

Negative Covenants in Densification Projects - Cadastral Challenges

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SUMMARY

A densification project is permissible under the zoning system and public law provisions, but it can also be in breach of the covenant system and private law rules. Since a negative covenant is not necessarily annulled in the event of a conflict between the covenant and project plan, it can therefore prevent publicly approved development projects from going ahead. The challenges associated with negative covenants and zoning plans, and thus the implementation of housing policy, have been the subject of several Supreme Court decisions.

The article's most important finding is that the Norwegian system for dealing with negative covenants is costly in terms of time and resources. Information about negative covenants is difficult to get hold of, which makes it a time-consuming job to find the covenants. The developer therefore has a possibility to proceed on the assumption that the right holder has no knowledge of the covenant.

Against this background, the article outlines two possible changes that should help resolve the challenges identified in the analysis in light of densification policy. The first is to establish a link directly to the documents when you click on the covenants that are listed in the register of land and land charges, and also to clarify the covenants actual content. The second is to import a provision that allows covenants older than 50 years to cease, if the rightholder not actively confirm that he wants the covenant(s) continued.