

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

No. SCI 2016 02008

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

AND IN THE MATTER of an application by MARGARET MARY CONLAN by her litigation guardian JOHN PATRICK CONLAN for the discharge or modification of the restrictive covenants contained in instruments of transfer Nos. 1014947 and 1233910 affecting land situate and known as 15-17 Woodland Street, Essendon being land more particularly described in Certificate of Title Volume 10044 Folio 412

MARY MARGARET CONLAN by her litigation guardian
JOHN PATRICK CONLAN

Plaintiff

and

MICHELLE BENTON and others
in accordance with the Schedule attached

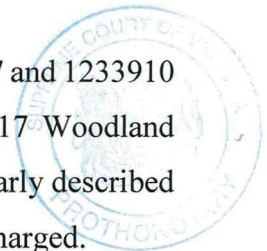
Defendants

FURTHER AMENDED ORIGINATING MOTION
(amended on 7 June 2016 pursuant to the order of
Hon Associate Justice Derham made on 6 June 2016 and
on 3 August 2016 pursuant to the order of Hon Associate Justice Derham
made on 26 July 2016)

Date of Document:	3 August 2016 The Plaintiff simon@conlancummings.com.au
Prepared by	Solicitors Code: 109354
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ASCOT VALE VIC 3032	Ref: SPC:150393

TAKE NOTICE, that the plaintiff intends to apply to the Court for orders on 6 June 2016 at 10:30am in Court 2, Ground Floor, 436 Lonsdale Street, that:

1. The restrictions imposed by Instruments of Transfer Nos. 1014947 and 1233910 over the land and improvements situated at and known as 15-17 Woodland Street, Essendon in the State of Victoria being land more particularly described in Certificate of Title Vol. 10044, Folio, 412 (the "land") be discharged.



2. Alternatively, the restrictions imposed by Instruments of Transfer Nos. 1014947 and 1233910 affecting the land be modified to by substituting covenants 1014947 and 1233910 with a single covenant to the following effect:

“[The Registered Proprietor] shall not at any time hereafter erect or allow to be erected on the land hereby transferred any building other than one shop or shops with or without dwellings attached.”

3. In the alternative,

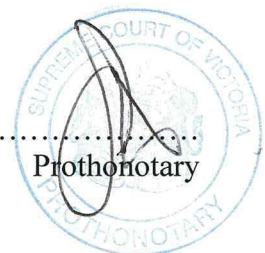
(a) the restrictions imposed by Instrument of Transfer No. 1014947 be modified by substituting the words “any building other than one shop or shops with or without dwelling house attached,” with the words “any building other than a shop with or without dwellings attached; and

(b) the alternative, the restrictions imposed by Instrument of Transfer No. 1233910 be modified by substituting the words “any building other than one shop or shops with or without dwelling house attached,” with the words “any building other than a shop with or without dwellings attached.

4. In the alternative, a declaration pursuant to s 84(2)(b) of the Property Law Act 1958 that upon their true construction neither restriction prohibits the development of a ground floor shop attached to residential apartment complex on the land.

56. Such further or orders as this Honourable Court deems appropriate.

Filed: 25 May 2016



The address of the plaintiff is C/- 554 Mount Alexander Road, Ascot Vale, VIC 3032.

SCHEDULE

MARY MARGARET CONLAN by her litigation guardian
JOHN PATRICK CONLAN

Plaintiff

and

MICHELLE BENTON

First Defendant

MICHAEL BENTON

Second Defendant

BARBARA BENTON

Third Defendant

JOHN WEINBER

Fourth Defendant

ROBYN PONTING

Fifth Defendant

BARRY HAMOND

Sixth Defendant

CAROLYN HAMOND

Seventh Defendant

PETA SHIELDS

Eighth Defendant

RUSSELL BLOWES

Ninth Defendant

PATRICIA FIDDES

Tenth Defendant

GEOFFREY HURST

Eleventh Defendant

CHRISTINE HURST

Twelfth Defendant

MAUREEN GREEN

Thirteenth Defendant

FRANCESCO GIORDANO

Fourteenth Defendant

ARCANGELA GIORDANO

Fifteenth Defendant

DONATO DIVINCENZO

Sixteenth Defendant

LISA HARRINGTON

Seventeenth Defendant

