Henty

Helen McRorie

henty@comminshendriks.com

Ganmain

Kate Carroll

ganmain@comminshendriks.com