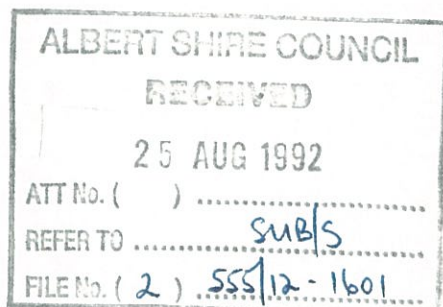


N

# NERANG PASTORAL CO. PTY. LTD.

Hart Street,  
Upper Coomera,  
Queensland, 4210.  
P.O. Box 179, Oxenford, 4210.  
Phone: (075) 53 1388/53 1257  
Fax: (075) 53 2908



24th August 1992

Shire Clerk  
P.O Box 172  
Nerang Qld 4211

Dear Sir,

RE : Application to Amalgamate Land in Extractive Industry Area.

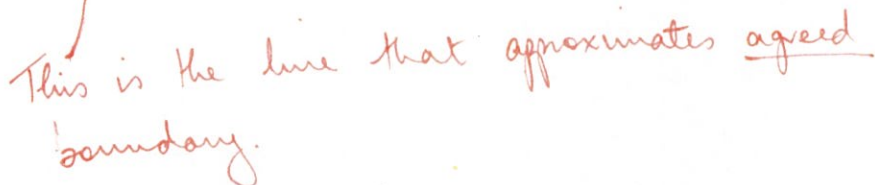
We refer to clauses 35 and 36 of the Rezoning Agreement between Nerang Pastoral Company Pty Ltd and the Albert Shire Council, dated 17th March 1992. In accordance with clause 35 we submit to the Council an application to amalgamate the necessary parts of Lot 3 on Registered Plan No. 183196 and Lot 463 on Registered Plan No. 228373 into one allotment. We bring to Council's attention that under cl.35.5 of the agreement we are not required to pay any Council fees or charges with respect to this application for amalgamation.

Yours faithfully

Dugald Gray  
General Manager

845775

*Original information compiled from  
RP 183196 & RP 228373 in the  
Division of Titles, Brisbane.*



J. Maendy.

ENDORSED	REGISTERING DIST
	DIVISION OF TITLES

PLAN 845775

- 35.1 undertake the use of the Extractive Industry Area as one comprehensive quarry operation, and the Council shall be entitled to enforce the provisions of this Deed against the Applicant in respect of each and every part of the quarry within the Extractive Industry Area as herein defined; and
- 35.2 as referred to in Recital O, make application to the Council pursuant to Section 5.11 of the Local Government (Planning and Environment) Act to amalgamate all those parts of Lot 3 on Registered Plan No. 182196 and Lot 463 on Registered Plan No. 228373, as are coloured pink, blue, green and yellow on said Plan of Development No. 362-010 (the whole of the Extractive Industry Area as herein defined) into one allotment;
- 35.3 make the said application for amalgamation within sixty (60) days of the Gazettal of the proposed rezoning pursuant to the Rezoning Application;
- 35.4 promptly and diligently attend to all matters and steps necessary to procure registration, in the Department Lands, Division of Titles, of the proposed amalgamation. Without limiting the generality of the foregoing, the Applicant shall, within fourteen (14) days of Council's notification of its consent thereto, lodge the request for amalgamation with the Division of Titles, and thereafter shall comply promptly with all requisitions which may issue upon the documents;
- 35.5 not be required to pay any Council fees or charges with respect to the application for amalgamation, nor shall the approval thereof by Council be subject to further conditions not contained in this Deed or imposed pursuant to Clause 42(1) of the Council's Town Planning Scheme.

#### CESSATION OF THE QUARRY USE

36. Upon the Shire Engineer being satisfied that all revegetation and rehabilitation works required by this Deed or pursuant to Clause 42(1) of the Town Plan have been completed, the Council shall sign and seal a Plan of Subdivision ("the new plan") of the amalgamated allotment created pursuant to Clause 35 hereof ("the amalgamated parcel"). The new plan shall effect a resubdivision of the amalgamated parcel into two parcels, one of which is identical to Lot 463 on Registered Plan No. 228373, the other being the balance of the shaded area on said Plan of Development No. 362-010. The Council's sealing and release of the Plans of Survey effecting the resubdivision shall be free of all Council fees and

*[Handwritten signature]*

32. The function of the Engineer, when determining a matter referred to him pursuant to Clause 31, 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:-
- 32.1 shall act as an expert and not as an arbitrator; and
- 32.2 may, without limiting in any way the discharge of his function hereunder and the application of his expert knowledge skill and experience, refer to and use his knowledge and experience of the Act, the Town Plan, and 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, provided or done on or in relation or applicable to lands in the Shire and the development and use of such lands.
33. No action or proceeding in relation to any matter of alleged doubt or uncertainty shall be instituted by either party unless and until the matter has been referred to the Engineer as aforesaid and the decision of the Engineer obtained, and any decision of the Engineer under Clause 31 shall bind both parties and for all purposes shall be deemed to have formed part of and been incorporated in this Deed as from the date hereof and not to be a variation or alteration of the terms of this Deed.
34. If the Applicant considers any decision of the Engineer under Clause 31 to be unfair the Applicant may apply to any Court of competent jurisdiction (to which the Council hereby submits) for determination of the alleged or contended doubt or uncertainty and the Court's determination shall be substituted for the decision of the Engineer under Clause 31.

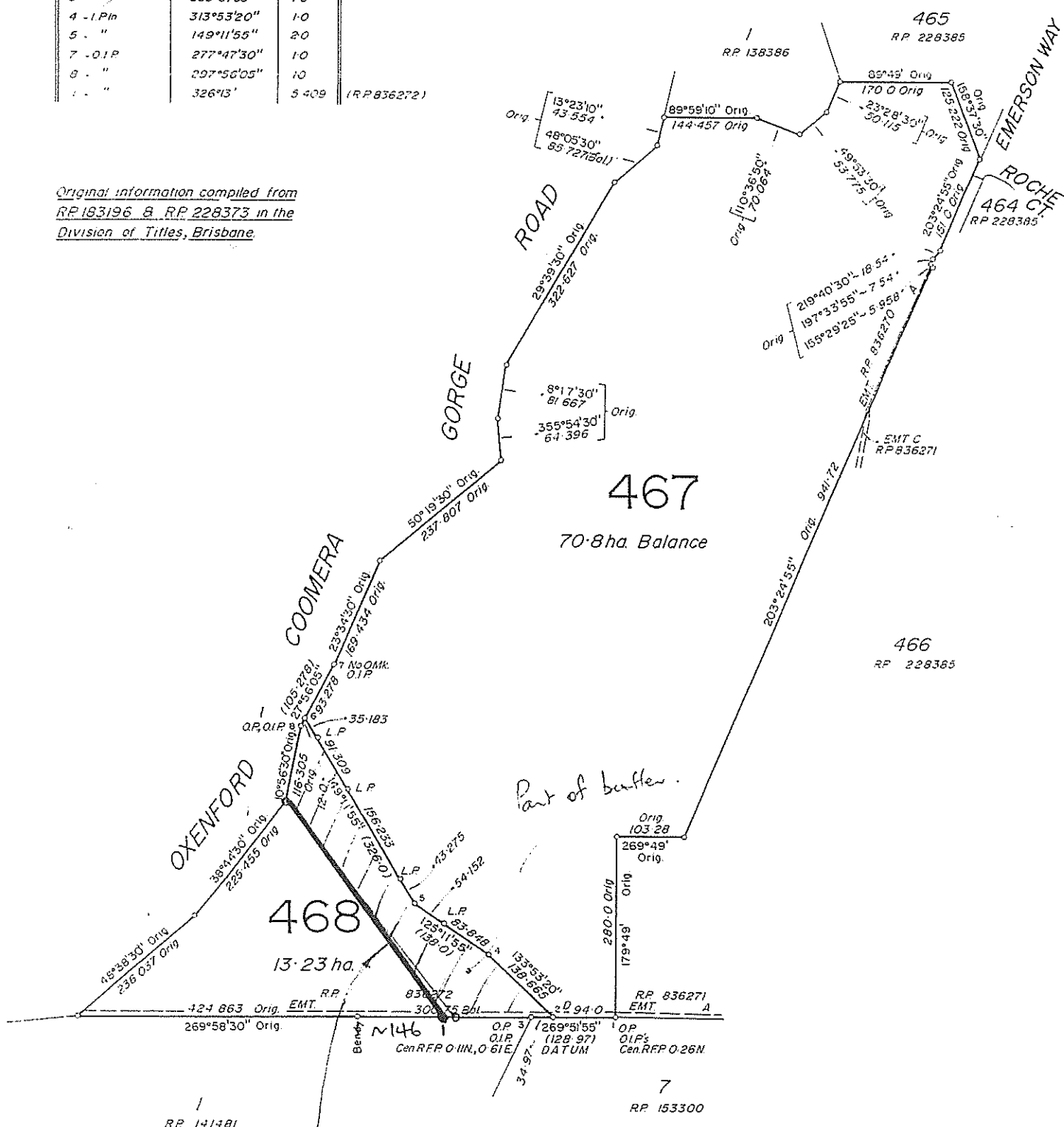
#### OPERATION OF THE EXTRACTIVE INDUSTRY AREA

35. The Applicant shall:-

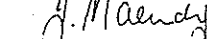
*PDW*  
*BS*

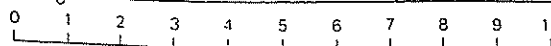
REFERENCE MARKS		
1. P	175°03'35"	0.5
3	359°51'36"	1.0
4 - I.P.in	313°53'20"	1.0
5. "	149°11'55"	2.0
7 - O.I.P	227°47'30"	1.0
8. "	297°56'05"	1.0
1. "	326°13'	5.409

*Original information compiled from  
RP183196 & RP 228373 in the  
Division of Titles, Brisbane.*



This is the line that approximates agreed boundary.

I, JOHN PETER MARENDY hereby certify that <del>the Company</del> have surveyed the land comprised in this plan <del>with the Company</del> personally or by ALAN LOUIS ORR, Surveying Technician for whose work <del>the Company</del> accept responsibility, that the plan is accurate, that the said survey was performed in accordance with the Surveyors Act and the Surveyors Regulations and that the said survey was completed on 24-8-92  Licensed Surveyor/ Director Date 24/8/92		PLAN OF Lots 467 and 468  Cancelling Lot 3 on R.P.183196 and Lot 463 on R.P.228373  ORIGINAL FOR 6 & 42				NO SURVEY RECORDS DEPOSITED ENDORSED REGISTERING DIST DIVISION OF TITLES		PARISH BARROW COUNTY Ward TOWN/LOCALITY Oxenford LOCAL AUTHORITY ALBERT SHIRE COUNCIL LAND AGENTS-MINING DISTRICT BRISBANE MINING FIELD  PLAN 845775	
MERIDIAN R.P.228385	MAP REF 9542-234	SCALE 1:6000	FILE REF						



J.P. Marendy  
12-1601  
31 AUG 1992

ALBERT SHIRE COUNCIL

Council's Endorsement of Survey Plan No.

845775  
Nerang Pastoral Co Pty.

MEMO SHIRE CLERK

Attached plan conforms with the provisional approval given by Council and the following tabulation details the moneys which have been lodged with Council to cover the cost of engineering services, together with other conditions necessary under the conditions of that Approval

1. Roadworks (a) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ to cover construction of road.  
(b) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ contribution to external work on \_\_\_\_\_  
(c) Roads are complete and accepted by Council  
(d) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ Retention money held on contract  
(e) A satisfactory bond has been arranged with Council

2. Water Supply (a) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ contribution for Headworks  
(b) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ for construction of internal work

Not Applicable

3. Sewerage (a) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ contribution for headworks  
(b) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ for construction of internal work

Amalgamation

4. Park (a) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_ contribution to parks  
(b) Lots \_\_\_\_\_ to be transferred to Crown as Reserve

5. Drainage (a) The endorsement of Easements \_\_\_\_\_  
\_\_\_\_\_ on lots \_\_\_\_\_  
\_\_\_\_\_ on Plan \_\_\_\_\_

6. Three Link Strip (Trust) (a) The endorsement on the Plan of Lots \_\_\_\_\_  
\_\_\_\_\_ in Trust to Council

18/9/92  
Rates -  
OK.

7. Street Lighting (a) \$ \_\_\_\_\_ Rec. # \_\_\_\_\_

8. Other Contributions \_\_\_\_\_

All Council rates & charges have been paid and all subdivision conditions complied with

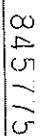
[Signature]  
SUBDIVISION ENGINEER

OK  
17/9/92



91

PLAN MUST BE DRAWN WITHIN BLACK LINES



Licensed Surveyor  
Director  
Expirator 24/8/0

Council of the \_\_\_\_\_ of \_\_\_\_\_ certifies  
that all the requirements of this Council, the Local Government Acts and all By-  
Laws have been complied with and approves this Plan of Subdivision

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Mayor or  
Chairman  
Town or  
Shire Clerk

I/We

(Names in full)

- as Proprietor/s of this land.
  - as Lessee/s of Miner's Homestead
- agree to this plan and dedicate the new road as shown hereon to public use.

Signature of • Proprietor/s • Lessee/s  
• Rule out which is inapplicable.

Previous Title

This survey has been examined and may be used for land dealings

Surveyor General

Date

Lot	Vol.	Fol.	Lot	Vol.	Fol.	Lot	Vol.	Fol.

Lodged by

Received  
Registrar of Titles

## Fees Payable

Postal fee and postage

Logt. Exam. &amp; Ass.

New Title

Entd. on Deeds

Photo Fee

Total

Short Fees Paid

File Ref.

Deposited / /

Audited / /

Passed / /

Survey Records: File/Field Notes

Charted / /

Original Grant

Particulars entered in Register Book

Vol. Folio

at

REGISTRAR OF TITLES

C 11140

No.

845775



( )555/12-1601  
Mr J Zawadzki:ROB

15 September 1992

Nerang Pastoral Co Pty Ltd  
P O Box 179  
OXENFORD QLD 4210

Dear Sir

OUTSTANDING ITEMS REGARDING SEALING OF PLANS

I refer to your request for sealing of Survey Plan No. 845775.

Unfortunately, the plan cannot be sealed as the proposed dividing boundary between proposed lots 467 and 468 is not in accordance with that shown on previously approved drawing no. 362-010.

Please amend the survey plan as necessary in order to comply with Clause 35 of our rezoning agreement. (Attached is an amended survey line which more accurately reflects the one agreed to).

Also please note that the amalgamation plan was required by Council in early April of this year and was only received by this office in late August.

Your urgent attention to this matter would therefore be appreciated.

Yours faithfully



for T R Moore  
GENERAL MANAGER/SHIRE CLERK

*10/15/92*

(2)555/12-1601  
Mr J Zawadzki:ROB

18 September 1992

Nerang Pastoral Co Pty Ltd  
P O Box 179  
OXENFORD QLD 4210

Dear Sir

**REQUEST FOR SEALING OF SURVEY PLAN NO. 845775**

Please disregard Council's letter dated 15 September 1992 regarding outstanding items for sealing of Survey Plan No. 845775.

This Survey Plan will be processed shortly.

I apologize for any inconvenience caused in this matter.

Yours faithfully



for T R Moore  
GENERAL MANAGER/SHIRE CLERK

BAS 17/9/92

(2) 555/12-1601  
Mr J Zawadzki:ROB

21 StP 1992

J P Marendy & Associates  
Surveyors  
P O Box 224  
SOUTHPORT QLD 4215

Dear Sir

SURVEY PLAN NO. 845775 - NERANG PASTORAL CO PTY LTD

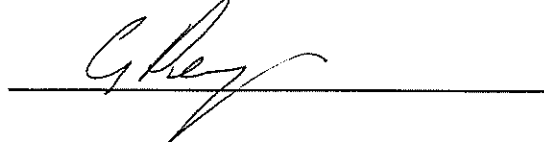
Enclosed please find the above plan signed and sealed by Council, as requested.

Yours faithfully



for T R Moore  
SHIRE CLERK

Collected by the Undersigned



11  
DATED this 17 day of MARCH

, 1992.

BETWEEN:

NERANG PASTORAL COMPANY PTY LTD  
(A.C.N. 010 119 990)

("the Applicant")

AND:


COUNCIL OF THE SHIRE OF ALBERT

("the Council")

REZONING AGREEMENT

King and Company,  
Solicitors,  
7th Level, Quay Central,  
95 North Quay,  
BRISBANE QLD 4000  
Tel: 236 1199  
REF: SAM:AA7584  
006P-B1  
ASCNERAN.REZ  
March 16, 1992

NO DUTY PAYABLE

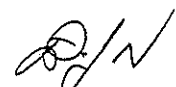
For   
Commissioner of Stamp Duties,  
Queensland  
THIS DEED is made the 17 day of MARCH, 1992.  
2/6/92

BETWEEN: NERANG PASTORAL COMPANY PTY LTD (hereinafter called "the Applicant") of the one part

AND: COUNCIL OF THE SHIRE OF ALBERT (hereinafter called "the Council") of the other part

WHEREAS:

- A. The Applicant is the registered proprietor of an estate in fee simple in that land more particularly described in the First Schedule;
- B. Application has been made to the Council to have the Town Plan for the Shire of Albert amended by excluding the said land described in the First Schedule from the zone in which it is now situated or included and including it in the zones indicated in the First Schedule to enable the land to be used for the purposes of proposed development being the purposes for which it may be used (subject, where applicable, to the consent of the Council) under the Town Plan in the case of land in the intended zone or zones.
- C. The application referred to in Recital B was referred to the Council and the Council resolved to refuse the said application on the basis of the number and nature of objections received by it, and other Town Planning grounds. The Council notified the Applicant of its refusal by letter dated 30th July, 1990.
- D. The Applicant appealed to the Local Government Court ("the Court") against the Council's refusal of the application.
- E. After consideration of the issues contained in the objections received by Council, and the Council's grounds of refusal, the Applicant submitted a significantly modified proposal as the basis for negotiations with the Council. It was subsequently agreed that the Applicant would amend the application in accordance with its modified proposal to render it more acceptable to the Council on Town Planning and environmental grounds. It was further agreed that the Applicant's Solicitors would make Application to the Court for an amendment of the said rezoning application, and an Order that the Amended Application complied with the provisions of the Local Government Act relating to the giving of public notice, and that the Applicant was not required to give further public notice of the Amended Application as it related to the proposed Special Facilities zoning.

  
TSZ

- F. On 17th April, 1991, the Court Ordered that the application be amended in accordance with the Plan of Development No. 362-010 dated 5th April, 1991 which plan is the Third Schedule to this Deed, and that the Appeal be allowed in respect of that Amended Application as shown on the said Plan of Development.
- G. On 4th February, 1992 the Planning and Environment Court ("the Court"), with the consent of the parties, Ordered that the Council make application to the Minister (as defined by the Act) for the necessary amendment of the Town Plan subject to compliance with certain conditions and the Applicant entering into Council's usual form of Development Agreement concerning development requirements and to facilitate the proper and effective enforcement of the Conditions of approval and to regulate the utilisation by Council of the security to be lodged by the Applicant.
- H. The Applicant is also the registered proprietor of the land presently zoned Extractive Industry contiguous to the north of the subject land, described as part of Lot 463 on Registered Plan No. 228373 and part of Lot 3 on Registered Plan No. 183196, and, is coloured pink on the said Plan of Development.
- I. Plan of Development No. 362-010 dated 5th April, 1991 comprising the Third Schedule is to be the Plan of Development for the whole area zoned Extractive Industry and Special Facilities (Ancillary Purposes to Extractive Industry including Processing, Plant, Stockpiling, Magazines, Water Storage, Workshops, Stores, Weighbridge and Offices, Decantation Ponds, Dams, Access, Permanent Tree and Shrub Screening) now owned by the Applicant (hereinafter referred to as "the Extractive Industry Area").
- J. It is the intent of the parties, and is hereby agreed, that the whole Extractive Industry Area is to be operated as one comprehensive quarry operation, and that this Deed is intended to regulate the orderly development and operation of that quarry. The conditions of approval appearing in the Second Schedule are to be equally and severally applicable to both the land the subject of the said Amended Application, and the land presently zoned Extractive Industry, namely the whole of the Extractive Industry Area.
- K. The Applicant acknowledges and agrees that, notwithstanding anything contained in this Deed, the Council continues to be at liberty to impose regulatory requirements on the proposed extractive operations in the Extractive Industry Area in addition to those contained in the Second Schedule pursuant to clause 42(1) of its Town Plan, and that the entry into this Deed by Council does

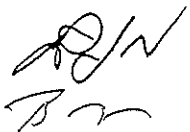
NDW  
TSW

W. J. P.  
S. W.  
R. N.

not in any way act as a waiver of Council's rights to impose such regulatory requirements thereunder.

- L. The parties hereto are also party to a Deed of Novation dated 12th September, 1989 under which the Applicant agreed to be bound by the terms of a (Rezoning) Deed between the Council and Midland Credit Limited bearing the same date; as if it had originally executed the said Rezoning Deed.
- M. There is presently a dispute between the parties as to the Applicant's performance of certain obligations regarding rezoning part of the existing Extractive Industry Zoned land contiguous to the north as referred to in Recital H to the Rural B Zone as contained in clause 5 of the said Rezoning Deed.
- N. The Applicant hereby acknowledges that nothing contained in this Deed in any way affects the rights and obligations of either party pursuant to the said Rezoning Deed and the Applicant's novation thereof, nor acts as, nor may be pleaded as a waiver of their respective rights and obligations thereunder.
- O. To facilitate the orderly and controlled development of the Extractive Industry Area as herein defined, the Applicant has agreed to amalgamate the land presently zoned Extractive Industry (coloured pink on Plan of Development No. 362-010) and the land contained in the Amended Application into one allotment, which allotment shall contain all the area comprising the Extractive Industry Area.
- P. The Applicant has agreed to enter into this Deed on the covenants and conditions hereinafter set forth in consideration of :-
  - (a) the Council consenting to the amendment of the application by including additional land and by altering the proposed internal layout of the Extractive Industry and its ancillary uses to reduce the impact of the whole Extractive Industry Area on the adjoining residential areas; and
  - (b) the Council consenting to the Appeal being allowed on the basis of the Amended Application; and
  - (c) The desire of both parties to ensure that the development of the whole Extractive Industry Area proceeds and is carried out in an orderly and controlled manner so as to minimise any possible conflict in use between the Extractive Industry Area and the adjoining and surrounding residential areas.

NOW THIS DEED WITNESSES:

Two handwritten signatures are present at the bottom left of the page. The top signature is a stylized, cursive 'JW' or similar. The bottom signature is a cursive 'B' followed by a horizontal line.



## 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 hereinbefore named (but subject the provisions of Clause 1.19);
  - 1.3 "the Amended Application" means the rezoning application referred to in Recital B, as amended by the Order of the Planning and Environment Court dated 17th April, 1991 to include those uses and those areas coloured blue, green and yellow on Plan of Development No. 362-010, and the Conditions appearing in the Second Schedule;
  - 1.4 "the Bond" means a bond in a form satisfactory to the Council, by a bank or financial institution approved in writing by the Council, providing for payment to the Council, pursuant to Clause 6, of the sum specified in the Second Schedule or so much thereof as shall be owing or payable by the Applicant pursuant to this Deed;
  - 1.5 "the Bonded Amount" means the sum the payment of which is secured under the Bond;
  - 1.6 "the Council" means the Council of the Shire of Albert and its successors and assigns;
  - 1.7 "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;
  - 1.8 "the Extractive Industry Area" means those areas coloured pink, blue, yellow and green on Plan of Development No. 362-010 comprising the Third Schedule hereto, and specifically includes the area presently zoned Extractive Industry (shown as pink on the said Plan of Development) which is also owned by the Applicant;
  - 1.9 "the Land" means the land described in the First Schedule;
  - 1.10 "the Minister" means the Minister of the Crown for the time being responsible for administration of the Act;
  - 1.11 "the Obligor" means the bank or financial institution, approved in writing by the Council, from whom the Bond is obtained;
  - 1.12 "the Present Zone" means the zone in which the Land is presently included, as set out in the First Schedule;

*R. J. N.*

*T. B. M.*

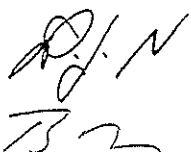
- 1.13 "the Proposed Development" means that use proposed for the Extractive Industry Area by the Applicant following gazettal of the proposed rezoning as set out in the First Schedule;
- 1.14 "the Proposed Zone" means the zones in which the Land is proposed to be included as set out in the First Schedule;
- 1.15 "the Rezoning Application" means the application (if any) made by the Council to the Minister pursuant to Clause 4;
- 1.16 "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;
- 1.17 "the Town Plan" means the Town Planning Scheme for the Shire of Albert and the Council's by-laws relating to town planning;
- 1.18 Where the context so admits or requires, references to the singular number shall import the plural number and vice versa; references to one gender shall import the other genders; and references to persons shall import corporations and/or associations and/or bodies and vice versa in each respective case.
- 1.19 If the Applicant is comprised of two or more persons all of the covenants, agreements, conditions, restrictions and provisos herein contained or implied shall be read and construed as binding those persons jointly and each of them severally together with their respective executors, administrators or successors (as the case may be) and assigns, who also shall be bound jointly and severally.

2. This Deed shall be interpreted in all respects 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.

#### APPLICATION TO MINISTER

4.

4.1 Subject to:-

Handwritten signature and initials, possibly "D.J.N." and "BZ", in dark ink.

- 4.1.1 execution of this Deed by the Applicant, and in consideration, and on the faith, of the covenants on the part of the Applicant to be observed and performed pursuant to this Deed; and
- 4.1.2 the Applicant providing the Council with the security referred to in Clause 6 hereof; and
- 4.1.3 the Applicant complying with its obligations under the Act and with any other obligations imposed by law; and
- 4.1.4 the provisions of Clause 4.2 hereof,

the Council shall make application to the Minister for amendment of the Town Plan by excluding the Land from the Present Zone and including it in the Proposed Zone.

- 4.2 The Applicant acknowledges and agrees that, where the Land is mortgaged, charged or encumbered, whether by registered dealing or otherwise, and it is intended that such mortgage, charge or encumbrance continue to exist after the date of gazettal of the rezoning, the Council shall not be under any obligation to proceed with application to the Minister for amendment of the Town Plan until the mortgagee, chargee or encumbrancee (as the case may be) has entered into an agreement in the Council's usual form whereby such mortgagee, chargee or encumbrancee agrees to be bound by the terms and conditions of this Deed, as if it were the Applicant, in the event that the said mortgagee, chargee or encumbrancee enters in possession of or exercises power of sale over the Land.

#### OBLIGATIONS OF APPLICANT

- 5. In the event of the Governor-in-Council approving the application referred to in Clause 4 the Applicant shall:-
  - 5.1 undertake, carry out, provide and do or cause to be undertaken, carried out, provided and done the works; and
  - 5.2 make or pay the payments or contributions offered by the Applicant and accepted by the Council,
 set out and specified in the Second Schedule, within the time limited in the Second Schedule.

#### SECURITY BY APPLICANT

*R.A.N.*  
*AS*

6. To secure to the Council due performance and fulfilment of the obligations of the Applicant under Clause 5, and otherwise under this Deed, the Applicant shall obtain, at its own cost and expense, in favour of the Council and in a form approved by the Council, a bond ("the Bond") by a bank or financial institution approved in writing by the Council ("the Obligor") providing for payment to the Council by the Obligor of the sum specified in the Second Schedule or so much thereof as shall be owing or payable by the Applicant under this Deed.
7. The Bond shall:-
  - 7.1 provide for payment of the Bonded Amount or part thereof at any time or times forthwith upon receipt by the Obligor of a Certificate signed by the Shire Clerk that a sum of money, to be set out therein, is payable by the Applicant to the Council pursuant to the provisions of this Deed;
  - 7.2 otherwise contain such terms and conditions as the Council reasonably requires; and
  - 7.3 be delivered, duly completed and stamped, to the Council by the Applicant contemporaneously with delivery of this Deed unless a different time for delivery is specified in the Second Schedule.

#### DEFAULT BY APPLICANT

8. Should the Applicant fail duly to perform and fulfil its obligations under Clause 5, or otherwise under this Deed, the Council may, at its discretion, forthwith recover from the Applicant as a liquidated debt, or forthwith demand from the Obligor pursuant to the Bond, the following amounts:-
  - 8.1 the whole amount of the payments or contributions (if any) not paid by the Applicant; and
  - 8.2 such sum as the Engineer certifies as representing the fair estimated cost of completing the works not performed or completed by the Applicant (including any works performed or to be performed by the Council the cost of which is, pursuant to the terms of this Deed, payable 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 be determined in the absolute discretion of the Engineer.

*P.J.N.*  
*B.M.*

9. The Council may exercise its rights under Clause 8 against the Applicant or against the Obligor or partly against the Applicant and partly against the Obligor.
10. The Council shall apply any sum or sums paid to it pursuant to Clause 8, so far as the same may extend, to or towards all or any one or more of the following:-
  - 10.1 reduction or discharge of the payments or contributions payable by the Applicant pursuant to this Deed;
  - 10.2 performing any work not completed, undertaken or performed by the Applicant pursuant to this Deed within such reasonable time as may be determined by the Council;
  - 10.3 altering or amending any improperly completed or partly completed work undertaken or performed by the Applicant pursuant to this Deed;
  - 10.4 performing 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 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
  - 10.5 reimbursing itself for any damages suffered by it.
11. If the sum or sums at any time or times received or recovered by the Council pursuant to Clause 8 are insufficient to complete the performance, alteration or amendment of such work in accordance with the requirements of this Deed the Council may, at its discretion:-
  - 11.1 perform, alter or amend such work so far as the moneys received by it pursuant to Clause 8 will, in the opinion of the Engineer, reasonably allow; or
  - 11.2 complete the performance, alteration or amendment of such work in accordance with the requirements of this Deed,and recover from the Applicant as a liquidated debt the difference between the costs actually incurred by it in so doing and the sums received or recovered by it pursuant to Clause 8.

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12. For the purposes of exercising its rights under Clauses 10 and 11 hereof the Council and the members, agents, servants, employees, contractors and sub-contractors of the Council, and others, whether of any class just mentioned or not, authorised by the Council, shall have full and free right and liberty to enter upon the Land with all necessary vehicles, plant, equipment and the like.

13. If:-

13.1 the Applicant defaults in the performance or fulfilment of any of its material obligations hereunder; and

13.2 after three (3) months written notice of any such default, given to the Applicant by the Council, such default is not remedied,

the Council may, at its discretion, and in addition to any other remedy available to the Council, whether by virtue of this Deed or the Bond or any other bond, or otherwise, take proceedings for deletion of the Land or any part thereof from the Proposed Zone and inclusion of the same in such zone or zones as the Council determines.

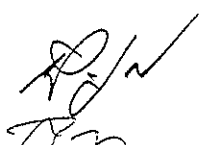
Provided however, that the land capable of being subject to deletion from its Zoning by this clause shall only be the land the subject of the Amended Application, and does not extend to the area coloured pink on the said Plan of Development No. 362-010.

14. In the event of the Council causing the Land to be deleted from the Proposed Zone pursuant to Clause 13, the Applicant shall:-

14.1 possess no entitlement to, and shall not make, any claim for compensation in respect of any such rezoning; and

14.2 indemnify and hold indemnified the Council against any loss or damage the Council may suffer in respect of any such claim by the owner of the Land (if not the Applicant) or any other person having an estate or interest in the Land which is or may be injuriously affected by such rezoning, including the Council's own costs of any such proceedings on a solicitor and own client basis and any further costs which may be awarded against it (the Applicant).

RELEASE OF SECURITY

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15. If the Applicant performs and fulfils all of its obligations under this Deed, the Council shall within fourteen (14) days thereafter certify to the Applicant to that effect, in writing under the hand of the Shire Chairman or Shire Clerk, and immediately thereupon the Bond shall be discharged.

#### APPLICANT'S OBLIGATIONS TO CONTINUE

16. Subject to granting of the Rezoning Application the obligations of the Applicant under this Deed shall continue and remain in full force and effect notwithstanding that:-
- 16.1 the Applicant may not be, become or be entitled to become the registered proprietor of the Land or any part thereof; or
  - 16.2 subject to Clause 17, the Applicant at any time ceases to be registered proprietor of the Land or any part thereof; or
  - 16.3 the Applicant is precluded from benefiting either wholly or partly from any amendment of the Town Plan approved consequent upon the said application, for any reason whatsoever including, but without limiting the generality of the foregoing, the reason that:-
    - 16.3.1 any use which the Applicant proposes for the Land may require the consent of the Council; and
    - 16.3.2 upon application therefor, such consent is refused by the Council or, if granted, is granted subject to conditions.

#### NOVATION OF AGREEMENT UPON TRANSFER

17. The Applicant shall not sell, transfer or otherwise alienate the Land or any part thereof prior to the performance and fulfilment of the Applicant's obligations under this Deed, or any of them, except subject to the condition that the purchaser, transferee or alienee shall:-
- 17.1 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 remain unperformed or unfulfilled by the Applicant at the time of such sale, transfer or alienation; and
  - 17.2 secure to the Council the due performance and fulfilment of those provisions, by obtaining at its own cost and expense, in favour of the Council and in a form approved by the Council, a bond in accordance with the requirements of Clauses 6 and 7.

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*T.N.*



18. 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 17:-
- 18.1 the Applicant shall remain liable for the performance and fulfilment of its obligations under this Deed as though no sale, transfer or alienation had taken place; and
  - 18.2 the Applicant shall perform and fulfil:
    - 18.2.1 forthwith; or
    - 18.2.2 at such other time or times as the Council shall require, such of the Applicant's obligations under this Deed as have not been performed and fulfilled notwithstanding that the time or times otherwise appointed for such performance and fulfilment shall not have then arrived.

#### ASSIGNMENT BY APPLICANT

19. The Applicant shall not assign, either absolutely or by way of security, its interests, rights or obligations under this Deed without the prior consent in writing of the Council but:
- 19.1 such consent shall not be arbitrarily or unreasonably withheld should the proposed assignee be a financially responsible and reputable person; and
  - 19.2 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 such consent shall be subject to compliance with the provisions of Clause 17 and the Council may impose conditions for the giving of such consent not inconsistent with the provisions of this Deed.

#### MORTGAGE OR ENCUMBRANCE

20. The Applicant shall not mortgage, charge or in any way encumber the Land without the prior written consent of the Council which consent shall be forthcoming upon the proposed mortgagee, chargee or encumbrancee covenanting by entry into a legally enforceable Agreement, in the Council's usual form, whereunder the mortgagee, chargee or encumbrancee covenants to be bound by the terms and conditions of this Deed, as if it were the Applicant,

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in the event that such mortgagee, chargee or encumbrancee subsequently enters into possession of, or exercises power of sale over, the Land.

#### APPLICANT TO BECOME REGISTERED PROPRIETOR

21. In the event of the Governor-in-Council approving the Rezoning Application and the Applicant not at the time of such approval being the registered proprietor of a fee simple estate in the Land the Applicant shall, forthwith thereafter, do, sign, seal and deliver all such acts, documents and things as may be necessary or desirable to have the Applicant registered as such proprietor as soon as is practical thereafter.
22. So as to fulfil its obligations under Clause 21 the Applicant shall take all action necessary to enforce (by legal process if necessary) its rights and remedies under any contract, option or other document entered into or given in favour of the Applicant.

#### PARTIAL APPROVAL OF APPLICATION

23. Notwithstanding any other provisions herein contained, if the Governor-in-Council approves of the Rezoning Application in part only the obligations of the Applicant and of the Council (if any) under this Deed shall be varied so that the Applicant and the Council respectively shall be bound only to observe and carry out such obligations so far as, and to the extent to which, in the determination of the Engineer, they relate, apply or pertain to, or are capable of relating, applying or pertaining to, that part of the Extractive Industry Area in respect of which approval to amend the Town Plan has been given.
24. Where the Engineer's determination pursuant to Clause 23 includes a provision for reduction of the amount of the security required from the Applicant hereunder:
  - 24.1 the Shire Clerk shall notify the Applicant of the amount determined by the Engineer as sufficient to secure performance of the Applicant's obligations as varied pursuant to Clause 23; and
  - 24.2 the amount of the security to be provided by the Applicant hereunder shall thereupon reduce to the amount determined.



25. Subject to Clause 24, in the event of the Applicant's obligations being varied pursuant to Clause 23, the other provisions of this Deed shall remain in full force and effect, with all necessary adaptations and modifications, to the intent that those provisions shall continue to apply as though that part of the Land in respect of which approval to amend the Town Plan is given was originally specified herein as the Land.
26. Notwithstanding the provisions of Clauses 23, 24 and 25, in the event that the Governor-in-Council intimates to the Council that he proposes to approve the Rezoning Application in part only the Council shall give to the Applicant forthwith notice of that intimation whereupon the Applicant may, by notice in writing to the Council, elect not to proceed with the Proposed Development and the performance and fulfilment of its obligations hereunder. If the Applicant so elects then there shall be no obligation on the Council to proceed with the Rezoning Application and this Deed shall thereupon terminate with no party having any claim against the other except in respect of any matter which arose prior to the Applicant so electing.

#### GENERAL PROVISIONS

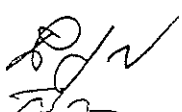
27. All designs and specifications for those works which the Applicant is obliged to perform, provide or do under or by virtue of this Deed shall be prepared by the Applicant at its own cost, shall be submitted to the Engineer for the Council's approval and, when necessary, for the approval of any other authority or instrumentality having jurisdiction. No such works shall be commenced by the Applicant before the Applicant has obtained the said approval or approvals in each and every instance.
28. All works which the Applicant is obliged to undertake, perform, provide or do under or by virtue of this Deed shall be undertaken, performed, 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, and the Applicant shall apply for and obtain from such authorities or instrumentalities any necessary approval for performance of the works.

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29. All conditions set out in the Schedules, including those relating to the time for performance or the order of doing any work, shall be deemed to form part of this Deed as though each of the same were set forth herein and shall be binding according to the tenor thereof upon the party to whom the same apply.
30. The Applicant shall permit the Council and its officers, agents, servants, contractors and sub-contractors, and agents and servants of its contractors and sub-contractors and others, whether of any class just mentioned or not, authorised by the Council, at all times during the operation of this Deed to enter into and upon the Land upon the giving of reasonable notice, for the purposes of:-
- 30.1 examining and inspecting the state and condition thereof and of any works or preparation therefor, or the site thereof on the Land or on land adjacent thereto;
  - 30.2 ascertaining whether the obligations of the Applicant under this Deed or otherwise are being duly observed, performed and fulfilled;
  - 30.3 rectifying, at the cost and expense of the Applicant, any breach of such obligations or any defect in such works;
  - 30.4 performing any works which the Council has agreed to perform; and
  - 30.5 exercising the Council's rights under Clauses 10 and 11.

#### SETTLEMENT OF DISPUTES

31. To the intent of ensuring that there is no want of certainty in this Deed, and to facilitate and expedite recording of the agreement between the parties without herein incorporating full specifications or details of the acts and works agreed to be performed, undertaken, executed, provided or done, or the amounts of contributions to be paid by either party, it is agreed that if either party alleges or contend that the meaning or effect of any provision is uncertain and therefore to any extent void or of no effect or is 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 shall be served on the opposite party, referred to the Engineer for final decision and the Engineer shall make a fair decision thereon which decision shall be communicated to the parties in writing.



32. The function of the Engineer, when determining a matter referred to him pursuant to Clause 31, 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:-
- 32.1 shall act as an expert and not as an arbitrator; and
- 32.2 may, without limiting in any way the discharge of his function hereunder and the application of his expert knowledge skill and experience, refer to and use his knowledge and experience of the Act, the Town Plan, and 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, provided or done on or in relation or applicable to lands in the Shire and the development and use of such lands.
33. No action or proceeding in relation to any matter of alleged doubt or uncertainty shall be instituted by either party unless and until the matter has been referred to the Engineer as aforesaid and the decision of the Engineer obtained, and any decision of the Engineer under Clause 31 shall bind both parties and for all purposes shall be deemed to have formed part of and been incorporated in this Deed as from the date hereof and not to be a variation or alteration of the terms of this Deed.
34. If the Applicant considers any decision of the Engineer under Clause 31 to be unfair the Applicant may apply to any Court of competent jurisdiction (to which the Council hereby submits) for determination of the alleged or contended doubt or uncertainty and the Court's determination shall be substituted for the decision of the Engineer under Clause 31.

#### OPERATION OF THE EXTRACTIVE INDUSTRY AREA

35. The Applicant shall:-

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- 35.1 undertake the use of the Extractive Industry Area as one comprehensive quarry operation, and the Council shall be entitled to enforce the provisions of this Deed against the Applicant in respect of each and every part of the quarry within the Extractive Industry Area as herein defined; and
- 35.2 as referred to in Recital O, make application to the Council pursuant to Section 5.11 of the Local Government (Planning and Environment) Act to amalgamate all those parts of Lot 3 on Registered Plan No. 182196 and Lot 463 on Registered Plan No. 228373, as are coloured pink, blue, green and yellow on said Plan of Development No. 362-010 (the whole of the Extractive Industry Area as herein defined) into one allotment;
- 35.3 make the said application for amalgamation within sixty (60) days of the Gazettal of the proposed rezoning pursuant to the Rezoning Application;
- 35.4 promptly and diligently attend to all matters and steps necessary to procure registration, in the Department Lands, Division of Titles, of the proposed amalgamation. Without limiting the generality of the foregoing, the Applicant shall, within fourteen (14) days of Council's notification of its consent thereto, lodge the request for amalgamation with the Division of Titles, and thereafter shall comply promptly with all requisitions which may issue upon the documents;
- 35.5 not be required to pay any Council fees or charges with respect to the application for amalgamation, nor shall the approval thereof by Council be subject to further conditions not contained in this Deed or imposed pursuant to Clause 42(1) of the Council's Town Planning Scheme.

#### CESSATION OF THE QUARRY USE

- 36. Upon the Shire Engineer being satisfied that all revegetation and rehabilitation works required by this Deed or pursuant to Clause 42(1) of the Town Plan have been completed, the Council shall sign and seal a Plan of Subdivision ("the new plan") of the amalgamated allotment created pursuant to Clause 35 hereof ("the amalgamated parcel"). The new plan shall effect a resubdivision of the amalgamated parcel into two parcels, one of which is identical to Lot 463 on Registered Plan No. 228373, the other being the balance of the shaded area on said Plan of Development No. 362-010. The Council's sealing and release of the Plans of Survey effecting the resubdivision shall be free of all Council fees and

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charges, and shall not be subject to further conditions not contained in this Deed or imposed pursuant to Clause 42(1) of the Council's Town Planning Scheme.

#### BOUNDARY SETBACK RELAXATION

37. The Applicant shall not be required to strictly comply with the provisions of Clause 42(13) of Division 10 of Council's Town Planning Scheme relating to the prohibition against conducting any extractive or ancillary use within forty (40) meters of the eastern boundaries of the Extractive Industry Area, namely those boundaries having a bearing of  $203^{\circ}43'$ ,  $270^{\circ}07'05''$ , and  $180^{\circ}07'05''$ , notwithstanding any other provision of this Deed, PROVIDED HOWEVER that at no time until specifically waived by Council in writing shall the Applicant conduct any extractive or ancillary use within the area of land the subject of the dispute referred to in Recital M and identified as the "AREA TO BE REZONED TO RURAL B" on the Plan comprising the Fourth Schedule hereto. Accordingly, the Applicant may conduct extractive and ancillary uses on the land coloured pink on the said Plan of Development up to the western boundary of the "AREA TO BE REZONED TO RURAL B", but not beyond.

#### PAYMENT OF MONEYS

38. All moneys payable to the Council pursuant to this Deed shall be payable free of any reduction at the office of the Shire Clerk.

#### WAIVER

39. No waiver, by the Council, of any breach of any of the provisions of this Deed by the Applicant shall be implied against the Council or be otherwise effective unless the same is in writing under the hand of the Shire Clerk and no laches or delays by the Council in enforcing any of its rights, powers and entitlements hereunder shall prejudice or affect those rights, powers or entitlements.

#### SERVICE AND NOTICE

- 40.1 Any certificate, demand or notice by or from the Council to or upon the Applicant pursuant to this Deed shall be sufficiently made, given or served if left for the Applicant, or if forwarded by prepaid post in an envelope addressed to the Applicant or any of the persons comprising the Applicant (where more than one such person), at his, its or their or

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any of their address/es or place/s of business in Queensland last known to the Council, and any 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 to the address to which it is directed, whether or not it is actually received, and in proving service by post it shall only be necessary for the Council to certify to that effect under the hand of the Shire Clerk.

40.2 For the purposes of giving notice pursuant to Clause 30 hereof, reasonable notice shall be deemed to have been given:-

- 40.2.1 upon the Council, or its representative contacting the Applicant by whatever means available including, but not limited to, attending at the site office on the subject land; and
- 40.2.2 in cases of urgency by the Council, or its representative making reasonable attempts to contact the Applicant or a representative thereof at its place of business on the subject land.

#### COSTS AND EXPENSES

41. The Applicant shall pay promptly all legal costs, calculated on a solicitor and own client basis, and all other charges and expenses incurred by the Council in and incidental to:

- 41.1 the negotiation, preparation, execution and stamping of this Deed and of the Bond, and of all counterparts of either document;
- 41.2 enforcement of the provisions of this Deed and/or the Bond, where the Council's enforcement action is vindicated by the finding of a competent Court exercising jurisdiction in relation thereto that the Applicant was in breach of the material provisions of this Deed and/or the Bond; and
- 41.3 preparation and placement of all advertisements required by law or otherwise in relation to the proposed amendment to the Town Plan.

#### TIME OF THE ESSENCE

42. Time shall be of the essence of this agreement in respect of all covenants, provisions and stipulations by which the Applicant is bound hereunder.

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FIRST SCHEDULE  
DESCRIPTION OF LAND  
(Recital A)

Those parts of Lot 3 on Registered Plan No. 183196 and Lot 463 on Registered Plan No. 228373, County of Ward, Parish of Barrow, situated at Oxenford-Coomera Gorge (Maudsland) Road, Oxenford in the State of Queensland as coloured blue, green and yellow on Plan of Development No. 362-010 (which is the Third Schedule).

PRESENT ZONE  
(Recital B and Clause 1.12)

Rural B

PROPOSED ZONE  
(Recital B and Clause 1.14)

That part marked blue on the Plan of Development No. 362-010 (being the Third Schedule hereto) is to be included in the Extractive Industry Zone, and both those parts marked green and yellow on the said Plan are to be included in the Special Facilities (Ancillary Purposes to Extractive Industry including Processing, Plant, Stockpiling, Magazines, Water Storage, Workshops, Stores, Weighbridge and Offices, Decantation Ponds, Dams, Access, Permanent Tree and Shrub Screening) Zone; in accordance with Plan of Development No. 362-010

PROPOSED DEVELOPMENT  
(Recital B and Clause 1.13)

Extractive Industry and Ancillary Purposes in accordance with said Plan of Development No. 362-010.

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## SECOND SCHEDULE

(Clauses 5, 6 and 7)

The Applicant shall undertake, perform, provide and do the works (or cause them to be undertaken, performed, provided and done) and make or pay the payments or contributions required by, and otherwise shall observe and comply with, the conditions following:

## PART 1 - GENERAL

1. The development of the subject land shall be carried out in accordance with Plan of Development No. 362-010 dated 5th April, 1990 submitted by the Applicant to the Council and the design, layout and operation of the proposed development shall not vary in any material respect therefrom unless otherwise approved by the Shire Engineer.
2. The Applicant shall submit to the Council a metes and bounds description of the both areas to be rezoned to the Extractive Industry and Special Facilities (Ancillary Purposes to Extractive Industry including Processing, Plant, Stockpiling, Magazines, Water Storage, Workshops, Stores, Weighbridge and Offices, Decantation Ponds, Dams, Access, Permanent Tree and Shrub Screening) Zones respectively, and be plotted at a scale of 1:10,000 prior to the Council being required to make application to the Minister.
3. All buildings and structures shall be constructed in materials and shall be of colours designed to blend in with the natural environment. The Applicant shall submit a concept plan showing all significant architectural details, and proposed materials and colours for approval by the Council pursuant to this condition before submitting any application for building approval in respect thereof and the Council shall not be required to consider any application for building approval in respect of a building or structure, the details of which have not been previously approved pursuant to this condition.

## PART 2 - VEHICLES AND TRAFFIC



4. The Applicant shall construct a good quality fence of the type common on rural properties in the area along the whole of each road frontage of the subject land so as to ensure that vehicles may only enter and leave the site using the crossing approved and constructed pursuant to this order. Warning signs which advise of the existence of quarrying operations shall be erected each 200 metres along the boundary between the subject land and the Forest Hills Estate.
5. All loading and unloading operations shall be conducted entirely within the subject land and vehicles waiting to be loaded or unloaded shall stand wholly within the subject land.
6. The Applicant shall dedicate as road reserve at no cost to the Council those areas along the frontage of the subject land required for the road realignment and future road construction of Oxenford-Coomera Gorge Road generally in accordance with Plan No. T0022 a copy of which Plan appears at the end of this Schedule marked with the letter "A".
7. The Applicant shall, within fourteen days of the Council forwarding the application for rezoning to the Minister, pay to the Council the sum of one hundred thousand dollars (\$100,000.00), to be added to the fifty thousand dollars (\$50,000.00) presently held by the Council, as Road Maintenance Levy Contributions. The total sum of one hundred and fifty thousand dollars (\$150,000.00) ("the prepaid contribution") shall represent a prepayment of the Road Maintenance Levy Contributions (as defined in Condition 8) payable by the Applicant, and shall be used by the Council to effect construction of a third lane on the Tamborine-Oxenford Road from the causeway to Georgina Street to its usual standards, and to the requirements of the Department of Transport - Main Roads.

The Council shall credit against the Road Maintenance Levy Contributions (otherwise payable under Condition 8) the prepaid contribution, until such time as the total of such Road Maintenance Levy Contributions equals the sum of one hundred and fifty thousand dollars (\$150,000.00); whereupon the Applicant shall tender payment of such contributions to the Council in the manner prescribed by Condition 8 hereof.

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8. The Applicant shall pay to the Council a contribution towards the cost of maintenance of roads used by or in connection with the Proposed Development at the rate of 20 cents per cubic metre of all crushed rock removed from the subject land. Such contribution shall be referred to herein as the Road Maintenance Levy Contribution.

The amount of the levy shall be fixed for the first five years at 20 cents per cubic metre, after which it shall be annually adjusted in accordance with movements in the Consumer Price Index (all groups) for the City of Brisbane between the quarter last ended prior to the anniversary date and the quarter twelve months earlier.

The Applicant shall keep details of all material removed from the subject site in such form as is reasonably required by the Council and those records shall be made available for inspection by any authorised officer of the Council at any time during ordinary working hours or at any other time upon reasonable notice first being given.

The contribution shall be paid by monthly instalments and the contribution payable in respect of material removed in each calendar month shall be paid to the Council at its public office not later than the seventh day of the following month (or the next working day following the seventh day if the seventh day is not a working day).

In the event that the Applicant fails to keep proper records of material removed as required by this condition or in the event that the Council is satisfied on reasonable grounds that the records kept are inaccurate then the Shire Engineer may determine the amount of material removed during any period covered by the inadequate or incorrect records using the best information reasonably available to him and the Shire Engineer's determination in that regard shall be conclusive except in the case of manifest error.

9. The haul road from the Oxenford-Coomera Gorge Road to the weighbridge shall be constructed in the location shown on the plan of development and shall be sealed with concrete or bitumen pavement to the Council's reasonable

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requirements. The Applicant shall maintain that road in a fully sealed condition and otherwise in a state of good repair. At all times during the continuance of any operations permitted by this approval and/or the proposed rezoning all internal roads including the road from Oxenford-Coomera Gorge Road and the Weighbridge shall be watered or otherwise treated to ensure that a dust nuisance is not created.

10. The Applicant shall maintain the said roads to the standards and design required by the approved plans.

### PART 3 - QUARRY OPERATIONS - GENERAL

11. The activities and operations permitted pursuant to this order may be carried out for a maximum of 25 years after the date of gazettal of the proposed rezoning and, subject to any further application made to or approved by the Council, shall cease after that time. The Council undertakes not to unreasonably withhold any further approval.
12. No extraction of the resource is to occur below RL 10.0 (Australian Height Datum) unless otherwise approved by the Council in accordance with concept plans for a specific and appropriate end use.
13. The method of quarrying is to be from east to west and designed so as to keep all quarry faces hidden from view by persons external to the subject site (other than persons occupying elevated properties and from whom it is impossible to hide the operations under any design) in as far as is practicable and subject to the requirements of the Department of Resource Industries. Trees and vegetation surrounding areas being extracted at a particular stage, may be removed only when extraction of that stage has been completed and it is necessary to commence a new stage (at a lower level and with a new shield of trees and vegetation around the fringes thereof).
14. The method of quarrying shall otherwise be in strict accordance with the methods and procedures set out in the project report by D R Kershaw which accompanied the application for rezoning. Any variations are to either be

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approved by the Shire Engineer or to have been required in writing by the Department of Resource Industries.

15. Extractive operations are permitted only upon the area to be rezoned Extractive Industry pursuant to this Deed, however, the Council acknowledges that vehicular access and benching requirements will require some extractive operations in the area shaded yellow on Plan of Development No. 362-010. Such works are to be carried out after levels in the area already zoned Extractive Industry have reached the level of the area shaded blue on said Plan of Development No. 362-010.
16. The permitted hours of operation for the proposed development are restricted to the following:-
  - 16.1 the hours of operation are to be those provided for in the Town Planning Scheme;
  - 16.2 in respect of blasting, 10.00 am to 3.00 pm Monday to Friday inclusive but so that blasting does not occur on more than two occasions in any one calendar week except in emergencies or for reasons associated with weather or safety and approved by the Shire Engineer;
  - 16.3 in respect of the construction of site works including roads, buildings and structures prior to the commencement of extractive operations:-
    - 16.3.1 7.00 am to 6.00 pm Monday to Friday; and
    - 16.3.2 7.00 to 12.00 noon Saturday.

#### PART 4 - QUARRY OPERATIONS - NOISE CONTROL

17. Noise emissions from all sources within the subject site are to comply with the requirements of Department of Environment and Heritage Guideline E3, "Noise from Extractive Industries" (copy attached).
18. Noise emanating from produce trucks travelling to and from the site shall comply with Department of Transport requirements. In the event that noise testing

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identifies noise levels from trucks exceeding that Department's standards, the Applicant shall take immediate measures to reduce those emissions to a level complying with the standard.

19. If noise emission levels above those specified by condition 17 are detected, the Applicant will forthwith upon receiving notice in writing from the Council of that fact take immediate and continued action to rectify the noise levels associated with the operation, such action to be completed within ten working days from the time of advice from the Council.

#### PART 5 - QUARRY OPERATIONS - DUST CONTROL

20. Dust monitors are to be strategically sited in positions adjacent to the property boundaries or in other locations as directed by relevant authorities. The monitors are to be high volume samplers and dust deposition gauges as described in Australian Standards 2724.3 - 1984 and 2724.1 - 1984 respectively.
21. All crushing plant and site equipment shall be fitted with dust suppression measures as may be necessary to ensure that dust emissions do not exceed the following levels, when measured at any monitor location.
  - 21.1 Average 24 hour  $PM_{10}$  concentration 150  $\mu g/Nm^3$  not to be exceeded more than once less existing per year ambient level
  - 21.2 Maximum annual average  $PM_{10}$  50  $\mu g/Nm^3$  concentration (U.S. EPA Goal) less existing ambient level
  - 21.3 24 Hour  $PM_{10}$  measurements are to be carried out weekly, on a random basis. The testing day schedule is to be provided quarterly in advance to the Council by the Applicant
  - 21.4 Maximum monthly average dust fallout 130  $mg/m^2/day$  (D.E.H. Standard) less existing ambient level
22. A regular maintenance program must be implemented to ensure that dust collection and preventative equipment is well maintained to ensure its efficiency in preventing emissions from exceeding the levels specified in Condition 21.

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23. The operation of the plant and equipment installed on site is to comply fully with the requirements of the Clean Air Act 1963-1990.
24. An effective water spray dust control system is to be in operation on the crushing and screening system.
25. Water sprays at raw material delivery points, stockpile areas and unsealed areas are to be used sufficiently to minimise dust emission from these points.
26. Dust containment structures and/or water sprays are to be fitted at material transfer points.
27. A hydraulic drill must be used (rather than a pneumatic drill) and it must be fitted with a proprietary dust collection device.

#### PART 6 - QUARRY OPERATIONS - BLASTING CONTROL

28. Environmental effects caused by blasting must satisfy criteria adopted by the Department of Environment and Heritage and monitoring equipment must also comply with the requirements of that body.
29. The Applicant shall ensure that accurate records of every blast are kept in form generally in accordance with quarry industry practice. The form is to be approved by the Council and the Department of Resource Industries.

#### MONITORING OF AMENITY

30. To ensure ongoing environmental management and to establish adequate operating conditions as the quarry proceeds, the operator of the quarry shall prepare and submit to the Council, at the end of the first, second, fifth and tenth years, a report on environmental management and related matters prepared by a consultant or person whose qualifications and experience are acceptable to the Council. This report will include an assessment of satisfactory performance specifically for the areas of noise, dust control and blasting effects and state whether the quarry operation satisfied the nominated criteria for noise, dust and

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blasting levels at the nearest dwellings or other affected buildings. The report shall also contain details of progressive revegetation.

31. During commissioning of the quarry and processing plant, noise and blast emission monitoring (ground vibration and airblast) is to be conducted and results advised to the Council and the Department of Environment and Heritage. A minimum of three blasts satisfying the nominated criteria (given in condition 28) are to be monitored.

The monitoring equipment and methodology shall comply with the Australian and New Zealand Environment Council's (ANZEC's) requirements or other equivalent standards approved by the Department of Environment and Heritage.

#### PART 7 - QUARRY MANAGEMENT - LANDSCAPING AND RESTORATION

32. A buffer of 40 metres width adjacent to the Oxenford-Coomera Gorge Road must be maintained free of all disturbance except for the site entrance road. Any unforested part of the buffer area within 150 metres either side of the site entrance must be planted to achieve an average density of at least 100 native trees per hectare within one year of gazettal of the proposed rezoning.
33. All bare and disturbed areas along the eastern boundary must be covered with loose overburden, soil and organic matter to ensure a minimum friable depth for plant establishment of at least 160 mm above rock. These areas must be planted to achieve a density of at least 300 native trees and 300 native shrubs per hectare within 1 year of gazettal of the proposed rezoning.
34. Above RL 34 metres (Australian Height Datum), exposed quarry faces to be a maximum of 8 metres height. Benches above RL 34 metres to be of minimum width 3 metres and 7 metres alternately. All other faces to be a maximum of 14 metres height with benches of minimum width 6 metres. All benches to slope backwards to avoid shedding water, with surfaces fractured to allow root penetration.

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35. Overburden consisting of at least 50 percent material smaller than 10 mm diameter to be stockpiled on site prior to placing on all benches at a minimum average depth of 300 mm and a minimum depth of 600 mm at the base of quarry faces.
36. Topsoil containing organic matter from on-site excavation or elsewhere to be stockpiled separately from overburden prior to placing on benches at a minimum depth of 100 mm.
37. Mulch consisting of vegetation cleared from the site and chipped to 50 mm, or other organic material, to be spread on all benches to achieve a depth of at least 60 mm over areas of at least 1 metre diameter surrounding each plant and 25 mm over all areas sown with native seed.
38. All benches must be planted following completion of extraction to achieve a final density of at least 300 native trees and 300 native shrubs per hectare of bench as soon as practicable following completion of extraction on that bench.
39. All trees and shrubs must be individually watered by an emitter-type drip irrigation system and by other means to ensure effective growth as defined for planting. If a water tank is required, the location and permanency will be as reasonably required by the Council to ensure minimum visual intrusion.
40. All benches must also be sown with pre-treated seed of native Acacia species at an average rate of at least 1 kg/hectare, and fertilised with at least 400 kg/hectare of fertiliser ("Tropic", "Q5" or similar).
41. The quarry floor must be self draining and accessible by vehicle at all times during quarry operation and on cessation of operations.
42. The Applicant shall submit to the Council plans at a minimum scale of 1:2,500 showing:-
  - 42.1 staged and progressive restoration of the site in accordance with the foregoing; and

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- 42.2 the extent of restoration and rehabilitation of the proposed quarry at 5 and 15 years following commencement, and following cessation of extraction.

43. For the purposes of this Part:-

43.1 "Native" means native to the site and surrounding areas and may include Eucalyptus Maculata, Ecrebra, Eintermedia, Acacia Aulacocarpa, Aleiocalyx and Casuarina Littoralis;

43.2 "Trees" means species capable of growth to at least 15 metres height;

43.3 "Planted" means container-grown plants of at least 0.5 metres planted in prepared free-draining planting holes twice the diameter of the container, backfilled with friable topsoil free of stones and sticks to which has been added 15 grams of superabsorbent ("Terrasorb" of similar) per plant and 10 gram fertiliser tablets ("Agriform" or similar - one per plant in buffer areas, two per plant on quarry benches), staked and protected with a clear plastic tree planted sleeve ("Growtube" or similar), mulched, watered and maintained such that plants are actively growing and at least 3 metres tall after 3 years growth.

44. To the extent not specifically dealt with by any other condition, the designated landscape areas as shown on the concept plan shall be heavily planted with trees and shrubs, and shall be maintained at all times, as an aesthetic and buffer. The landscaping shall contain mounding or barriers to prevent vehicle or pedestrian traffic on the landscaping.

45. Tree clearing is to be done in strict accordance with a tree clearing plan approved by the Shire Engineer, prior to each stage of development and removal of trees from the subject site or destruction of trees thereon is otherwise prohibited.

PART 8 - MISCELLANEOUS

46. All conditions of approval which are reasonably capable of being complied with prior to the commencement of extractive operations shall be complied with prior

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to that time. All other conditions shall be complied with (and so far as they are reasonably applicable) at all times while the subject land is being used for any purpose permitted by the rezoning.

47. Where any condition is to be complied with upon the happening of a particular event, then the condition shall be complied with as soon as practicable after the happening of that event and the Council may by notice in writing to the Applicant specify a date by which compliance is to be effected and, subject to that time being a reasonable one, the Applicant must comply with the condition within the time specified in the Council's notice providing that the condition referred to is considered reasonable.
48. All stormwater flows from working and disturbed areas, including overburden and produce storage areas, are to flow to a sedimentation pond (or ponds) sized to contain the runoff from the disturbed area(s) on the site from a 50mm rainfall event. This containment volume must be separate from, or in addition to, any additional water storage which may be required for process needs such as wet classification and dust control requirements. Additional rainfall is to bypass the pond (not flush it out) and divert to normal stormwater drains.
49. Settlement ponds must be desludged periodically to maintain the required volume and be pumped out within seven days after each storm to provide the desired freeboard in readiness for the next rainfall event. The pumped out water must be disposed of by use in the process, spray irrigation or for dust control.
50. The settlement pond overflow and spillway grades shall promote non-erosive sheet flow of water. Revetment and energy dissipating treatments shall be employed downstream of the spillway structure. Natural or sown vegetation is to be maintained along regular drainage paths in order to control erosion and sediment loss from the low flow outlet.
51. Management procedures at potential pollution sources, such as workshops, chemical, fuel and explosive storage areas, and topsoil, overburden and produce stockpiles, shall be such as to minimise pollution risk. Containment bunds shall be provided for all liquid fuel or chemical storages.

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52. In the absence of a sewerage scheme, sewerage treatment for the site shall be effected via septic tank or a package treatment plant in accordance with the Council's Guidelines.
53. The use shall be conducted in such a manner as not to interfere unreasonably with the amenity of the neighbourhood by reason of noise, vibration, fumes, soot, waste products, lights or anything whatsoever.
54. No materials, goods, machinery, containers or other articles shall be stored, placed, stood or otherwise permitted to remain between the street alignment and the building setback.
55. Provision shall be made for the land to be maintained in a clean and tidy state at all times. Satisfactory arrangements shall be made for the collection, storage and disposal of all waste materials, with replacement of industrial bins in accessible locations.
56. The observance of the requirements of the Department of Transport, the Department of Environment and Heritage and other relevant Government and Statutory Authorities at full cost to the Applicant.
57. Where major constructions or excavations are proposed, all water storage and stormwater drainage system shall be subject to engineering design which is to be approved by the Council and the Department of Primary Industry and Water Resources Commission, prior to the use commencing. The system shall be designed to prevent silt flows outside the site.
58. The provisions of the Council's Town Planning Scheme relating to operation of extractive industries shall be complied with except to the extent of any direct inconsistency with any provision of this Deed. Provisions are not inconsistent for the purposes of this condition by virtue only of the fact that they deal with a similar subject matter and are inconsistent only if performance of the obligations under both provisions is impossible or cannot be sensibly effected.

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The Applicant will enter into the Council's usual form of Rezoning Agreement to facilitate the proper and effective enforcement of the conditions of approval and to regulate the utilisation by the Council of the security to be lodged by the Applicant.

The Applicant shall lodge security in a form acceptable to the Council in an amount of \$100,000.00 to ensure full and proper performance of the Applicant's obligations pursuant to this agreement. The amount of the security shall be reviewed every five years in accordance with movements in the Consumer Price Index (all groups) for the City of Brisbane and shall be restored to the required amount within thirty (30) days of any monies being called up thereunder in consequence of a default being made by the Applicant.

The security shall be surrendered or returned to the Applicant in accordance with the provisions of the deed upon the completion of extractive operations within the site.

#### FOR PERFORMANCE OF WORKS (Clause 5)

All works, matters and things which the Applicant is required to undertake, perform, provide or do, and all contributions or payments which the Applicant is required to make or pay, shall be so undertaken, performed, provided, done, made or paid within the time or times respectively limited in this Second Schedule and, if no such time or times are specifically limited, then:

- 62.1 within two (2) years after the date of gazettal of the proposed rezoning; or
- 62.2 prior to the Council being required to issue a Certificate of Classification in respect of the buildings and structures comprised within the Proposed Development;
- 62.3 prior to the Council being required to seal and release any plan of subdivision of the Land following gazettal of the proposed rezoning;

whichever is earliest.

In the event that the Applicant elects to proceed with the Proposed Development in stages in accordance with this Deed then, notwithstanding the

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preceding clause, the Council shall seal and release plans of subdivision in respect of each stage subject to:

- 63.1 the Applicant having complied with all requirements arising otherwise than under this Deed so as to be otherwise immediately entitled to receive the sealed plans; and
- 63.2 the Applicant having performed such of its obligations under this Deed as in the reasonable opinion of the Engineer or Shire Planner:
  - 63.2.1 relate to the stage to which the plans relate; or
  - 63.2.2 do not relate to any particular stage but are required to be completed (in whole or in part) prior to or in conjunction with construction of the stage to which the plans relate.

- 64. All conditions of approval and terms of this Deed capable of continued application following commencement of the Proposed Development shall continue to be complied with at all times during which the Proposed Development is being carried out.

#### AMOUNT OF BOND (Clause 6)

- 65. The amount of bond required pursuant to Clause 6 of this Deed is One Hundred Thousand Dollars (\$100,000.00).

#### DATE FOR DELIVERY OF BOND (Clause 7.3).

- 66. Contemporaneously with delivery of this Deed

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THIRD SCHEDULE

(Recitals F and I;  
Clause 1.8;  
First Schedule;  
Second Schedule Conditions 1 and 15)

Plan of Development No. 362-010 dated 5th April, 1991

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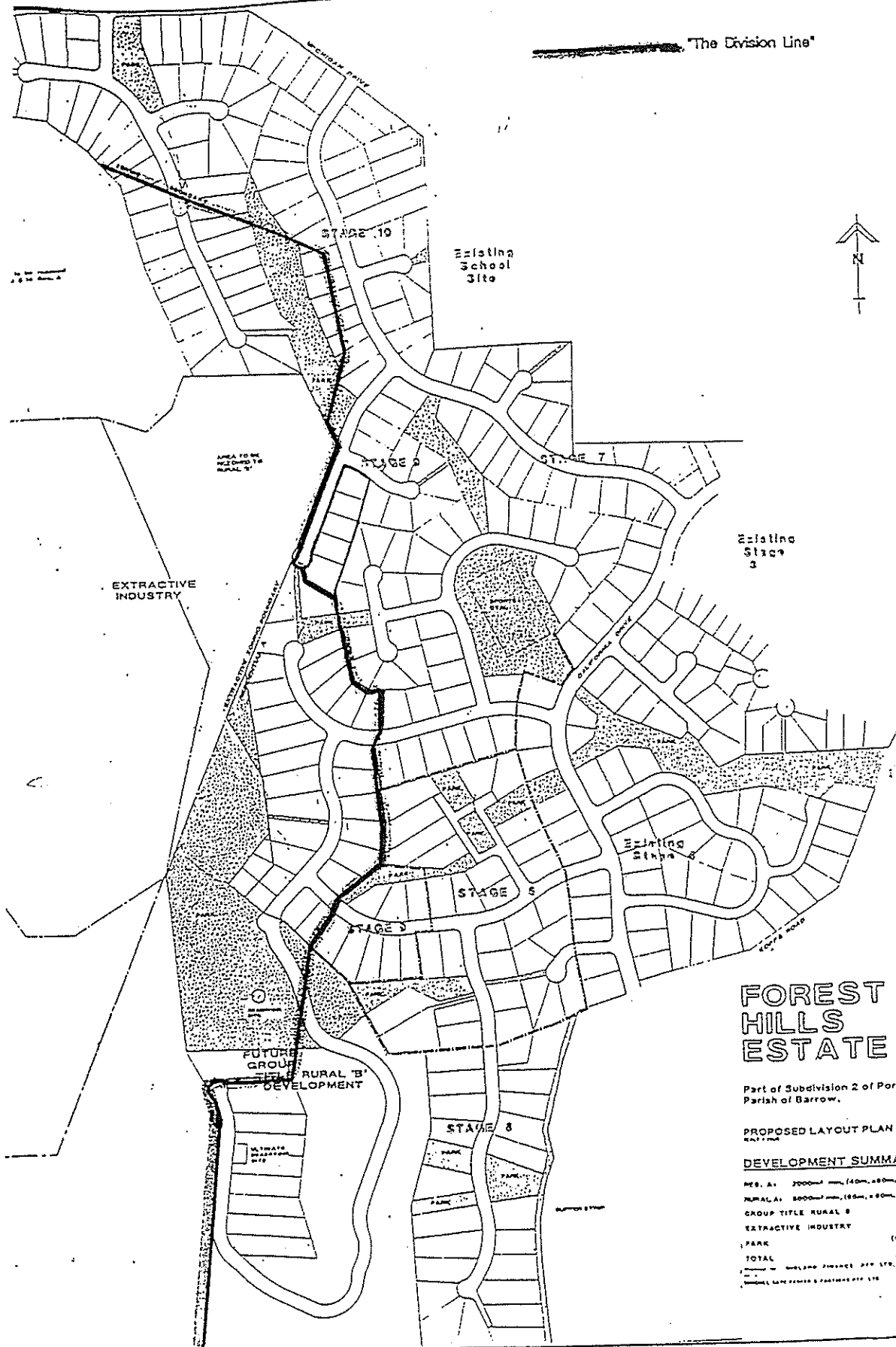
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FOURTH SCHEDULE

(Clause 37)

FOURTH SCHEDULE



# FOREST HILLS ESTATE

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

## PROPOSED LAYOUT PLAN SCALE 1:1000

### DEVELOPMENT SUMMARY

RES. A: 2000sq m (40m x 50m) ..... 201 Lots  
 RURAL A: 8000sq m (80m x 100m) ..... 15 Lots  
 GROUP TITLED RURAL B ..... 5 Lots  
 EXTRACTIVE INDUSTRY .....  
 PARK ..... (11.5 Ha. approx.)  
 TOTAL ..... 225 Lots  
 TOTAL AREA: 100000 sqm (100m x 1000m) 100 Ha.  
 TOTAL LOT AREA: 100000 sqm (100m x 1000m) 100 Ha.



C1495:00:130

*Handwritten signature/initials*

IN WITNESS WHEREOF the parties have executed this Deed on the date first hereinbefore written.

SIGNED SEALED and DELIVERED under  
the COMMON SEAL of NERANG PASTORAL  
COMPANY PTY LTD pursuant to a  
resolution of its board of  
Directors by

a Director and

a Director/the Secretary who  
certify that they are the proper  
officers to affix such seal in  
the presence of:-

A Justice of the Peace/Solicitor

THE CORPORATE SEAL of THE COUNCIL  
OF THE SHIRE OF ALBERT was  
hereunto affixed  
under the hands of WILLIAM MAURICE  
LAVER the Chairman and TERENCE  
ROBERT LESLIE MOORE the Shire Clerk  
in the presence of:

*Valerie Tite J.P. (old)*  
Valerie TITE J.P.

A Justice of the Peace/Solicitor

