Supreme Court
New South Wales

Medium Neutral Citation:	**Richard Van Brugge & Anor v Meryl Lesley Hare & Anor [2011] NSWSC 1364**
Hearing Dates:	23 June 2011
Decision Date:	04/11/2011
Jurisdiction:	Equity Division
Before:	Slattery J
Decision:	The plaintiffs' use of the inclinator is expressly authorised by the terms of the easement. Injunction granted to prevent interference with the plaintiff's' rights to use the easement.
Catchwords:	REAL PROPERTY - Torrens Title - easement - plaintiffs have benefit of right of way "with or without vehicles" over defendants' steeply sloping land - mechanical inclinator built over the length of the easement - defendants' prevent plaintiffs' using inclinator without the defendant's permission - whether plaintiffs have express or ancillary rights to the use of the inclinator under the terms of the easement.
Legislation Cited:	Uniform Civil Procedure Rules 2005 (NSW), r 28.2 Conveyancing Act 1919 (NSW), s 88B
Cases Cited:	Bland & Anor v Levi & Ors (2000) 9 BPR 17,517 Burke v Frasers Lorne Pty Ltd [2008] NSWSC 988 Butler v Muddle (1995) 6 BPR 13,984 Lyttleton Times Co Ltd v Warners Ltd [1907] AC 476 Owners of Strata Plan 48754 v Anderson & Anor (1999) 9 BPR 17,119; [1999] NSWSC 580 Phoenix Commercial Enterprises Pty Ltd v City of Canada Bay Council [2010] NSWCA 64 Proprietors of Strata Plan No. 9,968 & Anor v Proprietors Strata Plan No. 11,173 [1979] 2 NSWLR 605 Prospect County Council v Cross (1990) 21 NSWLR 601 Sertari Pty Ltd v Nirimba Developments Pty Ltd [2007] NSWCA 324 Westfield Management Limited v Perpetual Trustee Company Limited (2007) [2007] HCA 45; 233 CLR 528 White v Grand Hotel, Eastbourne Limited [1913] 1 Ch 113 Zenere v Leate (1980) 1 BPR 9300
Category:	Principal judgment
Parties:	Plaintiff- Richard van Brugge Second Plaintiff- Chiaki van Brugge Defendant- Meryl Lesley Hare Second Defendant- John Hare
Representation:	Plaintiffs- Sparke Helmore Lawyers Defendant- JGP Lawyers Plaintiff:- T. L. Wong Defendant:- V. R. Gray
File Number(s):	2011/113695
Publication Restriction:	No.

JUDGMENT

1 The plaintiffs, Mr Richard and Mrs Chiaki Van Brugge, live at Number 32 Abernethy Street, Seaforth. The defendants, Mr John and Mrs Meryl Hare, live at Number 34 Abernethy Street, which lies at the western end of Seaforth. From Abernethy Street the land slopes down quite steeply to Middle Harbour. Each of Number 32 and Number 34 has a water frontage at its western end. They are battle-axe blocks with access through their "axe handles" to Abernethy Street at their eastern end. The local landform is sufficiently steep that the plaintiffs and the defendants share a mechanical inclinator, which transverses east-west, up and down the slope from their houses near the water, up to garages on Abernethy Street.

2 The inclinator is constructed on an easement, called throughout these reasons "Easement B", over the defendants' land, Number 34. Easement B was created by a registered *Conveyancing Act 1919* (NSW), s 88B instrument dated 31 January 1985.

3 In late March-early April this year when the defendants were proposing to undertake renovations to Number 32 they sought to use the inclinator for their building works. The defendants objected and said that under the terms of Easement B the plaintiffs needed to seek the defendants' permission to use the inclinator, for themselves and for their workmen. The plaintiffs contended that no such permission was required. The parties could not resolve their differences, so the plaintiffs commenced these proceedings.

4 The matter was brought to the expedition list and heard on 23 June 2011. By the time of the Hearing the parties had reached an interim arrangement which permitted the plaintiffs' building works to proceed. But the longer-term issue of their respective rights to the use of the inclinator were unresolved.

5 The proceedings were commended by Summons dated 7 April 2011. Orders were made in the expedition list under *Uniform Civil Procedure Rules 2005* (NSW), r 28.2 on 20 May 2011 for the relief sought in paragraphs 1 and 2 of the Summons to be decided separately from other issues. Paragraph 2 of the Summons sought a declaration that the plaintiffs and their employees, agents and contractors were entitled to use the inclinator located on Easement B. Paragraph 1 sought an injunction restraining the defendants from substantially impeding the plaintiffs', their employees, agents and contractors from using the inclinator.

6 The main issues were whether the plaintiffs were entitled to use the inclinator, within the rights conferred on them as the dominant tenement owners under Easement B, "to go, pass and repass...with or without...vehicles" or whether such right of use was ancillary to the grant by Easement B.

7 Ms T. Wong appeared for the plaintiffs and Mr V. Gray appeared for the plaintiffs. The plaintiffs proffered a statement of proposed findings at the hearing, which I have found to be well justified by the evidence, and my findings in the next section are substantially based on it.

History of Registered Dealings

8 In July 1976, Peter Vernon Hickey and Helen Deirdre Hickey ("Hickeys") became the registered proprietors of Volume 6240 in Folio 121 (as it was then registered), known as 34 Abernethy Street, Seaforth. On 15 August 1978, Glendowner Thomas Wirth and Anne Elizabeth Wirth ("Wirths") became the registered proprietors of Volume 11171 in Folio 160 (as it was then registered), known as 32 Abernethy Street, Seaforth.

9 On 20 May 1983, the Wirths transferred Volume 1171 in Folio 160 to Joyce Margaret Anderson. On 24 May 1984, Mrs Anderson transferred the property to Glenvale Estates Pty Limited ("Glenvale"), a company controlled by her husband, Martin Anderson.

10 On 31 January 1985, Deposited Plan 708511 was registered, creating two lots:

(1) Lot 500 in Deposited Plan 708511, owned at the time by the Hickeys and known as 34 Abernethy Street, Seaforth; and

(2) Lot 501 in Deposited Plan 708511, owned at the time by Glenvale and known as 32 Abernethy Street, Seaforth.

11 Deposited Plan 708511 gave effect to a Transfer dated 19 October 1984, by which the Hickeys agreed to transfer to Glenvale a small parcel of land adjacent to where the narrow strip of land that forms part of Number 34 now adjoins the wider section of Number 32.

12 By registration of Deposited Plan 708511, three easements were created, which are described in the plan as follows:-

> "It is intended to create pursuant to Sec. 88B of the Conveyancing Act 1919...
>
> A Right of way & easements for services 1.7 wide and var. width.
>
> B Right of way & easements for services variable width.
>
> C Right of footway variable width."

13 The positions of these three easements can be seen in Figure 1 which is an extract from DP708511. Figure 1 is at the end of these reasons.

14 Easement A provided a right of way. It abutted the western end of Easement B. Easement A would allow a person to alight from the inclinator at its lower or western end, at a platform located there, and walk across a small triangular parcel of land marked "D", then transferred from Number 34 to 32 and upon which a building restriction had been

placed.

15 Easement C was a right of footway parallel to Easement B on which the inclinator is constructed.

16 On 31 January 1985, a section 88B Instrument was also registered in respect of DP 708511, which states that the terms of Easements A and B relevantly include:

> "Full and free right for every person who is at any time lawfully entitled to enter, pass and re-pass or be situated on or entitled to an estate or interest in possession in the land herein indicated as dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by him, to go, pass and re-pass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof..."

17 On 26 September 1990, Glenvale transferred ownership of Number 32 to the plaintiffs, Richard and Chiaki van Brugge.

18 After a series of transfers of ownership, on 11 December 1991, the defendants, John William Hare and Meryl Lesley Hare, became registered owners of Number 34. On 23 September 1999, the first defendant, Meryl Lesley Hare, became the sole registered owner of Number 34.

Physical circumstances of the dominant and servient tenements

19 Number 32 and Number 34 are battle-axe blocks and have a narrow strip of land which provides access to Abernethy Street. For each property, the narrow handle is approximately 2.47 metres wide.

20 There is a garage built on Abernethy Street that is shared by both Number 32 and Number 34. Beneath the garage there are two large cliffs which are at least three metres in height. Further down from the two cliffs are three other rock faces of up to 2.3 metres in height, a steep rock and a number of other boulders. The vertical drop from the garage to the western-most point of Easement B is at least 25 metres, which can be calculated by multiplying the total number of stairs (being 128) by the minimum stair rise of 20 cm.

21 In 1979, a garage was constructed on Abernethy Street and an inclinator was installed on Number 34. The costs of installing the inclinator were shared between the owners of Number 32 and Number 34. Once built, the inclinator had three platforms.

(1) One platform at the garage at Abernethy Street level (Top Platform);

(2) One platform part of the way down the inclinator (Middle Platform); and

(3) One platform at the start of the wider strip of lot 500 (Lower Platform).

22 At all material times following the construction of the garage and the inclinator, there has been access by stairs from Abernethy Street to the houses below as follows:

(1) from the garage on Abernethy Street to the rock platform below by spiral staircase constructed on land owned by Number 32; and

(2) from the rock platform below the garage to the Lower Platform of the inclinator, by a path and stairs substantially constructed on Number 32, but which in parts encroach upon the boundary between Number 32 and Number 34.

23 There are only three or four lights down the entire stairway and there is no light on the wooden stairs, so that the stairs cannot be walked down safely at night.

24 There are no rails on the stairs except on the spiral staircase below the garage and on the wooden stairs recently constructed by the defendants just above the Lower Platform.

25 The only practical mode of use of Easement B is by inclinator, as at all material times prior to and following the grant of the easement:

(1) there has been a cliff on the other side of the garage, and there is nowhere that a ladder could rest in order to climb down the ladder from the garage to the next level below;

(2) there have been no stairs on Number 34 up near the Abernethy Street end of the land and at various points down the property; and

(3) there are a number of cliff faces, boulders and other steep inclines where Easement B is located which would make it difficult to travel down much of the right way of Number 34 by foot.

Mode of use of the easement

26 After the inclinator was built in 1979, it was used by the owners of Number 32 and 34 (the Wirths and the Hickeys

respectively), as the primary means of access to their properties.

27 At the time of the grant of easement on 31 January 1985:

(1) the Hickeys used the inclinator down to the Lower Platform as the principal means of access to Number 34;

(2) the Andersons used the inclinator down to the Lower Platform as the principal means of access to Number 32;

(3) the Hickeys only used the stairs to maintain the garden;

(4) the Andersons did not typically use the stairs to walk from the garage to their house. They also used the stairs to maintain the garden.

28 Since they became owners of Number 32, and until the present dispute, the plaintiffs have used the inclinator as the principal means of access to their house and have permitted a wide range of other persons to use the inclinator for that same purpose.

29 It is not necessary to determine the questions in issue, to recount the detail of the correspondence that led to the commencement of these proceedings. Some relevant parts are set out at the end of these reasons.

Use of Extrinsic Evidence

30 There was a dispute between the parties about the extent of the evidence that the court could take into account in assessing the plaintiffs' and the defendants' respective rights in relation to Easement B. The plaintiffs conveniently grouped the evidence into four categories:-

(a) the information appearing in the register in relation to the relevant folio identifiers, registered instruments, including the deposited plans and Conveyancing Act s 88B instruments;

(b) evidence of the physical characteristics of the tenements;

(c) evidence regarding the use of easement B prior to, at the time of and following the grant of the easement;

(d) evidence regarding attempted obstruction of the use of Easement B.

31 Both parties accepted that information in Category (a) could be used to ascertain the extent of grant of rights under Easement B. This is consistent with the High Court's statements in *Westfield Management Limited v Perpetual Trustee Company Limited* [2007] HCA 45 **;** (2007) 233 CLR 528 at 538-539, [35] - [39], that consistently with the scheme of the Torrens system a third party who inspects the Register cannot be expected to look further for extrinsic material which might establish facts or circumstances existing at the time of creation of a registered dealing and placing the third party in the situation in the grantee; see also *Proprietors of Strata Plan No. 9,968 & Anor v Proprietors Strata Plan No. 11,173* [1979] 2 NSWLR 605 at 610-612 *,* per Needham J. It follows equally from these statements of principle that the evidence in Category C cannot be taken into account in assessing the extent of the grant and the parties were also agreed on this.

32 In relation to the last category of evidence, Category D, limited material in relation to the recent obstruction of Easement B was admitted, but not to ascertain the nature of the rights granted under the easement but in order to consider whether the plaintiffs had made out the circumstances that warranted the grant of injunctive relief. That indeed was not a particularly contentious part of these proceedings. It was common ground that in March/April this year, the defendants had by various acts manifested the view that they took of their rights as servient tenement owners of Easement B: that their permission was required before the plaintiffs could use the inclinator on the easement. But for the interim arrangements made between the parties, the defendants were taking a course of obstructing the plaintiff's use of the inclinator on Easement B. The Court did not take into account any of this material in construing the terms of the easement or the grant of rights under it.

33 The principal dispute at hearing about what evidence that the Court could take into account in construing the words of the grant related to the Category B evidence as to the physical characteristics of the tenements. Ms Wong maintained this material could be used. Mr Gray submitted that "all evidence of physical characteristics is necessarily irrelevant and inadmissible because it could only be meaningful if you ask about the physical characteristics at the time of the grant".

34 Both authority and considerations of logic support the plaintiff's position that the Court can take into account the present physical characteristics of the tenements.

35 Authority is clear. In *Westfield Management Limited v Perpetual Trustee Company Limited* (2007) HCA 45 at [42] the High Court reasoned that the Court could determine user under a registered easement which "may change with the *nature of the dominant tenement* " (emphasis added). Also in *Sertari Pty Limited v Nirimba Developments Pty Ltd* [2007] NSWCA 324 when construing the words of an easement to determine whether a right of way was excessive

the Court of Appeal confirmed at [15] - [16] that the effect of *Westfield Management Limited v Perpetual Trustee Company Limited* is that "extrinsic material apart from physical characteristics of the tenements, is not relevant to the construction of instruments registered under the Real Property Act".

36 Logic dictates the same result. It is difficult to give content to the rights under an easement unless some account is taken of the physical characteristics of the tenements. Otherwise the parties are engaged in an empty debate about the meaning of words in an instrument without reference to what is happening on the ground. The limitations of such a narrow view was emphasised by Campbell JA in *Phoenix Commercial Enterprises Pty Ltd v City of Canada Bay Council* [2010] NSWCA 64 at [158].

37 Thus, the approach taken in these reasons is to take into account information appearing in the Register and the physical characteristics of the tenements in order to determine the nature of the rights conferred under Easement B.

The Plaintiff's Rights - Express Terms of the Grant

38 The defendants' principal argument is directed to the words "to go, pass and repass at all times and for all purposes *with or without* animals *or vehicles* or both to and from the said dominant tenement" (emphasis added) in Easement B. The defendant's argument is that such a grant means that a person comes to the servient tenement with their own animal or vehicle and then must pass or repass and take it away; it cannot be left there. The defendants argue that the "vehicle" in the grant must mean a vehicle supplied by the dominant tenement owner, in this case the plaintiffs.

39 The defendant's argument is underpinned by what is common ground in the proceedings, that the inclinator vehicle and rail are fixtures to the surface area of the servient tenement. Both parties accepted that the concrete base of the rail, the rail with its grooves for providing traction for the inclinator mechanism, and the inclinator itself, are all affixed to this land other than by their own weight. Indeed the inclinator cannot be removed from the rail, which is buried at the western end in the ground and attached to the platform at the eastern end, without some mechanical dismantling of the apparatus. The defendants' case is that given that the vehicle is a fixture and part of the first defendant's servient tenement that the plaintiffs are not authorised by the grant to appropriate it to their use without the first defendant's consent but rather that the plaintiffs must bring their own vehicle to use on the easement.

40 In my view the defendant's argument is not persuasive. It fails upon considerations of the words of grant in Easement B, upon considerations based on the physical characteristics of the tenements and upon authority. I will deal with each of these in turn.

41 The words of the grant of Easement B do not specify whether the "vehicles" with which the dominant tenement owner may "go, pass and repass at all times" shall be vehicles supplied or owned by the dominant tenement owner or the servient tenement owner of Easement B. Whilst the defendant is correct that in an ordinary right of carriage way the dominant tenement owner will bring vehicles to the right of carriage way and pass over it with those vehicles, the circumstances of this case are different. The vehicle which is embedded in the servient tenement does permit the dominant tenement owner "to go, pass and repass at all times and for all purposes" to and from the dominant tenement, but it is not the dominant tenement owner's vehicle.

42 The defendants' caution about the construction of the grant is well justified. In an ordinary right of carriageway which could be used by motor vehicles it would be an excessive and unreasonable interpretation of these words to give the dominant tenement owner permission to use the servient tenement owner's motor vehicle over the easement.

43 But that is not this case. Where the vehicle for conveyance is fixed to the servient tenement for this specific purpose of permitting conveyance along the easement to the dominant tenement, in my view Easement B should not be construed to exclude such a vehicle from the word "vehicles" in the grant. This word is capable of applying to such a fixture and in my view should be construed to apply to such a vehicle.

44 The issue can also be approached as one of giving full effect to the grant of the easement. Unless there was some limitation to be found in the grant, full effect must be given to the grant: *White v Grand Hotel, Eastbourne Limited* [1913] 1 Ch 113 at 116. In my view "vehicles" in the express words of the grant includes a vehicle fixed to the servient tenement in the manner of this vehicle.

45 This construction is supported by the content of the Register and especially BP708511 itself. If the plaintiffs could only exercise their rights over Easement B by using their own vehicle, which would need to be detached from the rails so that it would not interfere with the defendant's fixed vehicle, some physical space would need to be provided for at each end of the easement for storage of the vehicle and Easement B would need to include terms and conditions permitting and regulating the storage of such an additional vehicle. None of this is provided for in the terms of Easement B. This assists the inference that Easement B should be construed as the plaintiffs contend.

46 Consideration of the physical features of the dominant and servient tenements supports the same conclusion. The

plaintiffs' point to the unique characteristics of this inclinator. The inclinator rail is wholly within the confines of the servient tenement enabling travel only between the commencement of the easement and its terminus. Only one inclinator carriage can be used on the inclinator rail at any given point of time as there is only a single rail and no capacity for two inclinator carriages to pass each other on the rail. The inclinator carriage is only intended to be used with the inclinator rail located on the servient tenement and there is no apparent means by which the inclinator carriage can be easily removed.

47 Moreover there is no other easy means of descending down Easement B with any other vehicle or indeed even on foot without very substantial modification of the landform within Easement B. The practicality or impracticality of such possible changes to the landform of Easement B were not explored in the evidence. But it can be inferred from the existing evidence that the creation of a parallel inclinator with the existing inclinator were the plaintiffs' to exercise their rights to create such a track and vehicle system would be very demanding, if not impossible and would be legally futile upon the defendant's construction of the terms of Easement B. The width of Easement B is 2.47 metres. The existing vehicle is 0.85 of a metre wide. The possibility of two such vehicles passing one another on the easement raises obvious hazards. But even if the plaintiffs went to this expense on the defendants' argument, the same problem would occur. The new inclinator would become a fixture, which the plaintiffs could only use with the defendants permission, unless the plaintiffs could remove the vehicle at each end. The same issues would recur. In summary, the physical characteristics of the land support the inference that the "vehicles" in the grant includes the existing inclinator.

48 Authority also supports this conclusion. The law in relation to easements already balances the competing rights of the dominant tenement owner in relation to fixtures on the servient land. There are many examples of how these competing rights are resolved. The applicable balancing principle is "the dominant owner has only such rights as are to be found expressly or by necessary implication in the terms of the grant. The servient owner has all the rights of an owner except those which are inconsistent with the exercise by the dominant owner of the rights expressly or by necessary implication conferred on him by the terms of the grant": *Zenere v Leate* (1980) 1 BPR 9300 at 9304 per McLelland J and *Prospect County Council v Cross* (1990) 21 NSWLR 601 at 607-608.

49 The servient tenement owner is entitled to treat fixtures on the servient land, as a full owner would, except to the extent that they are inconsistent with the exercise of the rights of the dominant owner. It has been held for example to be inconsistent with the right of the dominant owner to construct and form a carriage way on the site of an easement if the dominant owner, having constructed such a carriage way that was not excessive, the servient owner could unilaterally disrupt the carriage way and substitute an inferior one even though it would afford reasonable access: *Burke v Frasers Lorne Pty Ltd* [2008] NSWSC 988 . In that case Brereton J granted an injunction against a servient owner who removed ashphalt paving and replaced it with an inferior grass surface. The fact that the defendants are owners of fixtures on the servient land is no basis for the defendants to argue that their proprietorship over those fixtures allows them to use those fixtures inconsistently with the exercise by the dominant owners, the plaintiffs, of the rights granted under the Easement B. The defendants are in no different position from the servient owners who had a bridge, steps or other structure constructed over a right of way on their land and who attempted to argue that because they were fixtures, they as servient owners could place conditions on the use or placement of those fixtures; such an argument would not succeed: cf *Prospect County Council v Cross* (1990) 21 NSWLR 601.

50 For all these reasons the express terms of Easement B grant to the plaintiffs the entitlement to use the existing inclinator. But they must only exercise those rights in a way that is necessary and reasonable.

The Plaintiff's Ancillary Rights of Use

51 In the alternative the plaintiffs argue that the use of the inclinator is "reasonably necessary for the effective and reasonable exercise and enjoyment of the rights expressly granted": *Butler v Muddle* (1995) 6 BPR 13,984 and *Sertari Pty Limited v Nirimba Developments Pty Ltd* [2007] NSWCA 324. Such ancillary rights can be extensive, vary in nature and their categories are not closed: *Bland & Anor v Levi & Ors* (2000) 9 BPR 17,517 and *Owners of Strata Plan 48754 v Anderson & Anor* (1999) 9 BPR 17,119; [1999] NSWSC 580. Courts have sometimes inferred that there is a derogation from the grant of the easement if an ancillary right which a reasonable bystander would have expected to have passed with the grant is denied: *Lyttleton Times Co Ltd v Warners Ltd* [1907] AC 476 at 481; *Owners of Strata Plan 48754 v Anderson & Anor* (1999) 9 BPR 17,119.

52 Here in my view, merely by looking at Easement B and the s 88B instrument, DP708511, it can be inferred that a reasonable bystander with knowledge of the physical circumstances of the land would have expected that Easement B would grant ancillary rights to use the inclinator down the full length of the easement, because the right of way could not be reasonably or effectively enjoyed without it. This is principally to be inferred because there has never been any other method of travelling down Easement B.

53 But the defendants take issue with any ancillary rights arising. Mr Gray argues, on behalf of the defendants, that

Easement B is capable of being exercised without any use of the inclinator. He points to the fact that Number 34 was accessed on foot before the inclinator was built.

54 But there are a number of problems with the defendant's argument here. For the plaintiffs to be required in effect to construct a staircase down Easement B, as Mr Gray suggests, is effectively to turn Easement B from a right of carriageway into a right of footway. Also, the defendants are applying the wrong test here. The plaintiffs' ancillary right is to do "whatever is reasonably necessary to make the grant effective": *Burke v Frasers Lorne Pty Ltd [2008] NSWSC 988* at [21] per Brereton J. The dominant owner does not have to show that no use of the easement is possible without the inclinator, before an ancillary right will be implied; the test is one of reasonableness. The defendants' argument sets the bar too high.

55 I conclude that the plaintiffs are entitled to use the inclinator as part of their ancillary rights of use of Easement B, if they did not otherwise have express rights of use.

Injunctive Relief

56 From the time the plaintiffs opened correspondence on 25 March 2011 seeking cooperation from the defendants in use of the inclinator to enable Number 32 to be renovated, the defendants have taken the position that their permission was required for the plaintiffs or their workmen to use the inclinator and only on terms set by the defendants, or specifically Mrs Hare. This is evident from Mrs Hare's letter of 28 March 2011.

57 Shortly afterwards the issue escalated to lawyers, but the defendant's position has remained the same. In my view there is no doubt that this was a "real and substantial interference with the right of way" which is actionable: *Prospect County Council v Cross* (1990) 21 NSWLR 601 at 608-610. I will therefore grant injunctions in terms of Order 1 of the Summons and make the declaration sought in paragraph 2 of the Summons. There may be issues between the parties as to the precise form of the declaration to be made and the form of the injunction. I will allow the parties to bring in short minutes of order in relation to these.

58 The parties may have future issues in relation to setting an appropriate regime for their cooperative use of the inclinator and issues about the burden of the cost of repairs and operation of the inclinator. The parties made clear at the hearing that all these matters had not been worked out. The principal issues between the parties have been resolved by this judgment. I will reserve these matters for further consideration if it is required. It is highly desirable that all issues between the parties be resolved in these proceedings.

59 The plaintiffs have made a claim for damages in their Summons. It may be that the parties wish me to resolve any remaining questions of damages as well. I will set a date next week for those matters to come back before the Court.

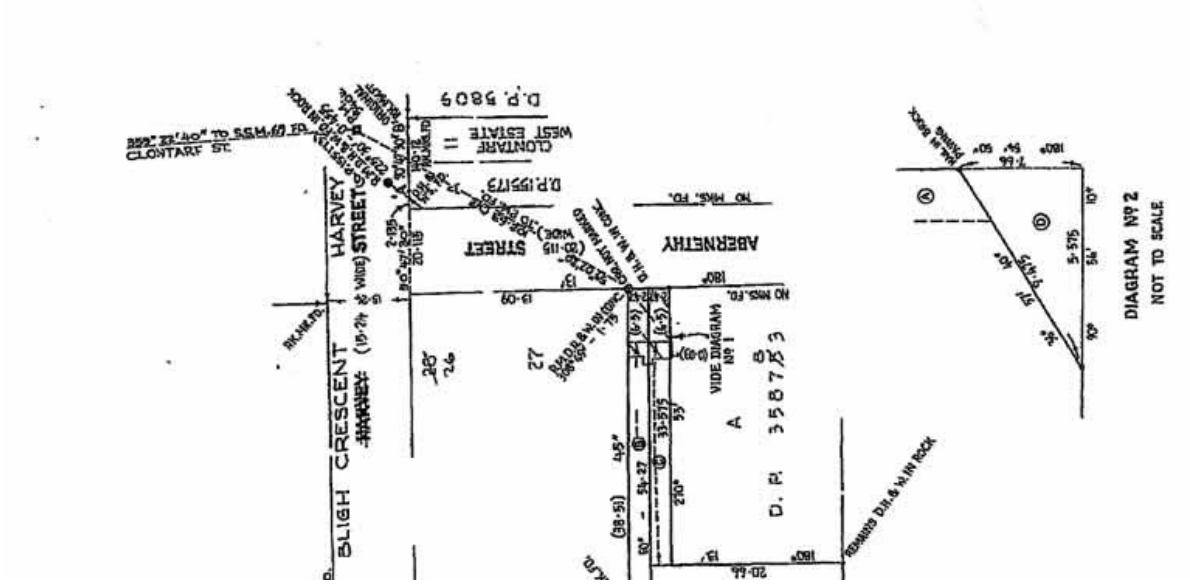
Orders

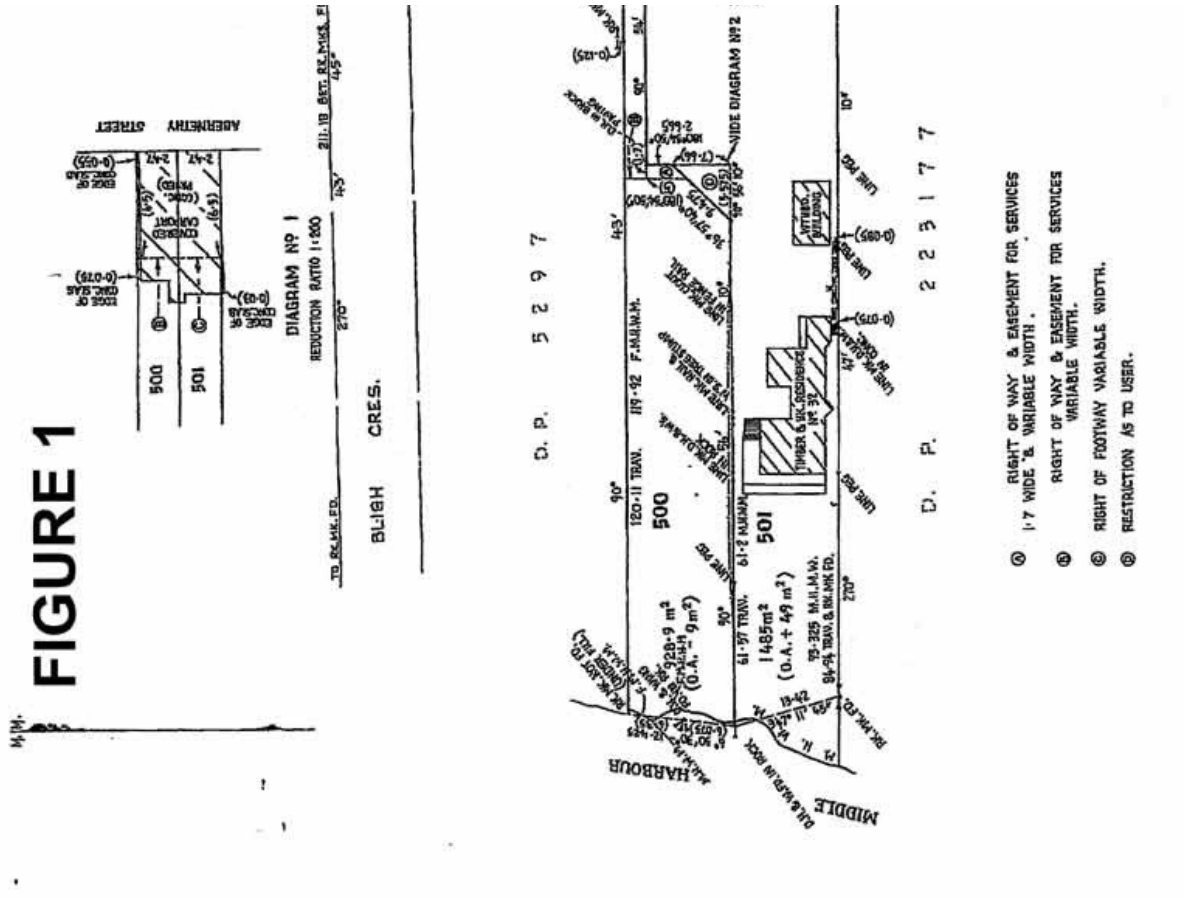
60 The Courts orders will therefore be:-

(1) Direct the parties to bring in short minutes of order to give effect to these reasons.

(2) List the proceedings for the making of orders and any further argument at 3pm Friday 11 November 2011.

(3) Grant liberty to apply.





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