

IN THE SUPREME COURT OF VICTORIA
COMMON LAW DIVISION
PROPERTY LIST

S ECI 2022 04301

IN THE MATTER of an application under section 84(1) of the *Property Law Act 1958* (Vic) for the modification of the restrictive covenant contained in Instrument of Transfer 1227928 registered in the Register Book at the Office of Titles burdening the land known as 262 Queen Street, Altona, Victoria, more particularly described as Lot 22 on Plan of Subdivision 12695, being the land comprised in Certificate of Title Volume 07178 Folio 587, by:

BRIEN AZZOPARDI HOLDINGS PTY LTD
(ACN 650 505 196)

Plaintiff

GENERAL FORM OF ORDER

JUDGE: Honourable Associate Justice Matthews

DATE MADE: 24 November 2022

ORIGINATING PROCESS: Originating Motion filed 24 October 2022

HOW OBTAINED: At the return of the application

ATTENDANCE: Mr Matthew Townsend, counsel for the Plaintiff

OTHER MATTERS:

- A. The Court being satisfied that the technical requirements in section 42G of the *Evidence (Miscellaneous Provisions) Act 1958* ('**Evidence Act**') are met and that all parties consent to the making of the direction, the Court orders under section 42E(1) of the Evidence Act that all persons shall appear, give evidence, and make submissions in this proceeding this day by audio-visual/audio link.
- B. This proceeding, pursuant to section 84 of the Property Law Act 1958 (Vic) concerns an application to modify a restrictive covenant that applies to the subject land (Covenant).
- C. The Covenant requires, among other things, that the main walls of any building on the land must be constructed of brick or stone.
- D. The Plaintiff seeks to modify the Covenant so that the main walls may also be constructed of materials with a rendered finish.
- E. Having read the evidence of the Plaintiff's solicitor, Myles Watson, by his affidavit dated 10 November 2022, and having the benefit of the written



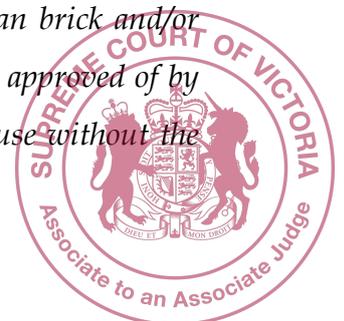
submissions of Matthew Townsend, counsel for the Plaintiff, and his further submissions made orally today, the Court is of the opinion that the proposed modification of the Covenant is benign in its nature and scope.

- F. Further, the affidavit of Myles Watson demonstrates that there is no land having the benefit of the Covenant in proximity of the subject land, but rather that the closest beneficiaries are removed by approximately 450 metres. The Court considers that requiring the Plaintiff to provide direct written notice to distant beneficiaries, would be of limited effect and that a sign being placed on the subject land in the usual manner might only create confusion.
- G. The Court is therefore of the opinion that the proposed modification of the Covenant will not cause substantial injury to the persons entitled to its benefit and, in the somewhat unusual circumstances of this case, is prepared to grant the modification sought without notice to beneficiaries.
- H. This Order is authenticated by the Associate Judge pursuant to Rule 60.02(1)(b) of the Rules.

THE COURT ORDERS THAT:

1. Pursuant to section 84(1)(c) of the *Property Law Act 1958* (Vic) that the restrictive covenant contained in Instrument of Transfer 1227928 in the Register Book kept by the Registrar of Titles under the *Transfer of Land Act 1958* (Vic) and burdening the land known as 262 Queen Street, Altona, Victoria, more particularly described as Lot 22 on Plan of Subdivision 12695 and being the land in Certificate of Title Volume 07178 Folio 587 be modified by removing the words struck through and adding the words double-underlined:

...And the...N.S.W. Realty Co. Limited HEREBY for itself its successors and tran[sferees] registered proprietor or proprietors for the time being of the la[nd]* transferred COVENANTS with the said Altona Beach Estates Limited its successors and transferees registered proprietor or proprietors for the time being of the balance of the land remaining in the said Certificate of Title and every part thereof- that it the said N.S.W. Realty Co. Limited its successors and transferees registered proprietor or proprietors for the time being of the land hereby transferred will not erect upon the said land hereby transferred any shop or dwelling-house of a less value than Two hundred pounds- nor will it or its successors or transferees use any material other than brick and/or stone or other materials with a rendered finish other material approved of by the transferor for the main walls of any shop or dwelling-house without the*



consent in writing of the said Altona Beach Estates Limited- AND FURTHER that it ... will not use or allow the said land hereby transferred to be used for the carrying on of quarrying or any noxious trade or business or the manufacture of bricks tiles pottery or other kindred manufacture...

*indicates parts of words to be inferred, but not visible given the condition of the original instrument.

2. As soon as practicable after the authentication of this order, the Plaintiff shall lodge an authenticated copy with the Registrar of Titles.
3. The Plaintiff has liberty to apply to the Court for any further or other orders necessary or incidental for the effectuation of this order.

DATE AUTHENTICATED: 24 November 2022



THE HONOURABLE ASSOCIATE JUSTICE MATTHEWS

