

**IN THE MATTER** of an application concerning the covenants in Instrument of Transfer 1923252 registered in the Register Book at the Office of Titles and on Certificate of Title Volume 06715 Folio 845 and Instrument of Transfer 1623360 registered in the Register Book at the Office of Titles and on Certificate of Title Volume 11638 Folio 177, seeking a declaration or, alternatively, an application for a modification of the covenants

**BETWEEN:**

ZC WOOD PTY LTD

Plaintiff

- and -

RACHAEL AMANDA WHITE & ORS  
(according to the attached Schedule)

Defendants

**GENERAL FORM OF ORDER**

**JUDGE:** The Honourable Associate Justice Irving

**DATE MADE:** 9 July 2024

**ORIGINATING PROCESS:** Originating Motion filed on 11 October 2023

**HOW OBTAINED:** At the trial on 9 July 2024

**ATTENDANCE:** Mr M Townsend of counsel for the plaintiff  
Ms T Acreman of counsel for the defendants

**OTHER MATTERS:**

- A. This proceeding concerns an application for declaration pursuant to section 84(2)(b) of the *Property Law Act 1958* (Vic) (**PLA**) and, in the alternative, an application pursuant to section 84(1)(c) of the PLA to modify the restrictive covenants which restrict the plaintiff from carrying out excavation works unless in connection with the residential development or use of the land and, in the case of the covenant that affects 31 High Street Road, Ashwood, prevents the plaintiff from erecting any building or hoarding for advertisement on that land and, in the case of the covenant that affects 33 High Street Road, Ashwood, prevents the plaintiff from erecting more than one residential apartment building on that land.
- B. On 9 July 2024, the Court granted leave for the defendants to withdraw from the proceeding without costs.
- C. The Court heard the applications unopposed and has decided to make final orders in the proceeding.



D. This Order is authenticated by the Associate Judge pursuant to r 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*.

**THE COURT ORDERS THAT:**

1. The plaintiff is granted leave to file a further amended originating motion in the form of the Further Amended Originating Motion dated 29 May 2024.
2. The first, third and fifth defendants are granted leave to withdraw from the proceeding with no order as to costs.

**THE COURT DECLARES THAT:**

1. The restrictive covenants imposed by:
  - (a) Instrument of Transfer 1923252, varied by Application AR019317V, registered in the Register kept by the Register of Titles under the *Transfer of Land Act 1958 (Vic)* in respect of the land at 31 High Street Road, Ashwood more particularly described as Certificate of Title Volume 06715 Folio 845 and known as Lot 20 on LP 012951; and
  - (b) Instrument of Transfer 1623360, varied by Application AQ922633G, registered in the Register kept by the Register of Titles under the *Transfer of Land Act 1958 (Vic)* in respect of the land at 33 High Street Road, Ashwood more particularly described Certificate of Title Volume 11638 Folio 177 and known as Lot 21 on LP 012951;

do not prohibit the use and development of the affected parcels for a medical centre.

DATE AUTHENTICATED: 10 July 2024



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**THE HONOURABLE ASSOCIATE JUSTICE IRVING**



SCHEDULE OF PARTIES

S ECI 2023 04723

**BETWEEN:**

ZC WOOD PTY LTD

Plaintiff

- v -

RACHAEL AMANDA WHITE

First Defendant

~~YUXIN WU~~

~~Second Defendant~~

JORDAN LIVANIDIS AND DILSHA JAYASEKARA

Third Defendant

~~MONAYGON PTY LTD ATF THE MONAYGON P/L  
EMPLOYEES SUPERANNUATION FUND~~

~~Fourth Defendant~~

PRAFUL GOYAL AND PULKIT GOYAL

Fifth Defendant

