

Restrictive Covenants

The enforcement of covenants is a legal matter between the parties concerned; PMRA does not have the power to intervene.

The following question was put to the ANNUAL ELECTORS' MEETING on 1st February 2010 by former PMRA President John Randall:

AE.8/2/10 MR J RANDALL; PORT MANDURAH: RESTRICTIVE COVENANTS

Mr Randall asked why the City did not adhere or administer the restrictive covenants placed on properties by developers such as Cedar Woods. He felt that people not adhering to the covenants faced no form of reprimand.

The Chief Executive Officer responded that Local Governments had no power to police restrictive covenants and that they did not form any part of the City's Town Planning Scheme.

The Director Sustainable Development responded that restrictive covenants were civil issues not Council matters and that in town planning matters the City's Town Planning Scheme had precedent. He responded that covenants were becoming more prominent in issues that are not dealt with by Councils.

Mayor Creevey responded that the placing of restrictive covenants was a strategy being utilised by developers to maintain a certain standard within new estates and the City had no powers to police.

The following excerpt is from <http://www.lrc.justice.wa.gov.au/files/P91-R.pdf> - Page 24:

4. RESTRICTIVE COVENANTS AND THE PROPERTY LAW ACT 1969

2.16 Under the Property Law Act 1969 a person may take an immediate or other interest in the benefit of any covenant over or respecting land, although he is not named as a party to the conveyance or other instrument that relates to the land. In these circumstances the covenant may also be enforced by third parties, such as a local government, who are neither parties to the covenant nor assignees or other successors-in-title to the parties to the covenant.

According to Bradbrook, MacCallum and Moore the provision merely repeals the common law rule that only a person who is expressly named as a party to a covenant may enforce it. According to them "where X covenants with Y and the owners of adjoining land, the owners of the adjoining land may sue to enforce the covenant by virtue" of the provision.

A significant limitation, however, is that the provision only operates in favour of persons who are in existence and identifiable at the date of the covenant. It therefore does not allow a covenant to be enforced by a future owner.