

# Statutory covenants



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## Introduction

Statutory covenants are set to become as familiar to Queensland developers as common law building covenants are. Building covenants are contracts with the current landowner – they are not binding on successors in title. Statutory covenants are voluntary (i.e. must be signed by both parties) agreements registered on the title of land which are binding on successors in title. They regulate the use of land or a building, or tie two parcels of land together in perpetuity. They can only be entered into between a land owner (as the Covenantor) and the State, a government agency or a local government (as the Covenantee).

## History

In 2000 *the Land Act 1994* (non-freehold land) and *the Land Title Act 1994* (freehold land) were amended to allow statutory covenants to be registered on the title of land. The legislation allows covenants to be used to regulate the use of land or a building (existing or proposed) or the conservation of a physical or natural feature of a lot, including soil, water, animals and plants. A statutory covenant cannot be used to regulate architectural or landscaping standards.

## Dealing in covenanted land

A statutory covenant may have a management plan annexed to it, which is not held on the Register of Titles. Such a management plan is also binding on successors in title.

A vendor must disclose the existence of a covenant over land and of any annexed management plans. Annexed management plans do not appear during title searches.

According to the legislation, a covenantor does not need the approval of the mortgagee to register a statutory covenant. However, there is likely to be a condition in the actual mortgage which requires this.

The owner of land covered by a statutory covenant can apply to the Supreme Court to extinguish or change a covenant under certain conditions.

## IPA and Statutory Covenants

If a statutory covenant is a condition of approval for a development application, then the applicant can request the modification or deletion of this condition. If the assessment manager refuses to remove or amend such a condition, then

the applicant can appeal to the Court as per the IPA provisions relating to any application. Developers should ensure that they are satisfied with accepting a covenant and the cost of applying it to the title(s).

IPA states that a statutory covenant must be consistent with a planning scheme in effect when a statutory covenant is registered over land. However, if the scheme subsequently changes and conflicts with the conditions of an existing registered statutory covenant the new scheme has no effect on the use allowed or required by the covenant.

When a statutory covenant is entered into in connection with a development application, IPA states that it must be a condition of the approval to be of effect.

One particular scenario which developers should have in mind before entering into a statutory covenant as a condition of approval, is that if the planning approval lapses, the covenant is still registered on the certificate of title and binding on successors in title.

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### Taxes, rates and incentives

In order to reduce rates, a landowner could apply to the DNR&M to reduce the unimproved capital value of the property proportionate to any decrease in value caused by a covenant.

A council, who has required a statutory covenant (usually for conservation purposes) as a condition of development approval, will generally not offer any form of compensation for ongoing maintenance of the covenanted land.

Conversely, if a landowner enters into a statutory covenant in an agreement for conservation purposes that is not a condition of approval then councils and other agencies may provide various forms of compensation in an effort to offset the cost of maintaining the covenanted land.

### Uses of Statutory Covenants and the future

Apart from tying two parcels of land together, the main use of statutory covenants in Queensland is likely to be for nature conservation purposes or environmental/amenity protection. Statutory covenants are also being progressed to facilitate supply of affordable housing in exchange for bonuses in Queensland.

Throughout Australia, some trusts are operating to buy properties, register conservation covenants over the title and then resell the property. It is possible that such revolving funds may increase in Queensland.

The Department of Main Roads (DMR) has used statutory covenants to reduce the impact of noise from main roads on adjacent residential areas. An example is the condition of a

covenant which limits the house height to a single storey. Consequently, the acoustic barrier fence, put up by the DMR along the adjacent main road, does not have to be as high.

It is possible that we will see increased use in residential estates with conservation purpose statutory covenants marketing the environmental friendliness of the stock. There is a segment of the property market which would value buying a property with a statutory covenant that protects the site's bushland, particularly if it was part of a larger estate where all of the other blocks were also so encumbered. Such a strong control on future land use would certainly ensure the continued amenity of an area.

Some care will need to be taken in the future to ensure that land being purchased is not unduly affected by an existing covenant, the previous owner has complied with covenant requirements or to allow for removal of a covenant if a development approval lapses or changes.

### Summary

Statutory covenants are effective for control of land use if permanency is required, because statutory covenants are binding on successors in title and continue to have effect despite subsequent changes to the planning scheme. Landowners should also be clear on the impact of covenants on land.

The DNR&M has produced a guide on statutory covenants entitled, "Statutory Covenants Guidelines for their use in Queensland" which can be found on its website via this link: [http://www.nrm.qld.gov.au/land/management/statutory\\_covenants.html](http://www.nrm.qld.gov.au/land/management/statutory_covenants.html). ■

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