

# Real Estate and The Law

## Altering restrictive covenants

The removal or modification of restrictive covenants is not always a straight forward exercise. Increasingly, clients are seeking the removal or modification of covenants in the Supreme Court.

Development opportunities can be greatly enhanced if restrictive covenants burdening land can be removed or varied to allow more dense development. If you have decided to seek modification or removal of a restrictive covenant, recent case law suggests that your application ought to be accompanied by development plans that are "as specific as possible" (and certainly beyond "concept plan" stage) if your application is to have a good chance of success.

The Supreme Court has provided clear direction on the law in relation to the removal/variation of restrictive covenant under the *Property Law Act*. In the recent Supreme Court case of *Vrakas v Registrar of Titles* [2008] the Applicants sought to remove a covenant burdening the land to enable the construction of two dwellings.

However, the Applicant did not tender plans of how he proposed to develop the land and gave evidence that he did not have "specific plans or proposals in relation to the property" and was seeking to clarify the options available to him. The Applicant agreed that he was partly motivated by the potential "to increase the value of the property" by having the covenant removed.

The Court was not persuaded to remove the covenant and dismissed the Application. In doing so, the Court warned that applicants should "be as specific as possible about the proposals they have in mind so that the Court is in the best position to assess the impact that those proposals may have on all parties".

We have significant experience in preparing applications for the removal or modification of restrictive covenants both at VCAT and in the Supreme Court of Victoria.



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## Native Title

There have been two determinations of Native Title in Victoria. These are known as the Gunditjmara and Wotjobaluk Claims and affect Crown land and waters in the western part of the State, along the South Australian border.

Other parts of Crown land and waters in Victoria are also affected by Native Title applications.

Native Title recognizes that some indigenous people have legal rights and interest over Crown land and waters which may co-exist (in some instances) with other rights and interests. Generally speaking, a freehold title extinguishes Native Title. If your business includes occupation of Crown land or waters then your rights to use the land or waters may be subject to Native Title applications.

Rigby Cooke are acting for representative groups involved in Native Title applications. For further information contact Trish Sheedy on 03 9321 7835; email [tsheedy@rigbycooke.com.au](mailto:tsheedy@rigbycooke.com.au) or Michael Markowitz on 03 9321 7848, email [mmarkowitz@rigbycooke.com.au](mailto:mmarkowitz@rigbycooke.com.au)



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## Alpine property

Not only does the Victorian alpine region provide a fabulous holiday destination, it also provides investment opportunities. Victoria's alpine resorts are on Crown land, meaning the title to alpine property is constituted by long term leasehold arrangements.

The Government and its Alpine Resort Management Boards are actively implementing a process of lease registration at Land Victoria. This has involved amendments to the *Transfer of Land Act* and preparation of standardised lease documentation. Registration of leases and sub-leases provides a more transparent process, leading to increased confidence from the financial sector and subsequently, investors have more availability of access to finance.

If you are or propose to be an investor in alpine property you need expert advice in this field. We at Rigby Cooke Lawyers are at the forefront of all alpine related matters.

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