

LEGAL REQUIREMENTS REFERRED TO IN PLANNING

WHAT IS A SECTION 70A NOTIFICATION?

A Section 70A Notification is a notice under the Transfer of Land Act 1893 that is placed on a property's Certificate of Title alerting the landowners or prospective landowners of potential circumstances that might impact the enjoyment of that property.

WHAT IS A SECTION 165 NOTIFICATION?

A Section 165 Notification is a notice under the Planning and Development Act 2005 that is placed on a property's Certificate of Title alerting the landowners or prospective landowners of potential circumstances that might impact the enjoyment of that property.

Both the "Section 70A" and "Section 165" notifications serve the same purpose, in that they alert landowners and prospective purchasers of any constraints and restrictions applicable to the land. They are governed by separate Acts, however achieve the same purpose.

WHAT IS A RESTRICTIVE COVENANT?

A Restrictive Covenant is a deed limiting the use of the property or land and prohibiting certain uses. A Restrictive Covenant is common amongst developers who wish to restrict the land they are selling by prohibiting certain development contrary to their Design Guidelines.

It can also be used by the Shire or Western Australian Planning Commission to restrict the use of land being subdivided or developed.

WHAT IS A CAVEAT?

A Caveat is an interest in land that is lodged to protect the Caveator's interest. Essentially it is a formal notice or warning issued against the title of a property. Most caveats must be removed for a property to settle.

WHAT IS AN EASEMENT?

An easement is a type of interest that has been registered over a parcel of land which gives a person or a company 'rights of use' over a designated portion of the land for a specific purpose, even though the land belongs to someone else. Examples of reasons for an easement include rights of carriageway; rights to erect a party wall; rights to take water from wells or bores; rights to install and operate drains and drainage works; rights to install, maintain and operate oil, gas or either pipelines; rights to install, maintain and operate electric power lines, telephone and other cables and supporting pylons.

WHAT IS A LEGAL AGREEMENT?

A Legal Agreement is an agreement between two or more parties that is legally binding. A Legal Agreement can be a requirement of a planning or subdivision condition and can be specific to the lot which considers:

- The intention between the parties;
- Legal capacity for both parties to act on;
- Genuine consent by both parties; and
- The legality of the agreement.

An example of a Legal Agreement may relate to an agreement between the Shire and a landowner for a payment to be made to the Shire within a certain timeframe. The requirement for the preparation of a Legal Agreement can form a condition of planning approval.

WHO CAN PREPARE THESE LEGAL INSTRUMENTS?

Landowners, applicants and developers may wish to have the above legal instruments prepared by their own legal representatives. However, depending on the requirement, the Shire may exercise its discretion in obtaining its own legal advice from their solicitors. All costs and expenses associated with the execution and review of these documents by the Shire's solicitors are borne by the applicant/ landowner/developer.

Additionally, if a condition of planning approval or subdivision approval explicitly states that the legal requirement/document needs to be prepared by the Shire's solicitors then all costs and expenses associated with the execution and review of these documents by the Shire's solicitors are borne by the applicant/landowner/developer.

WHEN WOULD THE SHIRE AGREE TO LEGAL INSTRUMENTS BEING PREPARED BY THIRD PARTIES?

Generally, the Shire would not object to landowners, applicant and developers having legal instruments prepared by their own legal representatives if:

- The notifications are short and simple in nature; and
- The notifications are duplicating the wording specified in a certain condition of planning or subdivision approval.

WHEN WOULD THE SHIRE INSIST IN LEGAL INSTRUMENTS BEING PREPARED BY THE SHIRE'S SOLICITORS?

The Shire will generally insist on certain legal instruments being prepared by its solicitors when:

- The legal instruments are lengthy or complex in nature;
- Shire staff are not qualified or delegated to check the legal instrument;
- Where there is an apparent risk to the Shire; or
- For any other reason.