

KING AND COMPANY

SOLICITORS

STEPHEN PHILLIP FYNES-CLINTON. B. ECON. LL.B (HONS)
DAVID PETER KEVIN. B.COM. LL.B

SEVENTEENTH LEVEL
BRISBANE ADMINISTRATION CENTRE
69 ANN STREET
BRISBANE
QUEENSLAND 4000

TELEPHONE (07) 229 1199

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POSTAL ADDRESS:
G.P.O. BOX 758
BRISBANE, QLD. 4001

OUR REF: SFC:GT:AA6224

YOUR REF: 555/12/3 (5) Pt 3

DATE: 22 May, 1990

The Shire Clerk,
Albert Shire Council,
P. O. Box 172,
NERANG QLD 4211

ALBERT SHIRE COUNCIL	
RECEIVED	
25 MAY 1990	
ASSESS No.	
\$	
RECT. No.	(0) A9012635
REFER TO	SEPP
FILE No.	555/12/3(5) P+3

Dear Sir,

RE: MIDLAND CREDIT LIMITED - DEVELOPMENT AGREEMENT AND DEED
OF NOVATION

We refer to previous correspondence and now forward
Council's stamped original copies of:-

1. Development Agreement; and
2. Deed of Novation.

This completes the matter and we thank you for your
instructions.

Yours faithfully,
KING AND COMPANY.

encs

*Development Agreement forwarded
to Legal Docs.*
25.5.90

Clarren

*This was handled by Jan & David.
I complete check of contents & advise me if
all correct.*

28/5

*This is only a deed of nov. & doesn't create new clauses.
OK by me but make DA's concern*
David
Comments R.

*WKM
4/6*

4-00

THIS DEED is made the 12th day of September, 1989
BETWEEN: MIDLAND CREDIT LIMITED of c/- Burchill, Bate, Parker
and Partners Pty. Ltd. 142 Bundall Road, Surfers Paradise in
the State of Queensland (hereinafter called "the Applicant")
of the one part AND: COUNCIL OF THE SHIRE OF ALBERT of Nerang-
Southport Road, Nerang in the State of Queensland (hereinafter
called "the Council") of the other part

WHEREAS:

- A. The Applicant is the registered proprietor of an estate
in fee simple in all that land more particularly described
in Part 1 of the First Schedule ("the estate land");
- B. Application was made to the Council by the Applicant for
approval to subdivide part of the estate land being that
part thereof delineated on the plan comprising the Second
Schedule hereto as "Stage 5";
- C. The Applicant is also the registered proprietor of an
estate in fee simple in all that land more particularly
described in Part 2 of the First Schedule ("the quarry
land") which land adjoins the estate land;
- D. The quarry land is zoned "extractive industry" under the
Town Plan and may be used for the extraction of quarry
material without the consent of the Council under the town
Plan and for the crushing and screening of that material
subject to the obtaining of the such consent;
- E. The application referred to in recital B was referred to
the Council which resolved to approve it subject to
certain requirements intended to minimise potential
conflicts between development of the undeveloped balance
of the estate land for residential purposes and
development of the quarry land for extractive industry
purposes;
- F. The Applicant appealed to the Local Government Court
against certain of those requirements;
- G. The Council consented to an order of the Court allowing

*17/05/90 R/N1336905

STAMP DUTY OFFICER

*2264791 17

H BRIS

\$4.00

the applicant's said appeal;

H. The Applicant has agreed to enter into this deed on the covenants and conditions hereinafter set forth in consideration of:-

H.1 The Council consenting to the allowing of its appeal as aforesaid; and

H.2 The desire of both parties to ensure that development of the estate land and the quarry land is carried out in an orderly manner and so as to minimise conflict between the two uses.

I. By Contract of Sale dated 17th May 1989, the Applicant sold land including the quarry land to Nerang Pastoral Company Pty Ltd ("the Purchaser") which sale ("the sale") is due for settlement on the 1st day of September 1989 or fourteen (14) days after registration of the Plan of Subdivision of the land thereby sold whichever is the later.

J. The Purchaser intends to develop the quarry land in conjunction with adjoining land to the west of the quarry which is zoned Extractive Industry under the Town Planning Scheme for the Shire of Albert.

NOW THIS DEED WITNESSETH:

INTERPRETATION

1. In this deed, unless the context otherwise requires:-

1.1 "the Act" means the Local Government Act of 1936 as amended from time to time.

1.2 "the Applicant" means the Applicant named above and its successors and permitted assigns;

1.3 "the Council" means the Council of the Shire of Albert and its successors and assigns;

- 1.4 "the Engineer" means the officer of the Council who heads the department or branch of the Council having responsibility for the subject matter in relation to which the term is used;
- 1.5 "the estate land" means the land described in Part 1 of the First Schedule;
- 1.6 "the Minister" means the Minister of the Crown for the time being responsible for administration of the Act;
- 1.7 "the proposed subdivision" means the subdivision of part of the estate land proposed to be carried out pursuant to and in accordance with the approval referred to in Recital B above.
- 1.8 "the quarry land" means the land described in Part 2 of the First Schedule;
- 1.9 "the Shire Clerk" means the Shire Clerk to the Council and includes the person (if any) for the time being acting as Shire Clerk to the Council;
- 1.10 "the Town Plan" means the Town Planning Scheme for the Shire of Albert and the Council's by-laws relating to town planning;
- 1.11 Words importing the singular number include the plural number and vice versa and words importing any gender include the other genders and words importing only persons include corporations and/or associations and/or bodies and vice versa in each respective case.
- 1.12 Whenever more persons than one constitute the Applicant all the covenants agreements conditions restrictions and provisos herein contained or implied shall be read and construed as joint and several and as including each such person and their respective executors administrators or successors

as the case may be and assigns jointly and severally.

2. This deed shall in all respects be interpreted in accordance with the law of the State of Queensland.
3. Nothing herein contained shall affect prejudice or derogate from the requirements of any statute, proclamation, Order in Council, rule, regulation, ordinance or by-law or from the rights powers and authorities of the Council under the provisions of any such enactment or under any declared policy of the Council.

RELEASE OF PLANS BY COUNCIL

4. In consideration of and on the faith of the covenants and agreements hereinafter contained on the part of the Applicant to be observed and performed (and subject to the conditions of subdivision approval which remain in effect) the Council shall forthwith upon the execution of these presents sign and seal the plan or plans of survey submitted to it in connection with the proposed subdivision provided always that such plan or plans of survey shall be in accordance with the layout design plan submitted by the Applicant to the Council and approved by it together with any such amendments as may be agreed by the parties.

APPLICATION FOR REZONING

5. The Applicant shall forthwith make application to the Council for the rezoning of that part of the quarry land

shown as "proposed Rural B" on the plan comprising the Second Schedule ("the buffer land") by excluding it from the "Extractive Industry" zone under the Town Plan and including it in the "Rural B" zone. Such application shall be made in the form required by the Council's by-laws and shall contain or be accompanied by all information and particulars required by law or otherwise reasonably required by the Council to enable it to determine the said application. The Applicant shall give public notice of the application as required by law.

6. The Council shall:-

6.1 subject to the compliance by it with its obligations under the provisions of The Local Government Act 1936 as amended and any other obligations imposed by law; and

6.2 subject to consideration by it of any objections duly lodged in respect of the said application, approve the said application and thereafter make application under the provisions of the Act to the Minister for amendment of the Town Plan by excluding the buffer land from the "Extractive Industry" zone and including it in the "Rural B" zone.

OBLIGATIONS OF APPLICANT - FUTURE SUBDIVISION

7. The Applicant acknowledges that:-

7.1 Detailed discussions and negotiations have taken place between the parties and their respective consultants as to the location of the division between that part of the estate land which will not be significantly affected by the carrying out of quarrying, crushing, screening and incidental

operations on the quarry land and that part which may be so affected; and

7.2 the red line delineated on the plan comprising the Second Schedule ("the division line") represents that division as determined by the parties during the course of those discussions and negotiations; and

7.3 the creation of substantial restrictions upon the carrying out of residential development of that part of the estate land lying to the west of the division line during the course of quarrying, crushing, screening and incidental operations on the quarry land was a fundamental objective of the Council during the course of the said discussions and negotiations.

8. The Applicant accordingly agrees that:-

8.1 it will not make application to the Council for approval to subdivide any part of the estate land lying to the west of the division line referred to in clause 7 until the quarry land has reached the end of its useful life as a quarry by reason of:-

8.1.1 the exhaustion of extractive industry resources contained within the quarry land and lawfully and practicably capable of being quarried; and/or

8.1.2 use of the quarry land for extractive industry purposes becoming unlawful by reason of a change in the zoning of the quarry land or the imposition by law of some other permanent prohibition upon the use of the quarry land for such purposes;

8.2 the Council shall not be required to consider an

application made contrary to the provisions of clause 8.1;

8.3 the Council may plead and otherwise rely upon the provisions of this deed in:-

8.3.1 defending any application for prerogative or other relief by which it is sought to compel the Council to consider an application made contrary to the provisions of clause 8.1; and/or

8.3.2 prosecuting any application for declaratory, injunctive or other relief by which it is sought to restrain the Applicant from making an application contrary to the provisions of clause 8.1 or purporting to exercise appeal rights or other rights of redress in respect of the Council's failure to consider or refusal of such an application.

OBLIGATIONS OF THE COUNCIL - FUTURE SUBDIVISION

9. The Council acknowledges the matters set forth in subclauses 7.1 and 7.2 and that:-

- 9.1 determination of the limits of that part of the estate land which may be developed for residential purposes without specific consideration of the quarry land or the imposition of requirements relating to operations upon the quarry land was a fundamental objective of the Applicant during the course of the said discussions and negotiations; and
- 9.2 the part of the estate land lying to the east of the division line has been determined during the discussions and negotiations as being the part thereof which may be so developed.

10. The Council accordingly agrees that:-

- 10.1 it will consider every application for subdivision for residential purposes or for approval of other residential development of land lying to the east of the division line without regard to any matter arising directly or indirectly out of, through, or in connection with the existence of the quarry land or the carrying out upon the quarry land of extractive industry, crushing and/or screening operations or any operations incidental thereto;
- 10.2 it will not impose as a condition of approval of or otherwise require in relation to such an application the doing of any thing or the carrying out of any work which condition or requirement is related directly or indirectly to the existence of the quarry land or the carrying out upon the quarry land of extractive industry, crushing and/or screening operations or any operations incidental thereto;
- 10.3 the Applicant may plead and otherwise rely upon the provisions of this deed in prosecuting any application for prerogative or other relief by which it is sought to compel the Council to consider an application in accordance with the provisions of subclause 10.1 and/or in exercising appeal rights or other rights of redress in respect an attempted or purported consideration or determination of an application by the Council contrary to the provisions of subclauses 10.1 and/or 10.2.

DEVELOPMENT OF QUARRY LAND

11. The Applicant further acknowledges that:-

- 11.1 contemporaneous development and use of that part of the estate land lying to the east of the division line for residential purposes and of the quarry land for extractive industry purposes can only be carried out without conflict between those uses if quarrying, crushing, screening and incidental operations upon the quarry land are carried out in a controlled manner in accordance with sound quarry management practices;
- 11.2 The report by David Kershaw and Co. dated 20 July 1988 and submitted by the Applicant to the Council ("the report") sets out details of the manner in which such operations ought to be carried out and details of the required quarry management practices.

12. The Applicant accordingly agrees that:-

- 12.1 All quarrying operations upon the quarry land will be carried out in accordance with the recommendations contained in the report including recommendations as to the adoption of quarry management practices;
- 12.2 In the event of consent being granted by the Council to the carrying out of crushing and screening operations upon the quarry land the Council will impose as a condition of approval a requirement that all crushing screening and incidental operations upon the quarry land will be carried out in accordance with the recommendations contained in the report including recommendations as to the adoption of quarry management practices so far as those matters are relevant to the uses for which consent is granted;
- 12.3 the Council may plead and otherwise rely upon the

provisions of this deed as creating an estoppel by deed against the Applicant by which the Applicant is estopped from denying in any proceedings whatsoever that the imposition of a condition in accordance with subclause 12.2 is not reasonably required by the approval of an application referred to in that subclause or is not reasonable and relevant to the approval of such an application.

12.4 the obligations created by this clause 12 bind the Applicant by force of this deed and are in addition to and not in derogation of any other obligations imposed or which may be imposed on the Applicant:-

12.4.1 by law (including the Town Plan and any by-law of the Council); or

12.4.2 by the Council acting in good faith pursuant to any statutory power so to do,
in relation to the carrying out of quarrying, crushing, screening and incidental operations on the quarry land.

13. The Council:-

13.1 acknowledges that no detailed plans or proposals for the development of the quarry land have yet been formulated or adopted by the Applicant and that the requirements arising under clause 12 and the report may be varied by agreement of the parties; and

13.2 agrees to consider any request by the Applicant for such variation in good faith having regard to the reasons for the Applicant's request and the agreement of the parties with respect to the manner of development of the quarry land and the estate land as evidenced by this deed.

DEFAULT BY APPLICANT

14. Should the Applicant fail to duly perform and fulfil the Applicant's obligations under Clause 12 or otherwise under this deed the Council may forthwith recover from the Applicant as a liquidated debt the following amounts:-
 - 14.1 the whole amount of the payments or contributions (if any) not paid by the Applicant; and
 - 14.2 such sum as the Engineer certifies as representing the fair estimated cost of completing the works not performed or completed by the Applicant which cost shall include the Council's charges for supervision, interest, administration costs, legal costs on a solicitor and own client basis, overheads and such reasonable contingency sum as may in the absolute discretion of the Engineer be determined.
15. The Council shall apply any sum or sums paid to it pursuant to Clause 14 as far as the same may extend to or towards all or any one or more of the following:-
 - 15.1 reduction or discharge of the payments or contributions payable by the Applicant hereunder;
 - 15.2 carrying out the work not done or undertaken by the Applicant under this deed within such reasonable time as may be determined by the Council;
 - 15.3 altering or amending any improperly completed or partly completed work done or undertaken by the Applicant under this deed;
 - 15.4 carrying out such other work or development (including any addition or extension to any work or development being carried out by the Applicant) whether within or outside or partly within and partly outside the perimeter of the said land as the

Council may reasonably consider necessary to mitigate the effects of any uncompleted or improperly completed or partly completed work of the Applicant or to make any such uncompleted improperly completed or partly completed work in the opinion of the Council more effective or useful; and

15.5 reimbursing itself for any damages suffered by it.

16. If the sum or sums at any time or times received or recovered by the Council pursuant to Clause 14 are insufficient to complete the carrying out or altering or amending of such work in accordance with the requirements of this deed the Council may, at its election,:-

16.1 carry out alter or amend such work at its discretion so far as the moneys received by it pursuant to Clause 14 will, in the opinion of the Engineer, reasonably allow; or

16.2 complete the carrying out or altering or amending of such work in accordance with the requirements of this deed and recover the difference between the costs actually incurred by it in so doing and the sums received or recovered by it pursuant to Clause 6 from the Applicant as a liquidated debt.

17. For the purposes of exercising its rights under Clauses 15 and 16 hereof the Council and its members, agents, servants, employees, contractors and sub-contractors and others whether of the class just mentioned or not, authorised by the Council, shall have the full and free right and liberty to enter upon the said land with all necessary vehicles plant equipment and the like.

NOVATION OF AGREEMENT UPON TRANSFER

18. The Applicant shall not sell, transfer or otherwise alienate the estate land or the quarry land any part thereof or of either (other than in the ordinary course of entering into agreements to sell allotments which conform to a design approved by the Council and are shown on a registerable plan of survey for the subdivision of the estate land consented to by the Council) prior to the time specified in subclause 8.1 except subject to the condition that the purchaser, transferee or alienee shall enter into a deed of novation of this deed with the Council whereby the purchaser, transferee or alienee becomes contractually bound to the Council to perform and fulfil the provisions of this deed or such of them as:-

- 18.1 remain unperformed or unfulfilled by the Applicant at the time of such sale, transfer or alienation or relate; and/or
- 18.2 relate to the part or parts being sold, transferred or alienated.

19. Until the proposed purchaser transferee or alienee executes the required deed of novation and furnishes the required security or in the event of a sale transfer or alienation being made otherwise than in compliance with Clause 18:-

- 19.1 the Applicant shall remain liable for the performance and fulfilment of this deed as though no sale, transfer or alienation had taken place; and
- 19.2 the Applicant shall perform and fulfil such of the Applicant's obligations under this deed as have not been performed and fulfilled forthwith or at such other time or times as the Council shall require notwithstanding that the time or times otherwise

appointed for such performance and fulfilment shall not have then arrived.

ASSIGNMENT BY APPLICANT

20. The Applicant shall not assign either absolutely or by way of security the interests rights or obligations of the Applicant under this deed without the prior consent in writing of the Council provided that such consent will not be arbitrarily or unreasonably withheld should the proposed assignee be a financially responsible and reputable person or company and provided further that such consent need not be given by the Council if the Applicant is in default under this deed. Should the Council grant its consent to any assignment then in such case such consent shall be subject to compliance with the provisions of Clause 18 and the Council may impose conditions for the giving of such consent not inconsistent with the provisions of this deed.

GENERAL PROVISIONS

21. All designs and specifications for those works which the Applicant is obliged to carry out provide or do under or by virtue of this deed shall be prepared by the Applicant at its own cost and shall be submitted to the Engineer for the Council's approval thereof and, when necessary, the approval of any other authority or instrumentality having jurisdiction and required in that behalf. No such work shall be commenced by the Applicant before the Applicant has obtained the said approval or approvals in each and every instance.

22. All works which the Applicant is obliged to undertake carry out provide or do under or by virtue of this deed shall be undertaken carried out provided or done to the requirements and satisfaction of the Engineer and under his supervision and to the requirements and satisfaction of any other authority or instrumentality having jurisdiction in relation thereto and the Applicant shall apply for and obtain any necessary approval for the carrying out of the works from such authorities or instrumentalities.

23. The Applicant shall permit the Council and its members officers agents servants contractors and subcontractors and agents and servants of its contractors and subcontractors and other whether of the class just mentioned or not authorised by the Council at all times during the operation of this deed to enter into and upon the said land for the purposes of:-

23.1 examining and inspecting the state and conditions thereof and any works or preparation therefor or the site thereof on the said land or on land adjacent thereto; and

23.2 ascertaining whether the obligations of the Applicant under these presents or otherwise are being duly observed performed and fulfilled; and;

23.3 making good at the cost and expense of the Applicant any breach of such obligations or any defect in such works; and

23.4 performing any works which the Council has agreed to perform; and

23.5 exercising the Council's rights under Clauses 15

and 16.

SETTLEMENT OF DISPUTES

24. To the intent of ensuring that there is no want of certainty in this deed and to facilitate and expedite the recording of the agreement between the parties without herein incorporating full specifications or details of the acts and works agreed to be performed undertaken carried out executed provided or done or the amounts or contributions to be paid by either party, it is agreed that if either party shall allege or contend that the meaning or effect of any provision is uncertain and therefore to any extent void or of no effect or unenforceable then the alleged or contended matter of doubt or uncertainty shall be by agreement of the parties on the written reference of either party, a copy of which reference is served on the opposite party, referred to the final decision of the Engineer who shall give his fair decision in writing on the matter of such alleged or contended doubt or uncertainty.

25. The function of the Engineer when determining a matter referred to him pursuant to Clause 25 shall be to make certain by the terms of his decision what is contended to be doubtful or uncertain and in considering and giving his decision, the Engineer:-

25.1 shall be acting as an expert and not as an arbitrator; and

25.2 may, without limiting in any way the discharge of his function hereunder and the utilisation of his expert knowledge skill and experience, refer to and use his knowledge and experience of the Act, the

Town Plan, the other by-laws of the Council, the terms of arrangements and agreements and conditions of approvals consents and refusals and reasons therefor and policy adopted from time to time by the Council generally in relation to applications for rezoning or subdivision of land, and of the common or usual or other requirements or standards or any new or any variation in requirements or standards adopted or proposed from time to time of acts and works agreed imposed required performed undertaken carried out provided or done on or in relation or applicable to lands in the Shire and the development and use of such lands.

26. No action or proceedings in relation to such matter of alleged doubt or uncertainty shall be instituted by either party unless and until the matter shall have been so referred and the decision of the Engineer obtained and any decision of the Engineer under Clause 25 shall bind both parties and for all purposes be deemed to have formed part of and been incorporated herein as from the date of these presents and not to be a variation or alteration of the terms of these presents.
27. In the event that the Applicant considers any decision of the Engineer under Clause 25 to be unfair the Applicant shall be at liberty to apply to any Court of competent jurisdiction (to which the Council hereby submits) for the Court's determination upon any such alleged or contended doubt or uncertainty and the Court's determination shall be substituted for the decision of the Engineer under Clause 25.

WAIVER

28. No waiver by the Council of any breach by the Applicant of any of the provisions of this deed shall be implied against the council or be otherwise effective unless the same shall be in writing under the hand of the Shire Clerk and no laches or delays by the Council at any time or times in enforcing any of its rights powers and the like hereunder shall prejudice or affect those rights or powers.

SERVICE

29. Any certificate demand or notice by or from the Council to or upon the Applicant shall be sufficiently made given or served if left at or forwarded by prepaid post in an envelope addressed to the Applicant or any of them (where there are more persons or corporations than one comprising the Applicant) at his its or their or any of their addresses or places of business in Queensland last known to the Council and such certificate demand or notice if sent by post shall be deemed to have been made given or served at the time when in due course of post it would be delivered at the address to which it is directed whether or not it is actually received and in proving such service by post it shall only be necessary for the Council to certify to that effect under the hand of the Shire Clerk.

COSTS OF AGREEMENT

30. The Applicant shall pay all costs on a solicitor and own client basis and all charges and expenses of and

incidental to the negotiations for, preparation, execution, stamping and completion of this deed and all counterparts thereof together with all costs of advertisements required by law or otherwise to be made relating to the proposed amendment of the Town Plan.

TIME OF THE ESSENCE

31. Time shall in all cases be of the essence of the Contract.

FIRST SCHEDULE

PART I

DESCRIPTION OF LAND FOR RECITAL A HEREOF

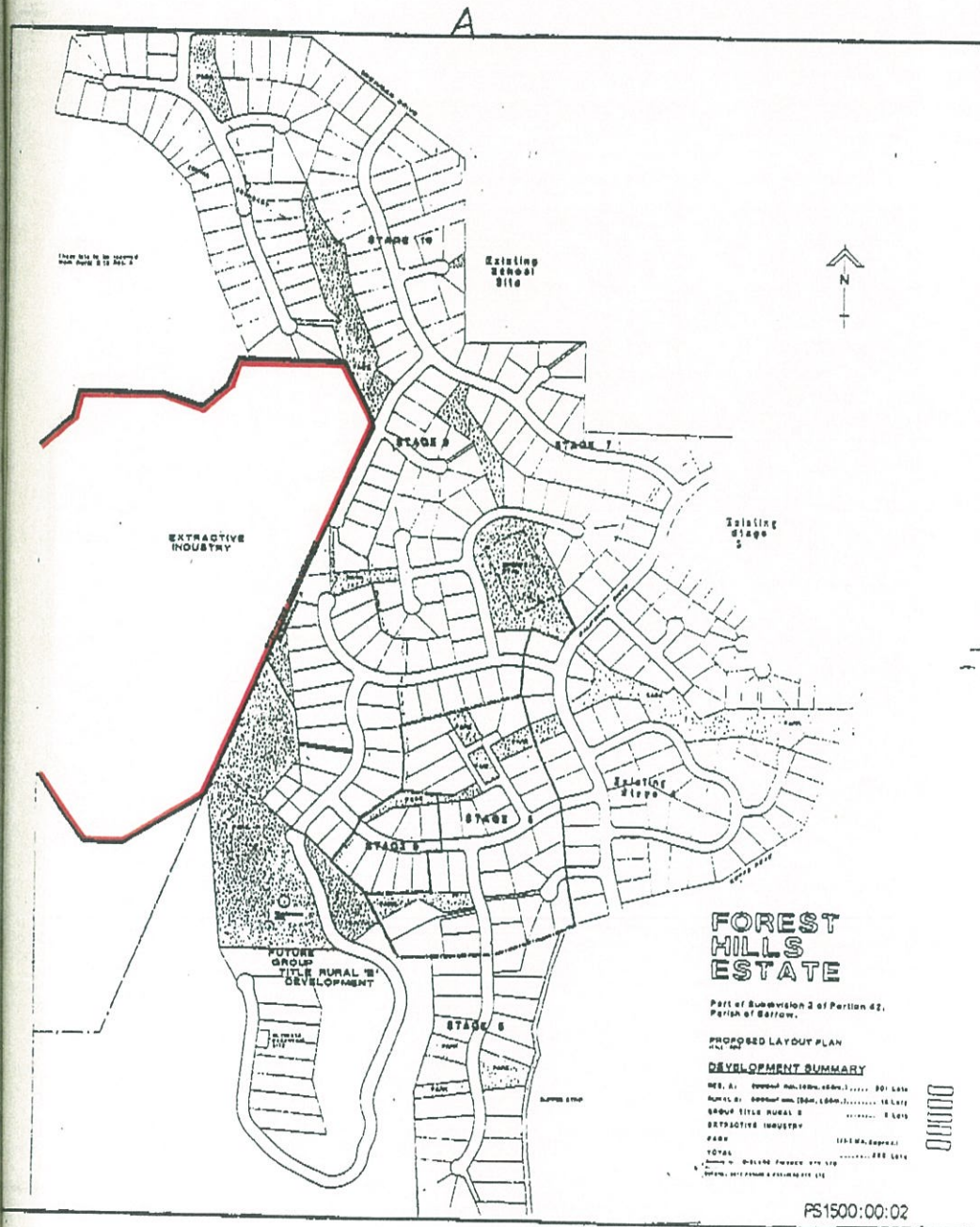
No.	Lot No.	Registered Plan No.	County	Parish	Volume	Folio	Area
1.	304	220685	Ward	Barrow	7183	112	2003m2
2.	326	220685	Ward	Barrow	7183	119	1349m2
3.	278	220686	Ward	Barrow	7183	129	2000m2
4.	302	220686	Ward	Barrow	7183	132	2025m2
5.	324	220686	Ward	Barrow	7183	138	2259m2
6.	285	220688	Ward	Barrow	7183	154	2141m2
7.	319	220688	Ward	Barrow	7183	161	2184m2
8.	308	220684	Ward	Barrow	7183	123	2006m2
9.	295	220687	Ward	Barrow	7183	143	2035m2
10.	299	220687	Ward	Barrow	7183	147	2044m2
11.	332	222336	Ward	Barrow	7258	70	2045m2
12.	337	2223336	Ward	Barrow	7258	75	2000m2
13.	336	222336	Ward	Barrow	7258	74	2000m2
14.	334	222336	Ward	Barrow	7258	72	2000m2
15.	335	222336	Ward	Barrow	7258	73	2000m2
16.	348	222350	Ward	Barrow	7327	186	2001m2
17.	349	222350	Ward	Barrow	7327	187	2037m2
18.	350	222350	Ward	Barrow	7327	188	2326m2
19.	351	222350	Ward	Barrow	7327	189	2041m2
20.	353	222350	Ward	Barrow	7327	190	2383m2
21.	354	222350	Ward	Barrow	7327	191	2715m2

No.	Lot No.	Registered Plan No.	County	Parish	Volume	Folio	Area
22.	356	222350	Ward	Barrow	7327	193	2001m2
23.	357	222350	Ward	Barrow	7327	194	2041m2
24.	359	222350	Ward	Barrow	7327	196	1983m2
25.	360	222350	Ward	Barrow	7327	197	2000m2
26.	340	222351	Ward	Barrow	7323	148	1864m2
27.	341	222351	Ward	Barrow	7323	149	2001m2
28.	344	222351	Ward	Barrow	7323	152	3859m2
29.	345	222351	Ward	Barrow	7323	153	2105m2
30.	346	222351	Ward	Barrow	7323	154	2000m2
31.	352	222351	Ward	Barrow	7323	155	2036m2
32.	362	222351	Ward	Barrow	7323	157	1912m2
33.	363	222351	Ward	Barrow	7323	158	2229m2
34.	364	222351	Ward	Barrow	7323	159	2020m2
35.	366	222351	Ward	Barrow	7323	161	2379m2
36.	367	222351	Ward	Barrow	7323	162	2095m2
37.	368	222351	Ward	Barrow	7323	163	2109m2
38.	369	222351	Ward	Barrow	7323	164	2114m2
39.	Part 329	220690	Ward	Barrow	7183	106 east of the red line on the plan annexed and marked "A"	

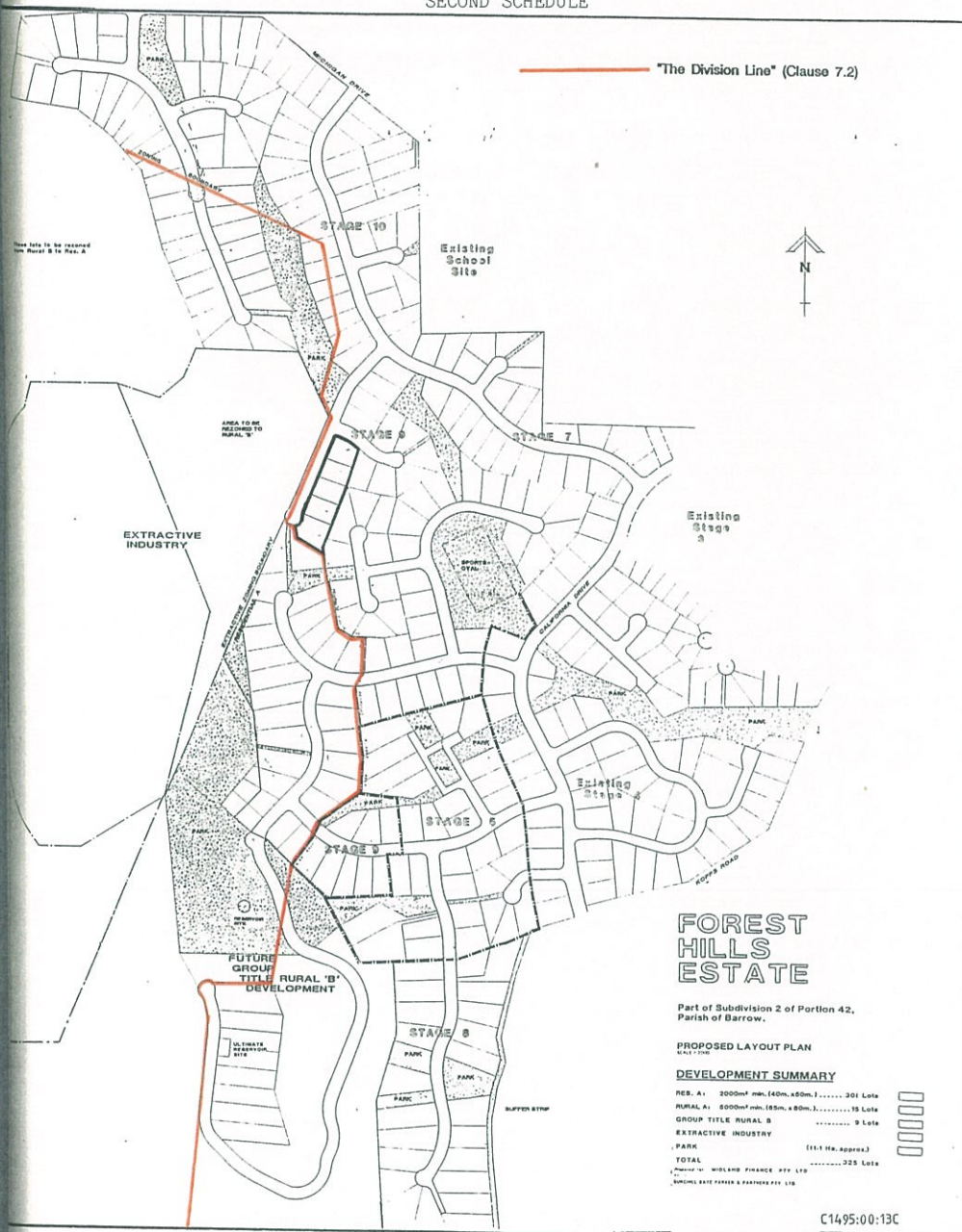
PART 2

DESCRIPTION OF LAND FOR RECITAL C HEREOF

Part of Lot 329 on Registered Plan No. 220690 County Ward Parish Barrow contained in Certificate of Title Volume 7183 Folio 106 as shown outlined in red on the plan annexed and marked "B".



SECOND SCHEDULE




IN WITNESS WHEREOF the parties hereto have hereunto set their
hands and seals the day and year first hereinbefore written.


MIDLAND CREDIT LIMITED by its
duly constituted Attorney

RAY ALAN BEALE

who certifies that he is the
GROUP MANAGEMENT
EXECUTIVE of the Company
under Registered Power of
Attorney J153447P in the
presence of:-



RIS
14
10



A Justice of the Peace.

THE CORPORATE SEAL of COUNCIL OF
THE SHIRE OF ALBERT was hereunto
affixed on the 14th
day of September, 1989
under the hands of WILLIAM
MAURICE LAVER the Chairman and
TERRENCE ROBERT LESLIE MOORE the
Shire Clerk and in the presence



of:-
Valerie Tite J.P. (old.)
Valerie TITE J.P.

A Justice of the Peace

DATED the 12th day
of September, 1989

BETWEEN:

MIDLAND CREDIT LIMITED
("the Applicant")

AND:

COUNCIL OF THE SHIRE OF ALBERT
("the Council")

DEVELOPMENT AGREEMENT

KING AND COMPANY,
Solicitors,
17th Level,
Brisbane Administration
Centre
69 Ann Street,
BRISBANE. QLD. 4000

TEL: 229 1199
REF: SFC:GT:AA6224
ASC_BURC.SUB 08/09/89

4-00
THIS DEED is made the 12th day of September 1989.

BETWEEN:

MIDLAND CREDIT LIMITED of care of Burchill Bate Parker & Partners Pty. Ltd., 142 Bundall Road, Surfers Paradise in the State of Queensland (hereinafter called "the Applicant")

AND:

*17/05/90 R/N1336905 H BRI
COUNCIL OF THE SHIRE OF ALBERT of Nerang/Southport Road, Nerang in the State of Queensland (hereinafter called "the Council")

AND:

NERANG PASTORAL COMPANY PTY LTD of Hart Street, Upper Coomera in the State of Queensland (hereinafter called "the Purchaser")

W H E R E A S:

- A. The Applicant is the registered proprietor of an estate in fee simple in all that land more particularly described in Part I of the First Schedule ("the estate land").
- B. The Applicant is also the registered proprietor of an estate in fee simple in all that land more particularly described in Part II of the First schedule ("the quarry land") which land adjoins the estate land.
- C. By Contract of Sale of the 17th May 1989, the Applicant has sold land including the quarry land to the Purchaser ("the sale"), which sale is due to settle on the 1st September, 1989 or fourteen (14) days after registration of the Plan of subdivision of that land thereby sold whichever is the later.
- D. By Contract of Sale of the 4th day of September 1989, the Applicant has sold land described in Part III of the First Schedule ("the quarantine land") to the Purchaser, which sale is due to settle on the 1st day of December, 1989.
- E. Upon completion of the sale, the Purchaser intends to develop the quarry land in conjunction with adjoining land to the west which is also zoned Extractive Industry pursuant to the Town Planning Scheme for the Shire of Albert.
- F. Application was made to the Council by the Applicant for approval to subdivide part of the estate land.

- G. The application referred to in Recital F was referred to the Council which resolved to approve it subject to certain conditions. The Applicant appealed to the Local Government Court against certain of those conditions.
- H. The Council consented to an Order of the Court allowing the Applicant's appeal on certain terms including a requirement that the Applicant enter into a Deed.
- I. In accordance with the terms of settlement referred to in Recital H, a Deed dated the 12th day of September 1989 ("the Deed") was entered into by the Applicant and Council to ensure that development of the estate land and the quarry land was carried out in an orderly manner and so as to minimise conflict between the two uses.
- J. It is a condition of the Contract of Sale referred to in Recital C that the Purchaser execute these presents in favour of the Council.

NOW THIS DEED WITNESSES AS FOLLOWS:

- 1. The Purchaser hereby covenants and agrees with the Applicant and the Council that it shall be bound by the terms of the said Deed insofar as the Deed concerns the quarry land as if the Purchaser had originally executed the said Deed as Applicant.
- 2. The Council and Purchaser acknowledge that following completion of the sale, the Purchaser may request the Council to relax the requirement in Clause 5 of the Deed in consideration of the Purchaser agreeing to not make application to the Council for approval to subdivide any part of the quarantine land until the quarry land has reached the end of its useful life as a quarry by reason of:-
 - (a) The exhaustion of extractive industry resources contained within the quarry land land lawfully and practicably capable of being quarried;
 - (b) Use of the quarry land for extractive industry purposes becoming unlawful by reason of a change in the zoning of the quarry land or

the imposition by law of some other permanent prohibition upon the use of the quarry land for such purposes.

And the Council acknowledges that it will consider such request in good faith having regard to the reasons for the Applicant's request.

3. The Council acknowledges that on completion of the sale, the Purchaser may seek to vary the manner of quarrying operations and quarrying management practises as set out in the report referred to in the Deed and that the requirements arising under Clause 12 of the Deed and the report referred to in the Deed may be varied by agreement of the Purchaser and the Council.

4. The Purchaser agrees to indemnify the Applicant in respect of all claims and demands whatsoever under the Deed in respect of the non-observance or non-performance of the covenants or stipulations required to be performed on the part of the Purchaser from the date of completion of the sale.

FIRST SCHEDULE

PART I

No.	Lot No.	Registered Plan No.	County	Parish	Volume	Folio	Area
1.	304	220685	Ward	Barrow	7183	112	2003m2
2.	326	220685	Ward	Barrow	7183	119	1349m2
3.	278	220686	Ward	Barrow	7183	129	2000m2
4.	302	220686	Ward	Barrow	7183	132	2025m2
5.	324	220686	Ward	Barrow	7183	138	2259m2
6.	285	220688	Ward	Barrow	7183	154	2141m2
7.	319	220688	Ward	Barrow	7183	161	2184m2
8.	308	220684	Ward	Barrow	7183	123	2006m2
9.	295	220687	Ward	Barrow	7183	143	2035m2
10.	299	220687	Ward	Barrow	7183	147	2044m2
11.	332	222336	Ward	Barrow	7258	70	2046m2
12.	337	2223336	Ward	Barrow	7258	75	2000m2
13.	336	222336	Ward	Barrow	7258	74	2000m2
14.	334	222336	Ward	Barrow	7258	72	2000m2
15.	335	222336	Ward	Barrow	7258	73	2000m2
16.	348	222350	Ward	Barrow	7327	186	2001m2
17.	349	222350	Ward	Barrow	7327	187	2037m2
18.	350	222350	Ward	Barrow	7327	188	2326m2
19.	351	222350	Ward	Barrow	7327	189	2041m2
20.	353	222350	Ward	Barrow	7327	190	2383m2
21.	354	222350	Ward	Barrow	7327	191	2715m2

No.	Lot No.	Registered Plan No.	County	Parish	Volume	Folio	Area
22.	356	222350	Ward	Barrow	7327	193	2001m2
23.	357	222350	Ward	Barrow	7327	194	2041m2
24.	359	222350	Ward	Barrow	7327	196	1983m2
25.	360	222350	Ward	Barrow	7327	197	2000m2
26.	340	222351	Ward	Barrow	7323	148	1864m2
27.	341	222351	Ward	Barrow	7323	149	2001m2
28.	344	222351	Ward	Barrow	7323	152	3859m2
29.	345	222351	Ward	Barrow	7323	153	2105m2
30.	346	222351	Ward	Barrow	7323	154	2000m2
31.	352	222351	Ward	Barrow	7323	155	2036m2
32.	362	222351	Ward	Barrow	7323	157	1912m2
33.	363	222351	Ward	Barrow	7323	158	2229m2
34.	364	222351	Ward	Barrow	7323	159	2020m2
35.	366	222351	Ward	Barrow	7323	161	2379m2
36.	367	222351	Ward	Barrow	7323	162	2095m2
37.	368	222351	Ward	Barrow	7323	163	2109m2
38.	369	222351	Ward	Barrow	7323	164	2114m2
39.	Part 329	220690	Ward	Barrow	7183	106 east of the red line on the plan annexed and marked "A"	

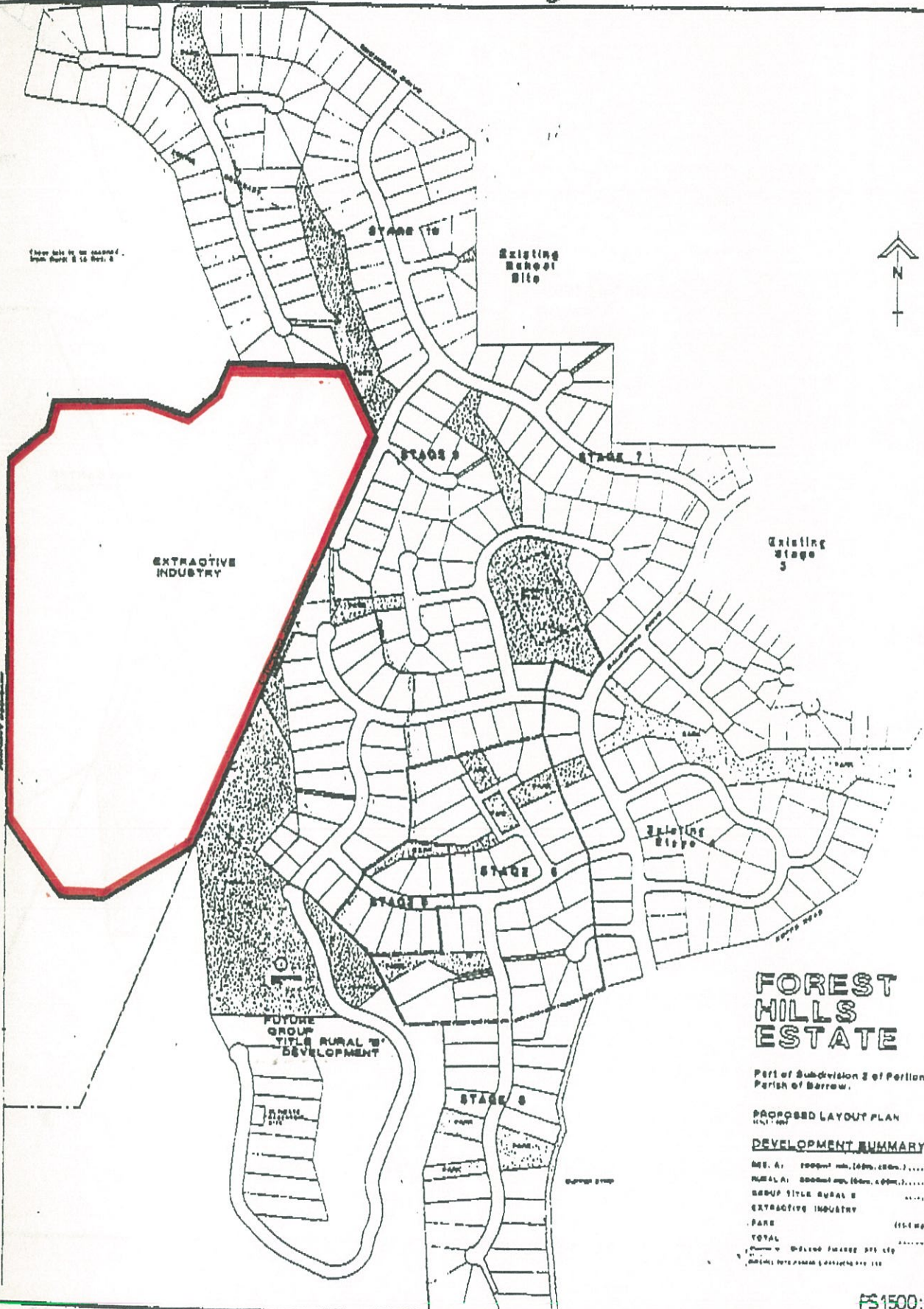
PART II

Part of Lot 329 on Registered Plan number 220690 County Ward Parish Barrow and contained within Certificate of Title Volume 7183 Folio 106 as delineated in red on the plan annexed and marked "B".

PART III

Part of Lot 329 on Registered Plan number 220690 County Ward Parish Barrow and contained within Certificate of Title Volume 7183 Folio 106 as delineated in red annexed hereto and marked "C".

B



FOREST HILLS ESTATE

Part of Subdivision 2 of Portion 42,
Parish of Barrow.

PROPOSED LAYOUT PLAN
(1:10,000)

DEVELOPMENT SUMMARY

REG. A:	roadway, (40m, 400m),	501 lots
RURAL A:	roadway, (40m, 400m),	10 lots
GROUP TITLE RURAL B	8 lots
EXTRACTIVE INDUSTRY	
PARK	(151m, 400m)	
TOTAL	520 lots
.....	
.....	

FS1500:00:02

IN WITNESS WHEREOF this Deed has been executed on the day and year
hereinbefore mentioned

MIDLAND CREDIT LIMITED by its
duly constituted Attorney
RAY ALAN BEALE
who certifies that he is the ^{GROUP}
MANAGEMENT EXECUTIVE of the Company
under Registered Power of
Attorney J153447P in the
presence of:

RB Beale

[Signature]
A Justice of the Peace

THE CORPORATE SEAL of
COUNCIL OF THE SHIRE OF ALBERT
was hereunto affixed on ^{first} 90th
the ~~February~~ day of 1989
under the hands of WILLIAM
MAURICE LAVER the Chairman and
TERRENCE ROBERT LESLIE MOORE
the Shire Clerk in the
presence of:
accordance with its Memorandum
and Articles of Association in
the presence of:

[Signature]
[Signature]

Valerie Tite J.P. (Old)

A Justice of the Peace

Valerie TITE J.P.

THE COMMON SEAL of
NERANG PASTORAL COMPANY PTY LTD
was hereunto affixed in
accordance with its Memorandum
and Articles of Association in
the presence of:



Director

Secretary

[Signature]
A Justice of the Peace

BETWEEN:

MIDLAND CREDIT LIMITED

("the Applicant")

AND:

COUNCIL OF THE SHIRE OF ALBERT

("the Council")

AND:

NERANG PASTORAL COMPANY PTY LTD

("the Purchaser")

DEED OF NOVATION

HENDERSON TROUT,
Solicitors,
26th Floor,
Santos House,
215 Adelaide Street,
BRISBANE. Qld. 4000

Telephone: (07)228-5811

KMT080048/22