

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



S CI 2016 02468

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

and

IN THE MATTER of a restrictive covenant contained in Instrument of Transfer No. 2025694 registered in the Register Book at the Office of Titles and imposed upon the land known as 21 Edna Street, Heathmont more specifically described in Certificate of Title Volume 8112 Folio 582 kept by the Register of Titles under the *Transfer of Land Act 1958* (Vic).

LUCIANO DI GREGORIO

Plaintiff

ORDER

JUDGE: The Honourable Associate Justice Lansdowne

DATE MADE: 25 July 2016

ORIGINATING PROCESS: Originating motion filed 24 June 2016.

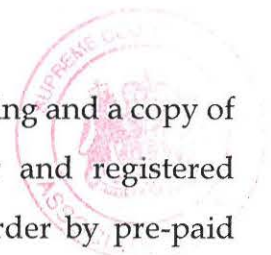
HOW OBTAINED: On return of the originating motion.

ATTENDANCE: Mr M. Townsend of counsel for the plaintiff.

OTHER MATTERS: Order 1 requires direct notification of the application to the registered proprietors and mortgagees of benefited lots in immediate proximity to 21 Edna St, Heathmont. There are other benefited lots within the subdivision. The Court considers that the notice on the land provided for in order 3 will give sufficient notice to persons with an interest in those lots.

THE COURT ORDERS THAT

1. By 1 August 2016 the plaintiff shall give notice of this proceeding and a copy of this order to each person who is a registered proprietor and registered mortgagee of the land identified in Schedule Two to this order by pre-paid



priority post at the last recorded address of that person appearing on the register held by Land Victoria (the Office of the Registrar of Titles) or rate book (if any), or otherwise to the last known address of that person.

2. The notice shall be in the form of Schedule One attached to this order.
3. By 1 August 2016 the plaintiff shall display publicly a copy of the notice referred to in Order 2 which is to be enlarged to size A3 and encased in a waterproof cover and affixed in a conspicuous position on the property at 21 Edna Street, Heathmont facing Edna Street.
4. The public notice shall remain displayed until 1 September 2016.
5. The further hearing of the proceedings is adjourned to 14 September 2016 at 09:30 in the Associate Judges' Court 2, 436 Lonsdale Street, Melbourne.

DATE AUTHENTICATED: 26 July 2016



THE HON ASSOCIATE JUSTICE LANSDOWNE

SCHEDULE ONE

NOTICE OF APPLICATION TO MODIFY A RESTRICTIVE COVENANT

AT 21 EDNA STREET, HEATHMONT (LAND),

VOLUME 8112 FOLIO 582

THIS NOTICE is given by order of the Supreme Court of Victoria.

The owner of the Land, Luciano Di Gregorio, has applied to the Court for an order to modify a covenant that is registered on the title to this Land. The covenant is stated in Instrument of Transfer No. 2025694 dated 20 August 1946 (Covenant). The Covenant prohibits the owner of the Land from, among other things, the construction of more than one dwelling on the Land, and a requirement that any dwelling front Edna Street. The Covenant is not for the benefit of all land in the area, but only for certain lots within Plan of Subdivision 011701 according to Instrument of Transfer No. 2025694.

The Plaintiff seeks to modify the Covenant so as to be able to construct three dwellings on the Land, and not be required to face all dwellings to Edna Street. The application is made under s84 of the *Property Law Act 1958* (Vic). This application is different to a planning permit application to the local council under the *Planning and Environment Act 1987*.

Any person who is entitled to the benefit of the Covenant and who wishes to oppose the application should:

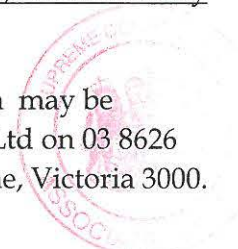
1. by 8 September 2016 give written notice to the plaintiff's solicitors "Planning & Property Partners Pty Ltd" of Duckboard House, Level 2, 91-93 Flinders Lane, Melbourne, Victoria 3000 ; and
2. attend the Supreme Court on 14 September 2016 at 09:30am in Court 2, Ground Floor, 436 Lonsdale Street, Melbourne.

An attendance in person, or by a legal practitioner or other person that the Court permits, is required in order to make an objection. Objectors may wish to act as a group. Written objections without an attendance may not be considered. If the application is opposed, the Court will not decide the application on that day, but will set procedures for the progress of the case. If no person appears in Court on that day to oppose the application, the Court may hear and decide the application on that day.

Copies of documents relating to this application and any further information may be obtained on request from Tyrone Rath of Planning & Property Partners Pty Ltd on 03 8626 9010 or by mail at Duckboard House, Level 2, 91-93 Flinders Lane, Melbourne, Victoria 3000.

Signed:

Dated:



SCHEDULE TWO

Street Address	Lot number on plan of subdivision
53 Great Ryrie Street, HEATHMONT VIC 3135	Lot 87 LP11701
55 Great Ryrie Street, HEATHMONT VIC 3135	Lot 86 LP11701
57 Great Ryrie Street, HEATHMONT VIC 3135	Lot 85 LP11701
30 Edna Street, HEATHMONT VIC 3135	Lot 88 LP11701
28 Edna Street, HEATHMONT VIC 3135	Lot 89 LP11701
26 Edna Street, HEATHMONT VIC 3135	Lot 90 LP11701
24 Edna Street, HEATHMONT VIC 3135	Lot 91 LP11701
22 Edna Street, HEATHMONT VIC 3135	Lot 92 LP11701
20 Edna Street, HEATHMONT VIC 3135	Lot 93 LP11701
18 Edna Street, HEATHMONT VIC 3135	Lot 94 LP11701
16 Edna Street, HEATHMONT VIC 3135	Lot 95 LP11701
14 Edna Street, HEATHMONT VIC 3135	Lot 96 LP11701
12 Edna Street, HEATHMONT VIC 3135	Lot 97 LP11701
1A Edna Street, HEATHMONT VIC 3135	Lot 1 PS309169
20 Balfour Avenue, HEATHMONT VIC 3135	Lot 2 PS309169
22 Balfour Avenue, HEATHMONT VIC 3135	Lot 63 LP11701
24 Balfour Avenue, HEATHMONT VIC 3135	Lot 64 LP11701
26 Balfour Avenue, HEATHMONT VIC 3135	Lot 1 LP70895
28 Balfour Avenue, HEATHMONT VIC 3135	Lot 2 LP70895
30 Balfour Avenue, HEATHMONT VIC 3135	Lot 67 LP11701

