

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No of 2010

IN THE MATTER of an application pursuant to section 84 of the *Property Law Act* 1958 for the discharge of a restrictive covenant.

THE APPLICATION of :

MAUREEN CARMEL PROWSE

Plaintiff

AFFIDAVIT IN SUPPORT

Date of document:	12 March 2010	Solicitors Code: 9344
Filed on behalf of:	The Applicant	Telephone: (03) 9819 5515
Prepared by:		Fax: (03) 9819 6078
Lukaitis Partners		Ref: JLL:MC:096185
Solicitors and Notary		
123 Church Street		
HAWTHORN VIC		
3122		

Deponent: Maureen Carmel Prowse

Sworn: 12 March 2010

I, MAUREEN CARMEL PROWSE of 191 – 193 Wattletree Road Malvern in the State of Victoria, retired, MAKE OATH AND SAY as follows:

- 1 I am the Plaintiff in this proceeding. Save where otherwise stated, all facts and matters contained herein are within my own knowledge.

J. Lukaitis

M. C. Prowse

The Subject Property and Existing Use

- 2 I am the sole registered proprietor of the property situate at 191 - 193 Wattletree Road Malvern in the State of Victoria. This is the land comprised in Lots 7 and 8 on Plan of Subdivision No. 5320 and is the whole of the land described in Certificate of Title Volume 3607 Folio 399 ("the property"). The property has a frontage of 120 feet along Wattletree Road and a depth of 150 feet. It adjoins vacant land at the corner of Coonil Crescent which was recently acquired by Cabrini Hospital. Now produced and shown to me and marked "MCP-1" is a true copy of my land surveyor's Site and Context Plan of my property and the present dwelling house.
- 3 The property is improved by a 68 square brick dwelling which has been my family home for 44 years.

Creation of the Covenant

- 4 A restrictive covenant contained in Instrument of Transfer 683810 was registered in Land Registry Victoria on 14 May 1912 ("the covenant"). The covenant is noted as an encumbrance on the Certificate of Title to the property. Under the terms of the Covenant the transferee of the Property covenanted for himself and his successors in title with the transferors of the Property and their successors in title for the benefit of the Transferors successors in title and the registered proprietors for the time being of the untransferred part of the land in Certificate of Title Volume 3442 Folio 352 ("the parent title").

The restrictions imposed by the restrictive covenant

- 5 The restrictions imposed by the covenant were that the transferee and the successors in title of the property will not:
- (a) at any time or times hereafter quarry on the said land or cart or carry away any stone gravel soil or sand therefrom or make any excavations therein except such as may be necessary for laying the foundation of any building on the said land; and

Jurwal *G. C. P. 2*

- (b) erect more than one house on each of the said Lots and that any house so erected shall be of stone or brick or brick and stone with roof of slates or tiles on the main portion thereof at a cost of not less than Six hundred pounds each exclusive of stables and outbuildings; and that such building shall not be used for any trade or business; and
- (c) subdivide either of the said Lots into small allotments nor reduce the frontage thereof to a smaller frontage than appears on the said plan of subdivision.

Proposed Use

- 6 I wish to develop the property by constructing a 3 storey building with a basement carpark. Now produced and shown to me and marked "MCP-2" is a true copy of the proposed development plans. The proposal is incapable of implementation whilst the covenant remains in place.
- 7 I request that this Honourable Court makes the orders sought in the Originating Motion to enable the development of the property to proceed.

SWORN by MAUREEN CARMEL
 PROWSE at Hawthorn in the State of
 Victoria this 12th day of March 2010

)
)
) *G. L. Prowse*
)

Before me *[Signature]*

JOSEPH LEO LUKAITIS
 NOTARY PUBLIC
 123 Church Street, Hawthorn
 Victoria Australia

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THE APPLICATION of :

MAUREEN CARMEL PROWSE

Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 12 March 2010

Solicitor's Code: 9344

Filed on behalf of: The Plaintiff

DX: Not Applicable

Prepared by:

Tel: (03) 9819 5515

Lukaitis Partners

Fax: (03) 9819 6078

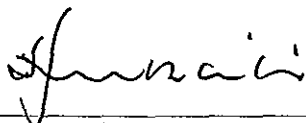
Solicitors and Notary

Ref: JLL:MC:096185

123 Church Street

HAWTHORN VIC 3122

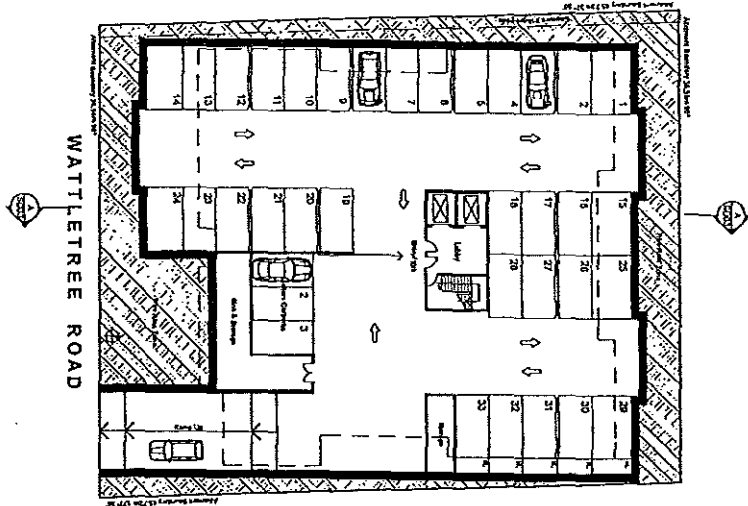
This is the exhibit marked "MCP-2" now produced and shown to MAUREEN CARMEL PROWSE at the time of swearing her affidavit on 12th March 2010.



Signature of person taking affidavit

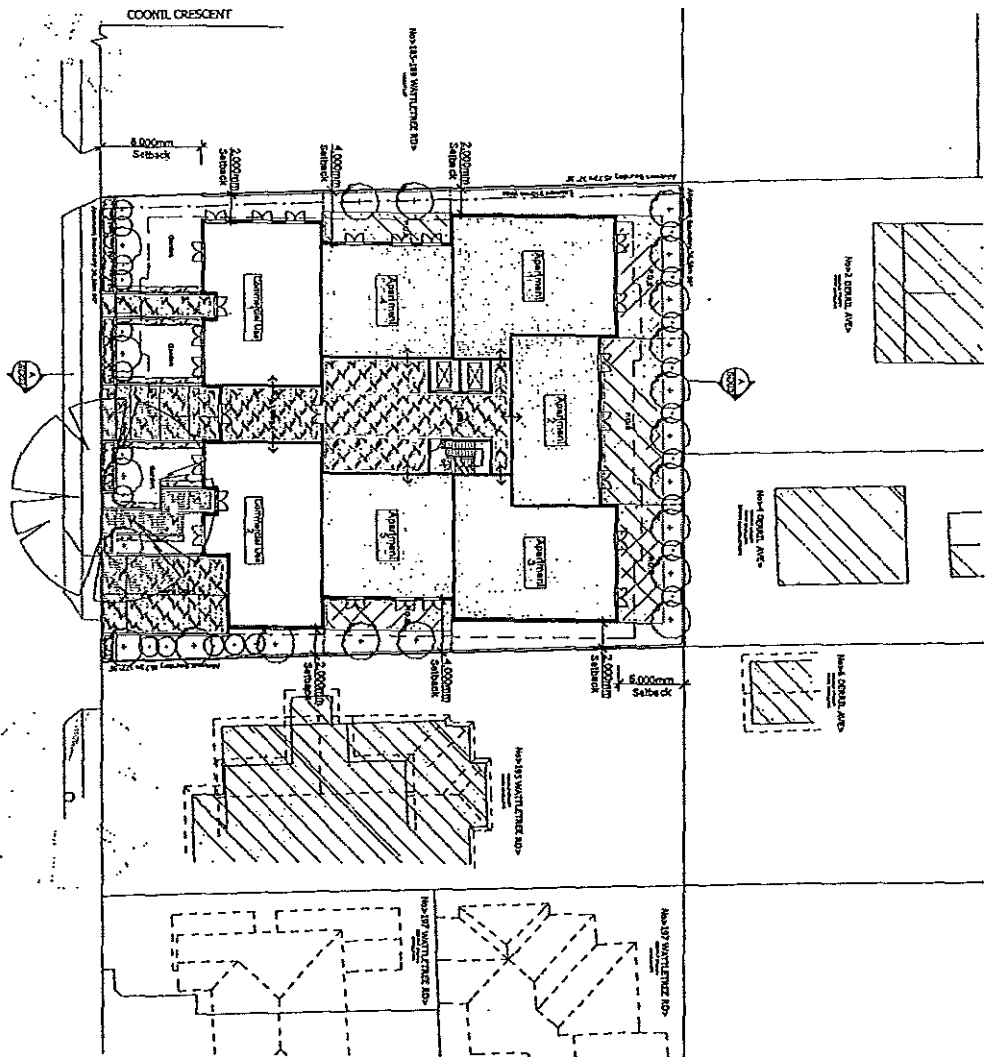
JOSEPH LEO LUKAITIS
NOTARY PUBLIC
123 Church Street, Hawthorn
Victoria Australia

MCP-2
Development plans



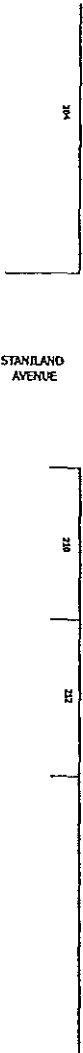
Basement Floor Plan

1200



Ground Floor Plan

1200



PROPOSED MIXED USE DEVELOPMENT
 81-183 Wattletree Road, MALVERN

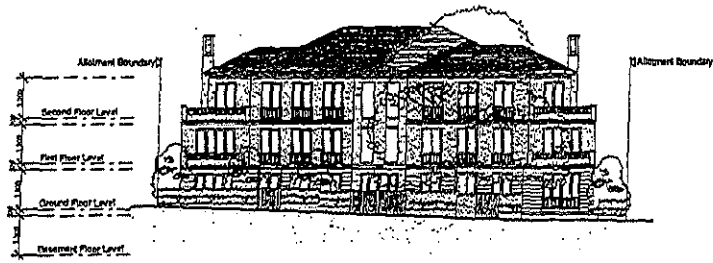
WS FEB 10 17/02/2010 1200

Schematic Concept Design - Basement & Ground Floor Plans

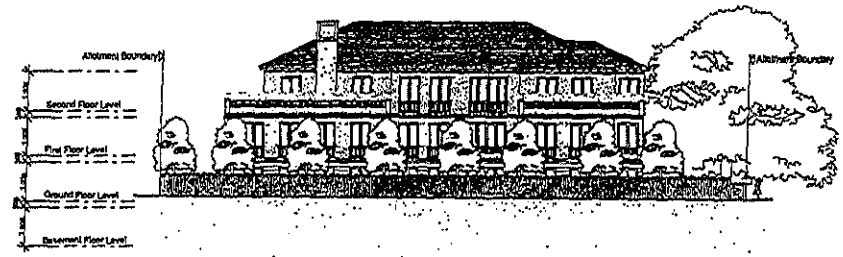
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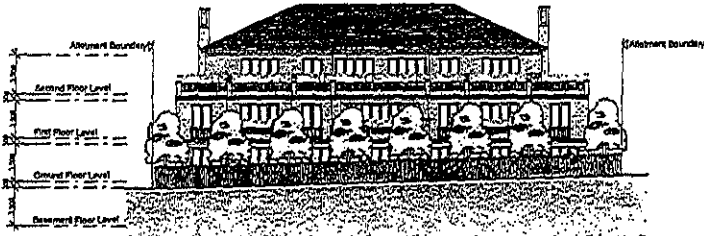
PROPOSED MIXED USE DEVELOPMENT
 81-183 Wattletree Road, MALVERN



Wattleree Road/ South Elevation
 1:200



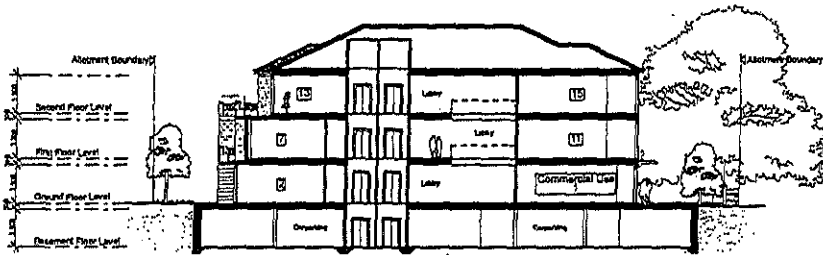
West Elevation
 1:200



North Elevation
 1:200



East Elevation
 1:200



Section A-A
 1:200

Materials/Finishes Schedule	
	Face brickwork Denial Robertson 50mm High Hawthorn Black face brick
	Sand finished rendered masonry exterior "mixed colour tones"
	Roofing Slate (mixed Npx)
	Rerendered base/planterbox, 1700mm High privacy screens
	Brought iron balustrading/ gates painted "black"
	Mild bronze powdercoated aluminium window & door sections