



SOUTH BURNETT
REGIONAL COUNCIL

Covenants and Easements

ECM 3227456
Version 1 – November 2024

This factsheet is intended to provide information in relation to covenants and easements and how they may impact property owners or prospective property owners.

What is a covenant?

A covenant is a voluntarily entered legally binding, written agreement. Through a covenant a landholder may be obliged to take, or not take, certain actions.

Covenants are used to protect, preserve, and often enhance specific features or the environment and context of freehold or leasehold land. For example, they can relate to noise impact mitigation, vegetation, water, environmental management, buffering and separation or to achieve certain aesthetic and design standards. The intent of a covenant is for its purpose to have legacy effect beyond the term of the current landholder.

Entering into a covenant may be a way to achieve compliance with the planning scheme or other building and development assessment criteria. They can also be used to ensure that initial home-builders design and landscape new buildings within the subdivision to a certain style or standard intended to raise the aesthetic appeal, profile, and marketability of the area. Covenants of this type are most regularly used by developers of greenfield sites when subdividing land.

Covenants in favour of the state or a local government may be registered against the freehold or leasehold title for the land in the Land Titles Register. Once registered, the covenant attaches to and binds all future landholders of the land.

What is an easement?

An easement is used to give a person or entity who is not the landowner, rights to use and access a defined area of land for a specified purpose. Through an easement, there is a burdened party and a benefited party. It gives someone the right to use land for a specific purpose even though it belongs to someone else.

Easements are often used by utilities and infrastructure providers, such as local governments, water authorities and electricity providers. Easements allow these entities to protect, access, operate and maintain utilities and infrastructure which is located within or passes through private land.

As a condition of a development approval, the developer may be required to enter into an easement. If this is the case, the developer will be required to complete an [Easement Form 9](#).

Easements are legally enforceable arrangements and registered on the title of the land on the Land Titles Register.

Are all covenant and easements imposed by Council?

No.

Building covenants, which set rules regarding design standards for buildings and landscaping, are usually a civil matter and are not enforceable by the Council.

Easements can be used by private parties to facilitate access, share access arrangements, the installation and maintenance of private infrastructure or by utilities and infrastructure providers other than Council. Council will not be a party to such easements. These easements also need to be registered against the title of the land.

What are the terms and conditions of easements imposed by Council?

Council has registered standard terms and conditions relating to easements for the following purposes:

- drainage infrastructure and access rights; and
- overland flow of water (stormwater easements).

For other purposes, easement terms and conditions may be developed on a case-by-case basis having regard to the specific purpose and circumstances.

What are the different types of covenants?

There are two types of covenants, positive and restrictive and both covenants affect land in different ways.

A positive covenant requires some form of action to be taken (for example, to erect a fence along a boundary). Positive covenants are generally a contract between the original parties to the deed imposing the covenant and do not bind future landowners. Future owners of the land which have the benefit of a positive covenant can enforce the covenant against the original owner of the land that has the burden of the covenant.

A restrictive covenant is a contract which places limitations on what can be done on your property. Developers of new subdivisions use them to ensure that the land is developed with uniformity (for example, a subdivision may have a restrictive covenant prohibiting the instalment of satellite dishes or clothes lines).

How might a covenant affect me?

If you plan to build on vacant land or renovate an existing dwelling, you will need to review any covenants carefully to ensure your plans comply with the obligations imposed.

Covenants may set minimum sizes for the construction of a dwelling, apply specific energy rating standards, mandate, restrict the external materials that may be used, regulate the location of ancillary structures (such as clotheslines, air-conditioning units, and water tanks) or prohibit fencing along the front of the property.

Many purchasers sign a contract without fully understanding the location of an easement or its effect, or the restrictions contained in a covenant.

How might an easement affect me?

An easement will likely affect any proposed development on a property. Generally, you cannot build over or too close to an easement, or you must obtain approval from the authority with the benefit of the easement to do so. Owners who build over an easement without obtaining approval may be required to remove the structure.

I am purchasing a property – how can I tell if there is a covenant or easement affecting the property?

If you are purchasing property, you should make enquiries regarding the existence of any covenants or easements and investigate the impacts they will have on proposed use and development of the land.

Covenants and easements are registerable on the title of a property on the Land Titles Register. You can purchase title searches, images of survey plans and title documents online from Titles Queensland. Fees apply. For more information contact Titles Queensland via www.titlesqld.com.au or (07) 3497 9479.

Council cannot provide any legal advice to the public relating to easement or covenant rights or interest. Property owners or prospective owners should seek independent legal advice in relation to these matters.

Can I have a covenant changed or removed?

Removing a property covenant in Queensland can be a complex process. It usually requires the consent of all parties involved, including the original covenant creator, the developer, and any relevant authorities. Alternatively, an application to the court may be required.

Independent legal advice should be sought in relation to enforceability, changing or removing a covenant or easement.

Further Information?

For further information regarding Covenants and Easements, you can contact Council via one of the following methods:

- ✉ South Burnett Regional Council
PO Box 336
KINGAROY QLD 4610
- ☎ (07) 4189 9100
- @ info@sbrc.qld.gov.au
- 👤 Visiting a Customer Service Centre