

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

S CI 2014 01622

IN THE MATTER of an application under section 84 of the *Property Law Act 1958*, for the removal or modification of the restrictive covenant contained in Instrument of Transfer No. 1270882 registered in the Register Book at the Office of Titles affected the land more particularly described in Certificate of Title Volume 08044 Folio 178, by

GUNJIAL SULTAN

Plaintiff

ORDER

JUDGE: The Honourable Associate Justice Mukhtar

DATE MADE: 25 June 2014

ORIGINATING PROCESS: Originating Motion

HOW OBTAINED: On return of the plaintiff's originating motion filed 7 April 2014, adjourned on 16 May 2014

ATTENDANCE: Mr M Townsend of counsel for the plaintiff

OTHER MATTERS:

- A. According to the Parent Title (volume 4423 folio 563), a Building Scheme affects all lots in the Plan of Subdivision (P/S 8329) within which the subject land is located. This may mean that each lot within that subdivision has both the benefit and burden of the relevant covenant.
- B. The Court has directed notice to be given to all those lots coloured blue in the map in Schedule 3.
- C. An awareness of the application to the surrounding neighbourhood ought to be created by the Court's first order which, akin to planning applications, requires a public notice to be displayed on the subject property itself, and to order that direct notice to be given to owners of land within reasonable proximity of the subject land.

THE COURT ORDERS THAT –

1. By 8 July 2014 the plaintiff shall display one copy of the notice (“**the Notice**”) of the application in this proceeding in the form of Schedule One to this order, which shall be enlarged to size A3 and encased in weatherproof covers and affixed in a conspicuous position on the property at 13 Wheatsheaf Road, Glenroy.
2. The Notice shall remain displayed until 29 July 2014.
3. In addition to order 1, by 8 July 2014, the plaintiff shall send a copy of the Notice by pre-



paid ordinary mail to the address of those persons in the Register of titles or the address for that person in the rate book of the municipality who are the registered proprietors and mortgagees of each lot which is identified in Schedule Two.

4. The plaintiff has leave to amend the originating motion by 2 July 2014 to possibly seek the discharge or modification of other components of the restrictive covenant.
5. The further hearing of the proceeding is adjourned to 7 August 2014 at 10.30am in Associate Judges' Court 2, 436 Lonsdale Street, Melbourne.
6. This order shall be prepared by Counsel and signed by the Associate Judge making the order.

DATE AUTHENTICATED: 27 June 2014



ASSOCIATE JUDGE

Muhammad Mukhtar Asif

THE HON ASSOCIATE JUSTICE MUKHTAR

SCHEDULE ONE

NOTICE OF APPLICATION CONCERNING A
RESTRICTIVE COVENANT

TAKE NOTICE that Gunjial Sultan is the registered proprietor of the land (“**the land**”) at 13 Wheatsheaf Road Glenroy, Victoria being the land more particularly described in certificate of title volume 8044 folio 178. He has applied to the Supreme Court of Victoria in proceeding No. S CI 2014 01622 for an Order under section 84(1)(c) of the *Property Law Act 1958* that the restrictive covenant contained in transfer no. 1270882 affecting the land be discharged, or alternatively modified:

- to allow the construction of two dwellings on the land;
- to remove the requirement to have the front elevation of any dwelling constructed on the land to front Wheatsheaf Road; and
- to remove the requirement to have the roof or walls of any dwelling comprised of iron, metal or similar materials.

ANY PERSON who claims to have the benefit of the covenant and seeks to oppose this application should:

1. by 30 July 2014 give written notice to the owner’s solicitors: De Marco Lawyers of 794A Pascoe Vale Road, GLENROY 3046; and
2. appear in Court No.2, Ground Floor, Supreme Court, 436 Lonsdale Street, Melbourne on 7 August 2014 at 10.30am on which occasion the Court usually makes procedural orders for the future conduct of the application.

Copies of all documents relating to this application and further information (including the land that appears to be entitled to the benefit of the covenant, and the name and addresses of any person who has lodged an objection) may be obtained from the owner's solicitors as stated above.

DATED: 2014

SCHEDULE TWO

Street address	Lot number on plan
5 Wheatsheaf Road	Lot 71 LP8329
7 Wheatsheaf Road	Lot 72 LP8329
9 Wheatsheaf Road	Lot 73 LP8329
11 Wheatsheaf Road	Lot 74 LP8329
15 Wheatsheaf Road	Lot 76 LP8329
17 Wheatsheaf Road	Lot 77 LP8329
19 Wheatsheaf Road	Lot 78 LP8329
21 Wheatsheaf Road	Lot 79 LP8329
11 Golf Links Road	Lot 12 LP8329
12 Golf Links Road	Lot 129 LP8329
13 Golf Links Road	Lot 13 LP8329
14 Golf Links Road	Lot 128 LP8329
15 Golf Links Road	Lot 14 LP8329
16 Golf Links Road	Lot 127 LP8329
17 Golf Links Road	Lot 15 LP8329
18 Golf Links Road	Lot 126 LP8329
19 Golf Links Road	Lot 16 LP8329
20 Golf Links Road	Lot 125 LP8329
21 Golf Links Road	Lot 17 LP8329
22 Golf Links Road	Lot 124 LP8329
23 Golf Links Road	Lot 18 LP8329
24 Golf Links Road	Lot 123 LP8329
25 Golf Links Road	Lot 19 LP8329
26 Golf Links Road	Lot 122 LP8329
27 Golf Links Road	Lot 20 LP8329
28 Golf Links Road	Lot 121 LP8329
16 Bayview Road	Lot 56 LP8329
18 Bayview Road	Lot 55 LP8329
20 Bayview Road	Lot 54 LP8329
22 Bayview Road	Lot 53 LP8329
24 Bayview Road	Lot 52 LP8329
26 Bayview Road	Lot 51 LP8329
28 Bayview Road	Lot 50 LP8329
30 Bayview Road	Lot 49 LP8329
32 Bayview Road	Lot 48 LP8329

SCHEDULE THREE

