

## 1.0 Objectors to Covenant Applications Widen

A VCAT Red-dot decision of interest is a case relating to the variation or removal of a restrictive covenant. The Tribunal in this matter sought to clarify who has a right to object to such a planning permit application and who may be joined as a party to an appeal relating to the same – be they a *beneficiary* of the covenant or just an *affected party*. *Hill v Campaspe Shire Council VCAT 949 [2011]* considered a covenant removal where groups who were beneficiaries as well as interested parties sought to participate in the hearing.

In the decision the Tribunal notes in terms of objections and the status of objectors as parties, there is nothing in the planning scheme that limits the rights of third parties to object to a permit application to remove or vary a restrictive covenant. Under Clause 52.02 (Easements, Restrictions and Reserves) of the planning scheme regarding the removal or variation of a restrictive covenant there are three categories of potential objectors:

- Those who own land that has the benefit of the covenant;
- Occupiers of land that has the benefit of the covenant; and
- ‘Other’ affected people

Clause 52.02 provides the power for permit applicants to lodge permit applications to vary or remove restrictive covenants. The decision guidelines in Clause 52.02 require the responsible authority to consider the interests of other affected people and the nature of their interest.

Of particular note in this case is that the Tribunal made the finding that in the absence of any provision in the Act to prevent anyone from having the right to object no limitations on third party rights of notice and review of applications under Clause 52.02 exist. Therefore there is no reason why those persons who are not beneficiaries of a covenant may not object (to the variation or removal) and retain rights of appeal to the Tribunal.

The Tribunal considered that the existence of a restrictive covenant will be contributory in establishing the character and amenity of a particular area and that people can be affected by the removal or modification of a covenant even though they may not be the owner or occupier of land with the legal benefit of the covenant. The Tribunal noted that covenants can exist as de-facto planning controls controlling, dwelling density, height, setbacks and other characteristics that contribute to character and amenity of areas.

Permit applicants seeking to vary or amend a restrictive covenant should be aware that this decision provides neighbours, nearby land owners and residents with clarity – they do have the right to object and lodge appeals against such planning permit applications even if they are not beneficiaries.

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