

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION**

IN THE MATTER of the *Property Law Act 1958*, Section 84

IN THE MATTER of an application by [REDACTED] for the modification of the restriction imposed by Instrument of Transfer No. [REDACTED] and registered in the Register Book at the Office of Titles affecting the land more particularly described in Certificate of Title Volume [REDACTED] Folio [REDACTED].

WHEREIN

[REDACTED]

is Plaintiff

GENERAL FORM OF ORDER

JUDGE: The Hon. Associate Justice Derham

DATE MADE: 29 May 2013

ORIGINATING PROCESS: Originating Motion filed 21 May 2013

HOW OBTAINED: At the hearing of the Originating Motion

ATTENDANCE: Mr. M Townsend of counsel

OTHER MATTERS: Not applicable

THE COURT ORDERS THAT:

1. Notice of the application in the form of the schedule to this order, be given by ordinary post to the registered proprietors and mortgagees of Lots [REDACTED] on or before 12 June 2013.
2. Notice of the application in the form of the schedule to this order be placed at the front of Lot [REDACTED] on Plan of Subdivision [REDACTED] on or before 12 June 2013 until 26 June 2013.
3. The further hearing of the proceeding is adjourned to 26 July 2013 at 10.30 am in Supreme Court No. 3, 436 Lonsdale Street, Melbourne.
4. This order be signed by an Associate Judge pursuant to Rule 60.02 of the *Supreme Court (General Civil Procedure) Rules 2005*.

DATE AUTHENTICATED: 29 May 2013


The Hon. Associate Justice Derham



SCHEDULE

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

IN THE MATTER of the *Property Law Act* 1958, Section 84

IN THE MATTER of an application by [REDACTED] for the modification of the restriction imposed by Instrument of Transfer No. [REDACTED] and registered in the Register Book at the Office of Titles affecting the land more particularly described in Certificate of Title Volume [REDACTED] Folio [REDACTED]

And

WHEREIN

[REDACTED]

is Plaintiff

TAKE NOTICE that [REDACTED] who is the owner of Lot [REDACTED] on Plan of Subdivision [REDACTED] in Certificate of Title Volume [REDACTED] Folio [REDACTED] being the land known as [REDACTED] in the State of Victoria has applied to the Supreme Court for:

an Order that the Restrictive Covenant contained in Instrument of Transfer No. [REDACTED] be modified in the manner set out below.

The Restrictive Covenant provides as follows:-

[That the Transferees etc.] "...will not at any time hereafter carry on quarrying operations on the said land or dig carry away or remove any marl stone earth clay gravel or sand therefrom except for the purpose of laying the foundation of any building to be erected on such land and will not erect build or construct or allow to be erected built or constructed on the said land hereby transferred any shop factory warehouse or any other premises for use or suitable for use for the purpose of manufacturing vending or exhibiting for sale goods or merchandise of any description nor will she or they erect or allow to be erected or leave standing more than one dwelling house on each of the said lots hereby transferred and such dwelling house including fences and outbuildings shall not cost less than Four hundred pounds and shall have its front elevation to the road to which the Lot upon which such dwelling house shall be erected is shown to have a frontage on the said plan and be set back at

a distance of at least thirty feet therefrom and any building erected upon the said land hereby transferred shall not be used for any other purpose than that of a residence and no trade or other sign shall be displayed or caused or allowed to be displayed on the said land and no building (including outbuilding) erected on each of the said Lots as aforesaid shall have its roof or any of its exterior walls of iron or metal or any description or any material which shall be an imitation thereof or substitute therefor..."

The Plaintiff desires the modification of the said covenant to enable an application to the municipal authority for a planning permit for a two lot subdivision, with a dwelling to be erected on the newly subdivided lot.

ANY person who is entitled to an estate or interest in any land comprised in the said Plan of Subdivision No. [REDACTED] or formerly comprised in Certificate of Title Volume [REDACTED] Folio [REDACTED] and who may be entitled to enforce the covenant may be entitled to oppose this application.

THIS APPLICATION will be heard in the first instance before Associate Justice Derham in the Supreme Court, Court 3, Ground Floor, 436 Lonsdale Street, Melbourne on 26 July 2013 at 10.30 am or at such time as the Court may allow and any person interested may appear at the hearing to take part as he may be advised. If the application is opposed the Associate Justice may give directions for the further hearing of the application. If the application is not opposed the Associate Judge may, if he thinks fit, dispose of it forthwith.

ANY person intending to appear at the hearing is required to give notice to the Plaintiff's Solicitors and to the Prothonotary, Supreme Court, Melbourne by 26 July 2013. Copies of all documents relating to this application are in the possession of the Plaintiff's solicitors, [REDACTED] who will on request, furnish any further information required to inform any objector of the name and address of any other objector and the application more generally. Only one set of costs may be allowed in respect of persons appearing to oppose the said application.

THIS NOTICE is given pursuant to the Order of the Associate Justice made 29 May 2013.

The address for the Plaintiff is at the address for her solicitors, [REDACTED]
[REDACTED]