

Planning and Environment (Restrictive Covenants) Bill

As Sent Print

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for the commencement of the Act.
- Clause 3 specifies the **Planning and Environment Act 1987** as the Principal Act.
- Clause 4 inserts the definition of "registered restrictive covenant" into the Principal Act.
- Clause 5 amends section 19 of the Principal Act to provide for additional notice to be given of an amendment providing for the removal or variation of a registered restrictive covenant.
- Clause 6 inserts a new section 47(1)(d) into the Principal Act so that a copy of a covenant accompanies an application for a permit if the land is burdened by a covenant.
- Clause 7 inserts a new section 52(1)(ca) into the Principal Act to require that notice of an application to use or develop land which would result in a breach of a covenant must be given to the owners of land benefited by a covenant. It also inserts a new section 52(1)(cb) into the Principal Act to require that notice be given to the owners of land benefited by a registered restrictive covenant of an application to remove or vary the covenant. It also inserts a new section 52(1D) into the Principal Act so that the notice under section 52(1)(ca) or (cb) must be given by both placing a sign on the land and publishing a newspaper notice. It also amends section 52(2B)(a) of the Principal Act as a consequence of those changes. It also amends section 52(4) of the Principal Act so that a planning scheme may not exempt from notice an application which would result in a breach of a covenant or which seeks the removal or variation of a covenant.

- Clause 8 inserts a new section 57(1A) into the Principal Act to deem an owner of any land benefited by a covenant to be a person affected by the grant of a permit, in respect of an application to use or develop land which would result in a breach of a covenant.
- Clause 9 inserts a new section 61(4) into the Principal Act to require a responsible authority to refuse to grant a permit, except in specified circumstances, if the permit would allow a use or development which would result in a breach of a covenant.
- Clause 10 inserts a new section 62(1)(aa) into the Principal Act to require a condition to be included on a permit, if the permit would allow a use or development which would result in a breach of a covenant, that the permit does not come into effect until the covenant is removed or varied.
- Clause 11 substitutes section 62(3) of the Principal Act to allow a responsible authority to amend plans, drawing or other documents under a permit if the amendment is consistent with the current planning scheme and permit, and if the amendment does not allow a use or development which would result in a breach of a covenant. It also inserts a new section 73(2) into the Principal Act to prevent a responsible authority amending a permit if the amendment would allow a use or development which would result in a breach of a covenant. It also inserts a new section 80(2) into the Principal Act so that an applicant may not apply to the Victorian Civil and Administrative Tribunal to review the condition to be included under section 62(1)(aa).
- Clause 12 inserts a new section 91(3A) into the Principal Act to provide that the Tribunal must not direct a responsible authority to amend a permit if the amendment would allow a use or development which would result in the breach of a covenant.
- Clause 13 substitutes section 96A(1) of the Principal Act so that the section also allows a person, if the amendment to the planning scheme provides for the removal or variation of a registered restrictive covenant, to apply to for a permit for a use or development which would, if the covenant were not removed or varied, result in a breach of that covenant. It also inserts new section 96A(4) which requires that a request for an amendment to the planning

scheme must be accompanied by a copy of the covenant, if the land is burdened by a registered restrictive covenant.

- Clause 14 inserts a new section 96C(1)(g) into the Principal Act so that notice must be given to owners of land benefited by a covenant, if the use or development would result in a breach of the covenant. It also inserts new sections 96C(2A) and 96C(2B) into the Principal Act to require that notice of an amendment providing for the removal or variation of a registered restrictive covenant to be given by placing a sign on the land, and that the sign states where a copy of the proposed permit relating to that amendment may be inspected. It also makes a consequential amendment to section 96C(3) of the Principal Act. Finally, a new section 96C(8A) is inserted in the Principal Act so that a planning authority must keep a copy of a proposed permit available for public inspection for a specified period.
- Clause 15 inserts a new section 96I(1A) into the Principal Act to provide that the Minister must not grant a permit if the permit would allow a use or development which would result in a breach of a covenant, unless one of two exceptions apply. It also inserts a new section 96I(1B) into the Principal Act so that if a permit is granted in accordance with one of the exceptions in section 96I(1A), it must include a condition that the permit does not come into effect until the covenant is removed or varied.
- Clause 16 inserts a new section 214 into the Principal Act to make provision as to the application of this Act to an application for a permit, a request for an amendment to a permit, and an application for review made or lodged before the coming into operation of this Act or an application for review made after that date in relation to a determination made before that date.

