

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 : 124052515118D  
Produced 10/10/2014 02:26 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 AH638599Q 26/11/2010  
TALBOT ROAD FINANCE PTY LTD  
TRANSFER OF MORTGAGE AK601617X 18/09/2013

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

Delivered from the Landata ® System by SAI Global Property Division Pty Ltd  
Delivered at 10/10/2014, for Order Number 24391191. Your reference: MA8278.

MONASH CITY COUNCIL	
FILE:	
FOLIO:	
RECEIVED:	13 OCT 2014
REFERRED:	
COPY TO:	
REPLY REQUIRED:	YES NO
SUBFILED TO:	



260593 1222 MISC \$56 \$505281N

\$505281N

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]

15/3/93

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: *X*  .....

Name of Officer: *ADRIAN HALLIDAY* .....

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 13<sup>th</sup> day of <sup>1993</sup> 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.

- 2 -

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



- 5 -

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.

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- 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

- 9 -

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. H. Newlands* Director

..... *Adams* Director/Secretary

month/HPT/D/3320003 KR

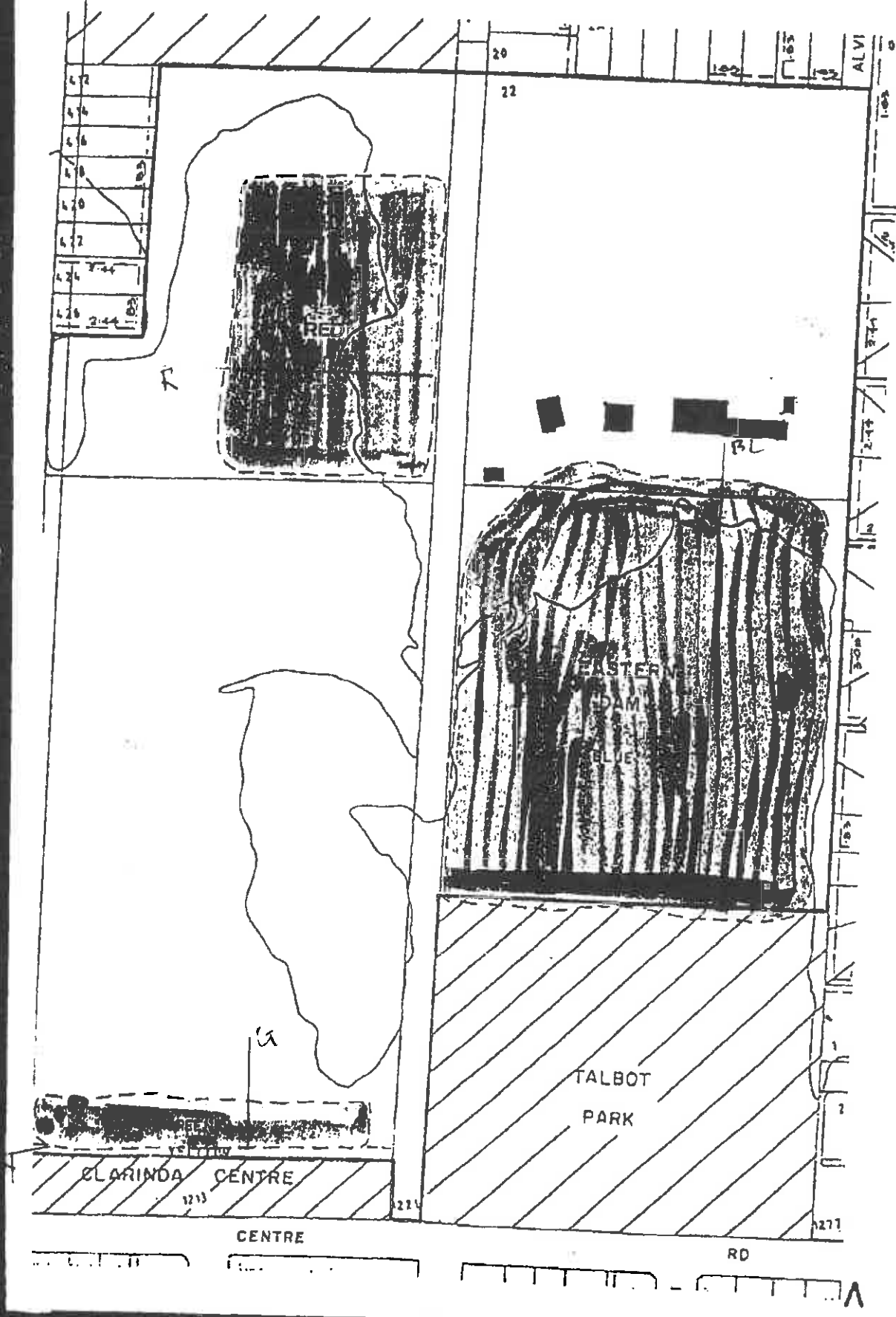
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

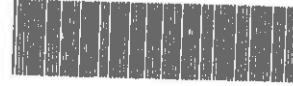
8135681690-

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

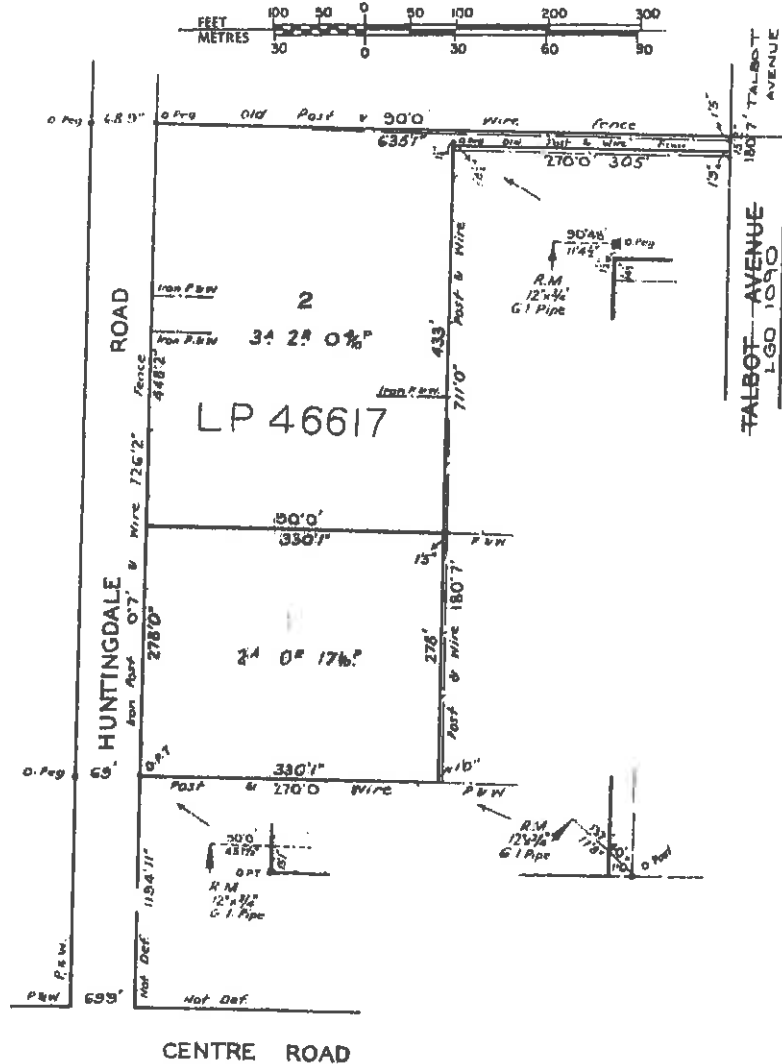


SCLP038793-1-5

LP 38793  
EDITION 1

38793

PLAN OF SUBDIVISION  
OF PART OF CROWN ALLOTMENT 6 SECTION 2  
PARISH OF MORDIALLOC  
COUNTY OF BOURKE  
V 4070 F-937



38793

36283

THIS IS THE BACK OF LP 38793

38793

POSTED: *MB*  
COLOURED: *MB*  
CHECKED: *MB*

Register Search Statement - Volume 8186 Folio 871

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Created by instrument A465942 16/01/1958

REGISTERED PROPRIETOR

Estate Fee Simple  
Sole Proprietor

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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

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260593 1222 MISC 956 S505281N

S505281N

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

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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*.

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**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:**

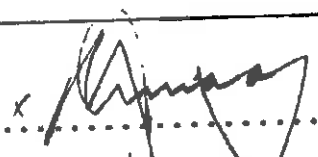
[ghp 9303311n.1:020493]

27/6/93

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  
7th APRIL 1993 SIGNING

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 13<sup>th</sup> day of <sup>1993</sup> March 1993 ✓

**BETWEEN:**

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

- and -

CONSOLIDATED QUARRIES LIMITED (A.C.N. 004 281 323)  
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**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"). ✓
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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.

- 2 -

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:

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**2. INTERPRETATION**

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

- 3 -

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(Use and Operating conditions)

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- 5 -

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- 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



- 9 -

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.

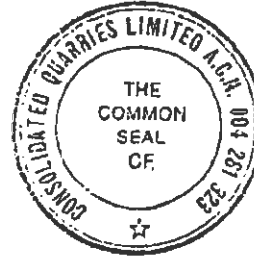
THE CORPORATE SEAL of THE )  
MAYOR COUNCILLORS AND CITIZENS )  
OF THE CITY OF OAKLEIGH was )  
hereunto affixed in the )  
presence of )

..... 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

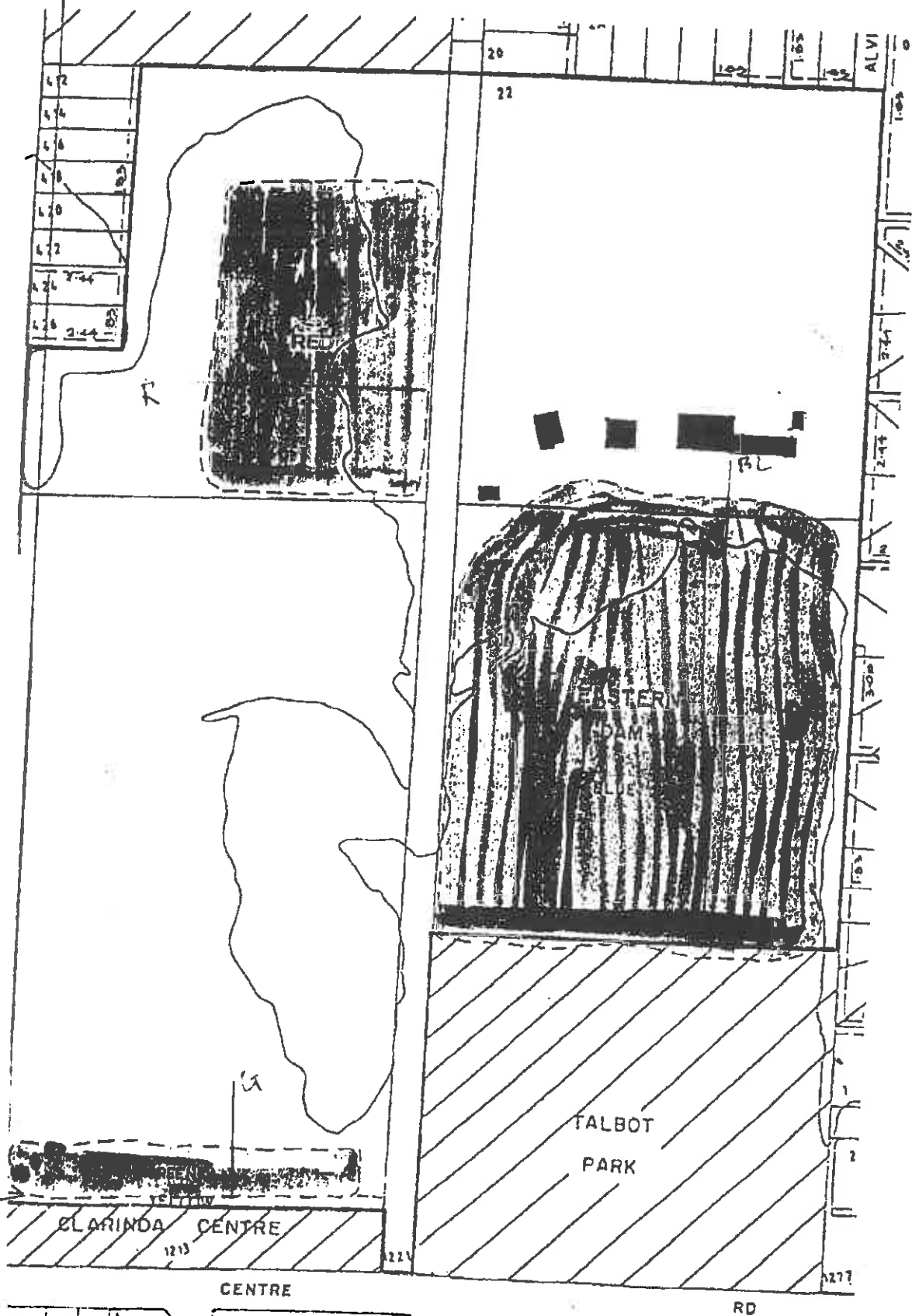
BY: CITY OF OAKLEIGH

:31- 8-92 : 2:30PM ;

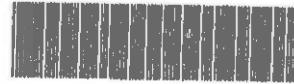
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61 3 6700062: # 2

# 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

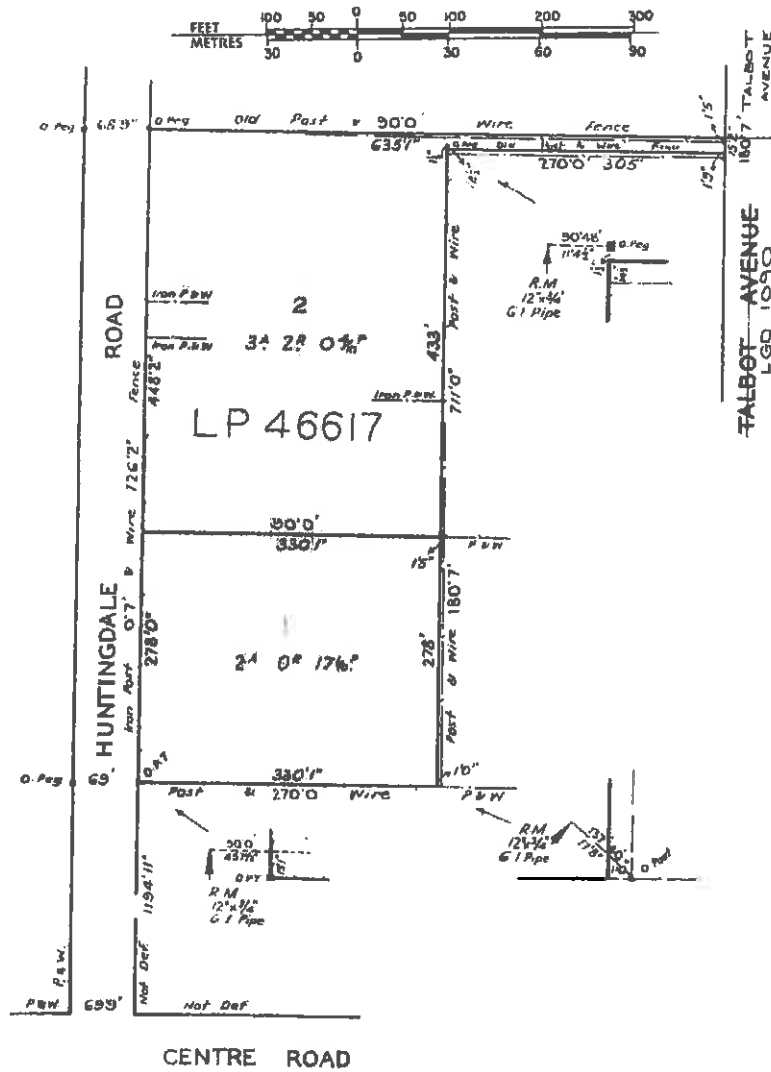


SCLP038793-1-5

LP 38793  
EDITION 1

38793

PLAN OF SUBDIVISION  
OF PART OF CROWN ALLOTMENT 6 SECTION 2  
PARISH OF MORDIALLOC  
COUNTY OF BOURKE  
V 4070 F-937



38793

36283

THIS IS THE BACK OF LP 38793

38793

POSTED: *SKB*  
COLOURED: *SKB*  
CHECKED: *M*



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 : 124052516094S  
Produced 10/10/2014 02:59 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, 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 AH638599Q 26/11/2010

TALBOT ROAD FINANCE PTY LTD

TRANSFER OF MORTGAGE AK601617X 18/09/2013

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

Delivered from the Landata © System by SAI Global Property Division Pty Ltd  
Delivered at 10/10/2014, for Order Number 24393028. Your reference: MA8278.



260593 1222 MISC \$56 \$505281N

\$505281N

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: *X*  .....

Name of Officer: *ADRIAN HALLIDAY* .....

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 *15<sup>th</sup>* day of *March* 199*7*<sup>*3*</sup> ✓

**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.

- 2 -

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.

- 3 -

- 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



- 5 -

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;
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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.

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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 )

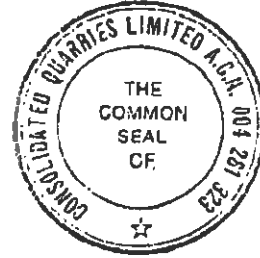
..... Mayor

..... 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

..... *J. Adams* ..... Director/Secretary

month/HPT/D/3320003 KR

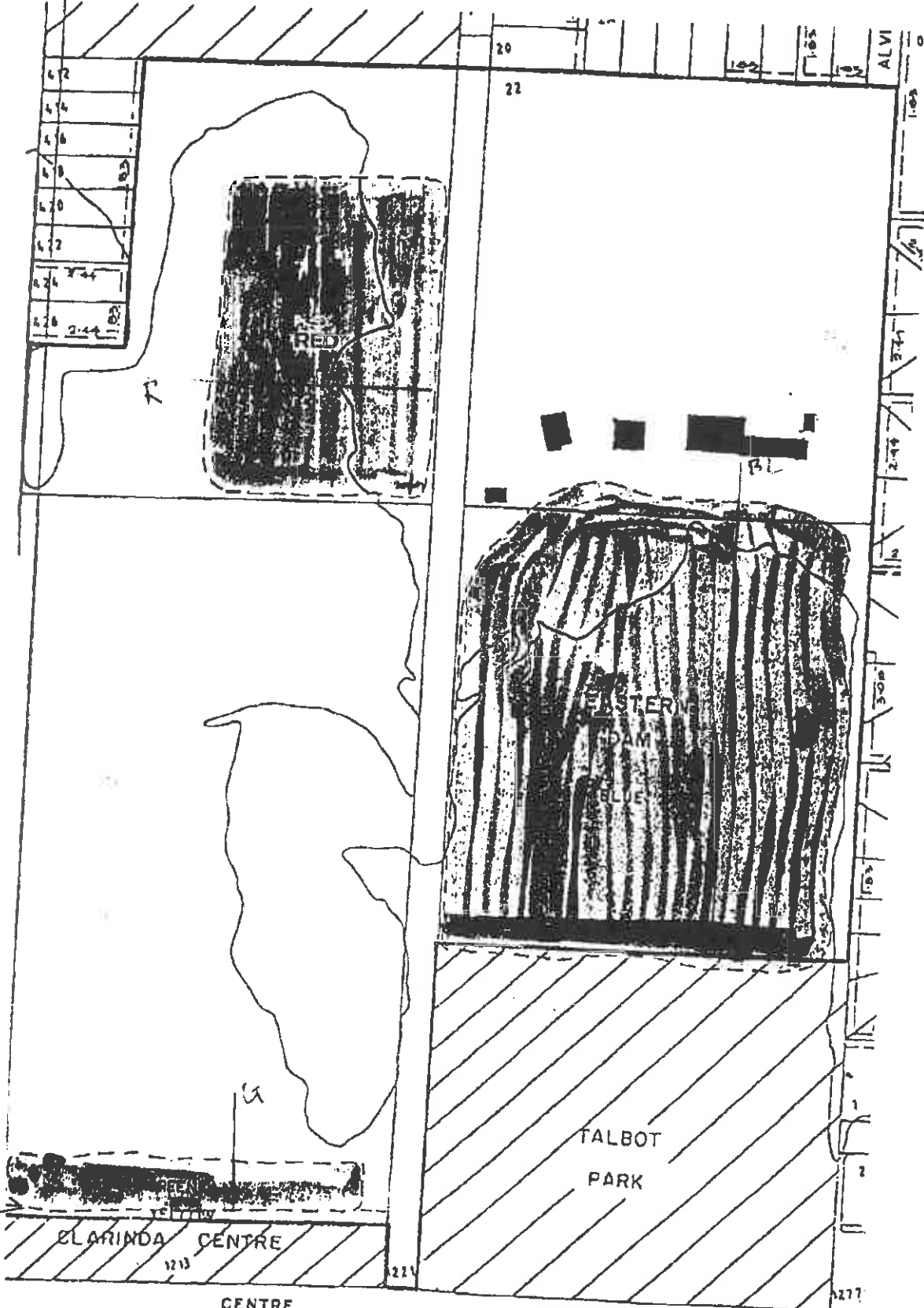
BY: CITY OF OAKLEIGH

31- 8-92 ; 2:30PM ;

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# PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



**COLOUR CODE**  
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 BL = Blue BR = Brown CH = Cross Hatched  
 R = Red P = Purple PK = Pink H = Hatched

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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 BOURKE

**LP 12090**

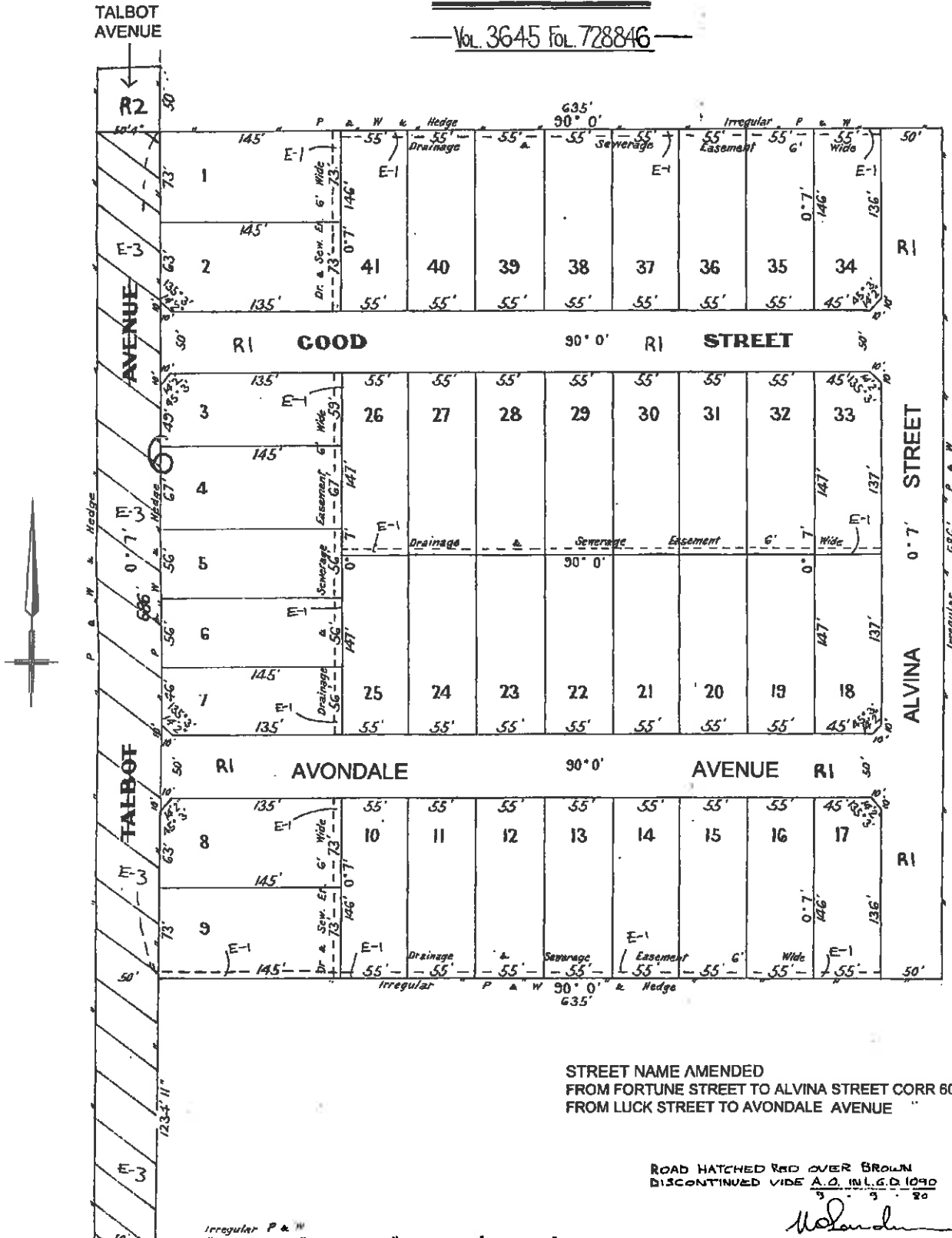
EDITION 1

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 ALVENA STREET CORR 60/31331  
FROM LUCK STREET TO AVONDALE AVENUE

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

*[Signature]*  
Assistant Registrar of Titles

Irregular P & W  
Line of Page 11/11521

CENTRE ROAD

**MONASH CITY COUNCIL**  
FILE:  
FOLIO:  
RECEIVED: 13 OCT 2014  
REFERRED:  
COPY TO:  
REPLY REQUIRED: YES NO  
SUBFILED TO:

Register Search Statement - Volume 10378 Folio 210

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

VOLUME 10378 FOLIO 210

Security no : 124052514657E  
Produced 10/10/2014 02:11 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 AH638599Q 26/11/2010  
TALBOT ROAD FINANCE PTY LTD  
TRANSFER OF MORTGAGE AK601617X 18/09/2013

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

Delivered from the Landata @ System by SAI Global Property Division Pty Ltd  
Delivered at 10/10/2014, for Order Number 24390510. Your reference: MA8278.



260593 1222 MISC \$55 5505281N

6505281N

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

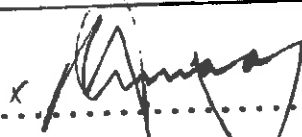
**AGREEMENT WITH:**

[ghp 9303311n.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: *X*  .....

Name of Officer: *ADRIAN HALLIDAY* .....

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 13<sup>th</sup> day of <sup>1993</sup> 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.

- 2 -

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.

- 3 -

- 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

- 5 -

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.

- 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



- 9 -

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

- 10 -

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.

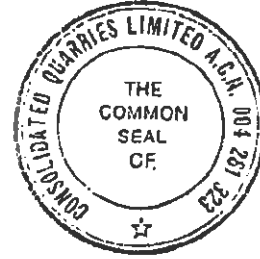
THE CORPORATE SEAL of THE )  
MAYOR COUNCILLORS AND CITIZENS )  
OF THE CITY OF OAKLEIGH was )  
hereunto affixed in the )  
presence of )

..... 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

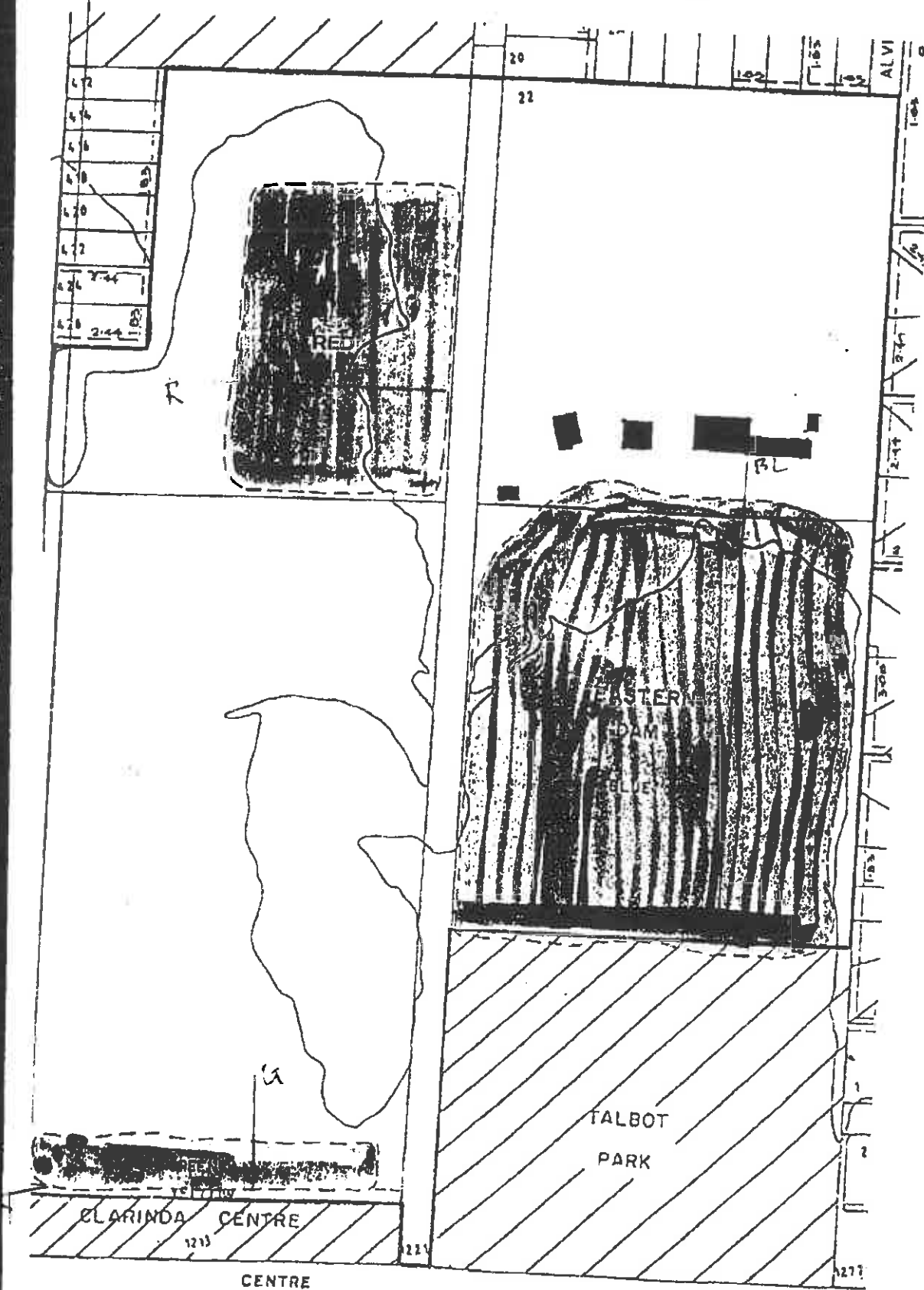
BY: CITY OF OAKLEIGH

31-8-92 ; 2:30PM ;



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61 3 6700062: # 2

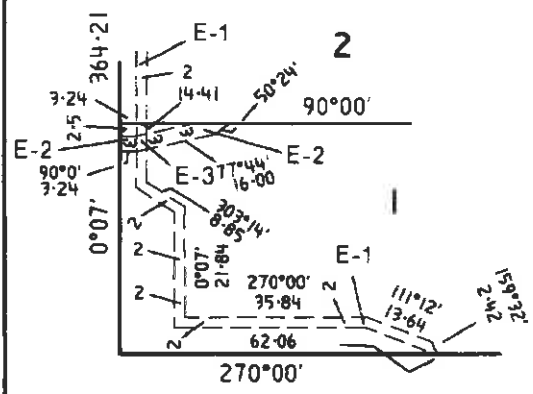
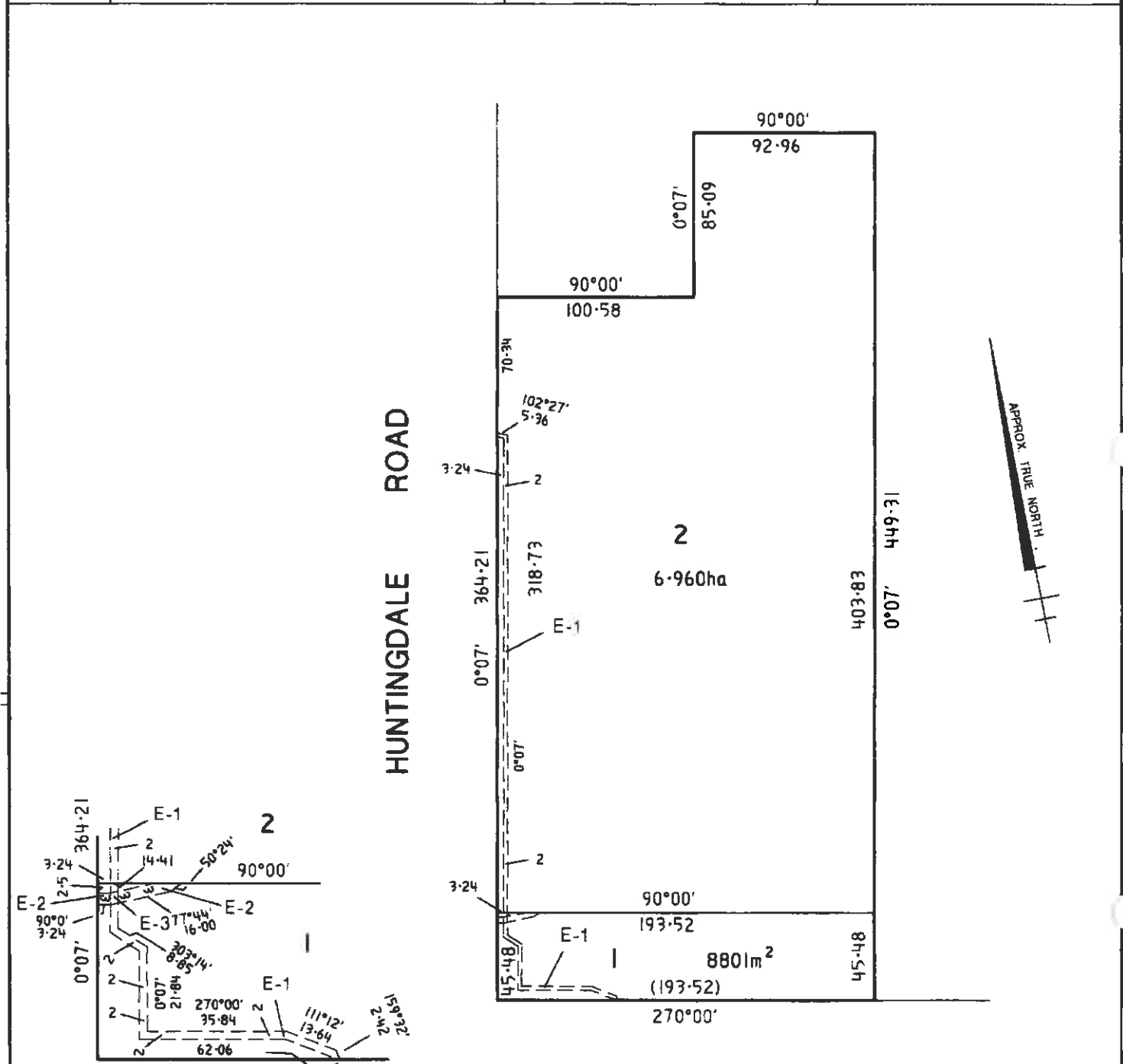
# PIONEER CONCRETE (VIC) P/L SAND EXTRACTION SITE



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

<b>PLAN OF SUBDIVISION</b>		STAGE NO. -----	LTO use only. <b>EDITION 1</b>	Plan Number <b>PS 409879 V</b>																							
Location of Land Parish: <b>MORDIALLOC</b> Township: ----- Section: <b>2</b> Crown Allotment: <b>6 (PART)</b> Crown Portion: -----  LTO Base Record: <b>CHART 68</b> Title Reference: <b>Vol.8550 Fol.541 &amp; Vol.9527 Fol.364</b> Last Plan Reference: <b>Lot 3,4,5,6 (Pts) on LP 4961 &amp; CP 156046</b> Postal Address: <b>Cnr. Huntingdale &amp; Centre Road OAKLEIGH SOUTH, 3167.</b> AMG Co-ordinates <b>E 333 100 N 5 800 700 Zone: 55</b>		Council Certificate and Endorsement Council Name: <b>Monash City Council</b> Ref. <b>5456AM</b> <del>1. This plan is certified under section 6 of the Subdivision Act 1988.</del> 2. This plan is certified under section 11(7) of the Subdivision Act 1988. Date of original certification under section 6 <b>12 / 12 / 97</b> 3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988. <b>OPEN SPACE</b> (i) A requirement for public open space under section 18 of the Subdivision Act 1988 <del>has</del> /has not been made. <del>(ii) The requirement has been satisfied.</del> <del>(iii) The requirement is to be satisfied in Stage -----</del> Council delegate <del>Council seal</del> Date <b>24 / 2 / 98</b> <del>Re-certified under section 11(7) of the Subdivision Act 1988</del> <del>Council Delegate</del> <del>Council Seal</del> <del>Date / /</del>																									
Vesting of Roads and/ or Reserve <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">Identifier</th> <th style="width: 50%;">Council / Body / Person</th> </tr> <tr> <td style="text-align: center;">NIL</td> <td style="text-align: center;">NIL</td> </tr> </table>		Identifier	Council / Body / Person	NIL	NIL	Notations Staging This is not a staged subdivision. Planning Permit No. Depth Limitation Does not apply.																					
Identifier	Council / Body / Person																										
NIL	NIL																										
Amendments: V1 2/7/97 V2 11/2/98 EASEMENT E-2 ADDED																											
Area of Site: <b>7.840ha</b> No. of Lots: <b>2</b>		Survey This plan is not based on survey. This survey has been connected to permanent mark No(s) In Proclaimed Survey Area No.																									
<b>Easement Information</b>																											
Legend: <b>A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)</b>																											
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 10%;">Easement Reference</th> <th style="width: 20%;">Purpose</th> <th style="width: 10%;">Width (Metres)</th> <th style="width: 15%;">Origin</th> <th style="width: 45%;">Land Benefited/In Favour Of</th> </tr> <tr> <td>E-1</td> <td>Sewerage</td> <td>See dia.</td> <td>This plan</td> <td>South East Water Limited</td> </tr> <tr> <td>E-2</td> <td>Pipeline &amp; Electricity Cable</td> <td>3</td> <td>This plan</td> <td>Vol 8420 Fol 815</td> </tr> <tr> <td rowspan="2">E-3</td> <td>Sewerage</td> <td rowspan="2">See dia</td> <td>This plan</td> <td>South East Water Limited</td> </tr> <tr> <td>Pipeline &amp; Electricity Cable</td> <td>This plan</td> <td>Vol 8420 Fol 815</td> </tr> </table>					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
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 <b>27 / 3 / 98</b>																											
LTO use only PLAN REGISTERED TIME <b>4:00PM</b> DATE <b>17 / 4 / 98</b>  Assistant Registrar of Titles Sheet <b>1</b> of <b>2</b>																											
 <b>TAYLORS</b> LAND SURVEYORS·TOWN PLANNERS PROPERTY CONSULTANTS <small>AVIRY AND PHEASANTS PTY. LTD. AGLD 078 028 114                  303 BURWOOD HWY, BURWOOD EAST 3161 TEL. 9603 8033 FAX. 9637 8821</small>		LICENSED SURVEYOR : <b>GEOFFREY LESLIE COOPER</b> Signature ..... Date <b>11 / 2 / 98</b> REF. <b>7012/2L</b> VERSION <b>2</b> 11/2/98 G.R.																									
		Date <b>24 / 2 / 98</b> Council Delegate Signature Original sheet size A3																									

<b>PLAN OF SUBDIVISION</b>	STAGE NO. -----	Plan Number <b>PS 409879 V</b>
----------------------------	--------------------	-----------------------------------



**HUNTINGDALE ROAD**

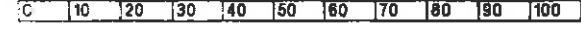
**CENTRE ROAD**



**TAYLORS**  
LAND SURVEYORS · TOWN PLANNERS  
PROPERTY CONSULTANTS

19577 AND PREVIOUSLY LTD. A/CN 878 088 111  
303 BURWOOD HWY, BURWOOD EAST 3161 TEL. 9803 8833 FAX 9887 8821

ORIGINAL		SCALE		LICENSED SURVEYOR : GEOFFREY LESLIE COOPER		Sheet 2 of 2	
SCALE	SHEET SIZE	20 0 40 80		Signature	Date 11/ 2 / 98	Date 24 / 2 / 98	
1:2000	A3	LENGTHS ARE IN METRES		REF. 7012/2L	VERSION 2	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 : 124052515312S  
Produced 10/10/2014 02:33 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 AH638599Q 26/11/2010

TALBOT ROAD FINANCE PTY LTD

TRANSFER OF MORTGAGE AK601617X 18/09/2013

COVENANT 1909682

as to Lot 1 on Title Plan 803687U

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section  
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S505281N 26/05/1993

DIAGRAM LOCATION

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SEE TP803687U FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

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NIL

DOCUMENT END

Delivered from the Landata ® System by SAI Global Property Division Pty Ltd  
Delivered at 10/10/2014, for Order Number 24391514. Your reference: MA8278.

413007

1909082

*W.H. Fregon*

*Walter Henry Fregon*

*W.H. Fregon*

VICTORIA

TRANSFER OF LAND.

*[Large handwritten signature]*



CLARINDA POULTRY FARM PROPRIETARY LIMITED

*Melbourne*  
~~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 5 on Plan of Subdivision No. 4961 lodged in the Office of Titles and being part of Crown Allotment 5 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 DOETH 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.



*44114-704 Pt 1*  
*Area 3' 0" x 35' 0"*  
*205m Road*  
*shown on L.P. 1*  
*Excess to the 10' wide*  
*the foot hereon*

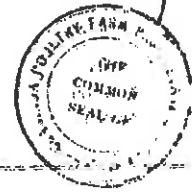
*Abel*  
*21.5.1111*  
*16.5.1111*  
*Reg. extra Nil*  
*6-6-1111*

DATED the 12<sup>th</sup> 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 H. Fregon*  
*as Director*  
*Walter H. Fregon*  
*Secretary*

Director  
Director  
Secretary.



*1971-4*

SIGNED by the said Walter Henry Fregon) *Walter Henry Fregon*  
in Victoria in the presence of *J.P. [Signature]*

Encumbrances referred to

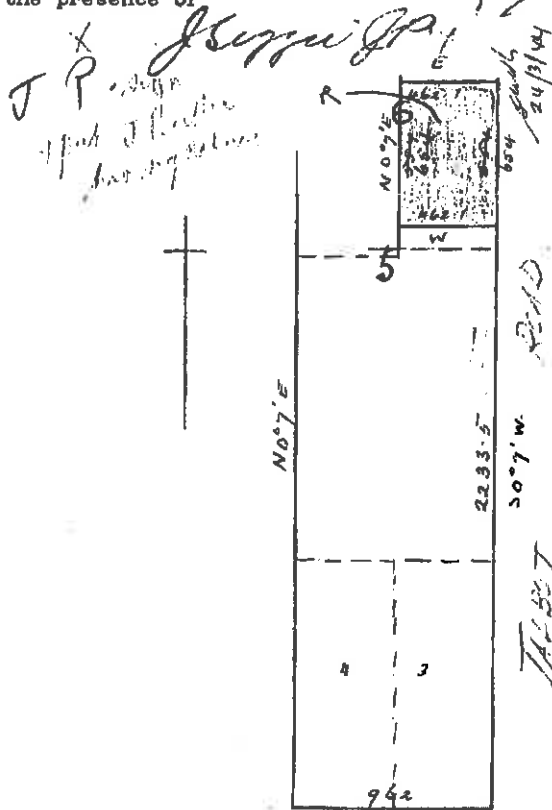
Nil.

I THE SAID WALTER HENRY FREGON the transferee in the above instrument of Transfer declare that the transaction to which the said instrument relates is not in contravention of any of the provisions of the National Security (Land Transfer) Regulations and that the said instrument has not been signed in contravention of the said Regulations.

SIGNED by the said Walter Henry Fregon) *Walter Henry Fregon*  
in the presence of *J.P. [Signature]*

COLOUR CODE

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



MEASUREMENTS IN LINKS



260593 1222 MISC 956 5505281N

5505281N

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: *[Handwritten Signature]*  
Name of Officer: *ADRIAN HALLIDAY*  
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 15<sup>th</sup> day of <sup>1973</sup> 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.

- 2 -

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.



- 3 -

- 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

- 5 -

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.

- 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

- 9 -

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.

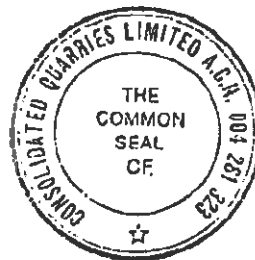
THE CORPORATE SEAL of THE )  
MAYOR COUNCILLORS AND CITIZENS )  
OF THE CITY OF OAKLEIGH was )  
hereunto affixed in the )  
presence of )

*[Signature]*..... Mayor

*[Signature]*..... Councillor

*[Signature]*..... 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

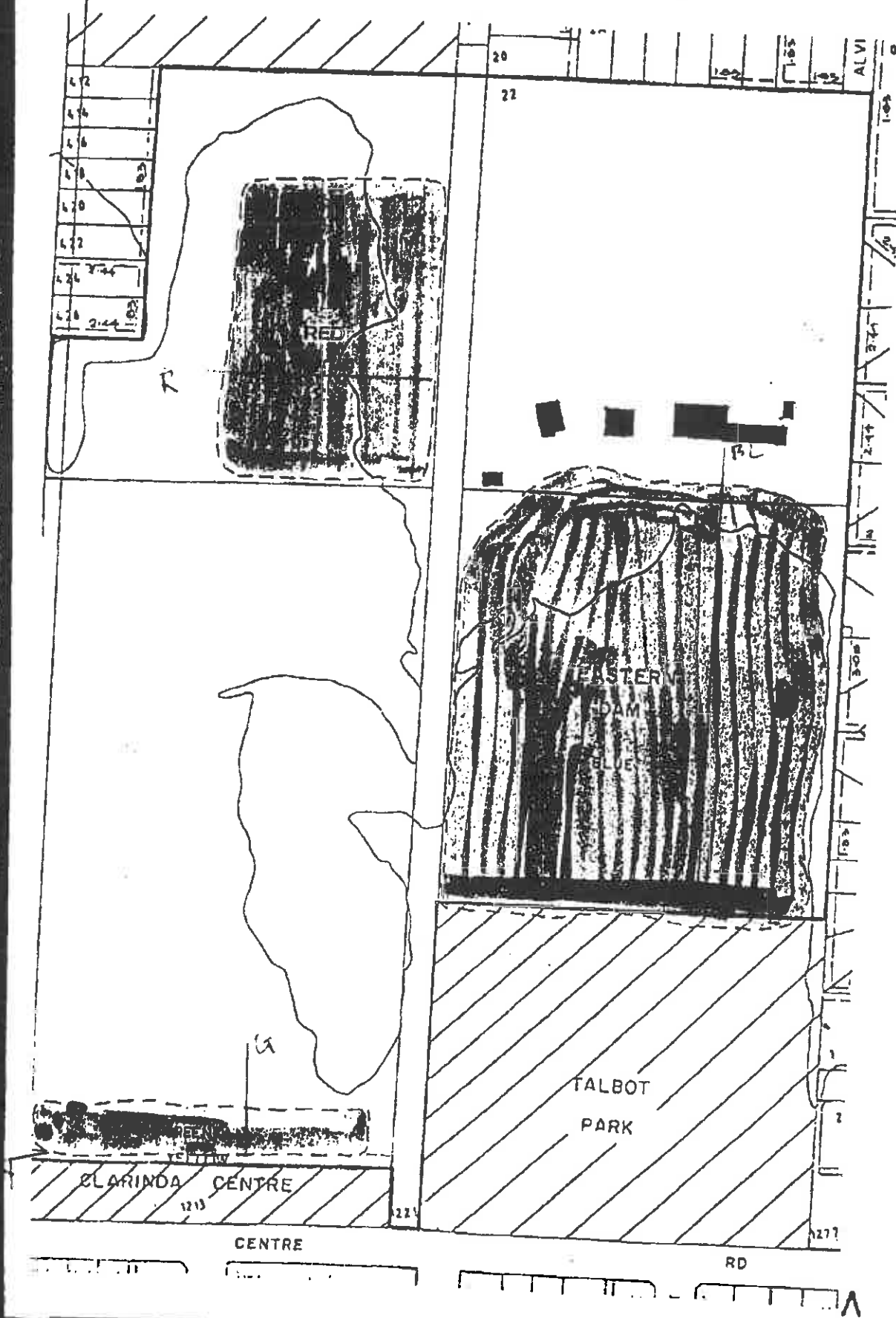
month/HPT/D/3320003 KR

BY: CITY OF OAKLEIGH

31- 8-92 : 2:30PM ;  
PIONEER CONCRETE (VIC) P/L  
SAND EXTRACTION SITE

6135881690-

61 3 6700062: # 2

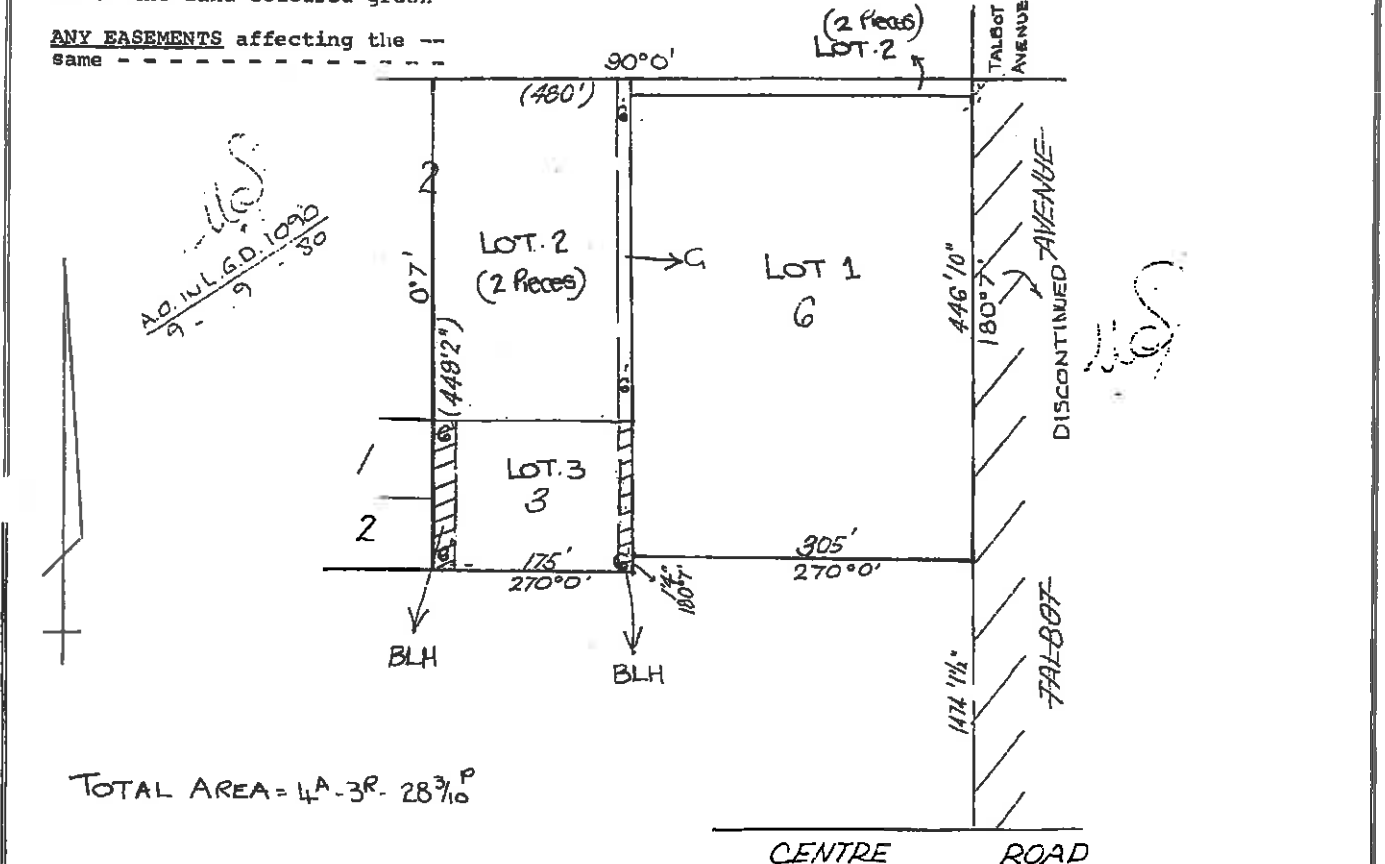


**COLOUR CODE**  
 Y = Yellow G = Green O = Orange  
 BL = Blue BR = Brown CH = Cross Hatched  
 R = Red P = Purple PK = Pink H = Hatched

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

<p><b>Location of Land</b></p> <p>Parish : MORDIALLOC                  Township : -                  Crown Allotment :                  Crown Portion :                  Section :</p> <p>Base record : DCMB                  Last Plan Reference : LP 4961, LP 46617 &amp; LP 53359                  Derived From : VOL. 8343 FOL. 532</p> <p>Depth Limitation :</p>	<p style="text-align: center;"><b>Notations</b></p> <p style="text-align: center;">ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN</p>
---	--

<p style="text-align: center;"><b>Description of Land/ Easement Information</b></p> <p style="text-align: center;">Together with a right of carriage way over the roads coloured brown on Plan of Subdivision No.4961 - - - - -</p> <p><b>ENCUMBRANCES</b></p> <p>As to the land coloured - - - - - blue-hatched - - - - -</p> <p><b>THE EASEMENTS</b> (if any) - - - - - existing over the same by - - - - - virtue of Section 98 of the - - - - - Transfer of Land Act - - - - -</p> <p>As to the land coloured green-</p> <p><b>ANY EASEMENTS</b> affecting the - - - - - same - - - - -</p>	<p>THIS PLAN HAS BEEN PREPARED BY LAND REGISTRY, LAND VICTORIA FOR TITLE DIAGRAM PURPOSES</p> <p>COMPILED: Date 13/09/05                  VERIFIED: A. DALLAS                  Assistant Registrar of Titles</p> <p style="text-align: center;"><b>COLOUR CODE</b></p> <p>BL=BLUE      G=GREEN                  BR=BROWN    P=PURPLE                  Y=YELLOW     R=RED                  H=HATCH     CH=CROSS HATCH</p>
---	--



TOTAL AREA = 4<sup>A</sup> - 3<sup>R</sup> - 28<sup>3</sup>/<sub>10</sub><sup>P</sup>

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 6A 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

**MONASH CITY COUNCIL**  
FILE:  
FOLIO:  
RECEIVED: 13 OCT 2014  
REFERRED:  
COPY TO:  
REPLY REQUIRED: YES NO  
SUBFILED TO:

Register Search Statement - Volume 10378 Folio 210

Copyright State of Victoria. This publication is copyright.  
No part may be reproduced by any process except in accordance with  
the provisions of the Copyright Act and for the purposes of Section  
32 of the Sale of Land Act 1962 or pursuant to a written agreement.  
The information is only valid at the time and in the form obtained  
from the LANDATA REGD TM System. The State of Victoria accepts no  
responsibility for any subsequent release, publication or reproduction  
of the information.

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

VOLUME 10378 FOLIO 210

Security no : 124052514048R  
Produced 10/10/2014 01:45 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 AH638599Q 26/11/2010

TALBOT ROAD FINANCE PTY LTD

TRANSFER OF MORTGAGE AK601617X 18/09/2013

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

Delivered from the Landata ® System by SAI Global Property Division Pty Ltd  
Delivered at 10/10/2014, for Order Number 24389415. Your reference: MA8278.



260593 1222 MISC \$56 \$505281N

\$505281N

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

Titles Office Use Only

Code: 1167E

VICTORIA

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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]

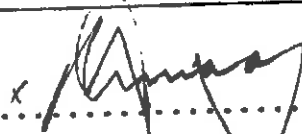
17/6/93



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 HALLIDAY  
PRINT NAME OF OFFICER  
7th APRIL 1993 SIGNING

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 13<sup>th</sup> day of <sup>1993</sup> ~~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:**

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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.

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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.

- 3 -

- 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

- 5 -

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.

- 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

- 9 -

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.

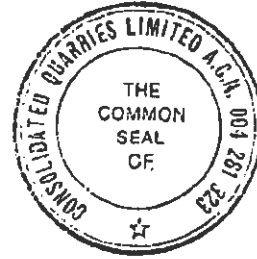
THE CORPORATE SEAL of THE )  
MAYOR COUNCILLORS AND CITIZENS )  
OF THE CITY OF OAKLEIGH was )  
hereunto affixed in the )  
presence of )

..... 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

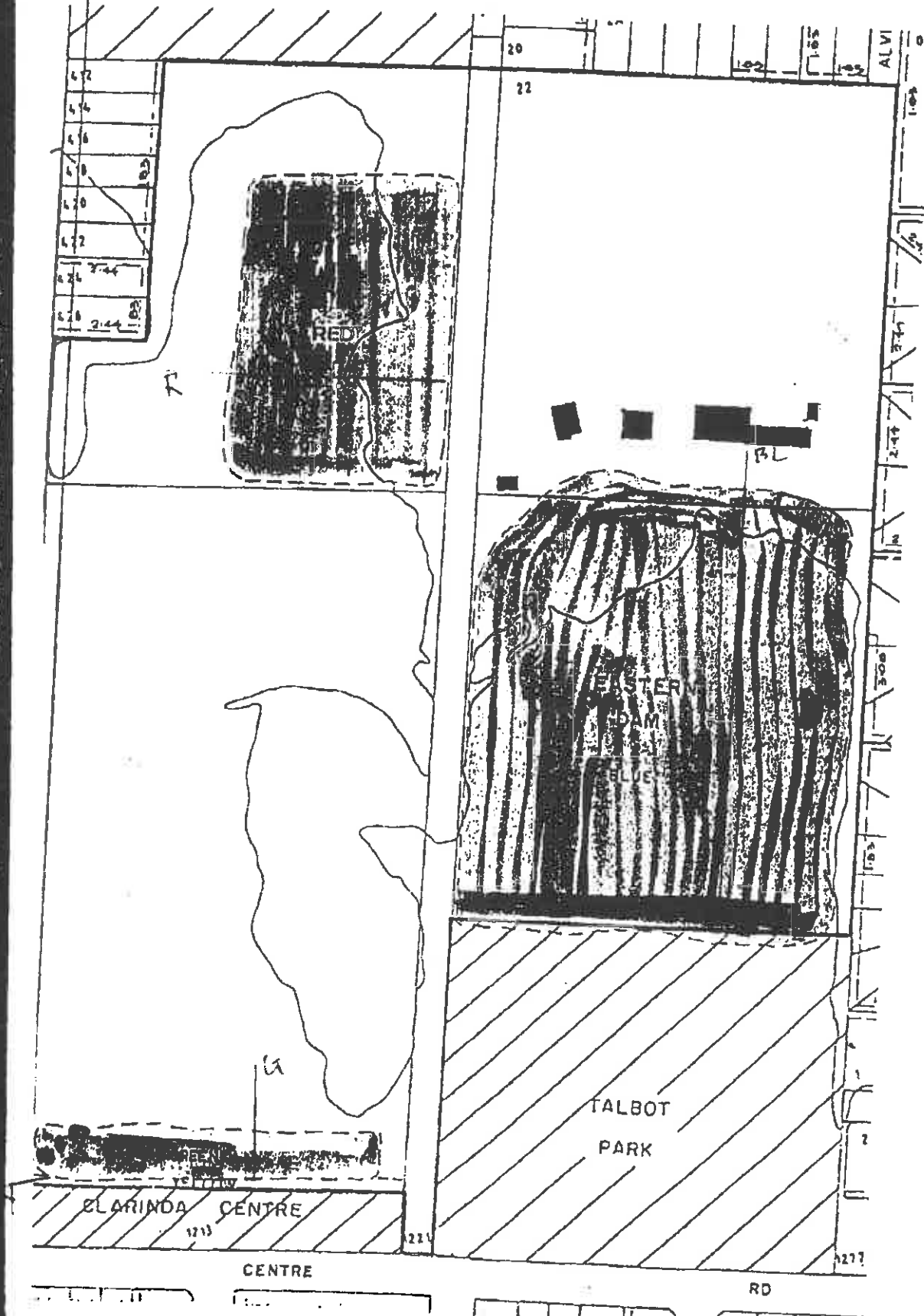
month/HPT/D/3320003 KR

BY: CITY OF OAKLEIGH

31- 8-92 : 2:30PM ;  
PIONEER CONCRETE (VIC) P/L  
SAND EXTRACTION SITE

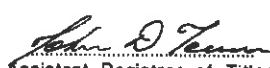

8135881690-

61 3 6700062: # 2



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



<b>PLAN OF SUBDIVISION</b>				STAGE NO. -----	LTO use only. <b>EDITION 1</b>	Plan Number <b>PS 409879 V</b>		
Location of Land Parish: <b>MORDIALLOC</b> Township: ----- Section: <b>2</b> Crown Allotment: <b>6 (PART)</b> Crown Portion: -----  LTO Base Record: <b>CHART 68</b> Title Reference: <b>Vol.8550 Fol.541 &amp; Vol.9527 Fol.364</b> Last Plan Reference: <b>Lot 3,4,5,6 (Pts) on LP 4961 &amp; CP 156046</b> Postal Address: <b>Cnr. Huntingdale &amp; Centre Road OAKLEIGH SOUTH, 3167.</b>  AMG Co-ordinates <b>E 333 100 N 5 800 700 Zone: 55</b>				Council Certificate and Endorsement Council Name: <b>Monash City Council</b> Ref. <b>5456AM</b> <del>1. This plan is certified under section 6 of the Subdivision Act 1988.</del> 2. This plan is certified under section 11(7) of the Subdivision Act 1988. Date of original certification under section 6 <b>12 / 12 / 97</b> 3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988. <b>OPEN SPACE</b> (i) A requirement for public open space under section 18 of the Subdivision Act 1988 <del>has</del> /has not been made. <del>(ii) The requirement has been satisfied.</del> <del>(iii) The requirement is to be satisfied in Stage -----</del> Council delegate <del>Council seal</del> Date <b>24 / 2 / 98</b> <del>Re-certified under section 11(7) of the Subdivision Act 1988</del> <del>Council Delegate</del> <del>Council Seal</del> <del>Date ----- / ----- / -----</del>				
<b>Vesting of Roads and/ or Reserve</b>								
Identifier	Council / Body / Person							
NIL	NIL			<b>Notations</b>				
				<b>Staging</b>	This is not a staged subdivision. Planning Permit No.			
				<b>Depth Limitation</b>	Does not apply.			
Amendments: V1 2/7/97 V2 11/2/98 EASEMENT E-2 ADDED								
Area of Site: <b>7.840ha</b> of Lots: <b>2</b>				Survey This plan is not based on survey. This survey has been connected to permanent mark No(s) In Proclaimed Survey Area No.				
<b>Easement Information</b>								
Legend: <b>A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)</b>								
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 <b>27 / 3 / 98</b>  LTO use only PLAN REGISTERED TIME <b>4:00PM</b> DATE <b>17 / 4 / 98</b>  Assistant Registrar of Titles Sheet 1 of 2								
 <b>TAYLORS</b> LAND SURVEYORS-TOWN PLANNERS PROPERTY CONSULTANTS <small>AVIRY AND PRIZAKOVA PTY. LTD. AGM 018 082 114                  303 BURWOOD HWY, BURWOOD EAST 3161 TEL. 9803 8033 FAX. 9807 8821</small>			LICENSED SURVEYOR : <b>GEOFFREY LESLIE COOPER</b> Signature ..... Date <b>11 / 2 / 98</b> REF. <b>7012/2L</b> VERSION <b>2</b> 11/2/98 G.R.				Date <b>24 / 2 / 98</b> Council Delegate Signature Original sheet size A3	

**PLAN OF SUBDIVISION**

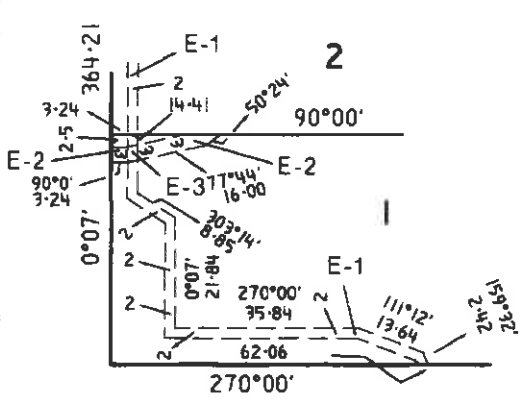
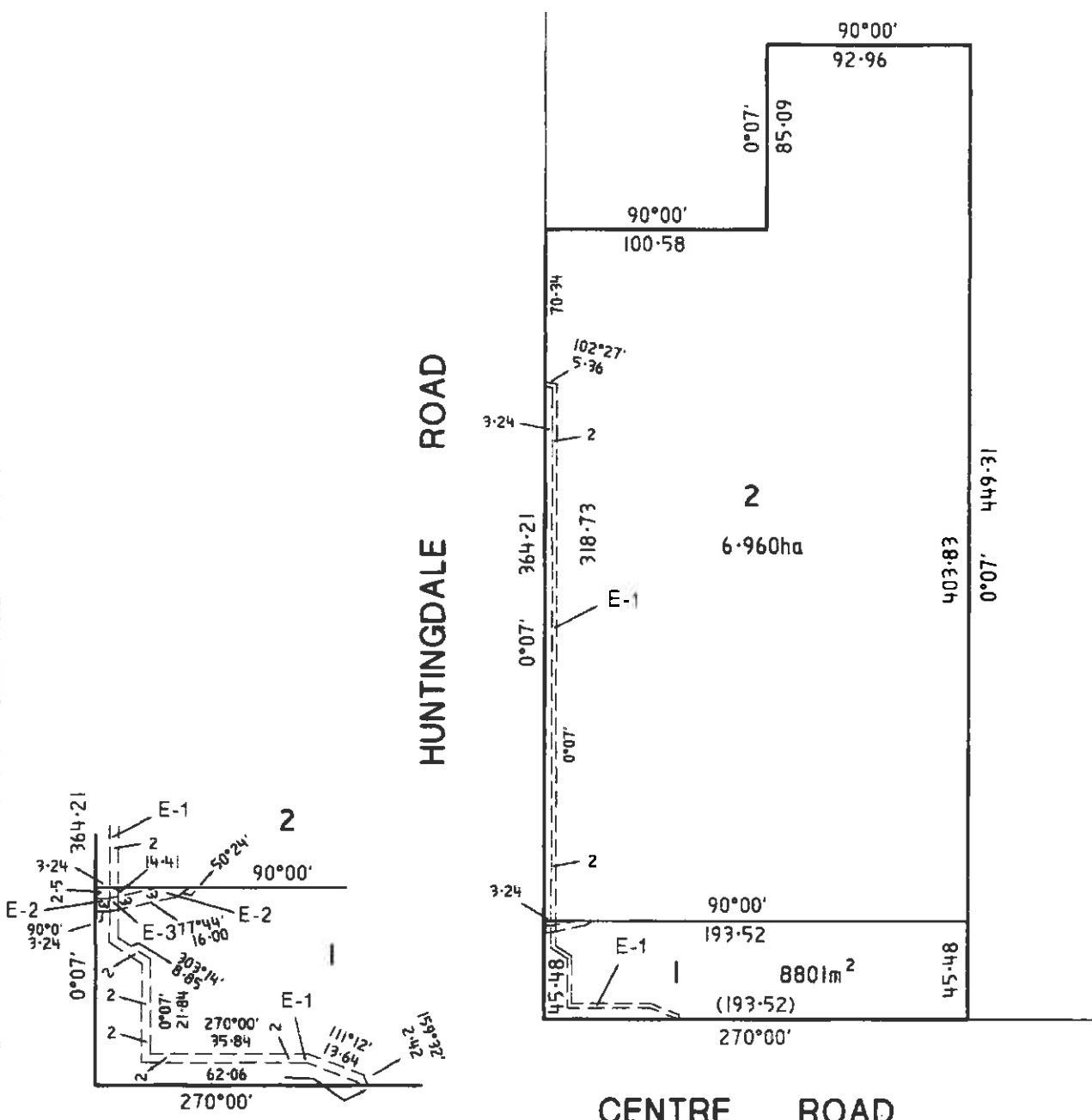
STAGE NO.

Plan Number

**PS 409879 V**

HUNTINGDALE ROAD

CENTRE ROAD



ENLARGEMENT  
1:1000



**TAYLORS**

LAND SURVEYORS-TOWN PLANNERS  
PROPERTY CONSULTANTS

HERVEY AND PEACOCK PTY. LTD. A/CN 099 082 716  
303 BURWOOD HWY, BURWOOD EAST 3161 TEL 9803 9833 FAX 9887 8821

Sheet: 2 of 2

ORIGINAL

SCALE

LICENSED SURVEYOR : GEOFFREY LESLIE COOPER

SCALE SHEET SIZE



Signature ..... Date 11/ 2 / 98

Date 24 / 2 / 98

12000 A3

LENGTHS ARE IN METRES

REF. 7012/2L

VERSION 2

11/2/98  
G.R.

Council Delegate Signature

Original sheet size A3

Register Search Statement - Volume 9402 Folio 344

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

VOLUME 09402 FOLIO 344

Security no : 124052514807R  
Produced 10/10/2014 02:18 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 AH638599Q 26/11/2010  
TALBOT ROAD FINANCE PTY LTD  
TRANSFER OF MORTGAGE AK601617X 18/09/2013

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

Delivered from the Landata @ System by SAI Global Property Division Pty Ltd  
Delivered at 10/10/2014, for Order Number 24390810. Your reference: MA8278.



260593 1222 MISC 956 5505281N

3505281N

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:**

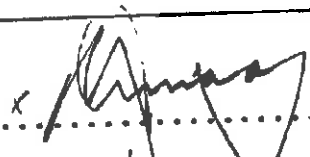
[ghp 9303311m.1:020493]

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  
7th APRIL 1993 SIGNING

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 13<sup>th</sup> day of <sup>1993</sup> 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.

- 2 -

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.



- 3 -

- 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

- 5 -

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.

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- 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

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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

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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.

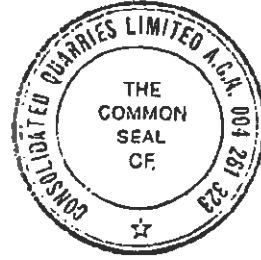
THE CORPORATE SEAL of THE )  
MAYOR COUNCILLORS AND CITIZENS )  
OF THE CITY OF OAKLEIGH was )  
hereunto affixed in the )  
presence of )

..... 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

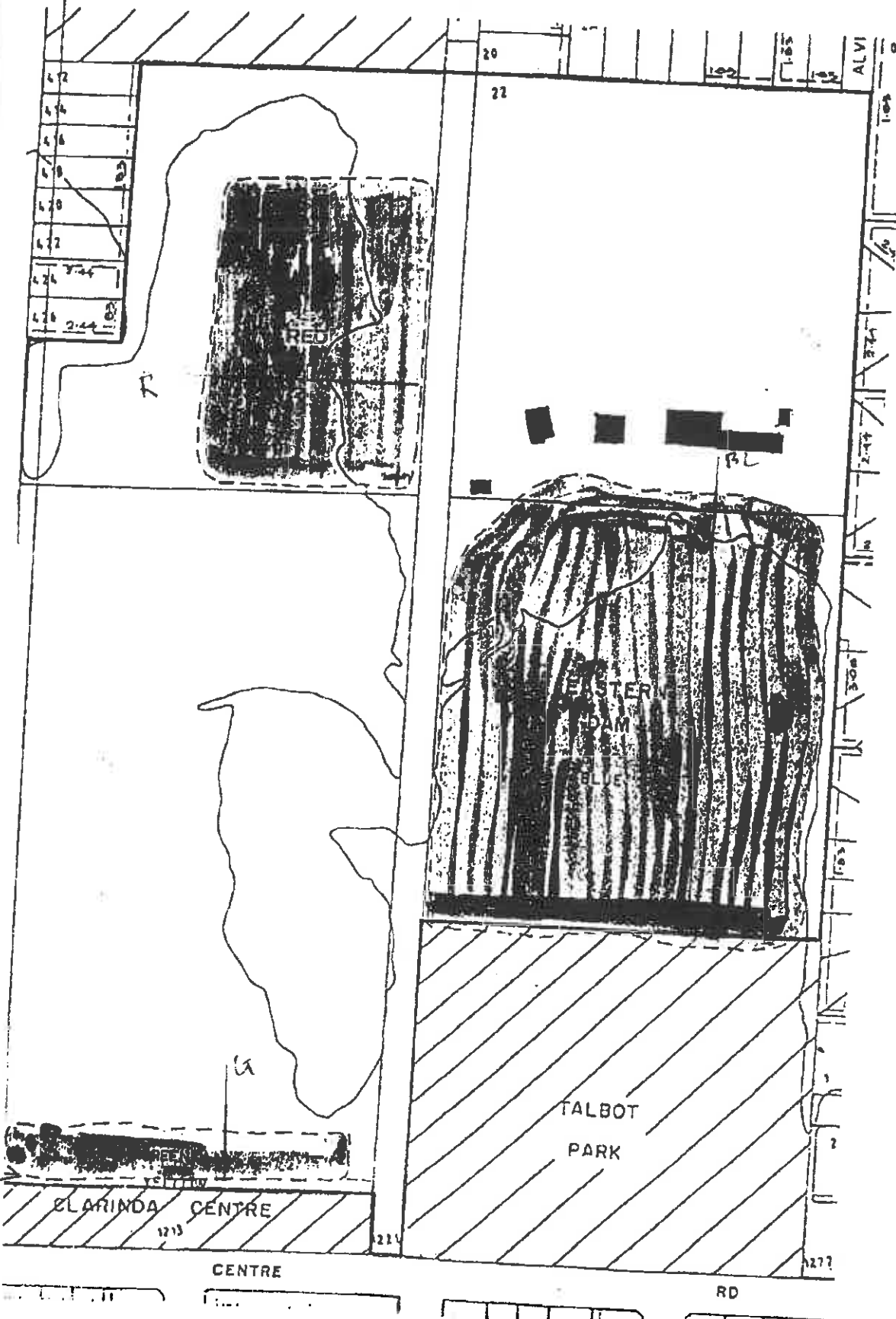
BY: CITY OF OAKLEIGH

:31- 8-92 ; 2:30PM ;

6135881690-

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

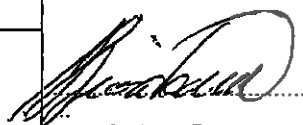
<b>TITLE PLAN</b>	<b>EDITION 1 TP 805390J</b>
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**Location of Land**  
 Parish : MORDIALLOC  
 Township : --  
 Crown Allotment : 6 ( PART )  
 Crown Portion :-  
 Section : 2  
 Last Plan Reference : --  
 Title Reference: VOL. 9402 FOL. 344  
 Depth Limitation : NIL

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

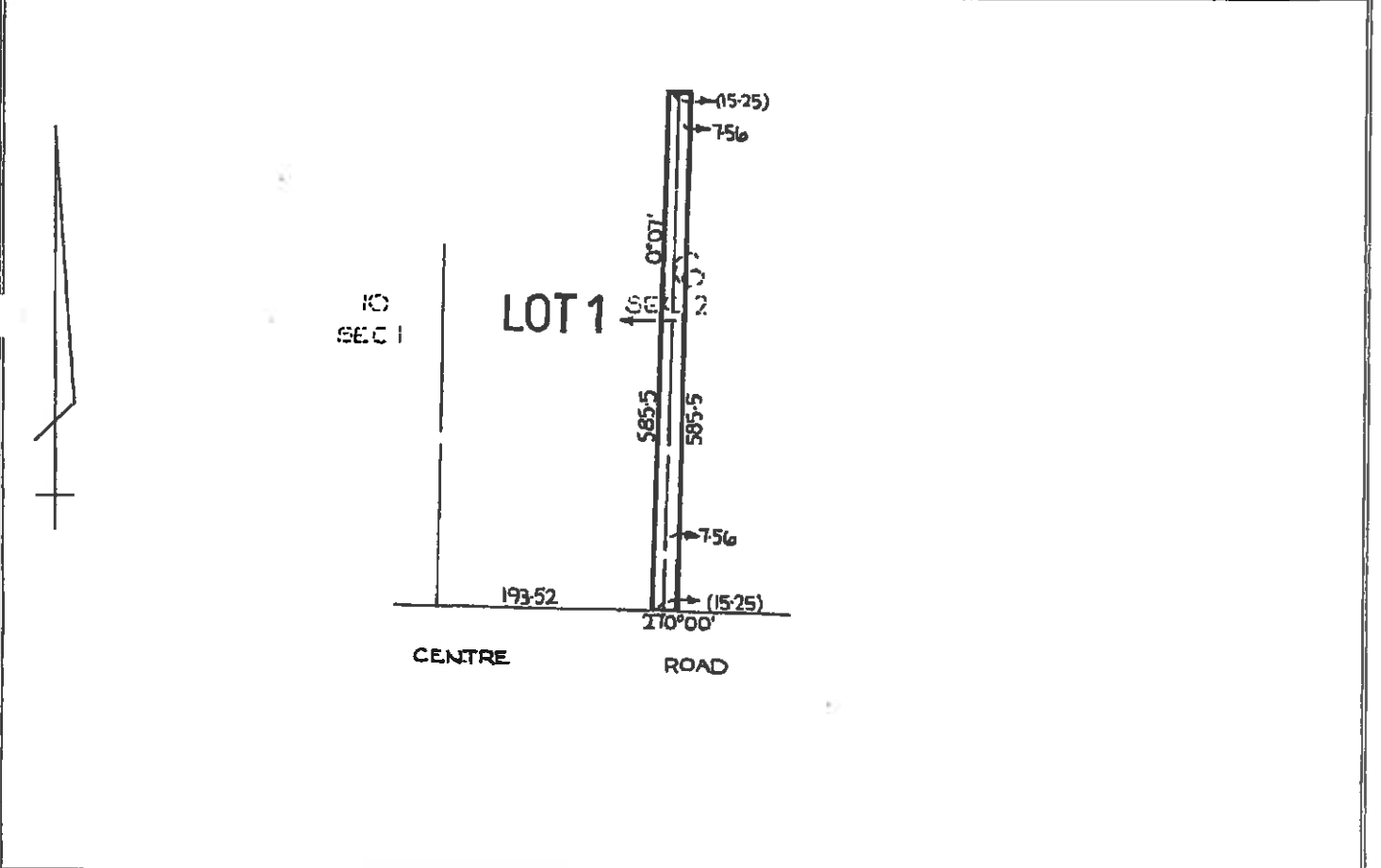
**Easement Information**  
 E -- Encumbering Easement    R -- Encumbering Easement (ROAD)    A -- Appurtenant Easement

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

Checked by : 

Assistant Registrar of Titles  
 Date 21 10 14

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 .



LENGTHS ARE IN METRES	SCALE	SHEET SIZE A3	
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**MONASH CITY COUNCIL**  
FILE:  
FOLIO:  
RECEIVED: 13 OCT 2014  
REFERRED:  
COPY TO: YES NO  
REPLY REQUIRED:  
SUBFILED TO: