

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

S CI 2014 01622

IN THE MATTER of an application by GUNJIAL SULTAN 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 affecting the land more particularly described in Certificate of Title Volume 08044 Folio 178.

and

WHEREIN

GUNJIAL SULTAN

is Plaintiff

GENERAL FORM OF ORDER

JUDGE: The Honourable Associate Justice Derham

DATE MADE: 16 October 2014

ORIGINATING PROCESS: Originating Motion.

HOW OBTAINED: On return of the Order of the Honourable Associate Justice Derham made on 7 August 2014

ATTENDANCE: M. Townsend of Counsel for the Plaintiff

OTHER MATTERS:

A. On 25 June 2014 the Court made Orders requiring notice of this application to be given to certain landowners in the immediate vicinity of the subject land, who have the benefit of the covenant. The Court also required the plaintiff to display an enlarged copy of the notice on the property at 13 Wheatsheaf Road, Glenroy. Pursuant to Rule 52.09(3) of the *Supreme Court (General Civil Procedure) Rules 2005*, the Court is satisfied that the notices were given in accordance with the Order of 25 June 2014.





- B. The Court has regard to the affidavit evidence contained in the affidavits of: Gunjial Sultan sworn 14 March 2014 and 6 August 2014; Rami Jurdi, solicitor, sworn 14 March 2014, 6 August 2014 and October 2014, Robert Walter Easton, expert town planner, sworn 19 June 2014.
- C. The covenant prevents, inter alia, the erection of more than one single dwelling house on the land. The Court is satisfied that the continued existence of the restriction of the single dwelling house on the land will impede the reasonable user of the land without securing practical benefits to other persons and, in addition, the proposed modification of the restrictive covenant will not substantially injure the persons entitled to the benefit of the restriction.
- D. The following Order modifying the covenant affecting the Land in Certificate of Title Volume 08044 Folio 178 is made.
- E. This Order is signed by the Judge pursuant to rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2005*.

THE COURT ORDERS THAT:

1. Pursuant to section 84(1)(c) of the *Property Law Act 1958* the restrictive covenant contained in Instrument of Transfer No. 1270882 registered in the Land Registry be modified to the extent that it affects the land described in Certificate of Title Volume 08044 Folio 178, being the land situate at and known as 13 Wheatsheaf Road, Glenroy by deletion of the words struck through in the Covenant extracted below, so that the covenant reads –

[That the Transferees etc.] "...will not at any time carry on quarrying operations on any of the said lots hereby transferred or any part thereof or dig carry away or remove therefrom or any part thereof any marl stone earth clay gravel or sand except

for the purpose of laying the foundation of any building to be erected on any of the said lots hereby transferred as aforesaid and that it or they will not erect build or construct or allow to be erected built or constructed on any of the said lots hereby transferred or any part thereof any shop factory warehouse or any other premises for use or suitable for use for the purpose of vending or exhibiting for sale goods or merchandise of any description and that it or they will not erect or allow to be erected or leave standing more than ~~one dwelling house on each of the said lots hereby transferred~~ two dwelling houses on Lot 75 LP8329 which dwelling houses with fences and outbuildings shall cost not less than Four hundred pounds ~~and shall have its front elevation to the road to which the respective lot shall have its frontage on its respective Plan of Subdivision~~ and be set back at a distance of at least thirty feet therefrom and the said dwelling houses for residential purposes only and the said Greater Glenroy Proprietary Limited shall not display or cause or allow to be displayed any trade or other sign upon the said land or any part thereof ~~and the said dwelling houses including outbuildings shall not have the roof or any of its exterior walls of iron or metal of any description or of any material which shall be an imitation or substitute thereof or therefor...~~”

2. As soon as practicable after the authentication of this Order, the Plaintiff shall lodge with the Registrar of Titles an authenticated copy of it.
3. The plaintiff has liberty to apply to the Court for any further working out of this Order.

DATE AUTHENTICATED: 16 October 2014



THE HON. ASSOCIATE JUSTICE DERHAM

