

THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. S CI 2011 4691

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

and

IN THE MATTER of an application by Mark William Suhr and Elizabeth Alexandra Suhr for the discharge and or modification of the restrictive covenant contained in Instrument of Transfer No. 1656917 registered in the Land Titles Office in the Register Book and imposed upon the land more particularly described in Certificate of Title Volume 6132 Folio 361

IN THE MATTER of an application by:

MARK WILLIAM SUHR and ELIZABETH ALEXANDRA SUHR and SURMAR
PTY LTD (ACN 100 678 831) Plaintiffs

and

ANDREW GORDON MICHELMORE and others (according to the schedule
attached) Defendants

FORM OF JUDGMENT

JUDGE: The Honourable Justice Pagone

DATE MADE: 14 June 2013

ORIGINATING PROCESS: Originating Motion

HOW OBTAINED: At trial and with the final form of orders agreed by consent

ATTENDANCE: Mr S.R. Horgan SC for the Plaintiffs
Ms L Harrison

Mr. J Gobbo QC for the Defendants
Mr M Townsend

OTHER MATTERS:

The Court published its reasons on 31 May 2013.



THE COURT ORDERS BY CONSENT:

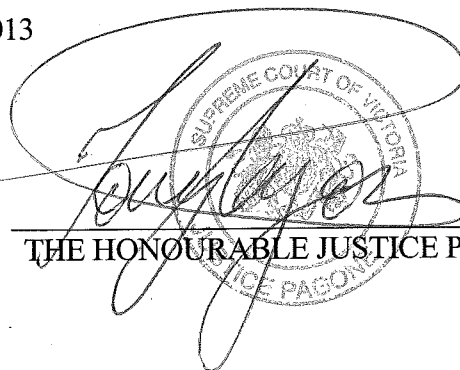
1. The covenant contained in Instrument of Transfer 1656917 in the register book affecting the land described in Certificate of Title Volume 6132 Folio 361 is modified pursuant to s 84(1) of the *Property Law Act 1958* (Vic) by -

replacing the words "*of greater height than twelve feet above the present level of the land*"

with the words "*(including architectural features, parapets, fencing and fixtures) of greater height than Reduced Level RL 36.50 metres relative to the Australian Height Datum (AHD) on the land within 14 metres of the southern boundary of the land or within 7.5 metres of the eastern boundary of the land and Reduced Level RL 38.00 metres relative to the Australian Height Datum (AHD) for the balance of the land*".

2. The plaintiffs pay the defendants' costs:
 - (a) on a party/party basis for the period up to and including 23 October 2012, including reserved costs; and
 - (b) on a solicitor/client basis thereafter;
– to be taxed in default of agreement.
3. There be a certificate for:
 - (a) the retainer of two counsel, including senior counsel; and
 - (b) transcript.

DATE AUTHENTICATED: 18 JUNE 2013



THE HONOURABLE JUSTICE PAGONE

SCHEDULE OF PARTIES

No. 4691 of 2011

BETWEEN:

MARK WILLIAM SUHR

First Plaintiff

ELIZABETH ALEXANDRA SUHR

Second Plaintiff

SURMAR PTY LTD (ACN 100 678 831)

Third Plaintiff

-and-

ANDREW GORDON MICHELMORE

First Defendant

JANET HAILES MICHELMORE

Second Defendant

ANTRO NOMINEES PTY LTD (ACN 005 430 008)

Third Defendant

