



## **1.0 POLICY AREA**

This Policy applies to all land within the Shire of Gingin where Restrictive Covenants exist.

## **2.0 POLICY OBJECTIVE**

To provide a consistent approach when assessing Development Applications for Lots where Restrictive Covenants are known to exist.

## **3.0 POLICY STATEMENTS**

### **3.1 Enforcement**

The Shire of Gingin will not undertake the enforcement of Restrictive Covenants unless the Restrictive Covenants have been registered on the Certificate of Title for the land by the Shire of Gingin.

The enforcement of Restrictive Covenants is a matter of contract and is distinct from the Shire of Gingin's statutory duty in regard to the issuing of Planning Approvals under the Local Planning Scheme No. 9 and Building Licences under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*.

*Notes: The owner(s) of land who claim(s) the benefit of a Covenant have the right to enforce it. It is open to them to take further action for an injunction if they think they are sufficiently affected.*

### **3.2 Consideration of Restrictive Covenants**

Officers assessing Applications will have regard to Restrictive Covenants that are known to exist in relation to Local Planning Scheme No. 9 and relevant Local Planning Policies provided that the Restrictive Covenants relate to matters or issues that fall within Local Authority's jurisdiction. In the instance of any conflict, Local Planning Scheme No. 9 or Local Planning Policies shall prevail.

### **3.3 Developers Requests**

The Shire of Gingin will not approve requests from landowners, developers or their representatives to carry out any functions associated with the policing of Restrictive Covenants including:

- Notifying the developer when Building Licence Applications are received;
- Delaying or withholding a Building Licence approval on the basis that a Developer's Approval for a proposal should first be obtained; and
- Assessment of any Applications against Restrictive Covenants and/or Developer's guidelines and ensuring compliance with the same.

3.4 Provision of Planning Approval Advice Note

The Shire of Gingin will provide the following Advice Note on all Planning Approvals:

*The Applicant is advised that the subject Lot may be affected by the existence of a Restrictive Covenant. This Planning Approval does not purport to override or modify such constraints which may be imposed.*

**Relevant Legislation**

*Planning and Development Act 2005  
Local Government (Miscellaneous Provisions) Act 1960*

[Adopted 15 January 2013]