Covenants and Risks to the Supply of Land for Modest Homes and Affordable Housing

National Science Challenges | BUILDING BETTER HOMES, TOWNS AND CITIES | Ko Ngā wā Kainga hei whakamāhorahora

C. Fredrickson and K. Saville-Smith

Auckland Council – Te Kaunihera o Tāmaki Makaurau

CRESA Centre for Research, Evaluation and Social Assessment

Introduction

New Zealand has an acute and persistent under-supply of housing. For the last decade, particular attention has been given to land costs and claims around the restrictive nature of land use planning and consenting carried out by local and regional councils. Little attention has been given to covenants imposed by private developers and the impact they have on land availability and land prices.

Covenants – A Quick Overview

Covenants are a powerful tool, which go beyond the public planning regime. 'Positive covenants' require a land owner to do something while 'restrictive covenants' prohibit or prevent an owner from doing something. Covenants:

- Are not imposed through the public planning system. They are a private arrangement between, typically, existing landowners and future users or owners. It binds them to obligations for a fixed period or in perpetuity.
- Can be costly to remove or change and require action in the High Court.
- Covenants have been cited by the NZ Productivity Commission as having a potentially negative effect on land supply, house prices, and as a barrier to the supply of affordable housing.

Covenants may vary but frequently involve restrictions on:

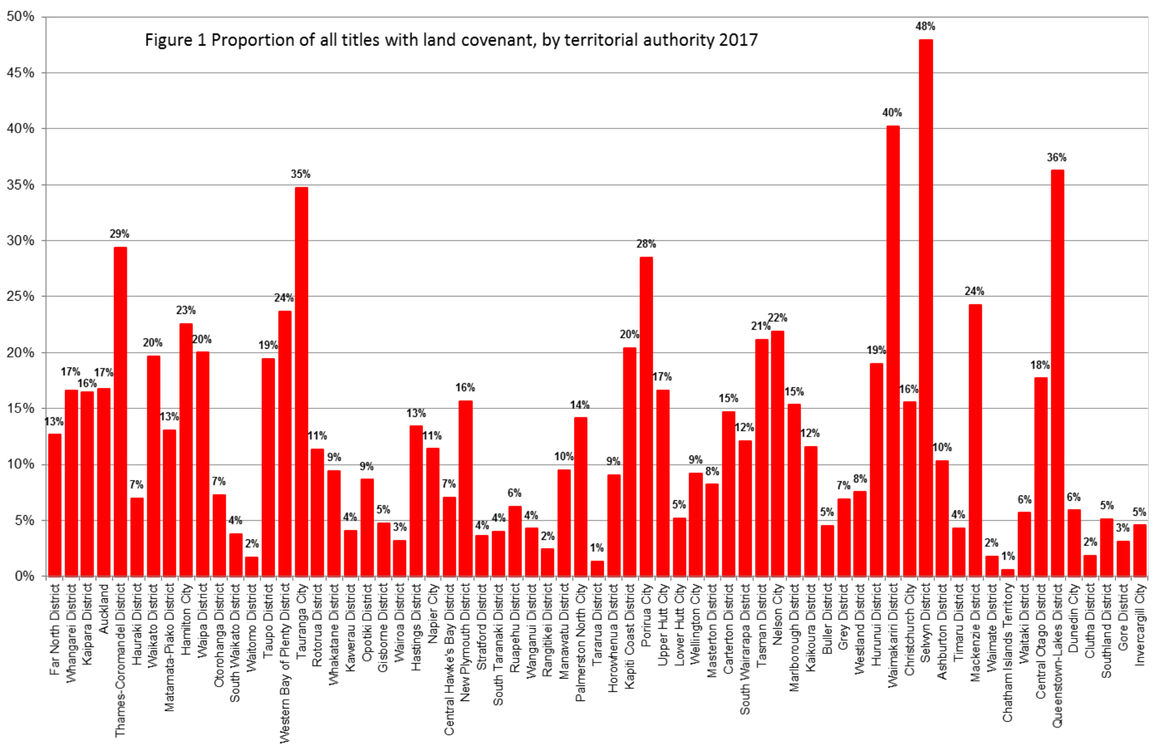
- the building of lower-cost housing
- building two-storey dwellings
- building smaller houses
- use of lower-cost materials
- visible solar energy systems.

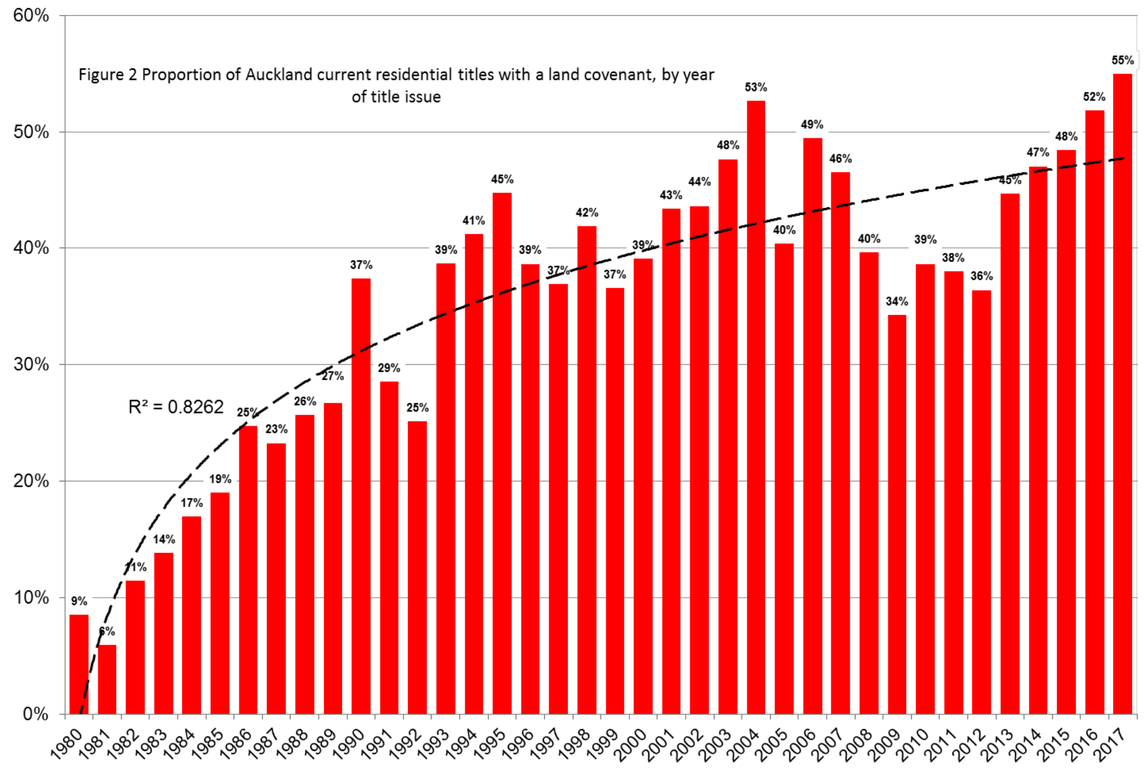
Sometimes developers use covenants to require designs, materials, and values-to-market to be approved by the developer.

Use of residential land covenants

Across the entire country 16% of titles have a land covenant on them. In Auckland, 19% of all titles in residential areas have a covenant, accounting for 23% of residential land. The imposition of covenants is most evident in territorial authorities who have seen recent expansion of residential land (Figure 1)

In Auckland, the imposition of covenants on residential titles has increased from 9% of residential titles struck in 1980 to covenants on 55% of residential titles struck in 2017 (Figure 2).





Covenants may present a significant restraint on development and re-development within the existing urban area. In Auckland, 19% of titles in Auckland's residential zones, and 23% of the land area of those zones are covered by a land covenant (Table 1). Over a quarter of titles and a similar proportion of the land area in the Future Urban Zone, the areas earmarked to accommodate future urban expansion, are affected by covenants. Of the 10,674 hectares of land marked for Auckland's Future Urban Zone, 2,732 hectares have covenants.

Table 1. Covenants in Auckland's Existing Urban Zones

Auckland Existing Urban Zones	% titles with land covenant	% area with land covenant
Large Lot	24%	30%
Mixed Housing Suburban	21%	24%
Mixed Housing Urban	10%	11%
Rural and Coastal settlement	12%	21%
Single House	27%	30%
Terrace Housing and Apartments	11%	14%
Total residential zones	19%	23%

Conclusions

Land covenants place restrictions on current and future use of land that go beyond district planning.

No public benefits, mitigation of public costs, or consultation is required from developers imposing covenants.

There is no simple mechanism for the removal of land covenants. The prevalence of land covenants being struck on residential land appears to be increasing.

The conditions associated with residential land covenants is the subject of further research, but indications are that they tend to demand dwelling sizes and designs that fuel high house prices and are likely to restrict the building of affordable housing on covenanted land.

See the full report at **http://www.buildingbetter.nz/publications/SRA1/Fredrickson_2018_land_covenants_in_Auckland_AC.pdf**

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Architecture of Decision-making Strategic Research Area, BBHTC
Programme Leader Kay Saville-Smith, Centre for Research, Evaluation and Social Assessment