

Land covenants in a changing landscape: recent Court decisions on removal and enforcement

Applications to modify or remove land covenants are becoming increasingly common. Over the past few years, and particularly since the Supreme Court's decision in *Synlait Milk Ltd v New Zealand Industrial Park Ltd*, the courts have taken a more flexible and pragmatic approach to applications under section 317 of the Property Law Act 2007.

Recent decisions show a clear trend towards close scrutiny of whether a covenant still serves a useful purpose, while confirming that covenants remain enforceable where their original purpose is still relevant and effects of change were foreseeable when they were created.

What is a land covenant?

A land covenant is a private agreement registered on the title to land that restricts how that land can be used. It is separate from planning controls and binds future owners of the land.

Covenants are commonly used to control matters such as subdivision, building density, dwelling numbers, building locations and design outcomes. They often form part of a wider development scheme and are designed to protect amenity, character, views, or privacy for neighbouring land.

While covenants can last indefinitely, section 317 of the Property Law Act 2007 (**PLA**) allows the court to modify or extinguish them in certain circumstances. The key grounds include a material change in the character of the neighbourhood, or where the covenant now unreasonably impedes the use of the land in a way that

could not reasonably have been foreseen at the time it was created.

[Shotover Rise GP Ltd v Queenstown Lakes District Council \[2025\] NZHC 3321](#)

Key facts

In this case, Shotover Rise GP Ltd applied under sections 316 and 317 of the PLA to extinguish a number of registered covenants burdening three lots within a large residential development in Queenstown. The affected lots were not residential sites but land required to vest in Queenstown Lakes District Council (**Council**) as roads and a reserve as part of a staged subdivision. The covenants included historic water supply covenants relating to a now-defunct private scheme, airport noise and non-objection covenants, building restriction covenants, and a covenant not to oppose a completed plan change. Although the covenants would remain on all other titles in the development, their presence on the vesting lots prevented subdivision approval because land dedicated for roads and reserves must vest in the Council free of interests.

Decision

The High Court allowed the application to proceed by originating application and without notice to any affected parties, and ordered that the covenants be extinguished insofar as they affected the vesting lots. The Court accepted that the covenants no longer served any practical purpose in relation to land that would be used exclusively as roads or reserve and could not be occupied or developed. The Court was satisfied that continued registration of the covenants impeded the reasonable use of the land in a way that could not have been foreseen when the covenants were created, particularly given the subdivision approvals already granted. Critically, the Court found that extinguishment would not substantially injure any person entitled to the benefit of the covenants, including Queenstown Airport, given the covenants would continue to apply to all other relevant titles.

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Practical takeaways

This decision illustrates a pragmatic use of section 317 where covenants have become functionally redundant and operate only as a technical barrier to subdivision and vesting requirements. Covenants that are incapable of fulfilling their original purpose, particularly where land is to vest as public road or reserve, are highly vulnerable to extinguishment. The case also confirms that the Court will support without-notice relief where serving a large class of benefited owners would be disproportionate and where there is no realistic prospect of prejudice.

[Sunder v Smith \[2025\] NZHC 2246](#)

Key facts

This was a High Court decision in which our firm acted for three neighbouring owners in successfully defending the removal of a long standing covenant. The covenant applied to four large residential properties at Lake Hayes, across the road from Amisfield, in Queenstown. It effectively limited each lot to one dwelling and precluded subdivision.

One of the four owners obtained resource consent from Queenstown Lakes District Council to subdivide their land and construct additional dwellings. They then applied under section 317 to extinguish or modify the covenant to give effect to that consent. Our clients opposed the application.

Decision

The High Court ordered in our clients favour and dismissed the application. While the broader area had changed over time, the Court held that there had not been a material change in the character of the relevant neighbourhood. The Court took a careful and relatively narrow view of what constituted the neighbourhood, focusing on the immediate enclave of properties subject to the covenant rather than the wider zoning context.

The Court also found that further intensification was foreseeable when the covenant was created and that the covenant was specifically designed to resist that outcome. The fact that resource consent had been granted did not, on its own, justify removal of the covenant.

Practical takeaways

This decision is a useful reminder that section 317 applications are highly fact specific. It demonstrates that covenants which protect low density outcomes, views, and amenity can still be upheld, even in areas under strong development pressure. It also highlights the importance of analysing what change was foreseeable at the time the covenant was created, and of carefully defining the relevant neighbourhood rather than defaulting to broad planning boundaries.

[Andrew v Sidwell Developments Ltd Partnership \[2025\] NZCA 418](#)

Key facts

This Court of Appeal decision arose out of a large scale development context in Wainui. A covenant created in the 1990s restricted the land to uses that were permitted or controlled under the zoning at that time. Since then, the area had been rezoned for future urban development and was incorporated into a major master planned urban expansion.

The developer sought modification of the covenant to enable residential subdivision and development consistent with the new planning framework. The neighbouring owner opposed the application, relying on the amenity benefits the covenant still provided. It sought compensation sufficient to compensate for loss of amenity, increased noise, loss of privacy, construction effects and a perceived reduction in the value of their land. Most notably, it also sought a share of the increase in value of the developer's land made possible by the removal of the covenant. The High Court had ordered modification of the covenant and

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declined compensation in favour of the neighbouring owner.

Decision

The majority agreed that the continuation of the covenant impeded the reasonable use of the burdened land to an extent that could not have been foreseen at the time it was created, given the scale and certainty of the rezoning and development framework. The covenant was therefore to be modified so that it no longer applied to the burdened land.

However, the majority disagreed with the High Court's view that no compensation should be paid to the neighbouring owner and remitted the issue of compensation back to the High Court. The minority however took a more cautionary approach. While agreeing that some compensation was appropriate, they strongly emphasised that compensation under section 317 is fundamentally directed at addressing loss or damage suffered by the benefited owner, rather than treating it as a mechanism for sharing in a developer's profit.

Practical takeaways

This case illustrates that covenants are particularly vulnerable where large scale rezoning and master planning fundamentally change what is reasonably possible for the land.

The minority's reasoning on compensation also signals that future courts may take a more disciplined view of compensation claims, particularly where they are framed as a percentage of development gain rather than as a response to identifiable harm. For landowners and developers, the case highlights the importance of carefully evidencing both loss and benefit of removal of a covenant, and of approaching compensation as an exercise in reasonableness rather than entitlement.

Final comments

Overall, the decisions demonstrate that the courts continue to uphold land covenants where they remain relevant, but they are prepared to intervene where a covenant no longer makes sense in its modern context.

For landowners, covenants should never be assumed to be either beyond challenge or easily set aside. Careful analysis of their original purpose, the nature of change over time, and the practical effects on neighbouring land will usually determine the outcome.

Want to know more?

If you would like advice on the enforceability of a covenant, or on the prospects of modifying or removing one, please contact our specialist [Residential Property Team](#) and [Commercial Property Team](#).