

# Body corporate and covenant arrangements for energy efficient features with dwellings

## How can covenants affect energy efficient features?

Urban developers commonly use covenants to assist with property sales contracts, and by-laws or community title schemes to control building design and construction in residential estates and multi-unit residential buildings. Covenants and community title schemes are typically administered by a body corporate for the on-going management of properties.

Some covenants and body corporate by-laws may have prohibited or restricted the inclusion of particular energy efficient features to dwellings. The initial home buyers may have also been required to pass on these same requirements to later buyers. For example, to maintain the visual appeal of a residential estate solar collectors were not allowed to be installed on the roof of houses. This meant property owners were unable to install a solar energy system.

## Why were these laws changed?

In 2010 changes were made to the *Building Act 1975* to allow homeowners covered by a covenant or body corporate the ability to install certain energy efficient features for their dwelling.

Homeowners now also have more choice for the size of their home and the type of building features to suit their preferences.

Energy efficient features can reduce on-going energy costs and assist with minimising the cost of living. They can also reduce the need for additional electricity infrastructure caused by peak demand as it encourages more energy efficient buildings.

## What energy efficient features are now permitted under a covenant or by-law?

New covenants and aspects of existing covenants and body corporate by-laws can no longer prevent certain energy efficient features being included with residential buildings.

### Dwelling design

Since 22 May 2010, covenants and body corporate by-laws cannot restrict the use of:

- light roof colours for a house and its attached garage (class 1a and 10a buildings)
- energy efficient windows or window treatments for a house or unit and its attached garage (class 1a, 2 and 10a buildings).

Further, they cannot require:

- orientation of a house in a particular way if that orientation would result in a less energy efficient house and its attached garage (class 1a and 10a buildings)
- minimum floor areas for a house, but a minimum frontage is allowed unless it results in a less energy efficient house (class 1a building)
- a minimum number of bedrooms or bathrooms for a house (class 1a building).

Covenants and body corporate by-laws made between 1 January 2010 to 22 May 2010, could not restrict the use of:

- light roof colours for a house and its attached garage
- energy efficient windows or window treatments for a house or unit and its attached garage

- specific types of materials and finishes for external walls and roofs for a house and its attached garage.

Further, they could not require:

- orientation of a house and its attached garage in a particular way
- minimum floor areas for a house
- a minimum number of bedrooms or bathrooms for a house
- more than one garage
- a minimum roof pitch for a house.

## Solar hot water systems and photovoltaic collectors

Since 1 January 2010, a covenant or body corporate by-law cannot prohibit or restrict the installation of a solar hot water system or photovoltaic collectors merely for the purposes of preserving the external appearance of a building.

This also applies to covenants or body corporate by-laws that were made before 1 January 2010, thereby allowing affected homeowners to install solar hot water systems and solar energy systems.

## Can some energy efficient features still be restricted?

Covenants and body corporate by-laws may still, in limited circumstances, lawfully place a restriction on particular energy efficient features. For example:

- a proposed roof colour that may be too reflective because the glare would cause nuisance to an adjoining property owner. In this case, a less reflective light colour or finish may be lawfully required
- an energy efficient window treatment that has a mirror finish might lawfully be restricted if it would reflect sunlight into an adjacent dwelling
- the installation of a solar hot water system with a roof storage tank might be prohibited because an engineering report shows the system would be too heavy for the existing roof.

## How can a covenant or by-law be found?

The existence of a covenant or by-law can be identified in the property's contract terms or when undertaking the title search for a property. These checks are also typically conducted by a solicitor or conveyancing agent who acts on behalf of the purchaser when buying a property.

## Do these laws override a local government planning scheme?

These laws only apply to allowing certain energy efficient features that would otherwise be prohibited or restricted by a covenant or by-law. They do not override local government planning schemes which may require minimum standards to meet the community's expectation for residential areas. For example, a planning scheme may require minimum setbacks for a house to be built away from the street front and from the boundary of adjacent properties.

It is recommended that property owners check with the relevant local government about any local planning and building requirements.

## What happens if there is a dispute that needs to be resolved?

The Body Corporate and Community Management (BCCM) Commissioner's Office provides a dispute resolution and information service for people who live, work or invest in community titles schemes. The BCCM dispute resolution service initially encourages self-resolution and conciliation. It also resolves disputes through adjudication where matters cannot be settled.

The Commissioner's Office can be contacted on 1800 060 119 or use the search term 'body corporate' at [www.qld.gov.au](http://www.qld.gov.au).

## For more information

For more information about body corporate and covenant arrangements for energy efficient features with dwellings refer to the department's website [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au).