

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
PROPERTY LIST

S ECI 2024 06528

IN THE MATTER of an application under section 84(1) of the *Property Law Act 1958* (Vic)
-and-

IN THE MATTER of the restrictive covenants contained in Instrument of Transfer 1782231 registered in the Register Book at the Office of Titles burdening the land known as 492 Toorak Road, Toorak, more particularly described as lot 14 on Plan of Subdivision 15389 and being the land in Certificate of Title Volume 6425 Folio 807, Instrument of Transfer 1787918 registered in the Register Book at the Office of Titles burdening the land known as 494 Toorak Road, Toorak, more particularly described as lots 1, 2, 3 and 4 on Plan of Strata Subdivision 11415 and being the land in Certificates of Title Volume 9255 Folios 948 and 949, and Instrument of Transfer 1782069 registered in the Register Book at the Office of Titles burdening the land known as 2 Kilsyth Avenue, Toorak, more particularly described as lot 2 and 2A on Plan of Subdivision 404803J and being the land in Certificates of Title Volume 10736 Folios 322 and 323 kept by the Registrar of Titles under the *Transfer of Land Act 1958* (Vic)

BETWEEN

NATWES PTY LTD and ZADLOW PTY LTD	Plaintiffs
SHARON LAZAROVITS and ORS (according to the attached Schedule)	Defendants

ORDER

JUDICIAL REGISTRAR:	Judicial Registrar Burgess
DATE MADE:	6 August 2025
ORIGINATING PROCESS:	Originating Motion filed 3 December 2024
HOW OBTAINED:	By consent pursuant to r 59.07 of the <i>Supreme Court (General Civil Procedure) Rules 2015</i> (Vic) (Rules)
ATTENDANCE:	On the papers
OTHER MATTERS:	

- A. This application is made pursuant to section 84(1)(c) of the *Property Law Act 1958* (Vic) (**Act**) that empowers the Supreme Court, by order, to wholly or partially discharge or modify any restriction arising under a covenant concerning the use of the land or buildings on the particular land that is burdened by the covenant.



- B. Zadlow Pty Ltd is the registered proprietor of the land described in Certificate of Title Volume 6425 Folio 807, more commonly known as 492 Toorak Road, Toorak in the State of Victoria, and more particularly described as lot 14 on Plan of Subdivision 15389 (**492 Toorak Road**). Natwes Pty Ltd is the registered proprietor of the land described in Certificates of Title Volume 9255 Folios 948 and 949, more commonly known as 494 Toorak Road, Toorak in the State of Victoria, and more particularly described as lots 1, 2, 3 and 4 on Plan of Strata Subdivision 11415 (**494 Toorak Road**). Natwes Pty Ltd is also the registered proprietor of the land described in Certificates of Title Volume 10736 Folios 322 and 323, more commonly known as 2 Kilsyth Avenue, Toorak in the State of Victoria, and more particularly described as lot 2 and 2A on Plan of Subdivision 404803J (**2 Kilsyth Avenue**) (together, **Land**).
- C. 492 Toorak Road, 494 Toorak Road and 2 Kilsyth Avenue are respectively burdened by the restrictive covenants contained within Instrument of Transfer 1782231, Instrument of Transfer 1787918, and Instrument of Transfer 1782069 (**Covenants**). The Covenants prohibit, amongst other things, the erection of any building other than outbuildings and one brick private dwelling or one two storey pair of dwelling houses (as defined by Bye-Law Number 196 of the City of Prahran as at 2/6/1940); the erection of any dwelling of more than two storeys; and use of any dwelling other than as a private dwelling house.
- D. The plaintiffs seek to modify the Covenants to allow 492 Toorak Road, 494 Toorak Road and 2 Kilsyth Avenue each to be developed with a dwelling, dwellings or building containing two or more dwellings, up to three storeys (excluding any basement) and of brick or other materials with a rendered finish.
- E. The first to the twelfth objectors have lodged a notice of appearance. Accordingly, they are defendants to this proceeding.
- F. On 13 May 2025, Judicial Registrar Burgess made orders for the future conduct of this proceeding, including that the parties attend mediation.
- G. The defendants consent to the variation of the Covenants in the form set out in this order, subject to the restrictions and other requirements set out in this order.
- H. In compromising the proceeding, the parties agree that the modifications set out in this order (**Agreed Modifications**) will not result in substantial injury but acknowledge that any further modification, however minor, may result in a substantial injury to the beneficiaries having regard to the protections afforded by the Covenants in their original form.
- I. Having regard to the plaintiffs' proposal and the evidence before this Court, the Court is satisfied that the variation of the Covenants will not cause substantial injury to the persons entitled to its benefit, pursuant to section 84(1)(c) of the *Property Law Act 1958* (Vic).
- J. This order is authenticated by the Judicial Registrar pursuant to r 60.01(1) of the Rules.

THE COURT ORDERS BY CONSENT THAT:



1. Pursuant to s 84(1)(c) of the *Property Law Act 1958* (Vic):

- (a) the restrictive covenant contained in Instrument of Transfer 1782231 registered in the Register Book at the Office of Titles under the *Transfer of Land Act 1958* (Vic), burdening the land known as 492 Toorak Road, Toorak, more particularly described as lot 14 on Plan of Subdivision 15389 and being the land in Certificate of Title Volume 6425 Folio 807, be modified by removing the words struck through and adding the words, letters and punctuation double underlined, as follows:

'...that no building or erection shall be built or erected at any time upon the Lot hereby transferred save and except:

1) if wholly contained within the boundaries of the Lot (not including any basement car park):

a. up to four one brick private dwelling house or one two storey pair of dwellings houses (as defined and/or classified respectively by Bye Law Number 196 of the City of Prahran as existing on the Twentysecond day of June One thousand nine hundred and forty)(including a building containing up to four dwellings) together with the usual necessary and proper outbuildings; and

b. any basement car park may not be combined with a basement car park associated with dwellings at 494 Toorak Road, Toorak, more particularly described as lots 1, 2, 3 and 4 on Plan of Strata Subdivision 11415 and being the land in Certificates of Title Volume 9255 Folios 948 and 949 (494 Toorak Road) unless ingress to and egress from such basement car park is from Toorak Road only; or

2) if contained within an apartment building that is connected to, or forms part of, an apartment building on the land known as 494 Toorak Road, up to five dwellings together with the usual necessary and proper outbuildings, provided that vehicular ingress to and egress from the Lot is available only via Toorak Road; and

3) that such building dwelling house or pair of dwelling houses (as the case may be):

a. shall be of not more than ~~two~~ three storeys (excluding any basement);

b. shall not be constructed of any material other than brick or other material with a rendered finish;

c. shall be set back (including balconies) not less than:

i. 2.0 metres from the boundary abutting Kilsyth Avenue; and

ii. 2.0 metres from the southern boundary of the Lot; and

d. shall not be used otherwise than as a private dwelling house or pair of private dwellings houses; and further



that no line or cable shall be laid erected or connected on the said Lot otherwise than under the surface thereof to connect any building erection or fixture at any time built erected or affixed upon or upon any part of the said Lot with any electricity or telephone line or main in or about Kilsyth Avenue shewn on the said Plan of Subdivision...'

- (b) the restrictive covenant contained in Instrument of Transfer 1787918 registered in the Register Book at the Office of Titles under the *Transfer of Land Act 1958* (Vic), burdening the land known as 494 Toorak Road, Toorak, more particularly described as lots 1, 2, 3 and 4 on Plan of Strata Subdivision 11415 and being the land in Certificates of Title Volume 9255 Folios 948 and 949, be modified by removing the words struck through and adding the words, letters and punctuation double underlined, as follows:

'...THAT no building or erection shall be built or erected at any time upon the said Lot save and except:

- 1) if wholly contained within the boundaries of the Lot (not including any basement car park):
 - a. up to four one brick private dwelling house or one two storey pair of dwellings houses (as defined and or classified respectively by Bye Law Number 196 of the City of Prahran as existing on the Twentysecond day of June One thousand nine hundred and forty) (including a building containing up to four dwellings) together with the usual necessary and proper outbuildings; and
 - b. any basement car park may not be combined with a basement car park associated with dwellings at 492 Toorak Road, Toorak, more particularly described as lot 14 on Plan of Subdivision 15389 and being the land in Certificate of Title Volume 6425 Folio 807 (492 Toorak Road) unless ingress to and egress from such basement car park is from Toorak Road only; or
- 2) if contained within an apartment building that is connected to, or forms part of, an apartment building on the land known as 492 Toorak Road, up to five dwellings together with the usual necessary and proper outbuildings, provided that vehicular ingress to and egress from the Lot is available only via Toorak Road; and
- 3) that such building dwelling house or pair of dwelling houses (as the case may be):
 - a. shall be of not more than ~~two~~ three storeys (excluding any basement);
 - b. shall not be constructed of any material other than brick or other material with a rendered finish;
 - c. shall be set back (including balconies) not less than 2.0 metres from the southern boundary of the Lot; and



d. ~~shall not be used otherwise than as a private dwelling house or pair of private dwellings houses...~~

- (c) the restrictive covenant contained in Instrument of Transfer 1782069 registered in the Register Book at the Office of Titles under the *Transfer of Land Act 1958* (Vic), burdening the land known as 2 Kilsyth Avenue, Toorak, more particularly described as lot 2 and 2A on Plan of Subdivision 404803J and being the land in Certificates of Title Volume 10736 Folios 322 and 323, be modified by removing the words struck through and adding the words, letters and punctuation double underlined, as follows:

'...that no building or erection shall be built or erected at any time upon the said Lot save and except:

1) up to three ~~one brick private dwelling house or one two-storey pair of dwellings houses~~ (as defined and/or classified respectively by Bye Law Number 196 of the City of Prahran as existing on the Twenty second day of June One thousand nine hundred and forty) (including a building containing up to three dwellings), together with the usual necessary and proper outbuildings, provided that any such building is wholly contained within the boundaries of the Lot and is not connected to, nor forms part of, any building on the land known as:

a. 492 Toorak Road, Toorak, more particularly described as lot 14 on Plan of Subdivision 15389 and being the land in Certificate of Title Volume 6425 Folio 807; or

b. 494 Toorak Road, Toorak, more particularly described as lots 1, 2, 3 and 4 on Plan of Strata Subdivision 11415 and being the land in Certificates of Title Volume 9255 Folios 948 and 949; and

2) that such ~~building house or pair of dwelling houses~~ (as the case may be):

a. shall be of not more than two storeys (excluding any basement);

b. shall not be constructed of any material other than brick or other materials with a rendered finish;

c. shall not have any trafficable area (other than for maintenance purposes) on the roof;

d. shall be set back not less than:

i. 5.0 metres from the boundary abutting Kilsyth Avenue; and

ii. 2 metres from the southern boundary of the Lot;

e. shall not have windows or balconies on the first floor unless such windows or balconies are permanently screened to at least 1700mm above finished floor level and with no more than 15 per cent transparency; and



f. shall not be used otherwise than as a private dwelling ~~house or pair of~~
private dwellings ~~houses~~; and further

that no line or cable shall be laid erected or connected on the said Lot otherwise than under the surface thereof to connect any building erection or fixture at any time built erected or affixed upon or upon any part of the said Lot with any electricity or telephone line or main in or about Kilsyth Avenue shewn on the said Plan of Subdivision...'

2. The plaintiff shall lodge this order with the Registrar of Titles, as soon as is practicable.
3. The Plaintiffs pay the Defendants costs fixed in the amount of \$75,601.12 within 28 days of this order.
4. The plaintiffs shall have liberty to apply to the Court for any further orders necessary or incidental for the effectuating of this order.

DATE AUTHENTICATED:

6 August 2025



JUDICIAL REGISTRAR BURGESS

SCHEDULE OF PARTIES

	S ECI 2024 06528
NATWES PTY LTD	First Plaintiff
ZADLOW PTY LTD	Second Plaintiff
- and -	
SHARON LAZAROVITS	First Defendant
PAUL COHEN	Second Defendant
SUSAN COHEN	Third Defendant
GEORGINA HOWITT	Fourth Defendant
IDRIS PTY LTD (ACN 006 469 861)	Fifth Defendant
PENELOPE GRAU	Sixth Defendant
ANDREW KILGOUR	Seventh Defendant
JANE FARAGO	Eighth Defendant
ROXANNE KOZICA	Ninth Defendant
ALAN KOZICA	Tenth Defendant

