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**BUILDING ADVISORY SERVICES BRANCH**

# BUILDING NOTE

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## COVENANTS

***Please note this Building Note is for general information and guidance about the requirements in relation to covenants. It should not be used as a substitute for making direct reference to the legislation and is not legal advice.***

Section 59(1)(c) of the *Building Act* provides that a certifier must not grant a building permit unless '**all** planning or **other prescribed conditions**, if any, **will be complied with**'. Regulation 11(2) provides that 'any condition imposed by a **covenant** or encumbrance on the title of the land on which the building work is to be carried out', is a condition for the purposes of section 59(1)(c).

As the legislation requires a certifier to consider any conditions of a covenant on the subject land, certifiers should undertake or require a title search of the property, prior to the issue of a building permit. A certifier is then able to consider any relevant covenant conditions that may apply to the land.

The assessment methods used when considering a covenant should be documented, in accordance with usual procedures for the issue of a building permit.

The *Building Act* and Regulations do not require a certifier to obtain a signed consent from the covenantee, (for instance a developer), before a building permit or occupancy permit may issue. The relevant provisions require the certifier to give independent consideration to the terms of the covenant, as they relate to the proposed building work, prior to the issue of a building permit.

In the event that a certifier decides that a condition of a covenant will not be complied with, the issue of the building permit may be refused. In that instance, the owner should be advised of that decision and reasons, and of their right to appeal to the Building Appeals Board in accordance with items 9, 10 and 12 of Schedule 3 of the *Building Act*.

**Steve Popple**  
**Director of Building Control**  
**29 August 2012**