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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 06313 FOLIO 437

Security no : 124092731389Q
Produced 28/09/2021 01:33 PM

CROWN GRANT

LAND DESCRIPTION

Crown Allotment 6A Section 2 Parish of Mordialloc.

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

HUNTINGDALE ESTATE NOMINEES PTY LTD of LEVEL 2 649 BRIDGE ROAD RICHMOND VIC
3121
AH638598S 26/11/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR342526G 13/08/2018

MELBOURNE SECURITIES CORPORATION LTD

Any crown grant reservations exceptions conditions limitations and powers noted on the plan or imaged folio set out under DIAGRAM LOCATION below. For details of any other encumbrances see the plan or imaged folio set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987

S505281N 26/05/1993

DIAGRAM LOCATION

SEE TP523979Q FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 1221-1249 CENTRE ROAD OAKLEIGH SOUTH VIC 3167

DOCUMENT END

The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of Victoria to provide this information via LANDATA® System. Delivered at 28/09/2021, for Order Number 70566074. Your reference: MA8278A.



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

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Produced 28/09/2021 01:34:20 PM

Status	Registered	Dealing Number	AR342526G
Date and Time Lodged	13/08/2018 01:14:17 PM		

Lodger Details

Lodger Code	20345Y
Name	PIPER ALDERMAN
Address	
Lodger Box	
Phone	
Email	
Reference	GHT:409713

MORTGAGE

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest being mortgaged

FEE SIMPLE

Land Title Reference

3645/846
6313/437
8186/871
8343/532
9402/344
10378/210

Mortgagor

Name	HUNTINGDALE ESTATE NOMINEES PTY LTD
ACN	146749822

Mortgagee

Name	MELBOURNE SECURITIES CORPORATION LIMITED
ACN	160326545
Address	
Floor Type	LEVEL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

Floor Number	2
Street Number	120
Street Name	COLLINS
Street Type	STREET
Locality	MELBOURNE
State	VIC
Postcode	3000

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference AA3574

(b) Additional terms and conditions

1. The reference to the term "Secured Money" in the Memorandum of Common Provisions AA3574 is replaced with the following term: "Secured Money" means all money which the Mortgagor owes to the Mortgagee under the Deed of Guarantee - Sterling Global Capital Mortgage Income Fund between the Mortgagee and the Mortgagor dated on or about the date of the Mortgage Form.

Mortgagee Execution

1. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
2. The Certifier has taken reasonable steps to verify the identity of the mortgagee.
3. The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
 - (a) has taken reasonable steps to verify the identity of the mortgagor; and
 - (b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Certifier has retained the evidence supporting this Registry Instrument or Document.

Executed on behalf of	MELBOURNE SECURITIES CORPORATION LIMITED
Signer Name	GREGORY HUGH TAYLOR
Signer	PIPER ALDERMAN
Organisation	
Signer Role	AUSTRALIAN LEGAL PRACTITIONER
Execution Date	13 AUGUST 2018

File Notes:

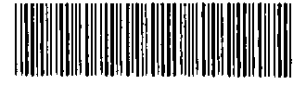
NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

AK744344H

28/11/2013 \$66.50 113A



Application for Amendment or Alteration of Registered Proprietor's Address

Privacy Collection Statement

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Section 113(5) Transfer of Land Act 1958

Lodged by

Name: PIPER ALDERMAN Solicitors

Phone: (03) 8665 5555

Address: Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Reference: GHT:382133

Customer Code: 4206F

The applicant applies to alter the address recorded in the Register to the address specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Volume 10378 Folio 210, Volume 03645 Folio 846, Volume 06313 Folio 437, Volume 08186 Folio 871, Volume 08343 Folio 532 and Volume 09402 Folio 344

Applicant: *(full name and address including postcode)*

HUNTINGDALE ESTATE NOMINEES PTY LTD ACN 146 749 822 of Level 2, 649 Bridge Road, Richmond, Victoria 3121

Date: *27 November 2013*

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

Piper Alderman

Approval No: 2325125A

Order to Register

Form 61

Please register and issue Certificate of Title to

Page 1 of 1

Signed

Customer Code

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010



260593 1222 MISC \$56 S505281N

S505281N

Lodged by Maddock Lonie & Chisholm
Ref: GHP/RDG/156678

Titles Office Use Only

Code: 1167E

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 of the *Planning and Environment Act 1987* for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the *Planning and Environment Act 1987*.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND:

Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344

ADDRESS OF THE LAND:

North side of Centre Road, corner Talbot Avenue, South Oakleigh

RESPONSIBLE AUTHORITY:

Oakleigh City Council, Municipal Offices, Atherton Road, Oakleigh, Victoria

PLANNING SCHEME:

Oakleigh Planning Scheme

AGREEMENT DATE:

15 March, 1993

AGREEMENT WITH:

[ghp 9303311m.1:020493]

17/6/93

Consolidated Quarries Limited (A.C.N. 004 281 323)
1183 Toorak Road, Hartwell. Victoria

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority: 

Name of Officer: ADRIAN HARRISON

Date:
PRINT NAME OF OFFICER SIGNING
7th APRIL 1993

MADDOCK LONIE & CHISHOLM
SOLICITORS & NOTARY

DATED 15th day of March 1993

CITY OF OAKLEIGH

the Council

- and -

CONSOLIDATED QUARRIES LTD.
(A.C.N. 004 281 323)

the Owner

**Agreement Under Section 173 of the Planning and
Environment Act 1987**

: **Subject Land:** Centre Road South Oakleigh

440 Collins Street
MELBOURNE VIC 3000
Telephone: 288 0555
Our Ref: GHP/RDG/1556678
DX 259

THIS AGREEMENT is made the 15th day of ^{11th DAY} March 1997~~3~~ ✓

BETWEEN:

OAKLEIGH CITY COUNCIL of Municipal Offices,
Atherton Road, Oakleigh of Victoria
("the Council") ✓

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)
of 1183 Toorak Road, Hartwell of Victoria
("the Owner")

INTRODUCTION:

- A. The Owner is the registered proprietor of the whole of the land described in Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344 being situated on the north side of Centre Road, South Oakleigh and used for the purpose of extraction, re-washing, drying, blending, storage and sale of sands (collectively "the subject land"). ✓
- B. The Council is the Responsible Authority pursuant to the *Planning and Environment Act 1987* ("the Act") for the Oakleigh Planning Scheme ("the Scheme").
- C. In Planning Appeals Nod. 1990/35916, 1990/35924 and 1990/35932 to the Administrative Appeals Tribunal the Council has alleged (inter alia) that the use of the subject land is not in accordance with the Oakleigh Planning Scheme.
- D. In the said appeals the Owner has denied the allegations made by the Council and maintained the legitimacy of the use of the subject land.

E. In order to avoid the expense of further proceedings the Council and the Owner wish to enter into an Agreement pursuant to Section 173 of the Planning and Environment Act 1987 whereby the Owner binds itself to observe certain conditions on continued use of the subject land. ✓

F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act. ✓

G. The parties to this Agreement acknowledge that the Agreement provides for one or more of the following matters:

1. the prohibition, restriction or regulation of the use or development of land;
2. the conditions subject to which land may be used or developed for specified purposes;
3. a matter intended to achieve or advance the objectives of planning in Victoria.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land.

2. INTERPRETATION

- 2.1. The singular includes the plural and the plural includes the singular.

- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

3. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the subject land ensure that its successors in title:

- 3.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 3.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

4. COVENANTS OF OWNER

4.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

4.1.1. this Agreement and any amendment of this Agreement and anything done in connection with this Agreement

4.1.2. the preparation of an application pursuant to Section 181 of the Act enabling the registration of this Agreement at the Land Titles Office and any duties or fees payable in connection with either this Agreement, the registration of this Agreement at the Land Titles Office or in connection with any default of the Owner.

4.2. The Owner covenants and agrees that it will:

(Use and Operating conditions)

4.2.1. undertake early and rapid extraction of the sand remaining at the southern end of the site, generally in the area coloured yellow on the annexed site plan marked "A";

4.2.2. extracted sand shall be stockpiled in the area west of Talbot Avenue and north of the western sandpit generally in the area coloured red on the site plan;

4.2.3. hours of operation will be limited to 7 a.m. to 6 p.m., Monday to Friday inclusive and 7 a.m. to 1 p.m. on Saturdays provided

- that operations may continue until 8 p.m. on Monday to Friday inclusive on condition that between 6 p.m. and 8 p.m. there will be no movement of vehicles or loaders on site associated with the drying plant operation save as required for essential plant maintenance. No operations are permitted on a Sunday or Public Holiday;
- 4.2.4. at all times the noise levels emanating from the plant shall not exceed those specified at the date of this Agreement for the time period 6 p.m. to 10 p.m. under the State Environment Protection Policy N-1;
- 4.2.5. as soon as is practicable seal the access road from Centre Road to the sand drying plant to the satisfaction of an Inspector of Mines and Quarries in consultation with the City Engineer, City of Oakleigh;
- 4.2.6. ensure that any front end loader operated on site shall be a unit able to operate within the permissible noise level;
- 4.2.7. within 14 days of the execution of this Agreement apply for all necessary building approvals to construct additional hopper capacity, so as to ensure that raw material stockpiles will not be required. The Owner will complete the construction of the additional hopper capacity within three months of the grant of such approvals. During the period while such hopper capacity is being provided, the Owner will use its best endeavours to reduce the size of stockpiles of raw material;

- 4.2.8. After completion of the said additional hopper capacity, if reasonably requested to do so by any affected resident having a line of sight from his or her property to the stockpiles on site, screen such stockpiles from view by shade cloth or similar means.

(Filling and End Use)

- 4.2.9. when extraction at the southern end of the site is completed as required in Clause 4.2.1, forthwith drain the eastern dam (being the area generally coloured blue and marked "eastern dam" on the site plan) and permit filling of the eastern dam commencing from its north-west corner;
- 4.2.10. make the site of the eastern dam available to Council or to third parties at Council's direction to accept clean fill on a no charge basis to enable the dam to be filled as quickly as possible, subject to reasonable notice being give of large volumes of fill;
- 4.2.11. with respect to all other airspace within the subject land, make such airspace available to the Council for the purpose of tipping using clean fill by the Council or third parties at Council's direction on the following terms:
- (i) no rates are charged to the Owner during the period that any area of land is in the control of the

- 7 -

Council for the purpose of tipping and/or reclamation with respect to such area;

- (ii) that all tipping is carried out in accordance with all applicable statutory requirements and in compliance with all applicable requirements for reclamation and rehabilitation of the site;
- (iii) that tipping only takes place in such area as the Owner from time to time indicates is no longer required for the purpose of excavation or of the Owner's operations on the remainder of the land;
- (iv) that any tipping and/or reclamation operations do not directly or indirectly interfere with the Owner's operations on the remainder of the land;
- (v) that the Council keep the area in which tipping operations are in progress securely fenced and be responsible to ensure that all land within the control of the Council for tipping or reclamation purposes is kept free of accumulations of water;
- (vi) that upon reclamation, the land be appropriately consolidated, resoiled and levelled.

- 4.2.12. ensure that no clay-slimes shall be deposited or permitted in the western sandpit;
- 4.2.13. if required by Council, transfer filled or unfilled land progressively to the Council at a negotiated fair market price;
- 4.2.14. use its best endeavours to make an area immediately behind the Clarinda Centre (coloured green on the site plan) available for transfer to the Council at a negotiated fair market price and will engage in negotiations with Council regarding the transfer of such area as soon as possible after October 1993;
- 4.2.15. ensure that use of the subject land for the purpose of extraction, re-washing, drying, blending, storage or sale of sands shall finish on the 31 December 2014;
- 4.2.16. carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 4.2.17. do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that it carries out its covenants, agreements and obligations under this Agreement and to

enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.18. consent to the Council entering a memorandum of this Agreement on the certificate of title to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document to enable the memorandum to be registered under that Section.

5. **CONSULTATIVE COMMITTEE**

The Owner and the Council will establish a Consultative Committee for the purposes of monitoring compliance with this Agreement and any relevant licences and permits. The Consultative Committee shall comprise two representatives of the Owner, one representative of the Department of Manufacturing and Industry Development, three representatives from the Council and three local residents. The Owner's representatives shall represent the occupiers of the land and shall be familiar with all operations on the land. Meetings shall be held three monthly or as determined by the Committee. A quorum for any meeting shall consist of at least four persons comprising one Owner representative, one Council representative and two local residents.

6. **DEFAULT OF OWNER**

In the event of the Owner defaulting or failing to perform any of its obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner

and any such costs shall until paid be and remain a charge on the said land and shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

7. INDEMNITY

The Owner covenants and agrees that it will indemnify and keep indemnified the Council, its officers, servants, agents, workmen and contractors from and against all costs expenses, losses or damages whatsoever which the Council its officers, servants, agents, workmen and contractors may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in Clause 6 of this Agreement.

8. ACKNOWLEDGEMENT AND UNDERTAKING

- 8.1. The parties acknowledge that the Administrative Appeals Tribunal proceedings have been struck out in consideration of the terms and conditions of this Agreement.
- 8.2. The Council undertakes not to bring any further proceedings in respect of alleged past breaches of the permit conditions.
- 8.3. The Council undertakes that provided the Owner is in compliance with the terms and conditions of this Agreement, the Council will not bring any further proceedings or provide direct or indirect assistance save in the normal course of its responsibilities to any other parties to bring proceedings asserting that the uses referred to in the Agreement are prohibited prior to 31 December 2014.

9. GENERAL

9.1. Notices

9.1.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (i) by delivering it personally to that party; or
- (ii) by sending it by post, postage pre-paid addressed to that party at his address set out in this Agreement or subsequently notified to each party from time to time.

9.1.2. A notice or other communication is deemed served, if delivered, upon delivery and, if posted, on the expiration of two business days after the date of posting.

9.2. Further Assurance

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

9.3. No Waiver

Any time or other indulgence granted by the Council to the Owner or any judgment or order obtained by the Council against the Owner will not

in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

9.4. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

9.5. No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the subject land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

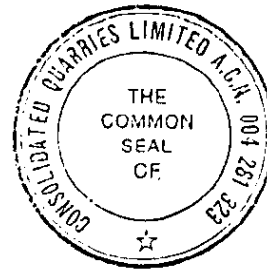
THE CORPORATE SEAL of THE)
MAYOR COUNCILLORS AND CITIZENS)
OF THE CITY OF OAKLEIGH was)
hereunto affixed in the)
presence of)

..... Mayor

..... Councillor

..... Town Clerk/Chief Executive

THE COMMON SEAL of THE)
CONSOLIDATED QUARRIES LTD)
was hereunto affixed in)
accordance with its Articles)
of Association in the presence)
of:)



..... *J. Newlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR

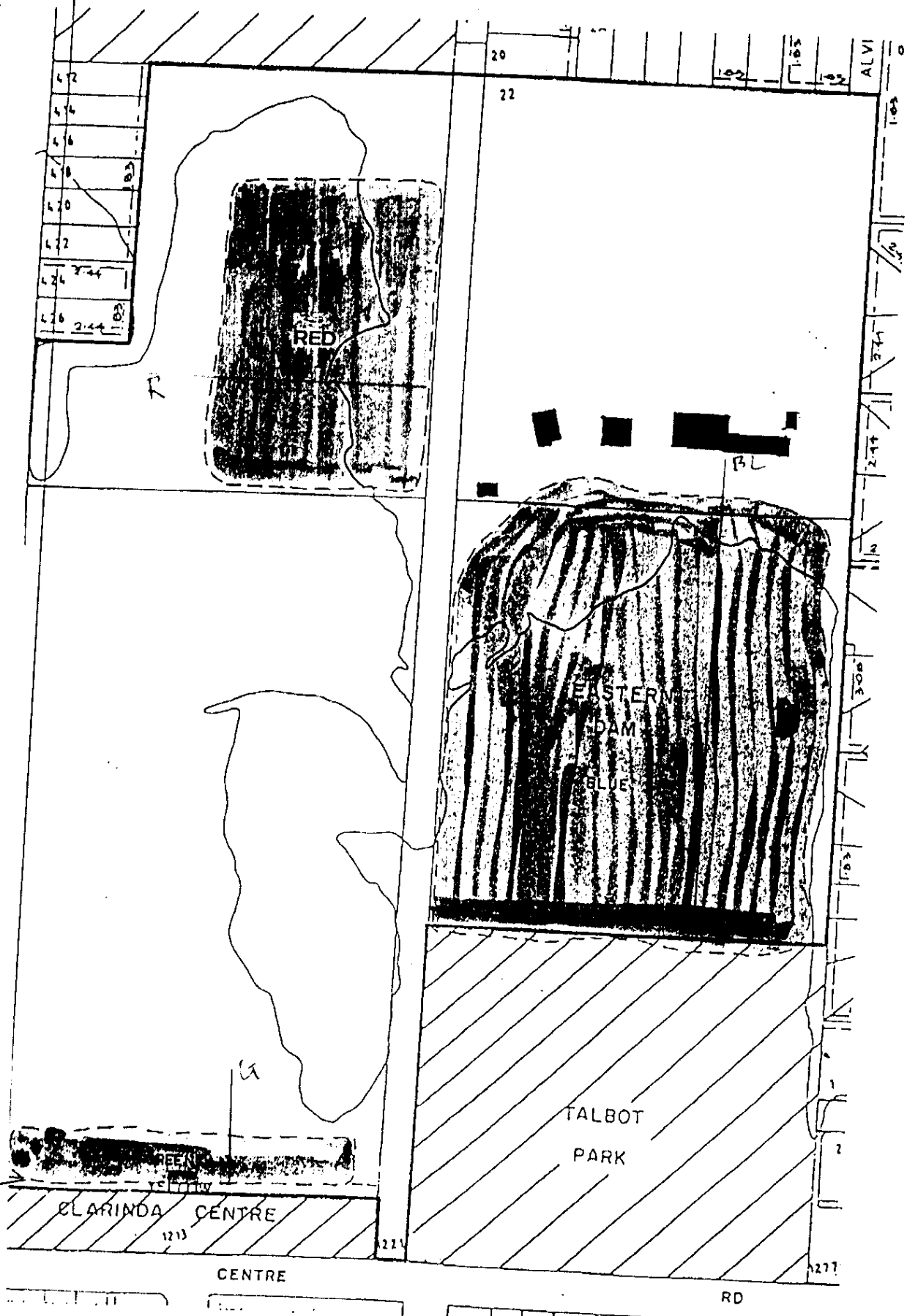
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

6135681690-

61 3 6700062: # 2

PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



COLOUR CODE
 Y = Yellow G = Green O = Orange
 BL = Blue BR = Brown CH = Cross Hatched
 R = Red P = Purple PK = Pink H = Hatched

TITLE PLAN	EDITION 1	TP 523979Q
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Location of Land

Parish: MORDIALLOC
 Township:
 Section: 2
 Crown Allotment: 6A
 Crown Portion:

Last Plan Reference:
 Derived From: VOL 6313 FOL 437
 Depth Limitation: 50 FEET

Notations

SUBJECT TO THE RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS CONTAINED IN CROWN GRANT VOL. 6313 FOL. 437 AND NOTED ON SHEET 2 OF THIS PLAN

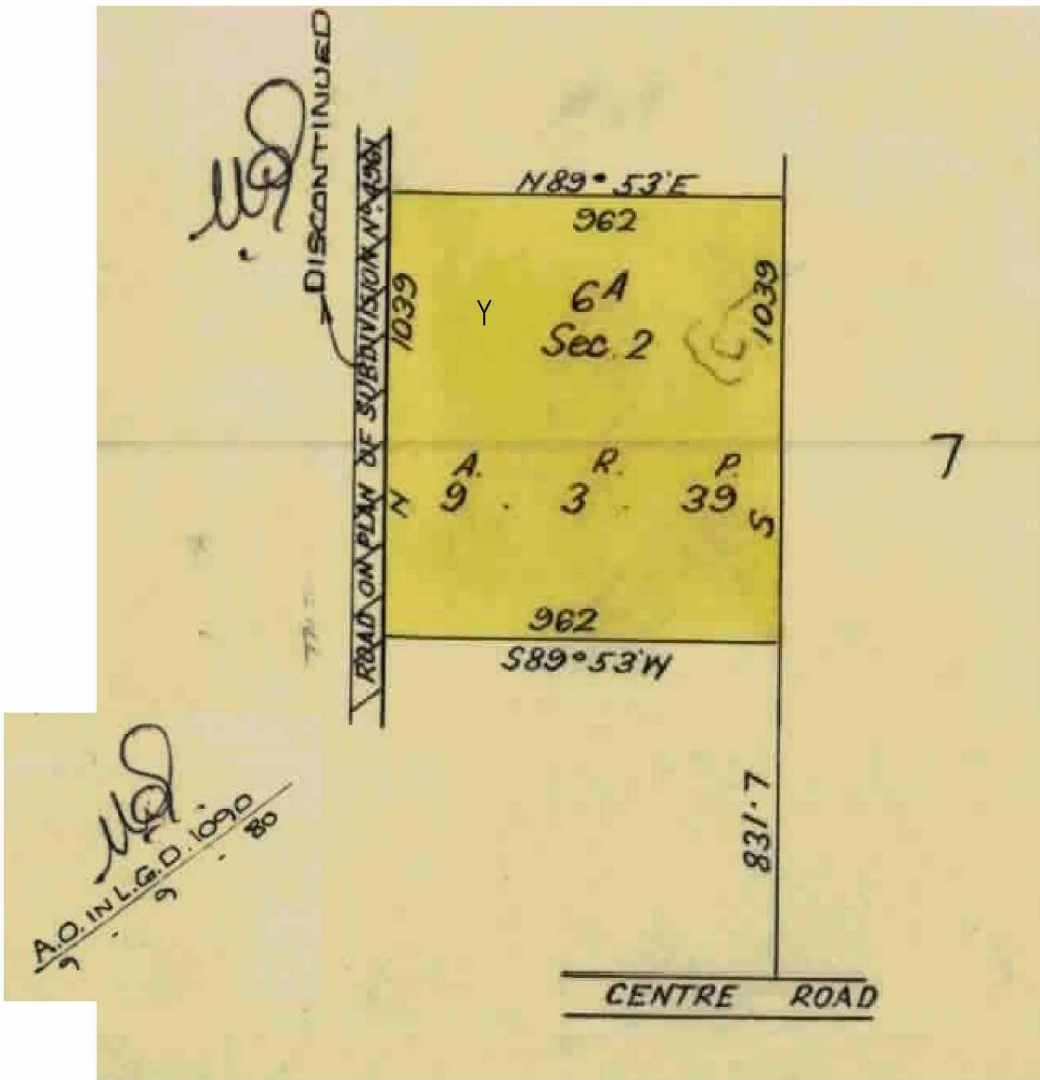
ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN

Description of Land / Easement Information

THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT

COMPILED: 09/06/2000
 VERIFIED: CL

COLOUR CODE
 Y = YELLOW



TITLE PLAN

TP 523979Q

LAND DESCRIPTION INCLUDING RESERVATIONS EXCEPTIONS
CONDITIONS AND POWERS SHOWN ON THE CROWN GRANT

nine acres three rods and thirty-nine perches more or less being allotment six^A of Section Two in the Parish of Merdialoc County of Bourke
 All THAT PIECE OF LAND in the said State containing
Together with a right of carriage-way over the road colored brown on Plan of Subdivision No 4361 lodged in the Office of Titles

delineated with the measurements and abutments thereof in the map drawn in the margin of these presents and therein colored yellow. PROVIDED nevertheless that the grantee shall be entitled to sink wells for water and to the use and enjoyment of any wells or springs of water upon or within the boundaries of the said land for any and for all purposes as though she held the land without limitation as to depth EXCEPTING nevertheless unto Us Our heirs and successors all gold and silver and minerals as defined in the *Mines Act 1928* in upon or under or within the boundaries of the land hereby granted AND ALSO reserving to Us Our heirs and successors free liberty and authority for Us Our heirs and successors and Our and their licensees agents and servants at any time or times hereafter to enter upon the said land and to search and mine therein for gold silver and minerals as aforesaid and to extract and remove therefrom any such gold silver and minerals and to search for and work dispose of and carry away the said gold silver and minerals lying in upon or under the land hereby granted and for the purposes aforesaid to sink shafts make drives erect machinery and to carry on any works and do any other things which may be necessary or usual in mining and with all other incidents that are necessary to be used for the getting of the said gold silver and minerals and the working of all mines seams lodes and deposits containing such gold silver and minerals in upon or under the land hereby granted

PROVIDED ALWAYS that the said land is and shall be subject to be resumed for mining purposes under Section 168 of the *Land Act 1928*.

AND PROVIDED also that the said land is and shall be subject to the right of any person being the holder of a miner's right or of a mining lease or mineral lease under the *Mines Act 1928* or any corresponding previous enactment to enter therein and to mine for gold silver or minerals within the meaning of the said Act and to erect and occupy mining plant or machinery thereon in the same manner and under the same conditions and provisions as those to which such person would for the time being be entitled to mine for gold and silver in and upon Crown lands PROVIDED that compensation shall be paid to the said

GRANTEE

her executors administrators assigns or transferees by such person for surface damage to be done to such land by reason of mining thereon such compensation to be determined as provided for the time being by law and the payment thereof to be a condition precedent to such right of entry.

LENGTHS ARE IN
LINKS

Metres = 0.3048 x Feet
Metres = 0.201168 x Links

Sheet 2 of 2 sheets

Register Search Statement - Volume 8186 Folio 871

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 08186 FOLIO 871

Security no : 124092731034C
Produced 28/09/2021 01:23 PM

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 038793.
PARENT TITLE Volume 04070 Folio 937
Created by instrument A465942 16/01/1958

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

HUNTINGDALE ESTATE NOMINEES PTY LTD of LEVEL 2 649 BRIDGE ROAD RICHMOND VIC
3121
AH638598S 26/11/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR342526G 13/08/2018
MELBOURNE SECURITIES CORPORATION LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan or imaged folio set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 PLANNING AND ENVIRONMENT ACT 1987
S505281N 26/05/1993

DIAGRAM LOCATION

SEE LP038793 FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 1221-1249 CENTRE ROAD OAKLEIGH SOUTH VIC 3167

DOCUMENT END

The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of Victoria to provide this information via LANDATA® System. Delivered at 28/09/2021, for Order Number 70565721. Your reference: MA8278A.

AK744344H

28/11/2013 \$66.50 113A



Application for Amendment or Alteration of Registered Proprietor's Address

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Section 113(5) Transfer of Land Act 1958

Lodged by

Name: PIPER ALDERMAN Solicitors

Phone: (03) 8665 5555

Address: Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Reference: GHT:382133

Customer Code: 4206F

The applicant applies to alter the address recorded in the Register to the address specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Volume 10378 Folio 210, Volume 03645 Folio 846, Volume 06313 Folio 437, Volume 08186 Folio 871, Volume 08343 Folio 532 and Volume 09402 Folio 344

Applicant: *(full name and address including postcode)*

HUNTINGDALE ESTATE NOMINEES PTY LTD ACN 146 749 822 of Level 2, 649 Bridge Road, Richmond, Victoria 3121

Date: *27 November 2013*

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

Piper Alderman

Approval No: 2325125A

Order to Register

Form 61

Please register and issue Certificate of Title to

Page 1 of 1

Signed

Customer Code

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010



260593 1222 MISC \$56 S505281N

S505281N

Lodged by Maddock Lonie & Chisholm
Ref: GHP/RDG/156678

Titles Office Use Only

Code: 1167E

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 of the *Planning and Environment Act 1987* for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the *Planning and Environment Act 1987*.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND:

Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344

ADDRESS OF THE LAND:

North side of Centre Road, corner Talbot Avenue, South Oakleigh

RESPONSIBLE AUTHORITY:

Oakleigh City Council, Municipal Offices, Atherton Road, Oakleigh, Victoria

PLANNING SCHEME:

Oakleigh Planning Scheme

AGREEMENT DATE:

15 March, 1993

AGREEMENT WITH:

[ghp 9303311m.1:020493]

17/6/93

Consolidated Quarries Limited (A.C.N. 004 281 323)
1183 Toorak Road, Hartwell. Victoria

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority: 

Name of Officer: ADRIAN HARRISON

PRINT NAME OF OFFICER SIGNING
7th APRIL 1993

Date:

MADDOCK LONIE & CHISHOLM
SOLICITORS & NOTARY

DATED 15th day of March 1993

CITY OF OAKLEIGH

the Council

- and -

CONSOLIDATED QUARRIES LTD.
(A.C.N. 004 281 323)

the Owner

**Agreement Under Section 173 of the Planning and
Environment Act 1987**

: Subject Land: Centre Road South Oakleigh

440 Collins Street
MELBOURNE VIC 3000
Telephone: 288 0555
Our Ref: GHP/RDG/1556678
DX 259

THIS AGREEMENT is made the 15th day of ¹⁹⁹³ ~~1992~~ March 1993 ✓

BETWEEN:

OAKLEIGH CITY COUNCIL of Municipal Offices,
Atherton Road, Oakleigh of Victoria
("the Council") ✓

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)
of 1183 Toorak Road, Hartwell of Victoria
("the Owner")

INTRODUCTION:

- A. The Owner is the registered proprietor of the whole of the land described in Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344 being situated on the north side of Centre Road, South Oakleigh and used for the purpose of extraction, re-washing, drying, blending, storage and sale of sands (collectively "the subject land"). ✓
- B. The Council is the Responsible Authority pursuant to the *Planning and Environment Act 1987* ("the Act") for the Oakleigh Planning Scheme ("the Scheme").
- C. In Planning Appeals Nod. 1990/35916, 1990/35924 and 1990/35932 to the Administrative Appeals Tribunal the Council has alleged (inter alia) that the use of the subject land is not in accordance with the Oakleigh Planning Scheme.
- D. In the said appeals the Owner has denied the allegations made by the Council and maintained the legitimacy of the use of the subject land.

E. In order to avoid the expense of further proceedings the Council and the Owner wish to enter into an Agreement pursuant to Section 173 of the Planning and Environment Act 1987 whereby the Owner binds itself to observe certain conditions on continued use of the subject land. ✓

F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act. ✓

G. The parties to this Agreement acknowledge that the Agreement provides for one or more of the following matters:

1. the prohibition, restriction or regulation of the use or development of land;
2. the conditions subject to which land may be used or developed for specified purposes;
3. a matter intended to achieve or advance the objectives of planning in Victoria.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land.

2. INTERPRETATION

- 2.1. The singular includes the plural and the plural includes the singular.

- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

3. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the subject land ensure that its successors in title:

- 3.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 3.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

4. COVENANTS OF OWNER

4.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

4.1.1. this Agreement and any amendment of this Agreement and anything done in connection with this Agreement

4.1.2. the preparation of an application pursuant to Section 181 of the Act enabling the registration of this Agreement at the Land Titles Office and any duties or fees payable in connection with either this Agreement, the registration of this Agreement at the Land Titles Office or in connection with any default of the Owner.

4.2. The Owner covenants and agrees that it will:

(Use and Operating conditions)

4.2.1. undertake early and rapid extraction of the sand remaining at the southern end of the site, generally in the area coloured yellow on the annexed site plan marked "A";

4.2.2. extracted sand shall be stockpiled in the area west of Talbot Avenue and north of the western sandpit generally in the area coloured red on the site plan;

4.2.3. hours of operation will be limited to 7 a.m. to 6 p.m., Monday to Friday inclusive and 7 a.m. to 1 p.m. on Saturdays provided

- that operations may continue until 8 p.m. on Monday to Friday inclusive on condition that between 6 p.m. and 8 p.m. there will be no movement of vehicles or loaders on site associated with the drying plant operation save as required for essential plant maintenance. No operations are permitted on a Sunday or Public Holiday;
- 4.2.4. at all times the noise levels emanating from the plant shall not exceed those specified at the date of this Agreement for the time period 6 p.m. to 10 p.m. under the State Environment Protection Policy N-1;
- 4.2.5. as soon as is practicable seal the access road from Centre Road to the sand drying plant to the satisfaction of an Inspector of Mines and Quarries in consultation with the City Engineer, City of Oakleigh;
- 4.2.6. ensure that any front end loader operated on site shall be a unit able to operate within the permissible noise level;
- 4.2.7. within 14 days of the execution of this Agreement apply for all necessary building approvals to construct additional hopper capacity, so as to ensure that raw material stockpiles will not be required. The Owner will complete the construction of the additional hopper capacity within three months of the grant of such approvals. During the period while such hopper capacity is being provided, the Owner will use its best endeavours to reduce the size of stockpiles of raw material;

- 4.2.8. After completion of the said additional hopper capacity, if reasonably requested to do so by any affected resident having a line of sight from his or her property to the stockpiles on site, screen such stockpiles from view by shade cloth or similar means.

(Filling and End Use)

- 4.2.9. when extraction at the southern end of the site is completed as required in Clause 4.2.1, forthwith drain the eastern dam (being the area generally coloured blue and marked "eastern dam" on the site plan) and permit filling of the eastern dam commencing from its north-west corner;
- 4.2.10. make the site of the eastern dam available to Council or to third parties at Council's direction to accept clean fill on a no charge basis to enable the dam to be filled as quickly as possible, subject to reasonable notice being give of large volumes of fill;
- 4.2.11. with respect to all other airspace within the subject land, make such airspace available to the Council for the purpose of tipping using clean fill by the Council or third parties at Council's direction on the following terms:
- (i) no rates are charged to the Owner during the period that any area of land is in the control of the

- 7 -

Council for the purpose of tipping and/or reclamation with respect to such area;

- (ii) that all tipping is carried out in accordance with all applicable statutory requirements and in compliance with all applicable requirements for reclamation and rehabilitation of the site;
- (iii) that tipping only takes place in such area as the Owner from time to time indicates is no longer required for the purpose of excavation or of the Owner's operations on the remainder of the land;
- (iv) that any tipping and/or reclamation operations do not directly or indirectly interfere with the Owner's operations on the remainder of the land;
- (v) that the Council keep the area in which tipping operations are in progress securely fenced and be responsible to ensure that all land within the control of the Council for tipping or reclamation purposes is kept free of accumulations of water;
- (vi) that upon reclamation, the land be appropriately consolidated, resoiled and levelled.

- 8 -

- 4.2.12. ensure that no clay-slimes shall be deposited or permitted in the western sandpit;
- 4.2.13. if required by Council, transfer filled or unfilled land progressively to the Council at a negotiated fair market price;
- 4.2.14. use its best endeavours to make an area immediately behind the Clarinda Centre (coloured green on the site plan) available for transfer to the Council at a negotiated fair market price and will engage in negotiations with Council regarding the transfer of such area as soon as possible after October 1993;
- 4.2.15. ensure that use of the subject land for the purpose of extraction, re-washing, drying, blending, storage or sale of sands shall finish on the 31 December 2014;
- 4.2.16. carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 4.2.17. do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that it carries out its covenants, agreements and obligations under this Agreement and to

enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.18. consent to the Council entering a memorandum of this Agreement on the certificate of title to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document to enable the memorandum to be registered under that Section.

5. **CONSULTATIVE COMMITTEE**

The Owner and the Council will establish a Consultative Committee for the purposes of monitoring compliance with this Agreement and any relevant licences and permits. The Consultative Committee shall comprise two representatives of the Owner, one representative of the Department of Manufacturing and Industry Development, three representatives from the Council and three local residents. The Owner's representatives shall represent the occupiers of the land and shall be familiar with all operations on the land. Meetings shall be held three monthly or as determined by the Committee. A quorum for any meeting shall consist of at least four persons comprising one Owner representative, one Council representative and two local residents.

6. **DEFAULT OF OWNER**

In the event of the Owner defaulting or failing to perform any of its obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner

and any such costs shall until paid be and remain a charge on the said land and shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

7. INDEMNITY

The Owner covenants and agrees that it will indemnify and keep indemnified the Council, its officers, servants, agents, workmen and contractors from and against all costs expenses, losses or damages whatsoever which the Council its officers, servants, agents, workmen and contractors may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in Clause 6 of this Agreement.

8. ACKNOWLEDGEMENT AND UNDERTAKING

- 8.1. The parties acknowledge that the Administrative Appeals Tribunal proceedings have been struck out in consideration of the terms and conditions of this Agreement.
- 8.2. The Council undertakes not to bring any further proceedings in respect of alleged past breaches of the permit conditions.
- 8.3. The Council undertakes that provided the Owner is in compliance with the terms and conditions of this Agreement, the Council will not bring any further proceedings or provide direct or indirect assistance save in the normal course of its responsibilities to any other parties to bring proceedings asserting that the uses referred to in the Agreement are prohibited prior to 31 December 2014.

9. GENERAL

9.1. Notices

9.1.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (i) by delivering it personally to that party; or
- (ii) by sending it by post, postage pre-paid addressed to that party at his address set out in this Agreement or subsequently notified to each party from time to time.

9.1.2. A notice or other communication is deemed served, if delivered, upon delivery and, if posted, on the expiration of two business days after the date of posting.

9.2. Further Assurance

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

9.3. No Waiver

Any time or other indulgence granted by the Council to the Owner or any judgment or order obtained by the Council against the Owner will not

in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

9.4. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

9.5. No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the subject land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

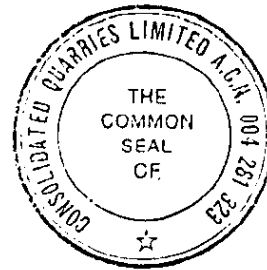
THE CORPORATE SEAL of THE)
MAYOR COUNCILLORS AND CITIZENS)
OF THE CITY OF OAKLEIGH was)
hereunto affixed in the)
presence of)

..... Mayor

..... Councillor

..... Town Clerk/Chief Executive

THE COMMON SEAL of THE)
CONSOLIDATED QUARRIES LTD)
was hereunto affixed in)
accordance with its Articles)
of Association in the presence)
of:)



..... *J. Howlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR

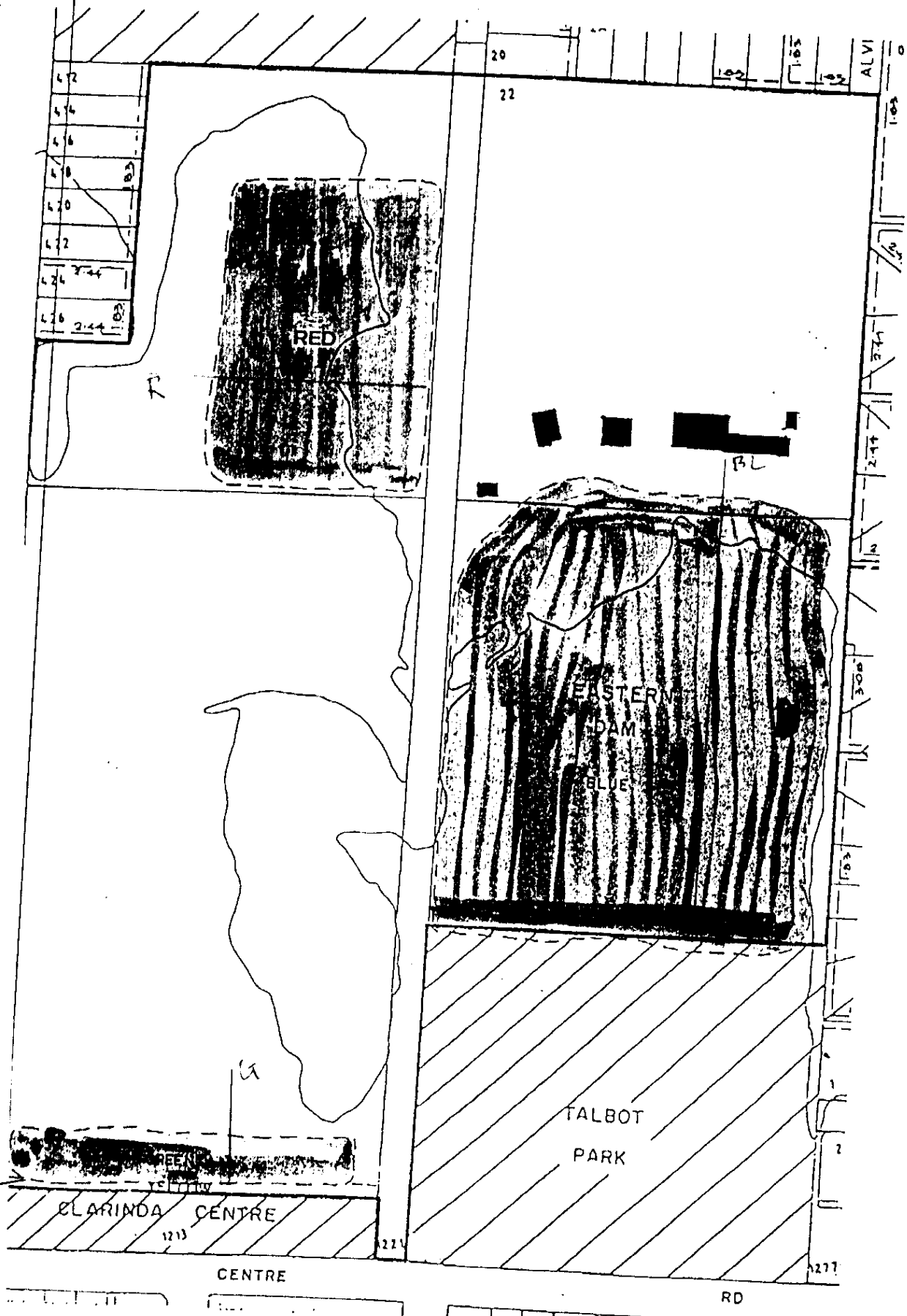
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

6135681690-

61 3 6700062: # 2

PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



COLOUR CODE
 Y = Yellow G = Green O = Orange
 BL = Blue BR = Brown CH = Cross Hatched
 R = Red P = Purple PK = Pink H = Hatched



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 28/09/2021 01:25:27 PM

Status	Registered	Dealing Number	AR342526G
Date and Time Lodged	13/08/2018 01:14:17 PM		

Lodger Details

Lodger Code	20345Y
Name	PIPER ALDERMAN
Address	
Lodger Box	
Phone	
Email	
Reference	GHT:409713

MORTGAGE

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest being mortgaged

FEE SIMPLE

Land Title Reference

3645/846
6313/437
8186/871
8343/532
9402/344
10378/210

Mortgagor

Name	HUNTINGDALE ESTATE NOMINEES PTY LTD
ACN	146749822

Mortgagee

Name	MELBOURNE SECURITIES CORPORATION LIMITED
ACN	160326545
Address	
Floor Type	LEVEL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

Floor Number 2
Street Number 120
Street Name COLLINS
Street Type STREET
Locality MELBOURNE
State VIC
Postcode 3000

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference AA3574

(b) Additional terms and conditions

1. The reference to the term "Secured Money" in the Memorandum of Common Provisions AA3574 is replaced with the following term: "Secured Money" means all money which the Mortgagor owes to the Mortgagee under the Deed of Guarantee - Sterling Global Capital Mortgage Income Fund between the Mortgagee and the Mortgagor dated on or about the date of the Mortgage Form.

Mortgagee Execution

1. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
2. The Certifier has taken reasonable steps to verify the identity of the mortgagee.
3. The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
(a) has taken reasonable steps to verify the identity of the mortgagor; and
(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Certifier has retained the evidence supporting this Registry Instrument or Document.

Executed on behalf of MELBOURNE SECURITIES CORPORATION LIMITED
Signer Name GREGORY HUGH TAYLOR
Signer PIPER ALDERMAN
Organisation
Signer Role AUSTRALIAN LEGAL PRACTITIONER
Execution Date 13 AUGUST 2018

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

38793

THIS IS THE BACK OF LP 38793

38793

POSTED: *MB*
COLOURED: *MB*
CHECKED: *[Signature]*

Register Search Statement - Volume 9402 Folio 344

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 09402 FOLIO 344

Security no : 124092731349J
Produced 28/09/2021 01:31 PM

LAND DESCRIPTION

Lot 1 on Title Plan 805390J.
PARENT TITLE Volume 01615 Folio 960
Created by instrument H864593 12/02/1980

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

HUNTINGDALE ESTATE NOMINEES PTY LTD of LEVEL 2 649 BRIDGE ROAD RICHMOND VIC
3121
AH638598S 26/11/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR342526G 13/08/2018
MELBOURNE SECURITIES CORPORATION LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
S505281N 26/05/1993

DIAGRAM LOCATION

SEE TP805390J FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 1221-1249 CENTRE ROAD OAKLEIGH SOUTH VIC 3167

DOCUMENT END

The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of Victoria to provide this information via LANDATA® System. Delivered at 28/09/2021, for Order Number 70566039. Your reference: MA8278A.

AK744344H

28/11/2013 \$66.50 113A



Application for Amendment or Alteration of Registered Proprietor's Address

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Section 113(5) Transfer of Land Act 1958

Lodged by

Name: PIPER ALDERMAN Solicitors

Phone: (03) 8665 5555

Address: Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Reference: GHT:382133

Customer Code: 4206F

The applicant applies to alter the address recorded in the Register to the address specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Volume 10378 Folio 210, Volume 03645 Folio 846, Volume 06313 Folio 437, Volume 08186 Folio 871, Volume 08343 Folio 532 and Volume 09402 Folio 344

Applicant: *(full name and address including postcode)*

HUNTINGDALE ESTATE NOMINEES PTY LTD ACN 146 749 822 of Level 2, 649 Bridge Road, Richmond, Victoria 3121

Date: *27 November 2013*

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

Piper Alderman

Approval No: 2325125A

Order to Register

Form 61

Please register and issue Certificate of Title to

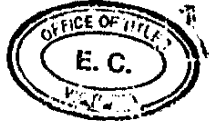
Page 1 of 1

Signed

Customer Code

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010



260593 1222 MISC \$56 S505281N

S505281N

Lodged by Maddock Lonie & Chisholm
Ref: GHP/RDG/156678

Titles Office Use Only

Code: 1167E

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 of the *Planning and Environment Act 1987* for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the *Planning and Environment Act 1987*.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

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ADDRESS OF THE LAND:

North side of Centre Road, corner Talbot Avenue, South Oakleigh

RESPONSIBLE AUTHORITY:

Oakleigh City Council, Municipal Offices, Atherton Road, Oakleigh, Victoria

PLANNING SCHEME:

Oakleigh Planning Scheme

AGREEMENT DATE:

15 March, 1993

AGREEMENT WITH:

[ghp 9303311m.1:020493]

17/6/93

Consolidated Quarries Limited (A.C.N. 004 281 323)
1183 Toorak Road, Hartwell. Victoria

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority: 

Name of Officer: ADRIAN HARRISON

Date:
7th APRIL 1993

PRINT NAME OF OFFICER SIGNING

MADDOCK LONIE & CHISHOLM
SOLICITORS & NOTARY

DATED 15th day of March 1993

CITY OF OAKLEIGH

the Council

- and -

CONSOLIDATED QUARRIES LTD.
(A.C.N. 004 281 323)

the Owner

**Agreement Under Section 173 of the Planning and
Environment Act 1987**

: **Subject Land:** Centre Road South Oakleigh

440 Collins Street
MELBOURNE VIC 3000
Telephone: 288 0555
Our Ref: GHP/RDG/1556678
DX 259

THIS AGREEMENT is made the 15th day of ¹⁹⁹³ ~~1992~~ March 1993 ✓

BETWEEN:

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Atherton Road, Oakleigh of Victoria
("the Council") ✓

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)
of 1183 Toorak Road, Hartwell of Victoria
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- A. The Owner is the registered proprietor of the whole of the land described in Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344 being situated on the north side of Centre Road, South Oakleigh and used for the purpose of extraction, re-washing, drying, blending, storage and sale of sands (collectively "the subject land"). ✓
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- D. In the said appeals the Owner has denied the allegations made by the Council and maintained the legitimacy of the use of the subject land.

E. In order to avoid the expense of further proceedings the Council and the Owner wish to enter into an Agreement pursuant to Section 173 of the Planning and Environment Act 1987 whereby the Owner binds itself to observe certain conditions on continued use of the subject land. ✓

F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act. ✓

G. The parties to this Agreement acknowledge that the Agreement provides for one or more of the following matters:

1. the prohibition, restriction or regulation of the use or development of land;
2. the conditions subject to which land may be used or developed for specified purposes;
3. a matter intended to achieve or advance the objectives of planning in Victoria.

IT IS AGREED:

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- 1.1. "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land.

2. INTERPRETATION

- 2.1. The singular includes the plural and the plural includes the singular.

- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
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- 3.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 3.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

4. COVENANTS OF OWNER

4.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

4.1.1. this Agreement and any amendment of this Agreement and anything done in connection with this Agreement

4.1.2. the preparation of an application pursuant to Section 181 of the Act enabling the registration of this Agreement at the Land Titles Office and any duties or fees payable in connection with either this Agreement, the registration of this Agreement at the Land Titles Office or in connection with any default of the Owner.

4.2. The Owner covenants and agrees that it will:

(Use and Operating conditions)

4.2.1. undertake early and rapid extraction of the sand remaining at the southern end of the site, generally in the area coloured yellow on the annexed site plan marked "A";

4.2.2. extracted sand shall be stockpiled in the area west of Talbot Avenue and north of the western sandpit generally in the area coloured red on the site plan;

4.2.3. hours of operation will be limited to 7 a.m. to 6 p.m., Monday to Friday inclusive and 7 a.m. to 1 p.m. on Saturdays provided

- that operations may continue until 8 p.m. on Monday to Friday inclusive on condition that between 6 p.m. and 8 p.m. there will be no movement of vehicles or loaders on site associated with the drying plant operation save as required for essential plant maintenance. No operations are permitted on a Sunday or Public Holiday;
- 4.2.4. at all times the noise levels emanating from the plant shall not exceed those specified at the date of this Agreement for the time period 6 p.m. to 10 p.m. under the State Environment Protection Policy N-1;
- 4.2.5. as soon as is practicable seal the access road from Centre Road to the sand drying plant to the satisfaction of an Inspector of Mines and Quarries in consultation with the City Engineer, City of Oakleigh;
- 4.2.6. ensure that any front end loader operated on site shall be a unit able to operate within the permissible noise level;
- 4.2.7. within 14 days of the execution of this Agreement apply for all necessary building approvals to construct additional hopper capacity, so as to ensure that raw material stockpiles will not be required. The Owner will complete the construction of the additional hopper capacity within three months of the grant of such approvals. During the period while such hopper capacity is being provided, the Owner will use its best endeavours to reduce the size of stockpiles of raw material;

- 4.2.8. After completion of the said additional hopper capacity, if reasonably requested to do so by any affected resident having a line of sight from his or her property to the stockpiles on site, screen such stockpiles from view by shade cloth or similar means.

(Filling and End Use)

- 4.2.9. when extraction at the southern end of the site is completed as required in Clause 4.2.1, forthwith drain the eastern dam (being the area generally coloured blue and marked "eastern dam" on the site plan) and permit filling of the eastern dam commencing from its north-west corner;

- 4.2.10. make the site of the eastern dam available to Council or to third parties at Council's direction to accept clean fill on a no charge basis to enable the dam to be filled as quickly as possible, subject to reasonable notice being give of large volumes of fill;

- 4.2.11. with respect to all other airspace within the subject land, make such airspace available to the Council for the purpose of tipping using clean fill by the Council or third parties at Council's direction on the following terms:

- (i) no rates are charged to the Owner during the period that any area of land is in the control of the

- 7 -

Council for the purpose of tipping and/or reclamation with respect to such area;

- (ii) that all tipping is carried out in accordance with all applicable statutory requirements and in compliance with all applicable requirements for reclamation and rehabilitation of the site;
- (iii) that tipping only takes place in such area as the Owner from time to time indicates is no longer required for the purpose of excavation or of the Owner's operations on the remainder of the land;
- (iv) that any tipping and/or reclamation operations do not directly or indirectly interfere with the Owner's operations on the remainder of the land;
- (v) that the Council keep the area in which tipping operations are in progress securely fenced and be responsible to ensure that all land within the control of the Council for tipping or reclamation purposes is kept free of accumulations of water;
- (vi) that upon reclamation, the land be appropriately consolidated, resoiled and levelled.

- 4.2.12. ensure that no clay-slimes shall be deposited or permitted in the western sandpit;
- 4.2.13. if required by Council, transfer filled or unfilled land progressively to the Council at a negotiated fair market price;
- 4.2.14. use its best endeavours to make an area immediately behind the Clarinda Centre (coloured green on the site plan) available for transfer to the Council at a negotiated fair market price and will engage in negotiations with Council regarding the transfer of such area as soon as possible after October 1993;
- 4.2.15. ensure that use of the subject land for the purpose of extraction, re-washing, drying, blending, storage or sale of sands shall finish on the 31 December 2014;
- 4.2.16. carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 4.2.17. do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that it carries out its covenants, agreements and obligations under this Agreement and to

enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.18. consent to the Council entering a memorandum of this Agreement on the certificate of title to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document to enable the memorandum to be registered under that Section.

5. **CONSULTATIVE COMMITTEE**

The Owner and the Council will establish a Consultative Committee for the purposes of monitoring compliance with this Agreement and any relevant licences and permits. The Consultative Committee shall comprise two representatives of the Owner, one representative of the Department of Manufacturing and Industry Development, three representatives from the Council and three local residents. The Owner's representatives shall represent the occupiers of the land and shall be familiar with all operations on the land. Meetings shall be held three monthly or as determined by the Committee. A quorum for any meeting shall consist of at least four persons comprising one Owner representative, one Council representative and two local residents.

6. **DEFAULT OF OWNER**

In the event of the Owner defaulting or failing to perform any of its obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner

and any such costs shall until paid be and remain a charge on the said land and shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

7. INDEMNITY

The Owner covenants and agrees that it will indemnify and keep indemnified the Council, its officers, servants, agents, workmen and contractors from and against all costs expenses, losses or damages whatsoever which the Council its officers, servants, agents, workmen and contractors may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in Clause 6 of this Agreement.

8. ACKNOWLEDGEMENT AND UNDERTAKING

- 8.1. The parties acknowledge that the Administrative Appeals Tribunal proceedings have been struck out in consideration of the terms and conditions of this Agreement.
- 8.2. The Council undertakes not to bring any further proceedings in respect of alleged past breaches of the permit conditions.
- 8.3. The Council undertakes that provided the Owner is in compliance with the terms and conditions of this Agreement, the Council will not bring any further proceedings or provide direct or indirect assistance save in the normal course of its responsibilities to any other parties to bring proceedings asserting that the uses referred to in the Agreement are prohibited prior to 31 December 2014.

9. GENERAL

9.1. Notices

9.1.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (i) by delivering it personally to that party; or
- (ii) by sending it by post, postage pre-paid addressed to that party at his address set out in this Agreement or subsequently notified to each party from time to time.

9.1.2. A notice or other communication is deemed served, if delivered, upon delivery and, if posted, on the expiration of two business days after the date of posting.

9.2. Further Assurance

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

9.3. No Waiver

Any time or other indulgence granted by the Council to the Owner or any judgment or order obtained by the Council against the Owner will not

in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

9.4. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

9.5. No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the subject land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

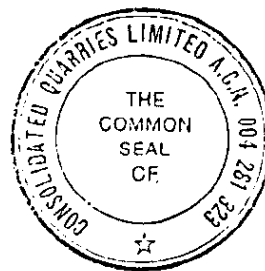
THE CORPORATE SEAL of THE)
MAYOR COUNCILLORS AND CITIZENS)
OF THE CITY OF OAKLEIGH was)
hereunto affixed in the)
presence of)

..... Mayor

..... Councillor

..... Town Clerk/Chief Executive

THE COMMON SEAL of THE)
CONSOLIDATED QUARRIES LTD)
was hereunto affixed in)
accordance with its Articles)
of Association in the presence)
of:)



..... *J. Howlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 28/09/2021 01:32:05 PM

Status	Registered	Dealing Number	AR342526G
Date and Time Lodged	13/08/2018 01:14:17 PM		

Lodger Details

Lodger Code	20345Y
Name	PIPER ALDERMAN
Address	
Lodger Box	
Phone	
Email	
Reference	GHT:409713

MORTGAGE

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest being mortgaged

FEE SIMPLE

Land Title Reference

3645/846
6313/437
8186/871
8343/532
9402/344
10378/210

Mortgagor

Name	HUNTINGDALE ESTATE NOMINEES PTY LTD
ACN	146749822

Mortgagee

Name	MELBOURNE SECURITIES CORPORATION LIMITED
ACN	160326545
Address	
Floor Type	LEVEL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

Floor Number 2
Street Number 120
Street Name COLLINS
Street Type STREET
Locality MELBOURNE
State VIC
Postcode 3000

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference AA3574

(b) Additional terms and conditions

1. The reference to the term "Secured Money" in the Memorandum of Common Provisions AA3574 is replaced with the following term: "Secured Money" means all money which the Mortgagor owes to the Mortgagee under the Deed of Guarantee - Sterling Global Capital Mortgage Income Fund between the Mortgagee and the Mortgagor dated on or about the date of the Mortgage Form.

Mortgagee Execution

1. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
2. The Certifier has taken reasonable steps to verify the identity of the mortgagee.
3. The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
(a) has taken reasonable steps to verify the identity of the mortgagor; and
(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Certifier has retained the evidence supporting this Registry Instrument or Document.

Executed on behalf of MELBOURNE SECURITIES CORPORATION LIMITED
Signer Name GREGORY HUGH TAYLOR
Signer PIPER ALDERMAN
Organisation
Signer Role AUSTRALIAN LEGAL PRACTITIONER
Execution Date 13 AUGUST 2018

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

TITLE PLAN	EDITION 1 TP 805390J
-------------------	-----------------------------


Location of Land
 Parish : MORDIALLOC
 Township : --
 Crown Allotment : 6 (PART)
 Crown Portion :-
 Section : 2
 Last Plan Reference : --
 Title Reference: VOL. 9402 FOL. 344
 Depth Limitation : NIL

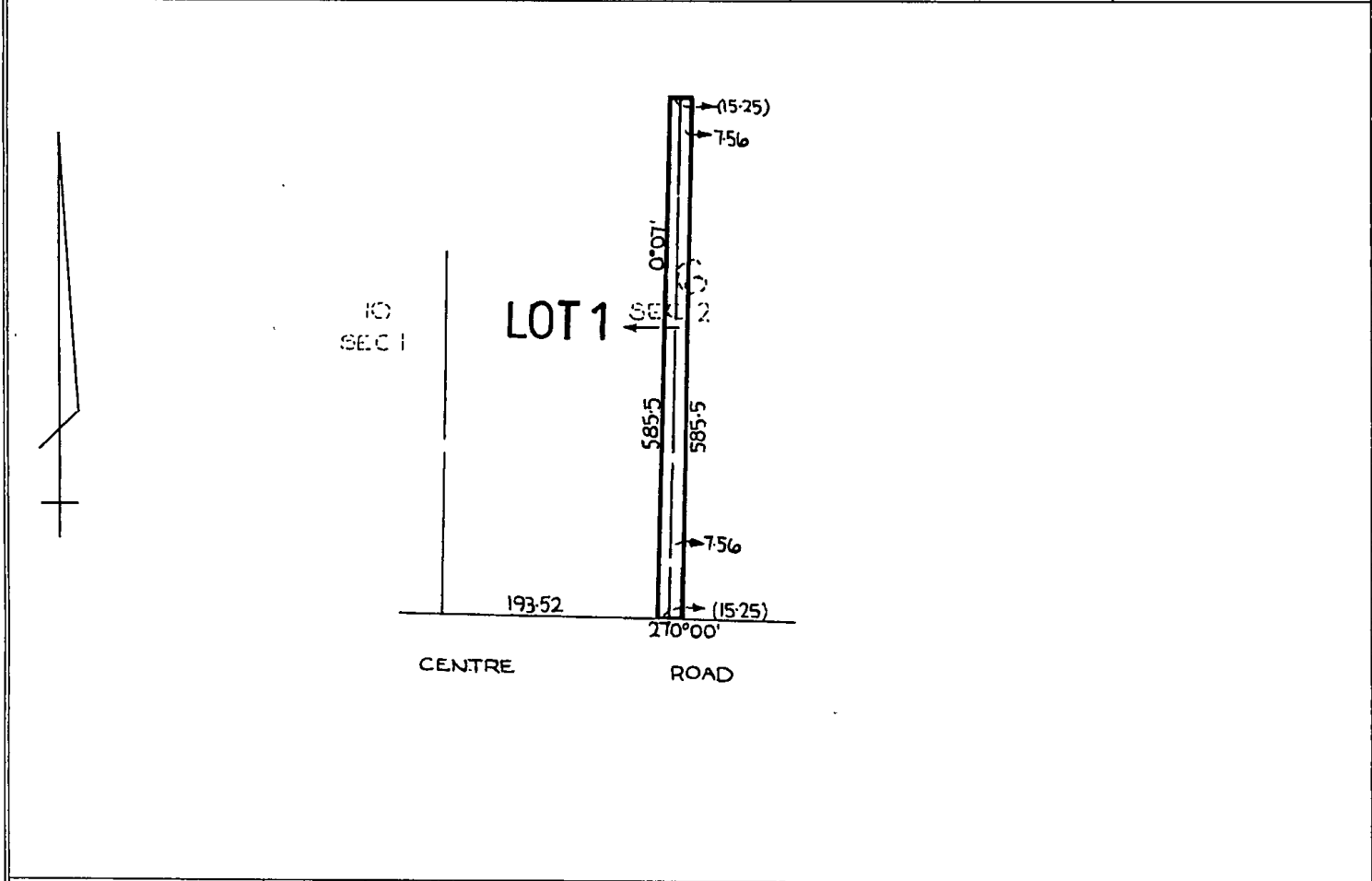
Notations
 NOTE 1 : LOT 1 = PART OF CROWN ALLOTMENT 6 SECTION 2

Easement Information
 E – Encumbering Easement R – Encumbering Easement (ROAD) A – Appurtenant Easement

THIS PLAN HAS BEEN PREPARED BY LAND REGISTRY, LAND VICTORIA FOR TITLE DIAGRAM PURPOSES

Easement Reference	Purpose/ Authority	Width (Metres)	Origin	Land benefited / In favour of
LOT 1	AS PROVIDED FOR IN SECTION 528 (2) (E) LOCAL GOVERNMENT ACT	SEE DIAGRAM	SECTION 528 (2) (E) LOCAL GOVERNMENT ACT	S . E . C . V .

Checked by :

 Assistant Registrar of Titles
 Date 21 10 104



LENGTHS ARE IN METRES	SCALE	SHEET SIZE A3	
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Register Search Statement - Volume 10378 Folio 210

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 10378 FOLIO 210

Security no : 124092731299N
Produced 28/09/2021 01:30 PM

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 409879V.

PARENT TITLES :

Volume 08550 Folio 541 Volume 09527 Folio 364

Created by instrument PS409879V 17/04/1998

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

HUNTINGDALE ESTATE NOMINEES PTY LTD of LEVEL 2 649 BRIDGE ROAD RICHMOND VIC
3121

AH638598S 26/11/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR342526G 13/08/2018

MELBOURNE SECURITIES CORPORATION LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 PLANNING AND ENVIRONMENT ACT 1987

S505281N 26/05/1993

DIAGRAM LOCATION

SEE PS409879V FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 1221-1249 CENTRE ROAD OAKLEIGH SOUTH VIC 3167

DOCUMENT END

The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of Victoria to provide this information via LANDATA® System. Delivered at 28/09/2021, for Order Number 70565982. Your reference: MA8278A.

AK744344H

28/11/2013 \$66.50 113A



Application for Amendment or Alteration of Registered Proprietor's Address

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Section 113(5) Transfer of Land Act 1958

Lodged by

Name: PIPER ALDERMAN Solicitors

Phone: (03) 8665 5555

Address: Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Reference: GHT:382133

Customer Code: 4206F

The applicant applies to alter the address recorded in the Register to the address specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Volume 10378 Folio 210, Volume 03645 Folio 846, Volume 06313 Folio 437, Volume 08186 Folio 871, Volume 08343 Folio 532 and Volume 09402 Folio 344

Applicant: *(full name and address including postcode)*

HUNTINGDALE ESTATE NOMINEES PTY LTD ACN 146 749 822 of Level 2, 649 Bridge Road, Richmond, Victoria 3121

Date: *27 November 2013*

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

Piper Alderman

Approval No: 2325125A

Order to Register

Form 61

Please register and issue Certificate of Title to

Page 1 of 1

Signed

Customer Code

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010



260593 1222 MISC \$56 S505281N

S505281N

Lodged by Maddock Lonie & Chisholm
Ref: GHP/RDG/156678

Titles Office Use Only

Code: 1167E

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 of the *Planning and Environment Act 1987* for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the *Planning and Environment Act 1987*.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND:

Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344

ADDRESS OF THE LAND:

North side of Centre Road, corner Talbot Avenue, South Oakleigh

RESPONSIBLE AUTHORITY:

Oakleigh City Council, Municipal Offices, Atherton Road, Oakleigh, Victoria

PLANNING SCHEME:

Oakleigh Planning Scheme

AGREEMENT DATE:

15 March, 1993

AGREEMENT WITH:

[ghp 9303311m.1:020493]

17/6/93

Consolidated Quarries Limited (A.C.N. 004 281 323)
1183 Toorak Road, Hartwell. Victoria

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority: 

Name of Officer: ADRIAN HARRISON

PRINT NAME OF OFFICER SIGNING
7th APRIL 1993

Date:

MADDOCK LONIE & CHISHOLM
SOLICITORS & NOTARY

DATED 15th day of March 1993

CITY OF OAKLEIGH

the Council

- and -

CONSOLIDATED QUARRIES LTD.
(A.C.N. 004 281 323)

the Owner

**Agreement Under Section 173 of the Planning and
Environment Act 1987**

: **Subject Land:** Centre Road South Oakleigh

440 Collins Street
MELBOURNE VIC 3000
Telephone: 288 0555
Our Ref: GHP/RDG/1556678
DX 259

THIS AGREEMENT is made the 15th day of ¹⁹⁹³ ~~1992~~ March 1993 ✓

BETWEEN:

OAKLEIGH CITY COUNCIL of Municipal Offices,
Atherton Road, Oakleigh of Victoria
("the Council") ✓

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)
of 1183 Toorak Road, Hartwell of Victoria
("the Owner")

INTRODUCTION:

- A. The Owner is the registered proprietor of the whole of the land described in Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344 being situated on the north side of Centre Road, South Oakleigh and used for the purpose of extraction, re-washing, drying, blending, storage and sale of sands (collectively "the subject land"). ✓
- B. The Council is the Responsible Authority pursuant to the *Planning and Environment Act 1987* ("the Act") for the Oakleigh Planning Scheme ("the Scheme").
- C. In Planning Appeals Nod. 1990/35916, 1990/35924 and 1990/35932 to the Administrative Appeals Tribunal the Council has alleged (inter alia) that the use of the subject land is not in accordance with the Oakleigh Planning Scheme.
- D. In the said appeals the Owner has denied the allegations made by the Council and maintained the legitimacy of the use of the subject land.

E. In order to avoid the expense of further proceedings the Council and the Owner wish to enter into an Agreement pursuant to Section 173 of the Planning and Environment Act 1987 whereby the Owner binds itself to observe certain conditions on continued use of the subject land. ✓

F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act. ✓

G. The parties to this Agreement acknowledge that the Agreement provides for one or more of the following matters:

1. the prohibition, restriction or regulation of the use or development of land;
2. the conditions subject to which land may be used or developed for specified purposes;
3. a matter intended to achieve or advance the objectives of planning in Victoria.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land.

2. INTERPRETATION

- 2.1. The singular includes the plural and the plural includes the singular.

- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

3. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the subject land ensure that its successors in title:

- 3.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 3.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

4. COVENANTS OF OWNER

4.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

4.1.1. this Agreement and any amendment of this Agreement and anything done in connection with this Agreement

4.1.2. the preparation of an application pursuant to Section 181 of the Act enabling the registration of this Agreement at the Land Titles Office and any duties or fees payable in connection with either this Agreement, the registration of this Agreement at the Land Titles Office or in connection with any default of the Owner.

4.2. The Owner covenants and agrees that it will:

(Use and Operating conditions)

4.2.1. undertake early and rapid extraction of the sand remaining at the southern end of the site, generally in the area coloured yellow on the annexed site plan marked "A";

4.2.2. extracted sand shall be stockpiled in the area west of Talbot Avenue and north of the western sandpit generally in the area coloured red on the site plan;

4.2.3. hours of operation will be limited to 7 a.m. to 6 p.m., Monday to Friday inclusive and 7 a.m. to 1 p.m. on Saturdays provided

- that operations may continue until 8 p.m. on Monday to Friday inclusive on condition that between 6 p.m. and 8 p.m. there will be no movement of vehicles or loaders on site associated with the drying plant operation save as required for essential plant maintenance. No operations are permitted on a Sunday or Public Holiday;
- 4.2.4. at all times the noise levels emanating from the plant shall not exceed those specified at the date of this Agreement for the time period 6 p.m. to 10 p.m. under the State Environment Protection Policy N-1;
- 4.2.5. as soon as is practicable seal the access road from Centre Road to the sand drying plant to the satisfaction of an Inspector of Mines and Quarries in consultation with the City Engineer, City of Oakleigh;
- 4.2.6. ensure that any front end loader operated on site shall be a unit able to operate within the permissible noise level;
- 4.2.7. within 14 days of the execution of this Agreement apply for all necessary building approvals to construct additional hopper capacity, so as to ensure that raw material stockpiles will not be required. The Owner will complete the construction of the additional hopper capacity within three months of the grant of such approvals. During the period while such hopper capacity is being provided, the Owner will use its best endeavours to reduce the size of stockpiles of raw material;

- 6 -

- 4.2.8. After completion of the said additional hopper capacity, if reasonably requested to do so by any affected resident having a line of sight from his or her property to the stockpiles on site, screen such stockpiles from view by shade cloth or similar means.

(Filling and End Use)

- 4.2.9. when extraction at the southern end of the site is completed as required in Clause 4.2.1, forthwith drain the eastern dam (being the area generally coloured blue and marked "eastern dam" on the site plan) and permit filling of the eastern dam commencing from its north-west corner;
- 4.2.10. make the site of the eastern dam available to Council or to third parties at Council's direction to accept clean fill on a no charge basis to enable the dam to be filled as quickly as possible, subject to reasonable notice being give of large volumes of fill;
- 4.2.11. with respect to all other airspace within the subject land, make such airspace available to the Council for the purpose of tipping using clean fill by the Council or third parties at Council's direction on the following terms:
- (i) no rates are charged to the Owner during the period that any area of land is in the control of the

- 7 -

Council for the purpose of tipping and/or reclamation with respect to such area;

- (ii) that all tipping is carried out in accordance with all applicable statutory requirements and in compliance with all applicable requirements for reclamation and rehabilitation of the site;
- (iii) that tipping only takes place in such area as the Owner from time to time indicates is no longer required for the purpose of excavation or of the Owner's operations on the remainder of the land;
- (iv) that any tipping and/or reclamation operations do not directly or indirectly interfere with the Owner's operations on the remainder of the land;
- (v) that the Council keep the area in which tipping operations are in progress securely fenced and be responsible to ensure that all land within the control of the Council for tipping or reclamation purposes is kept free of accumulations of water;
- (vi) that upon reclamation, the land be appropriately consolidated, resoiled and levelled.

- 4.2.12. ensure that no clay-slimes shall be deposited or permitted in the western sandpit;
- 4.2.13. if required by Council, transfer filled or unfilled land progressively to the Council at a negotiated fair market price;
- 4.2.14. use its best endeavours to make an area immediately behind the Clarinda Centre (coloured green on the site plan) available for transfer to the Council at a negotiated fair market price and will engage in negotiations with Council regarding the transfer of such area as soon as possible after October 1993;
- 4.2.15. ensure that use of the subject land for the purpose of extraction, re-washing, drying, blending, storage or sale of sands shall finish on the 31 December 2014;
- 4.2.16. carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 4.2.17. do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that it carries out its covenants, agreements and obligations under this Agreement and to

enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.18. consent to the Council entering a memorandum of this Agreement on the certificate of title to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document to enable the memorandum to be registered under that Section.

5. **CONSULTATIVE COMMITTEE**

The Owner and the Council will establish a Consultative Committee for the purposes of monitoring compliance with this Agreement and any relevant licences and permits. The Consultative Committee shall comprise two representatives of the Owner, one representative of the Department of Manufacturing and Industry Development, three representatives from the Council and three local residents. The Owner's representatives shall represent the occupiers of the land and shall be familiar with all operations on the land. Meetings shall be held three monthly or as determined by the Committee. A quorum for any meeting shall consist of at least four persons comprising one Owner representative, one Council representative and two local residents.

6. **DEFAULT OF OWNER**

In the event of the Owner defaulting or failing to perform any of its obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner

and any such costs shall until paid be and remain a charge on the said land and shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

7. INDEMNITY

The Owner covenants and agrees that it will indemnify and keep indemnified the Council, its officers, servants, agents, workmen and contractors from and against all costs expenses, losses or damages whatsoever which the Council its officers, servants, agents, workmen and contractors may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in Clause 6 of this Agreement.

8. ACKNOWLEDGEMENT AND UNDERTAKING

- 8.1. The parties acknowledge that the Administrative Appeals Tribunal proceedings have been struck out in consideration of the terms and conditions of this Agreement.
- 8.2. The Council undertakes not to bring any further proceedings in respect of alleged past breaches of the permit conditions.
- 8.3. The Council undertakes that provided the Owner is in compliance with the terms and conditions of this Agreement, the Council will not bring any further proceedings or provide direct or indirect assistance save in the normal course of its responsibilities to any other parties to bring proceedings asserting that the uses referred to in the Agreement are prohibited prior to 31 December 2014.

9. GENERAL

9.1. Notices

9.1.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (i) by delivering it personally to that party; or
- (ii) by sending it by post, postage pre-paid addressed to that party at his address set out in this Agreement or subsequently notified to each party from time to time.

9.1.2. A notice or other communication is deemed served, if delivered, upon delivery and, if posted, on the expiration of two business days after the date of posting.

9.2. Further Assurance

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

9.3. No Waiver

Any time or other indulgence granted by the Council to the Owner or any judgment or order obtained by the Council against the Owner will not

in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

9.4. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

9.5. No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the subject land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

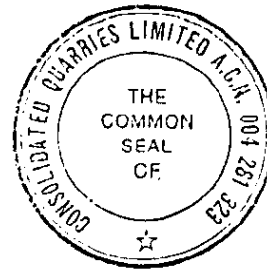
THE CORPORATE SEAL of THE)
MAYOR COUNCILLORS AND CITIZENS)
OF THE CITY OF OAKLEIGH was)
hereunto affixed in the)
presence of)

..... Mayor

..... Councillor

..... Town Clerk/Chief Executive

THE COMMON SEAL of THE)
CONSOLIDATED QUARRIES LTD)
was hereunto affixed in)
accordance with its Articles)
of Association in the presence)
of:)



..... *J. Newlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR

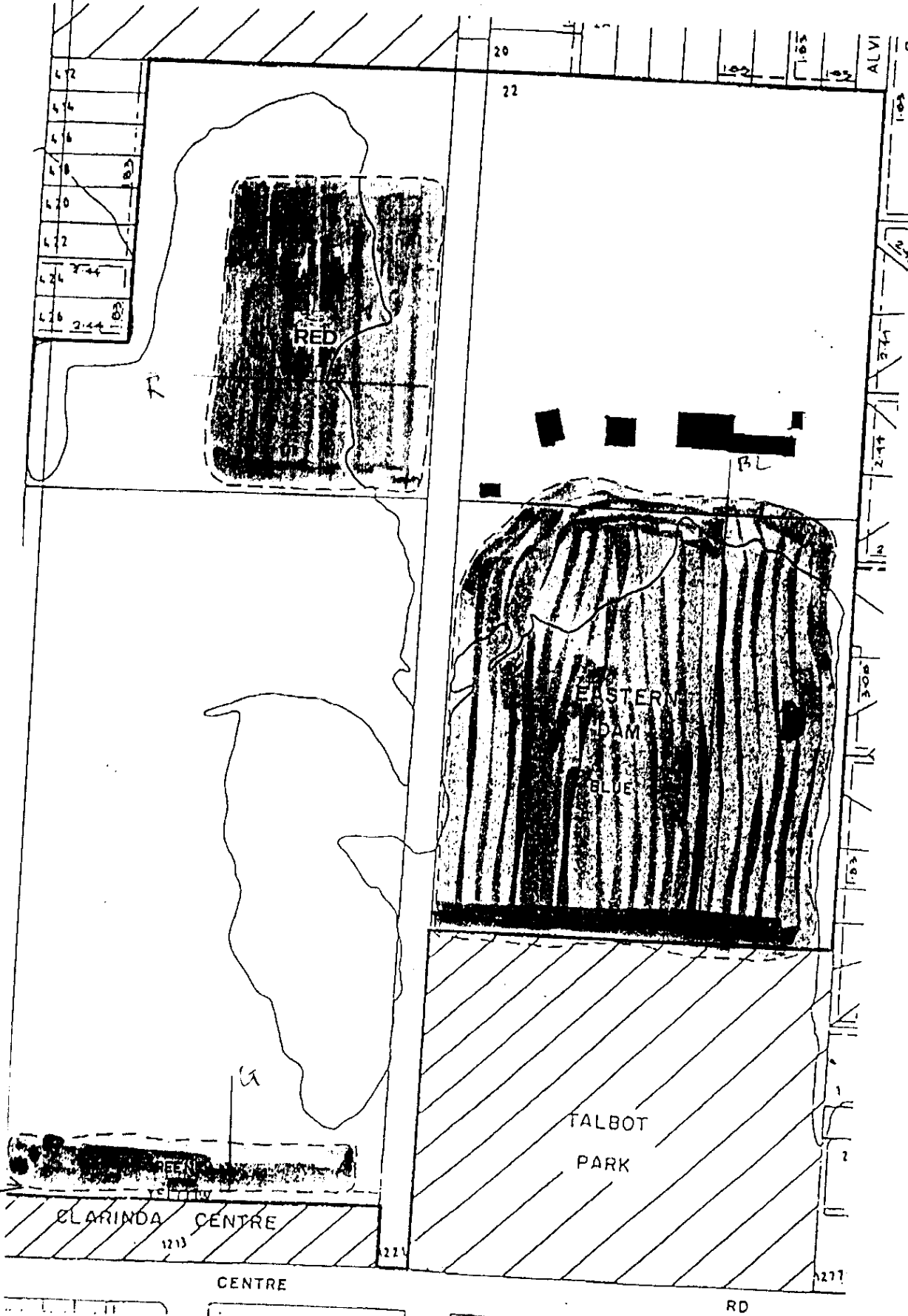
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

6135681690-

61 3 6700062: # 2

PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



COLOUR CODE
 Y = Yellow G = Green O = Orange
 BL = Blue BR = Brown CH = Cross Hatched
 R = Red P = Purple PK = Pink H = Hatched



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 28/09/2021 01:30:42 PM

Status	Registered	Dealing Number	AR342526G
Date and Time Lodged	13/08/2018 01:14:17 PM		

Lodger Details

Lodger Code	20345Y
Name	PIPER ALDERMAN
Address	
Lodger Box	
Phone	
Email	
Reference	GHT:409713

MORTGAGE

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest being mortgaged

FEE SIMPLE

Land Title Reference

3645/846
6313/437
8186/871
8343/532
9402/344
10378/210

Mortgagor

Name	HUNTINGDALE ESTATE NOMINEES PTY LTD
ACN	146749822

Mortgagee

Name	MELBOURNE SECURITIES CORPORATION LIMITED
ACN	160326545
Address	
Floor Type	LEVEL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

Floor Number 2
Street Number 120
Street Name COLLINS
Street Type STREET
Locality MELBOURNE
State VIC
Postcode 3000

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference AA3574

(b) Additional terms and conditions

1. The reference to the term "Secured Money" in the Memorandum of Common Provisions AA3574 is replaced with the following term: "Secured Money" means all money which the Mortgagor owes to the Mortgagee under the Deed of Guarantee - Sterling Global Capital Mortgage Income Fund between the Mortgagee and the Mortgagor dated on or about the date of the Mortgage Form.

Mortgagee Execution

1. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
2. The Certifier has taken reasonable steps to verify the identity of the mortgagee.
3. The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
(a) has taken reasonable steps to verify the identity of the mortgagor; and
(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Certifier has retained the evidence supporting this Registry Instrument or Document.

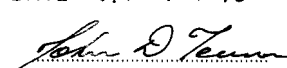

Executed on behalf of MELBOURNE SECURITIES CORPORATION LIMITED
Signer Name GREGORY HUGH TAYLOR
Signer PIPER ALDERMAN
Organisation
Signer Role AUSTRALIAN LEGAL PRACTITIONER
Execution Date 13 AUGUST 2018

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

PLAN OF SUBDIVISION		STAGE NO. -----	LTO use only. EDITION 2	Plan Number PS 409879 V
Location of Land Parish: MORDIALLOC Township: ----- Section: 2 Crown Allotment: 6 (PART) Crown Portion: ----- LTO Base Record: CHART 68 Title Reference: Vol.8550 Fol.541 & Vol.9527 Fol.364 Last Plan Reference: Lot 3,4,5,6 (Pts) on LP 4961 & CP 156046 Postal Address: Cnr. Huntingdale & Centre Road OAKLEIGH SOUTH, 3167. AMG Co-ordinates E 333 100 N 5 800 700 Zone: 55		Council Certificate and Endorsement Council Name: Monash City Council Ref. 5456AM 1. This plan is certified under section 6 of the Subdivision Act 1988. 2. This plan is certified under section 11(7) of the Subdivision Act 1988. Date of original certification under section 6 12 / 12 / 97 3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under section 18 of the Subdivision Act 1988 has /has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in Stage ----- Council delegate Council seal Date 24 / 2 / 98 Re-certified under section 11(7) of the Subdivision Act 1988 Council Delegate Council Seal Date ----- / ----- / -----		
Vesting of Roads and/ or Reserve				
Identifier	Council / Body / Person			
NIL	NIL			
Notations				
Staging		This is not a staged subdivision. Planning Permit No.		
Depth Limitation		Does not apply.		
Amendments: V1 2/7/97 V2 11/2/98 EASEMENT E-2 ADDED				
Area of Site: 7.840ha No. of Lots: 2		Survey This plan is not based on survey. This survey has been connected to permanent mark No(s) In Proclaimed Survey Area No.		
Easement Information				
Legend: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	Sewerage	See dia.	This plan	South East Water Limited
E-2	Pipeline & Electricity Cable	3	This plan	Vol 8420 Fol 815
E-3	Sewerage	See dia	This plan	South East Water Limited
	Pipeline & Electricity Cable		This plan	Vol 8420 Fol 815
LTO use only Statement of Compliance/ Exemption Statement Received <input checked="" type="checkbox"/> Date 27 / 3 / 98				
LTO use only PLAN REGISTERED TIME 4:00 PM DATE 17 / 4 / 98  Assistant Registrar of Titles Sheet 1 of 2				
 TAYLORS LAND SURVEYORS-TOWN PLANNERS PROPERTY CONSULTANTS <small>AVERY AND PHIZACKLEA PTY. LTD. A.C.N. 076 022 114 303 BURWOOD HWY, BURWOOD EAST 3161 TEL. 9803 8033 FAX. 9887 8921</small>		LICENSED SURVEYOR : GEOFFREY LESLIE COOPER Signature Date 11 / 2 / 98 REF. 7012/2L VERSION 2 11/2/98 GR.		
		Date 24 / 2 / 98 Council Delegate Signature Original sheet size A3		

PLAN OF SUBDIVISION

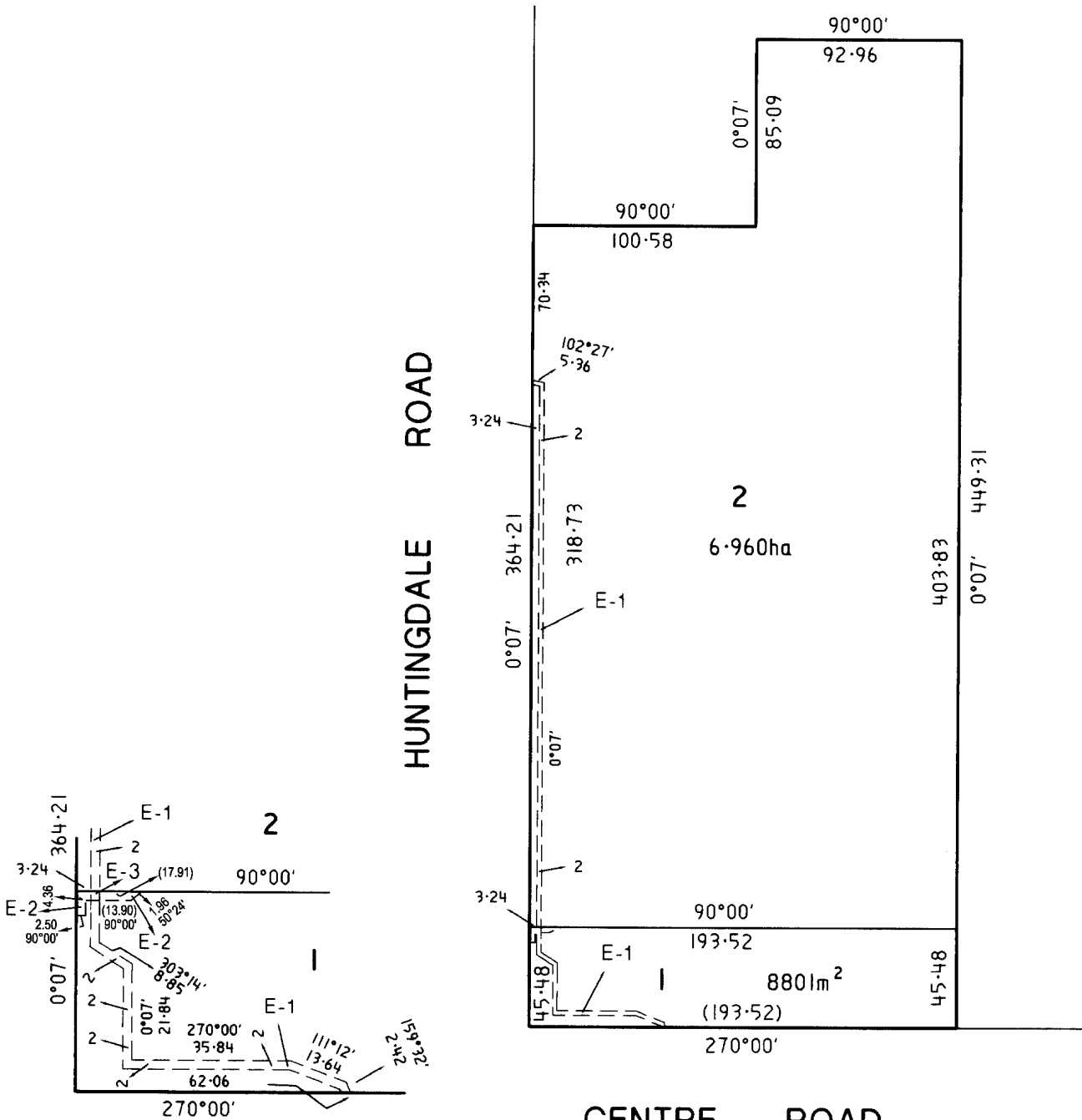
STAGE NO.

Plan Number

PS 409879 V

HUNTINGDALE ROAD

CENTRE ROAD



ENLARGEMENT
1:1000



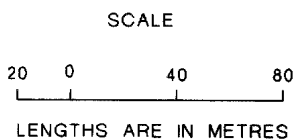
TAYLORS

LAND SURVEYORS-TOWN PLANNERS
PROPERTY CONSULTANTS

AVERY AND PHAZAKLEA PTY. LTD. A.C.N. 078 022 114
303 BURWOOD HWY, BURWOOD EAST 3161 TEL. 9803 8033 FAX. 9887 8921

Sheet 2 of 2

ORIGINAL
SCALE SHEET SIZE
1:2000 A3



LICENSED SURVEYOR : GEOFFREY LESLIE COOPER

Signature Date 11/ 2 / 98

REF. 7012/2L

VERSION 2

11/2/98
G.R.

Date 24 / 2 / 98

Council Delegate Signature

Original sheet size A3

Register Search Statement - Volume 8343 Folio 532

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 08343 FOLIO 532

Security no : 124092729955Y
Produced 28/09/2021 12:56 PM

LAND DESCRIPTION

Lots 1,2 and 3 on Title Plan 803687U.

PARENT TITLES :

Volume 08319 Folio 459 Volume 08343 Folio 531

Created by instrument B373707 28/02/1962

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

HUNTINGDALE ESTATE NOMINEES PTY LTD of LEVEL 2 649 BRIDGE ROAD RICHMOND VIC
3121

AH638598S 26/11/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR342526G 13/08/2018

MELBOURNE SECURITIES CORPORATION LTD

COVENANT 1909682

as to Lot 1 on Title Plan 803687U

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987

S505281N 26/05/1993

DIAGRAM LOCATION

SEE TP803687U FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

DOCUMENT END

The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of

Victoria to provide this information
via LANDATA® System. Delivered at 28/09/2021, for Order Number 70564755. Your reference: MA8278A.

AK744344H

28/11/2013 \$66.50 113A



Application for Amendment or Alteration of Registered Proprietor's Address

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Section 113(5) Transfer of Land Act 1958

Lodged by

Name: PIPER ALDERMAN Solicitors

Phone: (03) 8665 5555

Address: Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Reference: GHT:382133

Customer Code: 4206F

The applicant applies to alter the address recorded in the Register to the address specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Volume 10378 Folio 210, Volume 03645 Folio 846, Volume 06313 Folio 437, Volume 08186 Folio 871, Volume 08343 Folio 532 and Volume 09402 Folio 344

Applicant: *(full name and address including postcode)*

HUNTINGDALE ESTATE NOMINEES PTY LTD ACN 146 749 822 of Level 2, 649 Bridge Road, Richmond, Victoria 3121

Date: *27 November 2013*

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

Piper Alderman

Approval No: 2325125A

Order to Register

Form 61

Please register and issue Certificate of Title to

Page 1 of 1

Signed

Customer Code

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010



260593 1222 MISC \$56 S505281N

S505281N

Lodged by Maddock Lonie & Chisholm
Ref: GHP/RDG/156678

Titles Office Use Only

Code: 1167E

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 of the *Planning and Environment Act 1987* for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the *Planning and Environment Act 1987*.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND:

Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344

ADDRESS OF THE LAND:

North side of Centre Road, corner Talbot Avenue, South Oakleigh

RESPONSIBLE AUTHORITY:

Oakleigh City Council, Municipal Offices, Atherton Road, Oakleigh, Victoria

PLANNING SCHEME:

Oakleigh Planning Scheme

AGREEMENT DATE:

15 March, 1993

AGREEMENT WITH:

[ghp 9303311m.1:020493]

17/6/93

Consolidated Quarries Limited (A.C.N. 004 281 323)
1183 Toorak Road, Hartwell. Victoria

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority: 

Name of Officer: ADRIAN HALLIDAY

PRINT NAME OF OFFICER SIGNING
7th APRIL 1993

Date:

MADDOCK LONIE & CHISHOLM
SOLICITORS & NOTARY

DATED 15th day of March 1993

CITY OF OAKLEIGH

the Council

- and -

CONSOLIDATED QUARRIES LTD.
(A.C.N. 004 281 323)

the Owner

**Agreement Under Section 173 of the Planning and
Environment Act 1987**

: **Subject Land:** Centre Road South Oakleigh

440 Collins Street
MELBOURNE VIC 3000
Telephone: 288 0555
Our Ref: GHP/RDG/1556678
DX 259

THIS AGREEMENT is made the 15th day of ^{11th DAY} March 1997³ ✓

BETWEEN:

OAKLEIGH CITY COUNCIL of Municipal Offices,
Atherton Road, Oakleigh of Victoria
("the Council") ✓

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)
of 1183 Toorak Road, Hartwell of Victoria
("the Owner")

INTRODUCTION:

- A. The Owner is the registered proprietor of the whole of the land described in Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344 being situated on the north side of Centre Road, South Oakleigh and used for the purpose of extraction, re-washing, drying, blending, storage and sale of sands (collectively "the subject land"). ✓
- B. The Council is the Responsible Authority pursuant to the *Planning and Environment Act 1987* ("the Act") for the Oakleigh Planning Scheme ("the Scheme").
- C. In Planning Appeals Nod. 1990/35916, 1990/35924 and 1990/35932 to the Administrative Appeals Tribunal the Council has alleged (inter alia) that the use of the subject land is not in accordance with the Oakleigh Planning Scheme.
- D. In the said appeals the Owner has denied the allegations made by the Council and maintained the legitimacy of the use of the subject land.

E. In order to avoid the expense of further proceedings the Council and the Owner wish to enter into an Agreement pursuant to Section 173 of the Planning and Environment Act 1987 whereby the Owner binds itself to observe certain conditions on continued use of the subject land. ✓

F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act. ✓

G. The parties to this Agreement acknowledge that the Agreement provides for one or more of the following matters:

1. the prohibition, restriction or regulation of the use or development of land;
2. the conditions subject to which land may be used or developed for specified purposes;
3. a matter intended to achieve or advance the objectives of planning in Victoria.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land.

2. INTERPRETATION

- 2.1. The singular includes the plural and the plural includes the singular.

- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

3. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the subject land ensure that its successors in title:

- 3.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 3.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

4. COVENANTS OF OWNER

4.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

4.1.1. this Agreement and any amendment of this Agreement and anything done in connection with this Agreement

4.1.2. the preparation of an application pursuant to Section 181 of the Act enabling the registration of this Agreement at the Land Titles Office and any duties or fees payable in connection with either this Agreement, the registration of this Agreement at the Land Titles Office or in connection with any default of the Owner.

4.2. The Owner covenants and agrees that it will:

(Use and Operating conditions)

4.2.1. undertake early and rapid extraction of the sand remaining at the southern end of the site, generally in the area coloured yellow on the annexed site plan marked "A";

4.2.2. extracted sand shall be stockpiled in the area west of Talbot Avenue and north of the western sandpit generally in the area coloured red on the site plan;

4.2.3. hours of operation will be limited to 7 a.m. to 6 p.m., Monday to Friday inclusive and 7 a.m. to 1 p.m. on Saturdays provided

- that operations may continue until 8 p.m. on Monday to Friday inclusive on condition that between 6 p.m. and 8 p.m. there will be no movement of vehicles or loaders on site associated with the drying plant operation save as required for essential plant maintenance. No operations are permitted on a Sunday or Public Holiday;
- 4.2.4. at all times the noise levels emanating from the plant shall not exceed those specified at the date of this Agreement for the time period 6 p.m. to 10 p.m. under the State Environment Protection Policy N-1;
- 4.2.5. as soon as is practicable seal the access road from Centre Road to the sand drying plant to the satisfaction of an Inspector of Mines and Quarries in consultation with the City Engineer, City of Oakleigh;
- 4.2.6. ensure that any front end loader operated on site shall be a unit able to operate within the permissible noise level;
- 4.2.7. within 14 days of the execution of this Agreement apply for all necessary building approvals to construct additional hopper capacity, so as to ensure that raw material stockpiles will not be required. The Owner will complete the construction of the additional hopper capacity within three months of the grant of such approvals. During the period while such hopper capacity is being provided, the Owner will use its best endeavours to reduce the size of stockpiles of raw material;

- 4.2.8. After completion of the said additional hopper capacity, if reasonably requested to do so by any affected resident having a line of sight from his or her property to the stockpiles on site, screen such stockpiles from view by shade cloth or similar means.

(Filling and End Use)

- 4.2.9. when extraction at the southern end of the site is completed as required in Clause 4.2.1, forthwith drain the eastern dam (being the area generally coloured blue and marked "eastern dam" on the site plan) and permit filling of the eastern dam commencing from its north-west corner;

- 4.2.10. make the site of the eastern dam available to Council or to third parties at Council's direction to accept clean fill on a no charge basis to enable the dam to be filled as quickly as possible, subject to reasonable notice being give of large volumes of fill;

- 4.2.11. with respect to all other airspace within the subject land, make such airspace available to the Council for the purpose of tipping using clean fill by the Council or third parties at Council's direction on the following terms:

- (i) no rates are charged to the Owner during the period that any area of land is in the control of the

- 7 -

Council for the purpose of tipping and/or reclamation with respect to such area;

- (ii) that all tipping is carried out in accordance with all applicable statutory requirements and in compliance with all applicable requirements for reclamation and rehabilitation of the site;
- (iii) that tipping only takes place in such area as the Owner from time to time indicates is no longer required for the purpose of excavation or of the Owner's operations on the remainder of the land;
- (iv) that any tipping and/or reclamation operations do not directly or indirectly interfere with the Owner's operations on the remainder of the land;
- (v) that the Council keep the area in which tipping operations are in progress securely fenced and be responsible to ensure that all land within the control of the Council for tipping or reclamation purposes is kept free of accumulations of water;
- (vi) that upon reclamation, the land be appropriately consolidated, resoiled and levelled.

- 4.2.12. ensure that no clay-slimes shall be deposited or permitted in the western sandpit;
- 4.2.13. if required by Council, transfer filled or unfilled land progressively to the Council at a negotiated fair market price;
- 4.2.14. use its best endeavours to make an area immediately behind the Clarinda Centre (coloured green on the site plan) available for transfer to the Council at a negotiated fair market price and will engage in negotiations with Council regarding the transfer of such area as soon as possible after October 1993;
- 4.2.15. ensure that use of the subject land for the purpose of extraction, re-washing, drying, blending, storage or sale of sands shall finish on the 31 December 2014;
- 4.2.16. carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 4.2.17. do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that it carries out its covenants, agreements and obligations under this Agreement and to

enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.18. consent to the Council entering a memorandum of this Agreement on the certificate of title to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document to enable the memorandum to be registered under that Section.

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The Owner and the Council will establish a Consultative Committee for the purposes of monitoring compliance with this Agreement and any relevant licences and permits. The Consultative Committee shall comprise two representatives of the Owner, one representative of the Department of Manufacturing and Industry Development, three representatives from the Council and three local residents. The Owner's representatives shall represent the occupiers of the land and shall be familiar with all operations on the land. Meetings shall be held three monthly or as determined by the Committee. A quorum for any meeting shall consist of at least four persons comprising one Owner representative, one Council representative and two local residents.

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In the event of the Owner defaulting or failing to perform any of its obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner

and any such costs shall until paid be and remain a charge on the said land and shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

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8. ACKNOWLEDGEMENT AND UNDERTAKING

- 8.1. The parties acknowledge that the Administrative Appeals Tribunal proceedings have been struck out in consideration of the terms and conditions of this Agreement.
- 8.2. The Council undertakes not to bring any further proceedings in respect of alleged past breaches of the permit conditions.
- 8.3. The Council undertakes that provided the Owner is in compliance with the terms and conditions of this Agreement, the Council will not bring any further proceedings or provide direct or indirect assistance save in the normal course of its responsibilities to any other parties to bring proceedings asserting that the uses referred to in the Agreement are prohibited prior to 31 December 2014.

9. GENERAL

9.1. Notices

9.1.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (i) by delivering it personally to that party; or
- (ii) by sending it by post, postage pre-paid addressed to that party at his address set out in this Agreement or subsequently notified to each party from time to time.

9.1.2. A notice or other communication is deemed served, if delivered, upon delivery and, if posted, on the expiration of two business days after the date of posting.

9.2. Further Assurance

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

9.3. No Waiver

Any time or other indulgence granted by the Council to the Owner or any judgment or order obtained by the Council against the Owner will not

in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

9.4. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

9.5. No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the subject land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

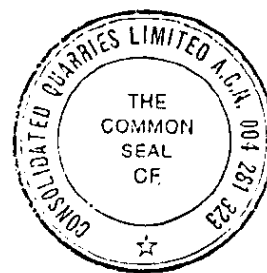
THE CORPORATE SEAL of THE)
MAYOR COUNCILLORS AND CITIZENS)
OF THE CITY OF OAKLEIGH was)
hereunto affixed in the)
presence of)

..... Mayor

..... Councillor

..... Town Clerk/Chief Executive

THE COMMON SEAL of THE)
CONSOLIDATED QUARRIES LTD)
was hereunto affixed in)
accordance with its Articles)
of Association in the presence)
of:)



..... *J. Newlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR

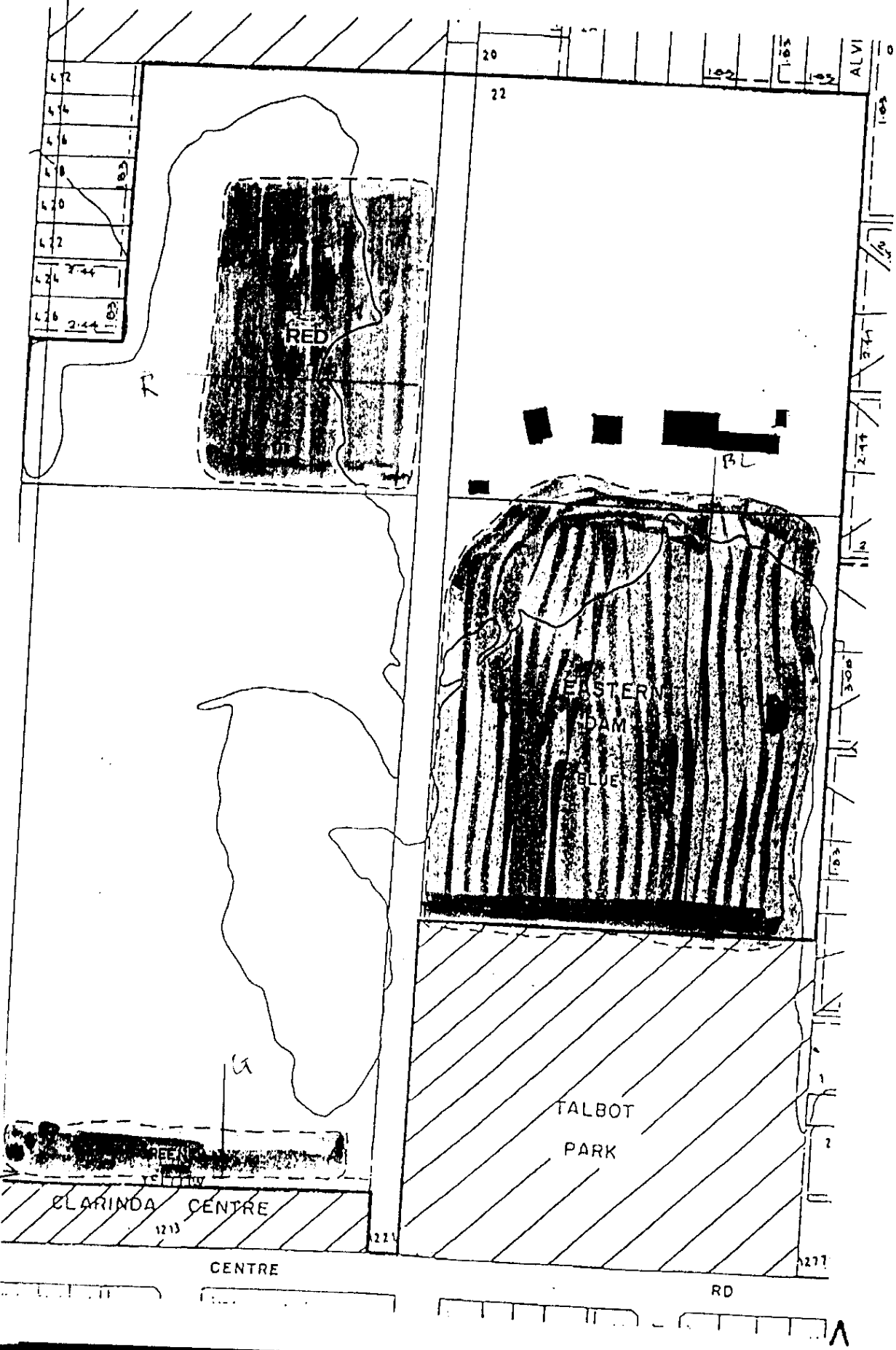
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

6135681690-

61 3 6700062: # 2

PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



COLOUR CODE
Y = Yellow G = Green O = Orange
BL = Blue BR = Brown CH = Cross Hatched
R = Red P = Purple PK = Pink H = Hatched



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 28/09/2021 12:59:46 PM

Status	Registered	Dealing Number	AR342526G
Date and Time Lodged	13/08/2018 01:14:17 PM		

Lodger Details

Lodger Code	20345Y
Name	PIPER ALDERMAN
Address	
Lodger Box	
Phone	
Email	
Reference	GHT:409713

MORTGAGE

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest being mortgaged

FEE SIMPLE

Land Title Reference

3645/846
6313/437
8186/871
8343/532
9402/344
10378/210

Mortgagor

Name	HUNTINGDALE ESTATE NOMINEES PTY LTD
ACN	146749822

Mortgagee

Name	MELBOURNE SECURITIES CORPORATION LIMITED
ACN	160326545
Address	
Floor Type	LEVEL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

Floor Number 2
Street Number 120
Street Name COLLINS
Street Type STREET
Locality MELBOURNE
State VIC
Postcode 3000

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference AA3574

(b) Additional terms and conditions

1. The reference to the term "Secured Money" in the Memorandum of Common Provisions AA3574 is replaced with the following term: "Secured Money" means all money which the Mortgagor owes to the Mortgagee under the Deed of Guarantee - Sterling Global Capital Mortgage Income Fund between the Mortgagee and the Mortgagor dated on or about the date of the Mortgage Form.

Mortgagee Execution

1. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
2. The Certifier has taken reasonable steps to verify the identity of the mortgagee.
3. The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
(a) has taken reasonable steps to verify the identity of the mortgagor; and
(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Certifier has retained the evidence supporting this Registry Instrument or Document.

Executed on behalf of MELBOURNE SECURITIES CORPORATION LIMITED
Signer Name GREGORY HUGH TAYLOR
Signer PIPER ALDERMAN
Organisation
Signer Role AUSTRALIAN LEGAL PRACTITIONER
Execution Date 13 AUGUST 2018

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

4143007

1909682

Walter Fregon
~~STEELE & STEELE~~
Chas Bayles & Co



8 paid

VICTORIA

Walter Fregon
TRANSFER OF LAND.



368 Collins Street
of Centre Road Clarinda

J.M.
24/3/44

CLARINDA POULTRY FARM PROPRIETARY LIMITED of Centre Road Clarinda

near Oakleigh being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances hereinafter referred to in consideration of the sum of TWO HUNDRED AND FORTY ONE POUNDS FIFTEEN SHILLINGS paid to it by WALTER HENRY FREGON of Stuart Street Clarinda Contractor HEREBY TRANSFERS to the said Walter Henry Fregon all its estate and interest in ALL THAT PIECE OF LAND being delineated and colored red on the map hereon and being part of Lot 6 on Plan of Subdivision No. 4961 lodged in the Office of Titles and being part of Crown Allotment 6 Section Two Parish of Mordialloc County of Bourke and being part of the land more particularly described in Certificate of Title Volume 4414 Folio 882704 AND the said Walter Henry Fregon DOTH HEREBY for himself his heirs executors administrators and transferees registered proprietor or proprietors for the time being of the land hereby transferred or any part or parts thereof COVENANT with the said Company its successors and transferees registered proprietor or proprietors for the time being of the land now comprised in the said Certificate of Title that he or they will not at any time hereafter dig carry away or remove or permit or allow to be dug carried away or removed any marl stone earth clay gravel or sand from such part of the said land hereby transferred as lies within ten feet of the southern boundary thereof except for the purpose of excavations for the foundations of any building to be erected thereon AND it is requested that this covenant should be noted and appear on every future certificate of title for the said land hereby transferred or any part thereof as an encumbrance affecting the same.



4414-704 Pt

Area 3A 0R 35P

207m Road

known as L.P

Enc as to the whole

the Coot herein

24 5 114

16 5 44

Being extra Nil
with 24
6.6.44

DATED the 12th day of February 1944.

THE COMMON SEAL of CLARINDA POULTRY FARM PROPRIETARY LIMITED was hereto affixed by the authority of the Directors in the presence of

Walter M Bayles Director
as called at Director
C. Stewart Secretary.



IMAGED

1971-4

STEELE & STEELE
352 Collins Street
Melbourne.

TRANSFER

W. H. Fregon

to

Clarlinda Poultry Farm Pty. Ltd.

Dated 1944.

MEMORIAL OF INSTRUMENT

NATURE OF INSTRUMENT	TIME OF ITS PRODUCTION FOR REGISTRATION	TO WHOM GIVEN	INDEXED IN REGISTER BOOK
TRANSFER AS TO PART	THE 8 th DAY OF <i>March</i> 1944	To <i>Walter Henry Fregon</i>	1909682

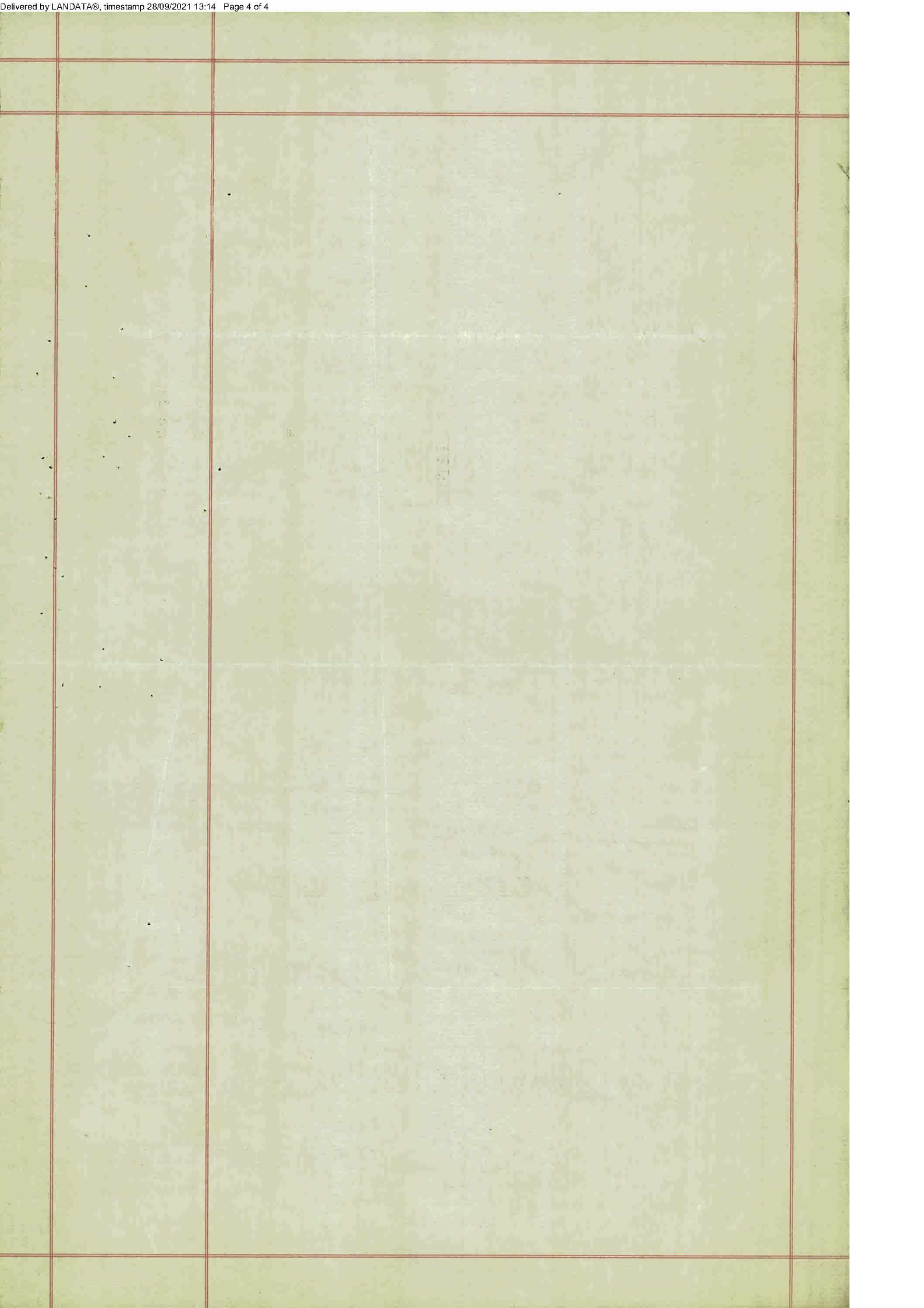
L. J. Tomlinson

ASSISTANT REGISTRAR OF TITLES

I CERTIFY THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED AT THIS TIME LAST MENTIONED IN THE REGISTER BOOK VOL 4414 FOL 882704

L. J. Tomlinson

ASSISTANT REGISTRAR OF TITLES



TITLE PLAN	EDITION 1	TP 803687U
-------------------	------------------	-------------------

Location of Land

Parish : MORDIALLOC
 Township : -
 Crown Allotment : -
 Crown Portion : -
 Section : -

Base record : DCMB
 Last Plan Reference : LP 4961, LP 46617 & LP 53359
 Derived From : VOL. 8343 FOL. 532

Depth Limitation : -

Notations

ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN

Description of Land/ Easement Information

Together with a right of carriage way over the roads
 coloured brown on Plan of Subdivision No.4961 - - - - -

ENCUMBRANCES
 As to the land coloured - - - -
 blue-hatched - - - - -

THE EASEMENTS (if any) - - - -
 existing over the same by - - -
 virtue of Section 98 of the --
 Transfer of Land Act - - - - -

As to the land coloured green--

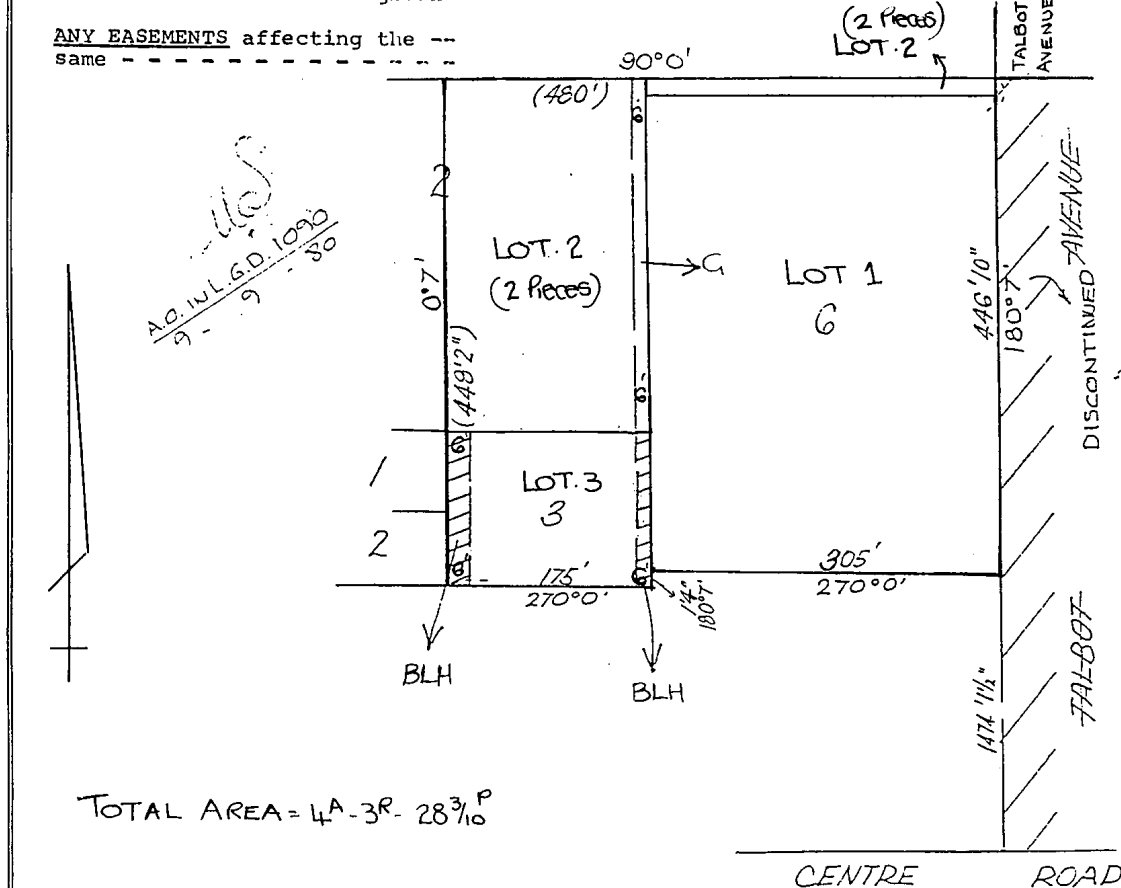
ANY EASEMENTS affecting the --
 same - - - - -

THIS PLAN HAS BEEN PREPARED BY
 LAND REGISTRY, LAND VICTORIA FOR
 TITLE DIAGRAM PURPOSES

COMPILED: Date 13/09/05
 VERIFIED: A. DALLAS
 Assistant Registrar of Titles

COLOUR CODE

BL=BLUE G=GREEN
 BR=BROWN P=PURPLE
 Y=YELLOW R=RED
 H=HATCH CH=CROSS HATCH



TOTAL AREA = 4^A - 3^R - 28³/₁₀ ^P

TABLE OF PARCEL IDENTIFIERS
WARNING: Where multiple parcels are referred to or shown on the Title Plan this does Not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962
LOT 1 = LOT 6 (PT) ON LP 4961 LOT 2 = LOT 2 (PT) ON LP 46617 LOT 3 = LOT 3 ON LP 53359

LENGTHS ARE IN FEET AND INCHES

Metres = 0.3048 x Feet
 Metres = 0.201168 x Links

Register Search Statement - Volume 3645 Folio 846

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 03645 FOLIO 846

Security no : 124092738910Q
Produced 28/09/2021 04:08 PM

LAND DESCRIPTION

Lots
1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,
30,31,32,33,34,35,36,37,38,39,40 and 41 on Plan of Subdivision 012090 and Road
R1 on Plan of Subdivision 012090.
PARENT TITLE Volume 01615 Folio 960
Created by instrument 0698163 16/10/1912

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
HUNTINGDALE ESTATE NOMINEES PTY LTD of LEVEL 2 649 BRIDGE ROAD RICHMOND VIC
3121
AH638598S 26/11/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR342526G 13/08/2018
MELBOURNE SECURITIES CORPORATION LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section
24 Subdivision Act 1988 and any other encumbrances shown or entered on the
plan or imaged folio set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
S505281N 26/05/1993

DIAGRAM LOCATION

SEE LP012090 FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

DOCUMENT END

**The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of
Victoria to provide this information**

via LANDATA® System. Delivered at 28/09/2021, for Order Number 70572399. Your reference: MA8278A.

AK744344H

28/11/2013 \$66.50 113A



Application for Amendment or Alteration of Registered Proprietor's Address

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Section 113(5) Transfer of Land Act 1958

Lodged by

Name: PIPER ALDERMAN Solicitors

Phone: (03) 8665 5555

Address: Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Reference: GHT:382133

Customer Code: 4206F

The applicant applies to alter the address recorded in the Register to the address specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Volume 10378 Folio 210, Volume 03645 Folio 846, Volume 06313 Folio 437, Volume 08186 Folio 871, Volume 08343 Folio 532 and Volume 09402 Folio 344

Applicant: *(full name and address including postcode)*

HUNTINGDALE ESTATE NOMINEES PTY LTD ACN 146 749 822 of Level 2, 649 Bridge Road, Richmond, Victoria 3121

Date: *27 November 2013*

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

Piper Alderman

Approval No: 2325125A

Order to Register

Form 61

Please register and issue Certificate of Title to

Page 1 of 1

Signed

Customer Code

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010



260593 1222 MISC \$56 S505281N

S505281N

Lodged by Maddock Lonie & Chisholm
Ref: GHP/RDG/156678

Titles Office Use Only

Code: 1167E

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 of the *Planning and Environment Act 1987* for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the *Planning and Environment Act 1987*.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND:

Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344

ADDRESS OF THE LAND:

North side of Centre Road, corner Talbot Avenue, South Oakleigh

RESPONSIBLE AUTHORITY:

Oakleigh City Council, Municipal Offices, Atherton Road, Oakleigh, Victoria

PLANNING SCHEME:

Oakleigh Planning Scheme

AGREEMENT DATE:

15 March, 1993

AGREEMENT WITH:

[ghp 9303311m.1:020493]

17/6/93

Consolidated Quarries Limited (A.C.N. 004 281 323)
1183 Toorak Road, Hartwell. Victoria

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority: 

Name of Officer: ADRIAN HARRISON

Date:
PRINT NAME OF OFFICER SIGNING
7th APRIL 1993

MADDOCK LONIE & CHISHOLM
SOLICITORS & NOTARY

DATED 15th day of March 1993

CITY OF OAKLEIGH

the Council

- and -

CONSOLIDATED QUARRIES LTD.
(A.C.N. 004 281 323)

the Owner

**Agreement Under Section 173 of the Planning and
Environment Act 1987**

: **Subject Land:** Centre Road South Oakleigh

440 Collins Street
MELBOURNE VIC 3000
Telephone: 288 0555
Our Ref: GHP/RDG/1556678
DX 259

THIS AGREEMENT is made the 15th day of ¹⁹⁹³ ~~1992~~ March 1993 ✓

BETWEEN:

OAKLEIGH CITY COUNCIL of Municipal Offices,
Atherton Road, Oakleigh of Victoria
("the Council") ✓

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)
of 1183 Toorak Road, Hartwell of Victoria
("the Owner")

INTRODUCTION:

- A. The Owner is the registered proprietor of the whole of the land described in Certificates of Title Volume 8343 Folio 532, Volume 8186 Folio 871, Volume 8550 Folio 541, Volume 3645 Folio 846, Volume 6313 Folio 437 and Volume 9402 Folio 344 being situated on the north side of Centre Road, South Oakleigh and used for the purpose of extraction, re-washing, drying, blending, storage and sale of sands (collectively "the subject land"). ✓
- B. The Council is the Responsible Authority pursuant to the *Planning and Environment Act 1987* ("the Act") for the Oakleigh Planning Scheme ("the Scheme").
- C. In Planning Appeals Nod. 1990/35916, 1990/35924 and 1990/35932 to the Administrative Appeals Tribunal the Council has alleged (inter alia) that the use of the subject land is not in accordance with the Oakleigh Planning Scheme.
- D. In the said appeals the Owner has denied the allegations made by the Council and maintained the legitimacy of the use of the subject land.

E. In order to avoid the expense of further proceedings the Council and the Owner wish to enter into an Agreement pursuant to Section 173 of the Planning and Environment Act 1987 whereby the Owner binds itself to observe certain conditions on continued use of the subject land. ✓

F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act. ✓

G. The parties to this Agreement acknowledge that the Agreement provides for one or more of the following matters:

1. the prohibition, restriction or regulation of the use or development of land;
2. the conditions subject to which land may be used or developed for specified purposes;
3. a matter intended to achieve or advance the objectives of planning in Victoria.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land.

2. INTERPRETATION

- 2.1. The singular includes the plural and the plural includes the singular.

- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

3. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the subject land ensure that its successors in title:

- 3.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 3.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

4. COVENANTS OF OWNER

4.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

4.1.1. this Agreement and any amendment of this Agreement and anything done in connection with this Agreement

4.1.2. the preparation of an application pursuant to Section 181 of the Act enabling the registration of this Agreement at the Land Titles Office and any duties or fees payable in connection with either this Agreement, the registration of this Agreement at the Land Titles Office or in connection with any default of the Owner.

4.2. The Owner covenants and agrees that it will:

(Use and Operating conditions)

4.2.1. undertake early and rapid extraction of the sand remaining at the southern end of the site, generally in the area coloured yellow on the annexed site plan marked "A";

4.2.2. extracted sand shall be stockpiled in the area west of Talbot Avenue and north of the western sandpit generally in the area coloured red on the site plan;

4.2.3. hours of operation will be limited to 7 a.m. to 6 p.m., Monday to Friday inclusive and 7 a.m. to 1 p.m. on Saturdays provided

that operations may continue until 8 p.m. on Monday to Friday inclusive on condition that between 6 p.m. and 8 p.m. there will be no movement of vehicles or loaders on site associated with the drying plant operation save as required for essential plant maintenance. No operations are permitted on a Sunday or Public Holiday;

- 4.2.4. at all times the noise levels emanating from the plant shall not exceed those specified at the date of this Agreement for the time period 6 p.m. to 10 p.m. under the State Environment Protection Policy N-1;
- 4.2.5. as soon as is practicable seal the access road from Centre Road to the sand drying plant to the satisfaction of an Inspector of Mines and Quarries in consultation with the City Engineer, City of Oakleigh;
- 4.2.6. ensure that any front end loader operated on site shall be a unit able to operate within the permissible noise level;
- 4.2.7. within 14 days of the execution of this Agreement apply for all necessary building approvals to construct additional hopper capacity, so as to ensure that raw material stockpiles will not be required. The Owner will complete the construction of the additional hopper capacity within three months of the grant of such approvals. During the period while such hopper capacity is being provided, the Owner will use its best endeavours to reduce the size of stockpiles of raw material;

- 4.2.8. After completion of the said additional hopper capacity, if reasonably requested to do so by any affected resident having a line of sight from his or her property to the stockpiles on site, screen such stockpiles from view by shade cloth or similar means.

(Filling and End Use)

- 4.2.9. when extraction at the southern end of the site is completed as required in Clause 4.2.1, forthwith drain the eastern dam (being the area generally coloured blue and marked "eastern dam" on the site plan) and permit filling of the eastern dam commencing from its north-west corner;
- 4.2.10. make the site of the eastern dam available to Council or to third parties at Council's direction to accept clean fill on a no charge basis to enable the dam to be filled as quickly as possible, subject to reasonable notice being give of large volumes of fill;
- 4.2.11. with respect to all other airspace within the subject land, make such airspace available to the Council for the purpose of tipping using clean fill by the Council or third parties at Council's direction on the following terms:
- (i) no rates are charged to the Owner during the period that any area of land is in the control of the

- 7 -

Council for the purpose of tipping and/or reclamation with respect to such area;

- (ii) that all tipping is carried out in accordance with all applicable statutory requirements and in compliance with all applicable requirements for reclamation and rehabilitation of the site;
- (iii) that tipping only takes place in such area as the Owner from time to time indicates is no longer required for the purpose of excavation or of the Owner's operations on the remainder of the land;
- (iv) that any tipping and/or reclamation operations do not directly or indirectly interfere with the Owner's operations on the remainder of the land;
- (v) that the Council keep the area in which tipping operations are in progress securely fenced and be responsible to ensure that all land within the control of the Council for tipping or reclamation purposes is kept free of accumulations of water;
- (vi) that upon reclamation, the land be appropriately consolidated, resoiled and levelled.

- 4.2.12. ensure that no clay-slimes shall be deposited or permitted in the western sandpit;
- 4.2.13. if required by Council, transfer filled or unfilled land progressively to the Council at a negotiated fair market price;
- 4.2.14. use its best endeavours to make an area immediately behind the Clarinda Centre (coloured green on the site plan) available for transfer to the Council at a negotiated fair market price and will engage in negotiations with Council regarding the transfer of such area as soon as possible after October 1993;
- 4.2.15. ensure that use of the subject land for the purpose of extraction, re-washing, drying, blending, storage or sale of sands shall finish on the 31 December 2014;
- 4.2.16. carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 4.2.17. do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that it carries out its covenants, agreements and obligations under this Agreement and to

enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.18. consent to the Council entering a memorandum of this Agreement on the certificate of title to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document to enable the memorandum to be registered under that Section.

5. **CONSULTATIVE COMMITTEE**

The Owner and the Council will establish a Consultative Committee for the purposes of monitoring compliance with this Agreement and any relevant licences and permits. The Consultative Committee shall comprise two representatives of the Owner, one representative of the Department of Manufacturing and Industry Development, three representatives from the Council and three local residents. The Owner's representatives shall represent the occupiers of the land and shall be familiar with all operations on the land. Meetings shall be held three monthly or as determined by the Committee. A quorum for any meeting shall consist of at least four persons comprising one Owner representative, one Council representative and two local residents.

6. **DEFAULT OF OWNER**

In the event of the Owner defaulting or failing to perform any of its obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner

and any such costs shall until paid be and remain a charge on the said land and shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

7. INDEMNITY

The Owner covenants and agrees that it will indemnify and keep indemnified the Council, its officers, servants, agents, workmen and contractors from and against all costs expenses, losses or damages whatsoever which the Council its officers, servants, agents, workmen and contractors may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in Clause 6 of this Agreement.

8. ACKNOWLEDGEMENT AND UNDERTAKING

- 8.1. The parties acknowledge that the Administrative Appeals Tribunal proceedings have been struck out in consideration of the terms and conditions of this Agreement.
- 8.2. The Council undertakes not to bring any further proceedings in respect of alleged past breaches of the permit conditions.
- 8.3. The Council undertakes that provided the Owner is in compliance with the terms and conditions of this Agreement, the Council will not bring any further proceedings or provide direct or indirect assistance save in the normal course of its responsibilities to any other parties to bring proceedings asserting that the uses referred to in the Agreement are prohibited prior to 31 December 2014.

9. GENERAL

9.1. Notices

9.1.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (i) by delivering it personally to that party; or
- (ii) by sending it by post, postage pre-paid addressed to that party at his address set out in this Agreement or subsequently notified to each party from time to time.

9.1.2. A notice or other communication is deemed served, if delivered, upon delivery and, if posted, on the expiration of two business days after the date of posting.

9.2. Further Assurance

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

9.3. No Waiver

Any time or other indulgence granted by the Council to the Owner or any judgment or order obtained by the Council against the Owner will not

in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

9.4. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

9.5. No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the subject land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

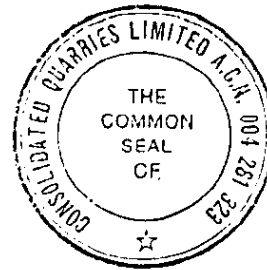
THE CORPORATE SEAL of THE)
MAYOR COUNCILLORS AND CITIZENS)
OF THE CITY OF OAKLEIGH was)
hereunto affixed in the)
presence of)

..... Mayor

..... Councillor

..... Town Clerk/Chief Executive

THE COMMON SEAL of THE)
CONSOLIDATED QUARRIES LTD)
was hereunto affixed in)
accordance with its Articles)
of Association in the presence)
of:)



..... *J. Newlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR

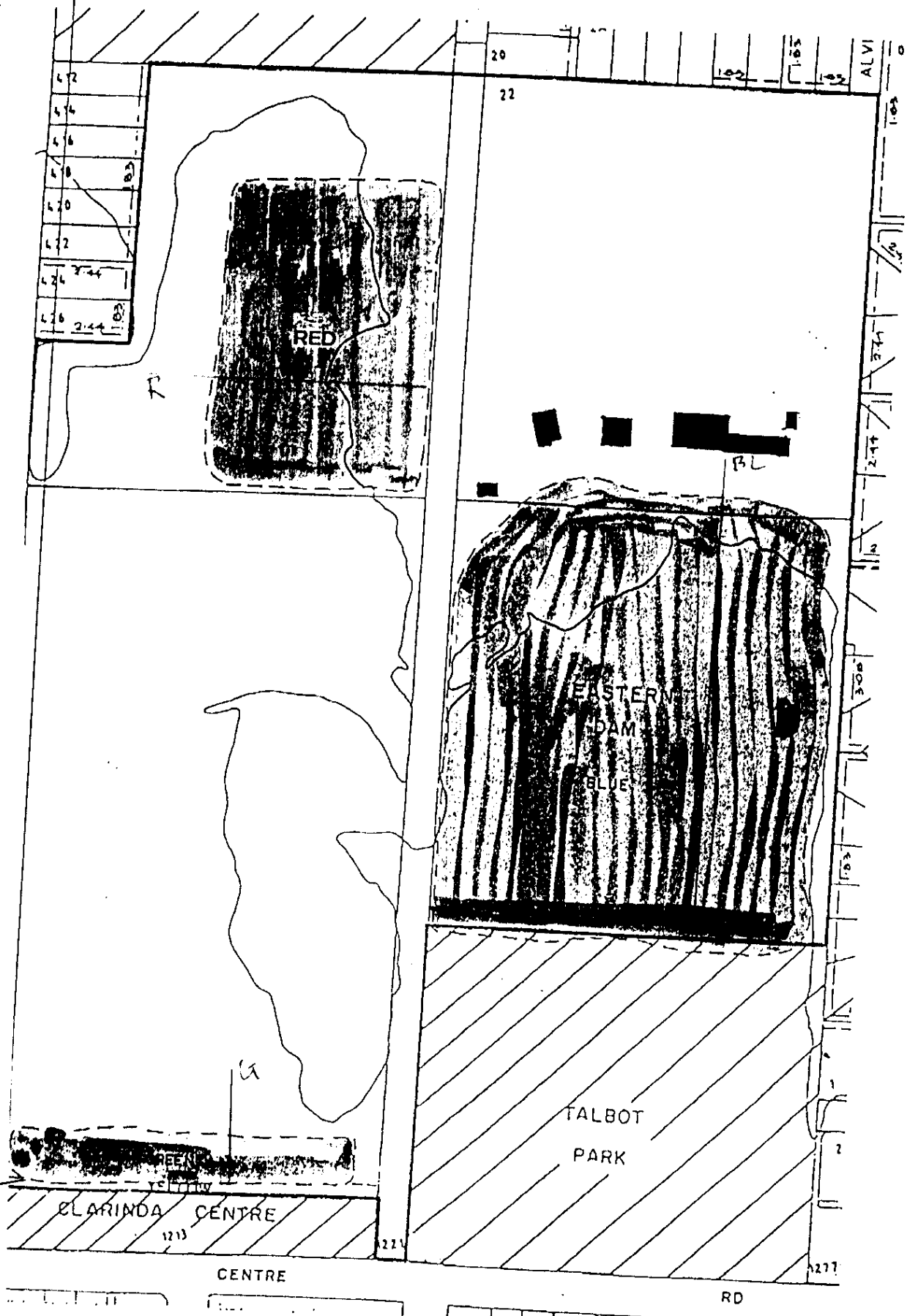
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

6135681690-

61 3 6700062: # 2

PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



COLOUR CODE

- Y = Yellow G = Green O = Orange
- BL = Blue BR = Brown CH = Cross Hatched
- R = Red P = Purple PK = Pink H = Hatched



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 28/09/2021 04:08:26 PM

Status	Registered	Dealing Number	AR342526G
Date and Time Lodged	13/08/2018 01:14:17 PM		

Lodger Details

Lodger Code	20345Y
Name	PIPER ALDERMAN
Address	
Lodger Box	
Phone	
Email	
Reference	GHT:409713

MORTGAGE

Jurisdiction	VICTORIA
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Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest being mortgaged

FEE SIMPLE

Land Title Reference

3645/846
6313/437
8186/871
8343/532
9402/344
10378/210

Mortgagor

Name	HUNTINGDALE ESTATE NOMINEES PTY LTD
ACN	146749822

Mortgagee

Name	MELBOURNE SECURITIES CORPORATION LIMITED
ACN	160326545
Address	
Floor Type	LEVEL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Mortgage Form version 1.5

Floor Number 2
Street Number 120
Street Name COLLINS
Street Type STREET
Locality MELBOURNE
State VIC
Postcode 3000

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference AA3574

(b) Additional terms and conditions

1. The reference to the term "Secured Money" in the Memorandum of Common Provisions AA3574 is replaced with the following term: "Secured Money" means all money which the Mortgagor owes to the Mortgagee under the Deed of Guarantee - Sterling Global Capital Mortgage Income Fund between the Mortgagee and the Mortgagor dated on or about the date of the Mortgage Form.

Mortgagee Execution

1. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
2. The Certifier has taken reasonable steps to verify the identity of the mortgagee.
3. The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
(a) has taken reasonable steps to verify the identity of the mortgagor; and
(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Certifier has retained the evidence supporting this Registry Instrument or Document.

Executed on behalf of MELBOURNE SECURITIES CORPORATION LIMITED
Signer Name GREGORY HUGH TAYLOR
Signer PIPER ALDERMAN
Organisation
Signer Role AUSTRALIAN LEGAL PRACTITIONER
Execution Date 13 AUGUST 2018

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

THE LAND COLOURED BLUE IS APPROPRIATED OR SET APART FOR EASEMENTS OF DRAINAGE AND SEWERAGE

THE LAND COLOURED BROWN IS APPROPRIATED OR SET APART FOR ROADS

PLAN OF SUBDIVISION

Part of Crown Allotment 6, Section 2

PARISH OF MORDIALLOC

COUNTY OF BURKE

LP 12090

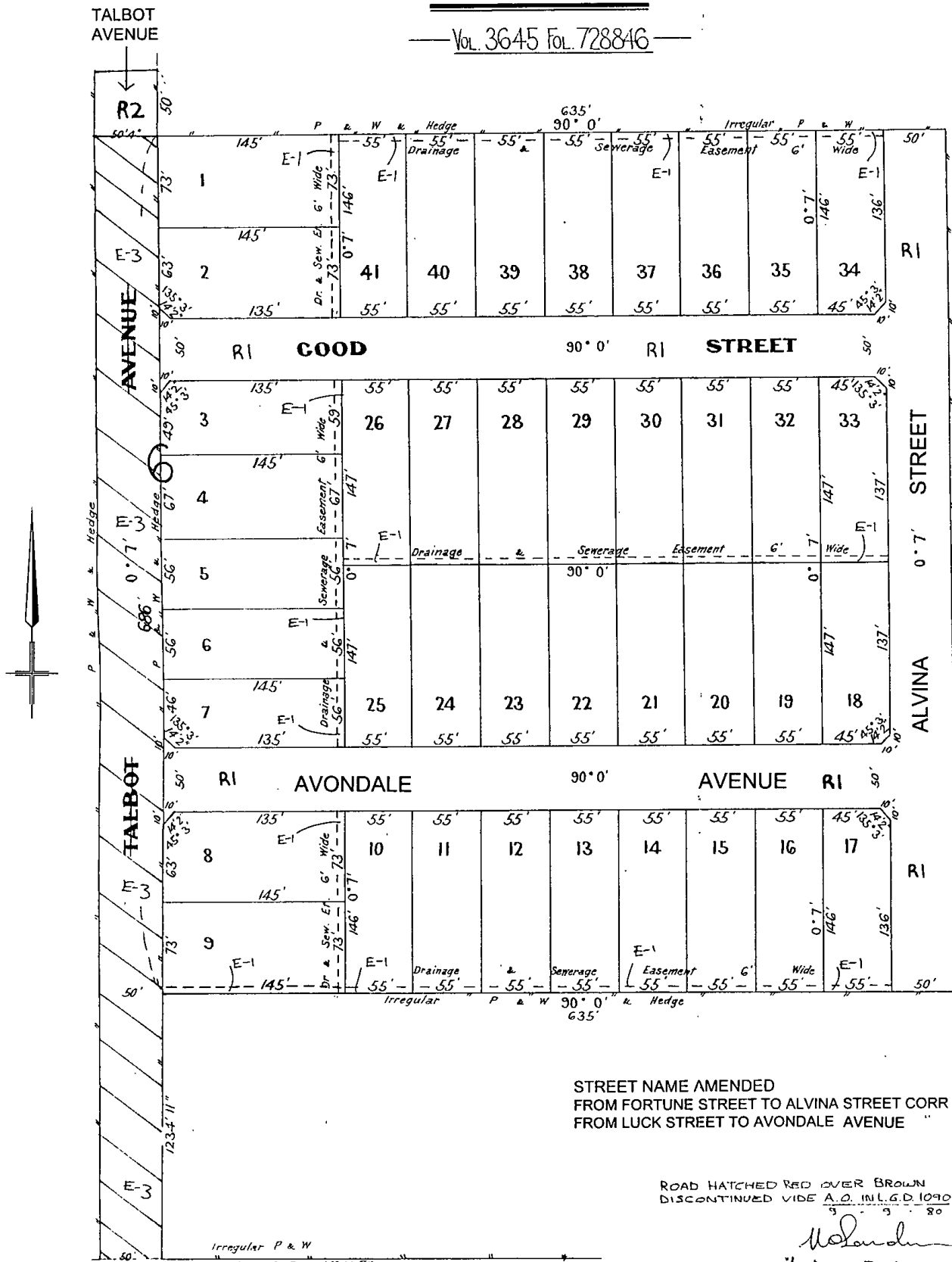
EDITION 1

PLAN MAY BE LODGED 27/04/1927

COLOUR CODE
 E-1 = BLUE
 R1&R2 = BROWN
 E-3 = HATCHED RED OVER BROWN

Scale 100 Feet to an Inch

Vol. 3645 Fol. 728846



7

STREET NAME AMENDED
 FROM FORTUNE STREET TO ALVINA STREET CORR 60/31331
 FROM LUCK STREET TO AVONDALE AVENUE

ROAD HATCHED RED OVER BROWN
 DISCONTINUED VIDE A.O. IN L.G.D. 1090
 5 3 80

W. J. ...
 Assistant Registrar of Titles

Irregular P & W
 Line of Pegs 11/11521

CENTRE ROAD