

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION**

S CI 2013

BETWEEN

MCDONALD'S AUSTRALIA LIMITED (ACN 008 496 928)

Plaintiff

and

JANINE WATSON AND ORS

Defendants

AFFIDAVIT OF PAUL ANTHONY VALLAY

Date affirmed: 12 July 2013

Filed on behalf of: The plaintiff

Prepared by:

Norton Rose Fulbright Australia

RACV Tower, 485 Bourke Street

MELBOURNE VIC, 3000

Solicitor's Code: 370

DX: 445

Tel: (03) 8686 6000

Fax: (03) 8686 6505

Ref: 2773256

Attention: AM:CLS:2773256

Email:

abigail.mcgregor@nortonrosefulbright.com

I, Paul Anthony Vallay of 2 Smith Street, Collingwood, in the State of Victoria, real estate manager, solemnly and sincerely affirm and say as follows:

1. I am the Real Estate Manager for Victoria, Tasmania and South Australia for McDonald's Australia Limited (**McDonald's**). I am responsible for obtaining the necessary planning permits for new McDonald's restaurants in Victoria.
2. I have been employed by McDonald's for in excess of 22 years.
3. I am authorised to make this affidavit on behalf of McDonald's. I make this affidavit from my own knowledge, save where otherwise stated.

Land and Ownership

4. I am responsible for obtaining permission for the development of a new McDonald's restaurant over the land located at 1529, 1529A, 1531 Burwood Highway, Tecoma (**Land**).

5. Now produced and shown to me marked "PAV1" is a copy of a planning map showing the location of the Land, and an aerial photograph showing the Land and the general vicinity. I have identified the Land on the photograph with a black line.
6. On 7 February 2011, McDonald's entered into a contract for the purchase of the Land. On 31 October 2012, McDonald's settled the contract of sale and on 6 December 2012, McDonald's became the registered owner of the Land.
7. On 27 March 2013, plan of consolidation 372937X was registered. That plan consolidated the titles over the Land. The Land is now known as 1529 Burwood Highway, Tecoma. Now produced and shown to me marked "PAV2" is a copy of the Certificate of Title for the Land, contained in Volume 11412 Folio 179.
8. The Land is currently improved by existing buildings that most recently were used for an Indian restaurant called Saffron Cottage and a shop called Hippy Haven.

Planning permit application

9. On 3 June 2011, Urbis (a town planning consultancy firm) on behalf of McDonald's lodged a planning permit application with the Yarra Ranges Shire Council (**Council**) for the development of the Land for a McDonald's restaurant, comprising buildings and works, the creation of an easement, installation of signage and removal of vegetation. The application proposes (but no planning permit was required for) the demolition of the existing buildings on the Land. The planning permit application was assigned number YR-2011/647 by the Council.
10. While a planning permit is required to construct the proposed buildings, no planning permit is required to use the Land for a Convenience Restaurant because:
 - (a) The Land was included in the Business 1 Zone under the Yarra Ranges Planning Scheme; and
 - (b) In the Business 1 Zone, a Convenience Restaurant (which is included within the definition of Food and Drinks premises) is an "as of right" use (for which no planning permit is required).

11. Now produced and shown to me marked "PAV3" is a copy of the Business 1 Zone from the Yarra Ranges Planning Scheme and the definitions of Convenience Restaurant and Food and Drink Premises.
12. I understand that more than 1000 objections were lodged with the Council in response to the planning permit application.
13. The Council considered the planning permit application at its meeting on 11 October 2011 and determined to refuse the planning permit application. A Notice of Refusal was issued on 26 October 2011. Now produced and shown to me marked "PAV4" is a copy of the Council's Meeting Agenda and the Meeting Minutes dated 11 October 2011. Now produced and shown to me marked "PAV5" is a copy of the Council's Notice of Refusal dated 26 October 2011.

Application for Review

14. On 22 December 2011, Norton Rose Australia on behalf of McDonald's lodged an Application for Review with the Victorian Civil and Administrative Tribunal (**Tribunal**) pursuant to section 77 of the *Planning and Environment Act 1987* appealing against the Notice of Refusal.
15. The Application for Review was allocated proceeding number P3933/2011 by the Tribunal.
16. I understand that approximately 320 objectors lodged a statement of grounds with the Tribunal in response to the Application for Review, thereby electing to become a respondent party to the Application for Review.
17. The Application for Review was heard before the Tribunal before Member Rundell (Presiding Member) and Member Carew on 6-10 August 2012, 13 August 2012 and 3-4 September 2012. I attended every day of the Tribunal hearing.
18. Now produced and shown to me marked "PAV6" is a copy of the Overall Site Plan, drawing A001, Revision I, dated 19 July 2012, prepared by Richmond and Ross Pty Limited, which was considered at the Tribunal hearing (in addition to a number of other architectural plans).
19. A number of the objector respondent parties made verbal and written submissions during the Tribunal hearing.

20. The Tribunal issued its decision on 10 October 2012, ordering that:

3. *The decision of the responsible authority in relation to permit application no. YR-2011/647 is set aside.*

4. *A permit is granted in relation to land at 1529, 1529A, 1531 and 1533 Burwood Highway, Tecoma. The permit will allow*

- *Buildings and works for a convenience restaurant*
- *Creation, variation and removal of easements*
- *Displaying business identification and internally illuminated signage*
- *Removal of vegetation*
- *Alteration of access to a Road Zone Category 1*

generally in accordance with the endorsed plans and subject to the conditions contained in Appendix B to these reasons.

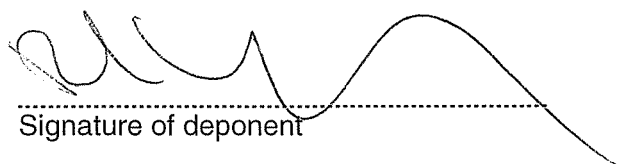
21. Now produced and shown to me marked "PAV7" is a copy of the Tribunal's Order dated 10 October 2012.


22. The Council issued Planning Permit YR/2011/647 on 11 October 2012 (**Planning Permit**). Now produced and shown to me marked "PAV8" is a copy of Planning Permit YR/2011/647 issued on 11 October 2012.

23. Following the issue of the Planning Permit, I handed the matter over to Ken Ronald Pryor, Development Manager, who is responsible for the implementation of the Planning Permit and the steps necessary for construction of the new McDonald's restaurant to occur.

AFFIRMED at Melbourne
in Victoria
on 12 July 2013

)
)
)
)
_____)
Signature of deponent



Before me:


Signature of person taking affidavit

HANNAH WENDY GOULD
RACV Tower, 485 Bourke Street
Melbourne Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.