

IN THE PRIVY COUNCIL

No. **25** of 1982

4/1/82

ON APPEAL  
FROM THE SUPREME COURT OF NEW SOUTH WALES  
EQUITY DIVISION

BETWEEN:

STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED  
BLUE CIRCLE SOUTHERN CEMENT LIMITED  
Appellants (Defendants)

AND:

COLIN ELLIOTT GOOD  
Respondent (Plaintiff)

**TRANSCRIPT RECORD OF PROCEEDINGS**

---

SOLICITORS FOR THE APPELLANTS

Freehill, Hollingdale & Page,  
MLC Centre, Martin Place,  
SYDNEY, N.S.W. 2000

By their Agents:

Linklaters & Paines,  
Barrington House,  
59-67 Gresham Street,  
LONDON, EC2V 7JA U.K.

SOLICITORS FOR THE RESPONDENT

Wm. Washington & Co.,  
16 Church Street,  
MUDGEE, N.S.W. 2850

By their Agents:

McGirr James Hall & Associates,  
5 Gresham Street,  
SYDNEY, N.S.W. 2000

By their Agents:

Barnett & Barnett,  
93 Shaftsbury Avenue,  
LONDON, W1V 7AE U.K.

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES

EQUITY DIVISION

BETWEEN: STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED

BLUE CIRCLE SOUTHERN CEMENT LIMITED

Appellants (Defendants)

AND: COLIN ELLIOTT GOOD

Respondent (Plaintiff)

TRANSCRIPT RECORD OF PROCEEDINGS

INDEX OF REFERENCE:

PART 1

Documents included in the Record

No.	Description of Document	Date	Page
1.	Summons No. 3739 of 1981	13 October, 1981	1
2.	Amended Cross Claim	28 October, 1981	4
3.	Affidavit of Colin Elliott Good	13 October, 1981	6
4.	Affidavit of Ronald William Washington	13 October, 1981	17
5.	Affidavit of Frederick Ian Webb	13 October, 1981	19
6.	Affidavit of Keith Albert Howes	21 October, 1981	21
7.	Affidavit of Keith Albert Howes	21 October, 1981	42
8.	Affidavit of Keith Albert Howes	23 October, 1981	45
9.	Affidavit of William Melville Gale	21 October, 1981	74
10.	Affidavit of William Melville Gale	23 October, 1981	75

No.	Description of Document	Date		Page
11.	Transcript of Evidence given in the proceedings before his Honour, Mr. Justice Waddell			
	<u>EVIDENCE OF DEFENDANTS (APPELLANTS)</u>			
	<u>HOWES</u> - Keith Albert			
	Examined	27 October,	1981	83
	Cross-Examined	27 October,	1981	84
	<u>GALE</u> - William Melville			
	Examined	27 October,	1981	87
	Cross-Examined	27 October,	1981	89
	<u>EVIDENCE OF PLAINTIFF (RESPONDENT)</u>			
	<u>WEBB</u> - Frederick Ian			
	Examined	27 October,	1981	91
	Cross-Examined	27 October,	1981	91
	<u>GOOD</u> - Colin Elliott			
	Examined	27 October,	1981	93
	Cross-Examined	27 October,	1981	94
12.	Reasons for Judgment of his Honour, Mr. Justice Waddell	12 November,	1981	97
13.	Order as amended	3 March,	1982	124
14.	Order granting Final Leave to Appeal to Her Majesty in Council	3 March,	1982	124
15.	Certificate of Registrar verifying Transcript Record	22 March,	1982	127

Part II  
Exhibits included in the Record

No.	Description of Document	Date	Page
<u>PLAINTIFF'S EXHIBITS</u>			
"A"	- Copy Certificate of Title Vol. 14381 Folio 83		128
"B"	- Copy Registered Transfer No. S452308		130
"C"	- Copy letter from first Defendant to the Plaintiff	12 October, 1981	169
"E"	- Certain documents from the conveyancing files of Mr. J.K. Smith, corporate solicitor of the first defendant:		
	- Original inter-office memorandum	12 November, 1979	132
	- Copy inter-office memorandum from Mr. Smith to Mr. Howes	28 November, 1979	134
	- File note of Mr. Smith	3 December, 1979	135
	- File note with initials "IAG:CB"	3 December, 1979	136
	- Letter from Mr. Smith to Mr. Good	29 April, 1981	137
<u>DEFENDANTS' EXHIBITS</u>			
1	- 3 pages from Exhibit 1 (being first page of Exhibit and further page bearing item No. 1210 and further page bearing item No. 1414) to the Affidavit of Keith Albert Howes - 52 page document headed "Sale by Tender".	23 October, 1981	138
2	- Paragraphs 1 and 2 of Affidavit of Colin Elliott Good together with annexures (reference item No. 3 page 1 of index)	13 October, 1981	170
3	- Letter from BHP to second defendant	28 July, 1981	144
	- Letter from second defendant to BHP and annexures	10 August, 1981	145
	- Copy letter from BHP to second defendant	11 September, 1981	154
	- Copy letter from BHP to second defendant	18 September, 1981	156
	- Copy letter from second defendant to BHP	21 September, 1981	158
	- Copy order from BHP to the second defendant and attachments	9 October, 1981	160



Documents not included in the Record

No.	Description of Document	Date
1.	Order	13 October, 1981
2.	Cross Claim	23 October, 1981
3.	Notice of Motion for Conditional Leave to Appeal to Her Majesty in Council	25 November, 1981
4.	Affidavit of Michael Andrew Pembroke	25 November, 1981
5.	Short Minutes of Order granting Conditional Leave to Appeal to Her Majesty in Council	7 December, 1981
6.	Order granting Conditional Leave to appeal to Her Majesty in Council	7 December, 1981
7.	Plaintiff's Exhibit "D" - Photographs of "O" Mill (10 photographs A to J) and schedule of photographs	
8.	Balance of Plaintiff's Exhibit "E"	
9.	Plaintiff's Exhibit "F" - certain documents from the Rylstone Shire Council files:	
	- Building Application	1 May, 1961
	- Works layout WP 156	
	- Drawing Number CM 137	
	- Footing details drawing No. CM145/2	
	- Letter from the first defendant to the Shire Clerk	4 May, 1961
	- General Specification for excavation and concrete work in "O" Cement Mill and cement pumping cooling station, Charbon, N.S.W.	
10.	Balance of Defendants' Exhibit 1.	
11.	Defendants' Exhibit 4 - Certain photographs	
12.	Defendants' Exhibit 5 - Photograph of No. 2 Cement Kiln at Northern Cement Works	
13.	Defendants' Exhibit 6 - Brochure of Universal Equipment Company headed "September 1980, Offering of Used Equipment"	

No.	Description of Document	Date	
14.	Notice of Motion to amend Order		
15.	Affidavit of Peter William Smith	24 February,	1982
16.	Order	12 November,	1981
17.	Notice of Motion for Final Leave to Appeal to Her Majesty in Council		
18.	Affidavit of Peter William Smith	24 February,	1982
19.	Certificates of Compliance of Registrar		

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED

Defendant

10

BLUE CIRCLE SOUTHERN CEMENT LIMITED

2nd Defendant

SUMMONS

The plaintiff claims the following orders:

1. An order that pending suit and permanently the defendants and each of them their servants or agents be restrained from entering on to or remaining on the lands of the plaintiff being all that part of Lot 2 in Deposited Plan 233552 County Roxburgh, Parish of Clandulla contained in Certificate of Title Volume 14381 Folio 83 and that part of Lot 2 in the same County and Parish in Deposited Plan 603460 being the land in Certificate of Title Volume 3780 Folio 56, being the lands upon which is erected all buildings, plant and machinery known as the Charbon Cement Works more particularly shown as the land delineated in red on the Plan annexed hereto.
2. An order that pending suit and permanently the defendants and each of them be restrained from removing altering demolishing or in any way tampering with any plant and

20

Summons

machinery standing or erected upon the lands referred to  
in the first paragraph of this Summons.

3. Further or other Order.

4. Costs

R. Washington

-----  
SOLICITOR FOR THE PLAINTIFF.

TO THE DEFENDANT: Portland House, 1 McLaren Street,  
North Sydney.

If there is no attendance before the Court by you or by your 10  
counsel or solicitor at the time and place specified below the  
proceedings may be heard and you will be liable to suffer  
judgment or an order against you in your absence.

Before any attendance at that time you must enter an appearance  
in the Registry.

Time: 9.30 a.m. 22nd Oct., 1981

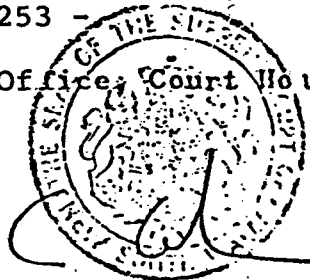
Place: No. 7A Court 7th Level, Court House, Queen's Square,  
Sydney.

The time before which this Summons is to be served has been  
abridged by the Court to 2 p.m. 14th Oct., 1981. 20

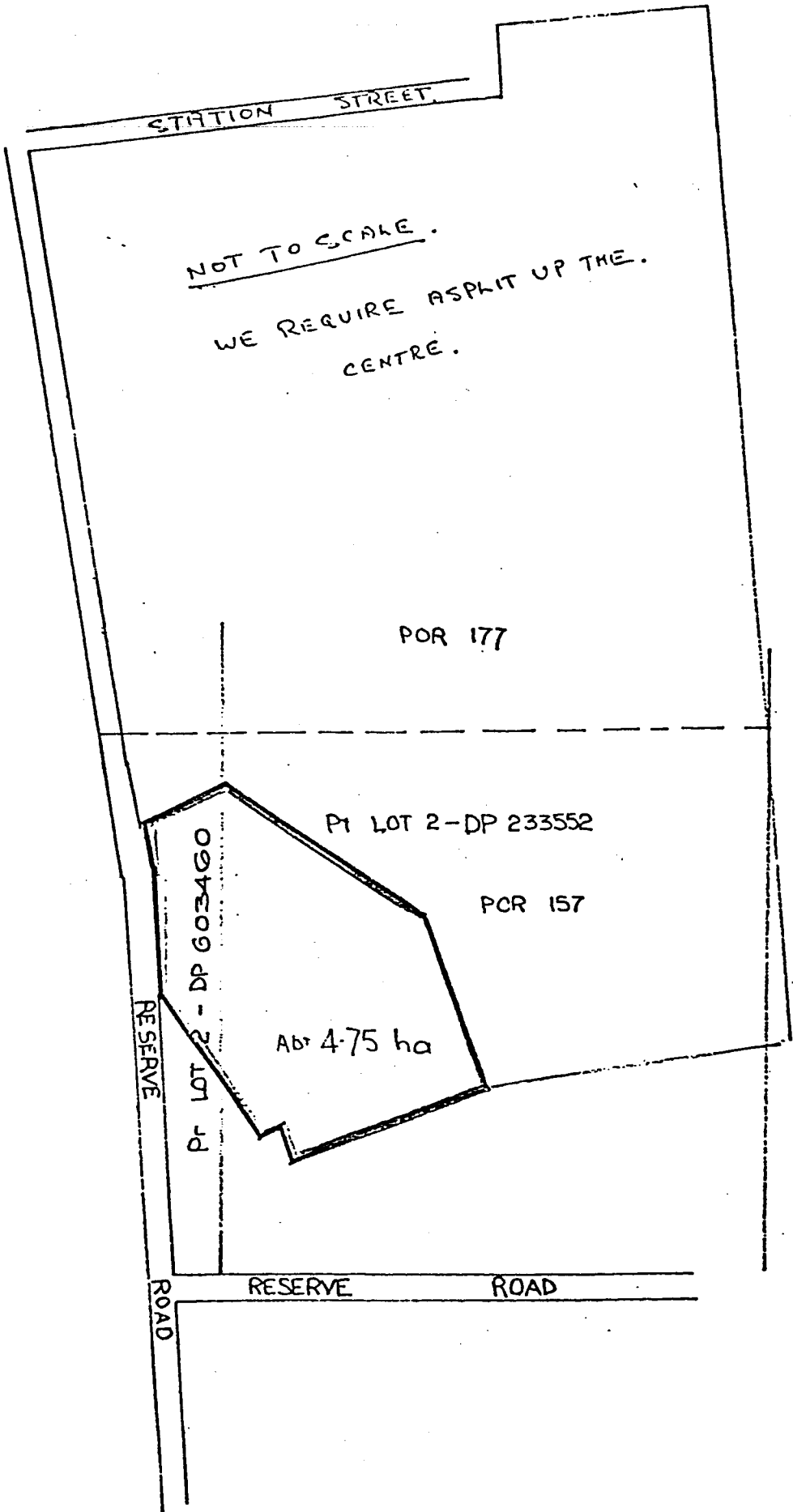
Plaintiff: Colin Elliott Good, c/- Cambridge Inn,  
212 Riley Street, Surry Hills, Cement Works  
Proprietor.

Plaintiff's c/- Messrs. Marquis Jackson Cahill & Associates,  
Address for 5 Gresham Street, Sydney, 2000.  
Service: C.D.E. 253 - TEL: 27 7471

Address of Equity Office, Court House, Queen's Square, Sydney.  
Registry: Sydney.



30



STATION STREET

NOT TO SCALE.

WE REQUIRE ASPHALT UP THE CENTRE.

POR 177

P1 LOT 2 - DP 233552

PCR 157

Apt 4.75 ha

P1 LOT 2 - DP 603460

RESERVE ROAD

ROAD

RESERVE

ROAD

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
EQUITY DIVISION

)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED

First Defendant

BLUE CIRCLE SOUTHERN CEMENT LIMITED

Second Defendant

10

STANDARD PORTLAND CEMENT COMPANY  
LIMITED

BLUE CIRCLE SOUTHERN CEMENT LIMITED

Cross Claimants

COLIN ELLIOTT GOOD

Cross Defendant

AMENDED CROSS CLAIM

The Cross Claimants claim:-

1. An order that the Contract for Sale of Land dated 3rd December, 1979 between the First Cross Claimant as vendor and the Cross Defendant as purchaser (a copy of which is Annexure A to the Affidavit of the Cross Defendant sworn 13th October, 1981 and filed herein) be rectified by inserting at the conclusion of the matter under the heading "Description of

20

Property" on the first page thereof the words "excluding there-  
out the '0' Mill, its building and associated equipment".

2. An order that the plaintiff, his servants and his agents be restrained from obstructing or otherwise interfering with the first defendant its servants and agents having access to

Amended Cross Claim

the land contained in Certificate of Title Volume 14381 Folio 81 for the purpose of removing the said "0" Mill, its building and associated equipment.

3. Costs.

4. Such further or other order as the Court considers appropriate.

FILED:

Michael Pembroke (Sgd).

-----  
Solicitor for the Cross Claimants 10

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED

1st Defendant

10

BLUE CIRCLE SOUTHERN CEMENT LTD.

2nd Defendant

AFFIDAVIT

Deponent: C.E. Good  
Sworn: 13/10/81

I, COLIN ELLIOTT GOOD of c/- Cambridge Inn, 212 Riley Street, Surry Hills in the State of New South Wales, Cement Works Proprietor, says on oath:-

1. I am the proprietor of the Charbon Cement Works the particulars of title to which are more particularly set out in the copy Contract annexed hereto and marked with the letter "A", which particulars also appear in the Summons filed herein.

20

2. Identical with the copy Contract annexed hereto and marked with the letter "A" is a true photocopy of the Contract entered into between Standard Portland Cement Company Pty. Limited and myself on 3rd December 1979. This Contract was completed on or about the 2nd April 1981 at which time I paid the whole of the balance of purchase money in cash.

~~3. On or about -----, I wrote to Blue Circle~~

~~Southern Cement Limited putting a proposal regarding my retaining~~ 30

Affidavit of  
6. Colin Elliott Good



Affidavit of  
Colin Elliott Good

~~the "O" Mill, the subject of this action. Following that letter~~

I had discussions with Mr. K.A. Howes, the Assistant Director Finance & Administration for Blue Circle Southern Cement Limited on 29th August, 1980. That conversation is summarised in a letter dated 3rd September, 1980, from Blue Circle Southern Cement Limited to me. A copy of this letter is annexed and marked with the letter "B". This proposal did not proceed to fruition as no confirmation was ever received from Blue Circle Southern Cement Limited regarding my performance in removing equipment from the Maldon Cement Works.

10

4. Apart from the above discussion and letter I have had no correspondence or negotiations with Blue Circle Southern Cement Limited or Standard Portland

Signed C.E. Good

Signed S. Bennett

-2-

Cement Company Pty. Limited in relation to the "O" Mill.

SWORN by the deponent at )  
Sydney on the 13th )  
day of October 1981 )  
before me: )

Signed C.E. Good

20

----- Signed S. Bennett -----  
A Justice of the Peace.

"A"  
**Contract For Sale of Land**

by  
\*Private Treaty

\*Public Auction

Vendor's name, firm and occupation.

**VENDOR'S AGENT.**

**DESCRIPTION OF PROPERTY**

All that part of Lot 2 County Roxburgh Parish Clandulla contained in Certificate of Title Volume 10757 Folio 171 in Deposited Plan 233552 and that part of Lot 2 in the same county and parish Certificate of Title Volume 3780 Folio 56 Deposited Plan 603460 as delineated in red on the plan annexed hereto.

**AUCTION CONDITIONS - Upon a sale by auction:**

- (a) the highest bidder shall be the Purchaser. In case of any dispute the property shall be put up again at any former bidding and no bidding shall be retracted.
- (b) the sale is subject to a reserve price and the right to bid is reserved on behalf of the Vendor.
- (c) upon the fall of the hammer the Purchaser shall sign the following agreement the conditions of which, with these conditions, are the conditions of the sale by auction.

Vendor's name, firm and occupation.

AGREEMENT made the 3<sup>rd</sup> day of December 1979  
BETWEEN **STANDARD PORTLAND CEMENT COMPANY PTY LIMITED**  
of 1 McLaren Street, North Sydney

(herein called the Vendor) of the one part

Purchaser's name, firm and occupation.

AND **COLIN ELLIOTT GOOD**  
of 19 Adrian Street  
Welshpool Western Australia

(herein called the Purchaser) of the other part

Let's not cable

WHEREBY the Vendor agrees to sell and the Purchaser agrees to purchase, if more than one as \*JOINT TENANTS/\*TENANTS IN COMMON IN THE FOLLOWING SHARES:  
with joint and several liability under this agreement, the property above described (herein referred to as "the property") for the sum of **Eighty five thousand dollars**

(85,000)

upon and subject to the following terms and conditions:-

1.- The Purchaser shall upon the signing of this agreement pay as a deposit to the Vendor's Agent herein named or his holder the sum of

(8,500)

which shall vest in the Vendor upon and by virtue of completion and which shall be accounted for to the Vendor upon receipt of an order from the Purchaser or his Solicitor authorizing such payment. The deposit may be paid by cheque but if the cheque is not honoured on presentation the Purchaser shall immediately and without notice be in default under this agreement.

The balance of the purchase price shall be paid as stipulated in the First Schedule hereto. Any moneys payable to the Vendor hereunder by the Purchaser or the Agent shall be paid to the Vendor's Solicitor or as he may direct in writing.

2.- The title to the land is under.

\*THE REAL PROPERTY ACT, 1900, (not being Qualified Title or Strata Title)

\*STRATA TITLE (Conveyancing (Strata Titles) Act, 1961)

\*OLD SYSTEM

\*QUALIFIED TITLE (Part IVA of the Real Property Act and Old System)

\*CROWN LANDS (CONSOLIDATION) ACT, 1912

\*OTHER ACT RELATING TO CROWN LANDS, namely

3.- After the date of this agreement and within a reasonable time after written request by the Purchaser or prior thereto if the Vendor so desires the Vendor shall furnish to the Purchaser a written statement of his title which shall comprise:-

(a) FOR LAND UNDER THE REAL PROPERTY ACT (including Strata Title): particulars of title and the form of any restrictive covenant easement or other interest to be created by the transfer sufficient to enable the Purchaser to prepare the transfer. The Purchaser shall not be entitled to an abstract of any document affecting the title. Any instrument in respect of which a caveat is entered on the register shall, if in the possession of the Vendor or of any mortgagee of the property, be produced to the Purchaser free of charge;

(b) FOR LAND UNDER OLD SYSTEM TITLE: a proper abstract of his title in the form of any restrictive covenant easement or other interest to be created by the conveyance of the property or the title. A proper abstract of the Vendor's title may as to relevant documents to be abstracted comprise photocopies (being themselves legible) of such documents PROVIDED THAT where the abstract includes photocopies of a document the Vendor shall furnish as part of his abstract and in addition to the foregoing requirements a chronological index of all the facts events and documents which comprise his title stating as regards the documents to be so indexed brief particulars of -

(i) the date of the document, (ii) its general nature; (iii) the parties to the document, and (iv) its registration details.

Annexure "A" to the Affidavit  
8. of Colin Elliott Good

The Vendor shall not be called upon to abstract the Crown Grant unless it is the only good root of title or to abstract produce or for a covenant to produce any deeds or documents in support of the title or in verification of the abstract which are not in the power of the Vendor or of any mortgagee of the property. No objection shall be made to the execution of any document under a power of attorney authorizing its execution;

- (c) FOR LAND UNDER QUALIFIED TITLE: paragraph (a) of this clause shall apply to that part of the title evidence instruments registered under the Real Property Act and paragraph (b) shall apply to that part of the title not so evidenced
- (d) FOR LAND UNDER ANY ACT RELATING TO CROWN LANDS: particulars of title sufficient to enable the Purchaser to prepare his transfer and an abstract of title as provided in paragraph (b) of this clause in respect of the relevant facts the documents of title which are not in a form prescribed by or pursuant to the Act under which the land is held and form of any restrictive covenant easement or other interest to be created by the transfer or conveyance;
- (e) FOR LAND UNDER MORE THAN ONE TITLE: a statement of title shall not be complete until furnished in respect of each title to the property.

4.- The Purchaser shall be deemed to have waived any objection or requisition which he has not made and delivered to the Vendor within twenty-one days after the delivery of the Vendor's statement of title. Within twenty-eight days from the delivery of the Vendor's statement of title the Purchaser shall at his own expense tender to the Vendor for execution the appropriate assurance of the property provided however that if the assurance requires the consent of the Minister for Lands or other prescribed authority the time for so thereof under this clause shall be the twenty-eighth day period aforesaid or fourteen days from the notification to the Purchaser of consent having been granted, whichever is the later.

5.- No error or misdescription of the property shall annul the sale but compensation if demanded in writing before completion but not otherwise shall be made or given as the case may require, the amount to be settled in case of a difference by an arbitrator appointed by the parties by mutual agreement or failing agreement nominated by the President for the time being of The Law Soc of New South Wales, Clause 15 hereof shall not apply to any such claim for compensation.

insert "completion" "this agreement" or other agreed date.

6.- The Vendor shall be entitled to the rents and profits and shall pay or bear all rates taxes and outgoings up to and including the date of completion from which date the purchaser shall be entitled to and shall pay or bear the same respectively and any necessary apportionment thereof shall be made and adjusted completion. Where the Vendor has paid or is liable to pay land tax on the property for the year current at the date of apportionment whether to the Commissioner of Land Tax or to a predecessor in title the amount to be apportioned as land tax under this clause be the sum which would have been payable by the Vendor for land tax on the property as used by him if the property had been owned and was the only land owned by him at midnight on 31st December then last past and the Vendor were a natural person.

7.- No objection or requisition or claim for compensation shall be made by the Purchaser in respect of any of the following matters:

- (a) the ownership or location of any dividing fence as defined by the Dividing Fences Act, 1951;
- (b) any water supply or sewerage or drainage service to the property being a joint service with any other property, the water supply sewerage or drainage pipes or connections for any other land (including mains or pipes of any water sewerage or drainage authority) passing through the property;
- (c) any wall being a party wall in any sense of that term;
- (d) any exception reservation or condition contained in any relative Crown Grant;
- (e) the existence of any other exception or reservation of the substance of which is disclosed in the Second Schedule hereto;
- (f) the existence of or departure from the terms of any easement or restrictive covenant affecting the property provided that the substance of any such easement or restrictive covenant is disclosed in the Second Schedule hereto.

If the property sold is intended to be a strata lot within the meaning of the Conveyancing Act, 1967, then this clause called "the Act" then the Purchaser shall take title subject to the provisions of the Act and the Regulations thereunder in general and in particular to the following matters:-

- (a) the by-laws of the Body Corporate created or to be created by virtue of the registration of the Strata Plan as contained in the First and Second Schedules to the Act subject only to such conditions variations or deletions as are in substance disclosed in this agreement;
- (b) clause 7 of this agreement shall be read as applying equally to the property and to the parcel (as defined by the Act);
- (c) For the purposes of this agreement:
  - (i) "outgoings" shall include contributions to the Body Corporate pursuant to Section 15 (2) of the Act;
  - (ii) unless and until separate assessments of rates and taxes are issued in respect of the said lot or lots by the relevant authorities all necessary adjustments between the parties (whether on or after completion) shall be made on basis that the lot shall be liable to that proportion of any such rates taxes and outgoings (other than land tax) as or assessed against the parcel (as defined by the Act) as a whole which the unit entitlement of each lot or lots is to the total entitlement of all lots comprised in the Strata Plan; and
  - (iii) unless and until contributions under Section 15 (2) of the Act are fixed outgoings paid by the Vendor which are properly be the subject of such contributions when fixed shall be adjusted between the parties on the same basis as provided in paragraph (ii) of this sub-clause.
- (d) If the Strata Plan has not been registered the Vendor shall take all necessary steps to have it registered and complete this agreement is subject to the Plan being registered within a reasonable time after the date hereof or such other time as may be specified expressly or by necessary implication in this agreement.
- (e) The Purchaser shall not make any objection requisition or claim in respect of:
  - (i) any minor variations as regards the subject lot between the Strata Plan produced to the Purchaser and the Strata Plan as registered which may be required by any statutory authority or by the Registrar-General;
  - (ii) any minor alterations which may be required by any statutory authority or by the Registrar-General in the size location or unit entitlement of any lot or lots in the Strata Plan (other than the subject lot) or in or to the common property provided that the proportionate unit entitlement of the subject lot shall not thereby be varied;
- (f) notwithstanding any rule of law or equity to the contrary the risk of the property shall not pass to the Purchaser until completion;
- (g) the property is sold subject to a warranty that the Vendor is not aware of:
  - (i) any actual or contingent liabilities of the Body Corporate of the said Strata Plan (other than for normal operating expenses); or
  - (ii) any defects (whether patent or latent) in the common property which may involve the said Body Corporate in expenditure of money for repair or replacement (other than for ordinary wear and tear);
- (h) without prejudice to any rights arising under the last preceding sub-clause if it should be established prior to completion that there is any actual or contingent liability of the Body Corporate of the said Strata Plan (other than for normal operating expenses) then the Purchaser shall be entitled to rescind this agreement.

9.- (a) If the property sold is land under Qualified Title, notwithstanding the provisions of the Real Property (Conveyancing Title) Amendment Act, 1967, and save as herein otherwise provided expressly or by necessary implication the provisions of the Conveyancing Act, 1919, which do not apply exclusively to land under the provisions of the Real Property Act, 1900, shall be deemed to apply, mutatis mutandis, to that part of the title of the land subject to this agreement which is not evidenced by instruments registered under the provisions of the Real Property Act, 1900.

(b) if the Purchaser so requires the Vendor shall in addition to any transfer and conveyance of his title, provide a copy of the title to the Crown to enable the purchaser to apply for a certificate of title.

10.- If the property sold is land under any Act relating to Crown Lands:-

- (a) if the time for issue of a certificate of conformity has passed the Vendor shall at his own expense produce the certificate or an official letter stating that the certificate was issued;
- (b) land held under a purchase tenure is sold subject to free from all taxes payable to the Crown to enable the purchaser to apply for a certificate of title. When the same is subject to payment by the Purchaser of the land tax then the Vendor shall pay any arrears of land tax and interest shall be apportioned as an outgoing under Clause 6 hereof;
- (c) the rent of the land held under a leasehold tenure shall be apportioned as an outgoing under Clause 6 hereof.

\*Delete words not applicable.

11.- The Vendor shall apply for any necessary consent of the Minister for Lands or other prescribed authority for the transfer of property or any part of it whether still under Crown tenure or not and shall pay or bear all costs and fees (other than those of the Purchaser's Solicitors) in respect thereof. The Purchaser shall be bound to apply for such consent if and only if such consent is refused either party may rescind this agreement. If consent is refused subject to any condition which either party may be unable or reasonably unwilling to comply that party may give to the other notice in writing that the conditional consent is acceptable to him and thereupon the consent shall be deemed to have been refused provided that the Vendor on his own election

STRATA TITLE - SUBSTITUTED CLAUSE 8 TO BE ANNEXED

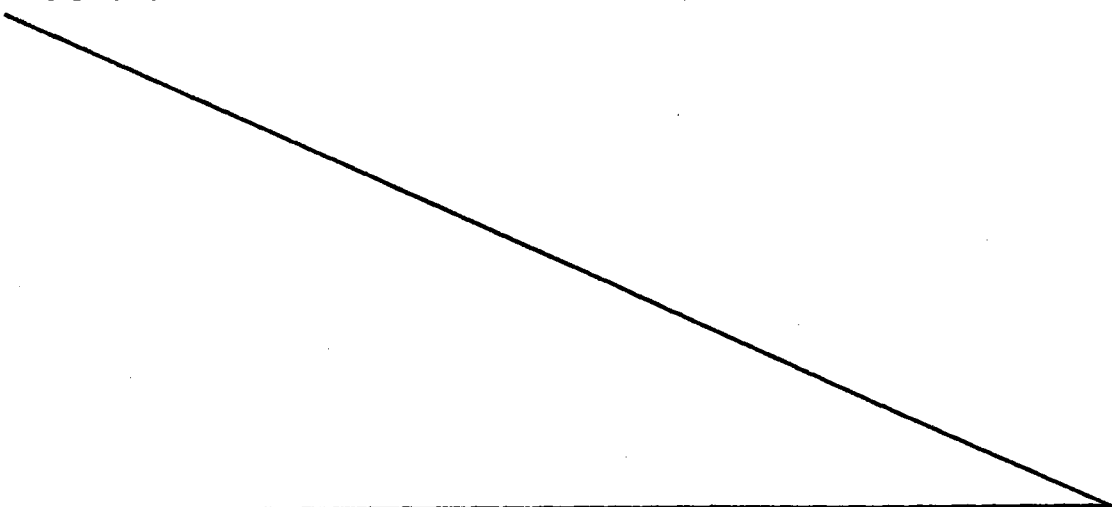
SPECIAL CONDITIONS

1. After exchange of contracts the Purchaser shall be at liberty to move into possession of the subject property under licence at a licence fee of \$1 per week payable on completion (if demanded) and in that event shall pay all rates taxes and outgoings payable in respect of the property.
2. The Purchaser may upon taking possession of the property erect buildings thereon but in the event that this contract is rescinded then he shall be entitled to remove the same at his expense but shall not be entitled to any additional compensation. 10
3. The Vendor shall use its best endeavours to ensure that Buyers of its equipment situated on the property remove the same within six weeks from the date hereof provided that No. 3 kiln may remain thereon for a period twelve months from the date hereof and in the event that completion is effected before the said kiln is removed the Purchaser covenants to allow the Vendor or its nominee reasonable access for the purpose of removing the same. 20
4. The Vendor will at its expense in all things arrange for the preparation and registration of a plan of subdivision of the land owned by it to enable it to obtain a separate title for the land hereby sold and the Purchaser waives any rights he might have hereunder for compensation or otherwise in the event that major alterations to the land shown hatched red in the annexure hereto are required by any competent authority to allow registration of the said plan but nothing in this clause contained shall be construed so as to oblige the vendor to sell land outside the boundaries of the area hatched red on the plan hereto. 30
5. This Agreement is subject to registration by the Registrar General of the plan referred to in Clause 4 hereof and completion shall be effected seven days after notification to the Purchaser that the Registrar General has registered the said Plan.
6. The Purchaser as to the land hereby sold and with intent to bind all persons in whom the said land shall for the time being be vested but not so as to be personally liable under this covenant after he has parted with all interest in the said land hereby covenants with the Vendor not to use or permit to be used any part of the said land for the purpose of making cement, limestone or clinker and it is hereby agreed and declared that the 40

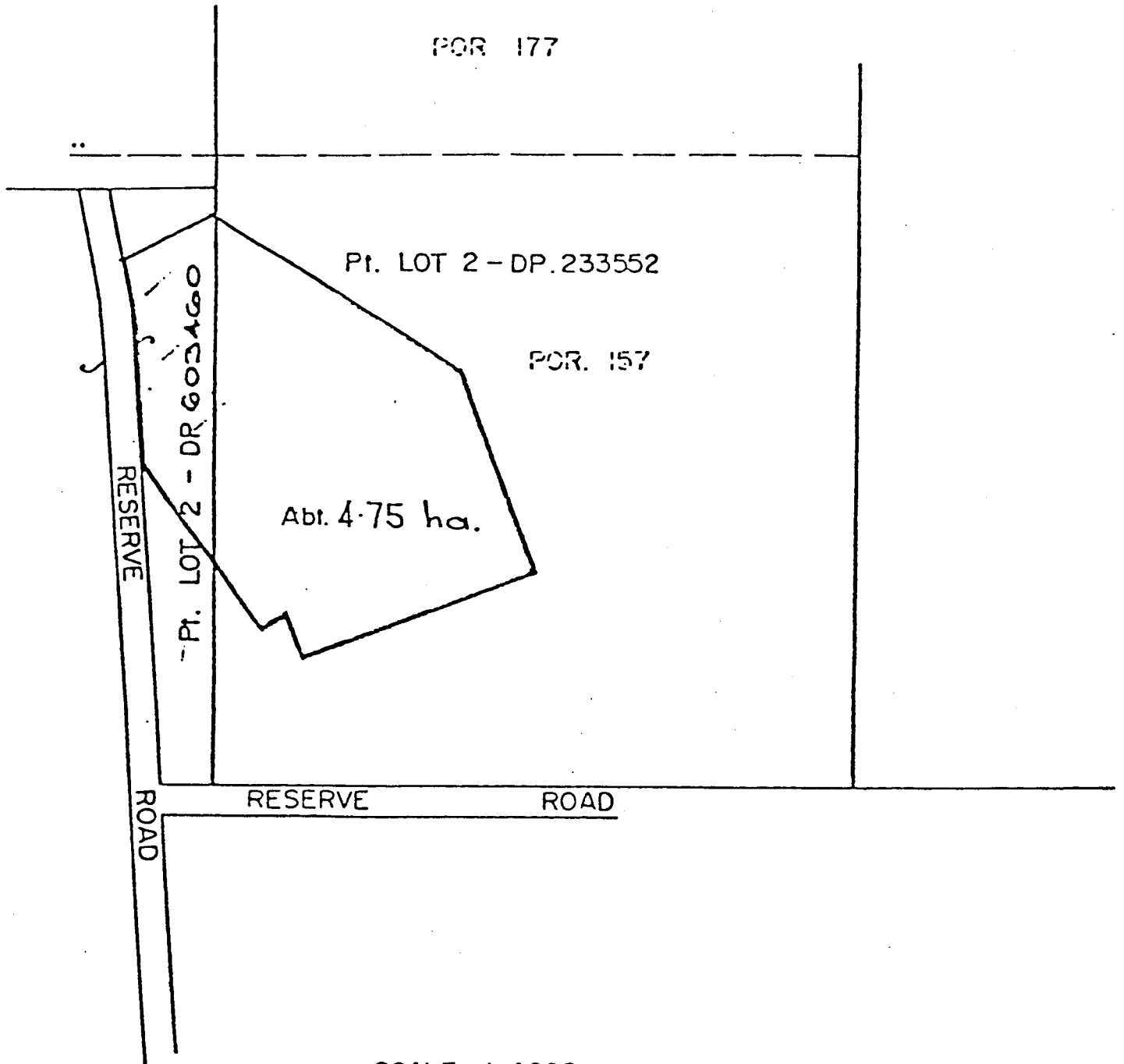
Annexure "A" to the Affidavit  
of Colin Elliott Good

land which is subject to the burden of the restrictions hereinbefore set out is the land hereby sold and the land to which the benefit of such restrictions is appurtenant is Lot 2 on Deposited Plan 233552 being the land contained in Certificate of Title Volume 10757 Folio 171 and Lot 2 on Deposited Plan 603460 being part of the land contained in Certificate of Title Volume 3780 Folio 56.

7. The Vendor reserves to itself in fee simple out of the property sold as appurtenant to both areas referred to as Lot 2 in Clause 6 hereof full and free right of using all drains power and water supply pipes now in or over the property with power at any time upon giving previous reasonable notice to enter upon the property sold to make lay repair cleanse and maintain any pipes or drains. 10
8. The Purchaser agrees that he will not make any objection, requisition or claim for compensation in receipt of any building not wholly within the bounds of the property hereby sold. 20
9. Should completion be effected before the expiration of twelve months from the date hereof the Purchaser will grant the Vendor licence to enter upon the property for the purpose of removing the '0' Mill situated thereon such removal to be effected in any event within twelve months from the date hereof.



Parish of Clandulla  
COUNTY OF ROXBURGH



alternative to making application for the consent of the Minister or other authority as aforesaid at his own expense make application to the Minister pursuant to the provisions of the Crown Lands and Other Lands (Amendment) Act, 1970, for a certificate under section 3 of the Minister enabling the property to be transferred without such consent.

12. The Vendor shall not whether before or after completion be bound to contribute to the erection or cost of erection of any fence or wall between the property and any adjoining land owned by the Vendor. If so required the Purchaser shall include in his conveyance or transfer a restrictive covenant on his part in such form as the Vendor shall reasonably require for the benefit of the adjoining land of the Vendor, binding himself and his successors in title, which will exempt the Vendor and his successors in title or his purchasers on sales from liability to make or pay any such contribution.

13. The property is sold

\* with vacant possession

~~subject to the provisions of the Third Schedule hereto~~  
the benefit of which shall be given to the Purchaser ~~at the date of~~ on completion.

14. The requirements existing at the date of this agreement of any valid notice issued prior to the date of this agreement by any competent authority or by an owner or occupier of land adjoining the property necessitating the doing of work or expenditure of money on or in relation to the property or any footpath or road adjoining the same must be fully complied with by the Vendor prior to completion and any such requirements not existing at the date of this agreement must subject to completion of this agreement be complied with by the Purchaser who shall indemnify the Vendor in respect thereof. Nothing herein contained shall relieve the Vendor from liability in respect of any work done prior to the date of this agreement upon the property or upon any footpath or road adjoining the same and the Vendor agrees to indemnify the Purchaser against all liability in respect thereof notwithstanding the completion of this agreement. If without default of the Purchaser this agreement is rescinded the Vendor shall repay to the Purchaser any amount expended by the Purchaser in complying with any such requirement which was in the nature of capital expenditure or has resulted in a benefit to the Vendor.

15. If the Vendor shall be unable or unwilling to comply with or remove any objection or requisition which the Purchaser has made and shall not have waived within 14 days after the Vendor has given him notice of intention to rescind this agreement the Vendor, whether he has or has not attempted to remove or comply with the objection or requisition and notwithstanding any negotiation or litigation in respect thereof and whether the Purchaser has or has not taken possession, shall be entitled by notice in writing to rescind this agreement.

16. If the Purchaser defaults in the observance or performance of any obligation imposed on him under or by virtue of this agreement the deposit paid by him hereunder, except so much of it as exceeds 10% of the purchase price, shall be forfeited to the Vendor who shall be entitled to terminate this agreement and thereafter either to sue the Purchaser for breach of contract or to resell the property as owner and the deficiency (if any) arising on such resale and all expenses of and incidental to such resale or attempted resale and the Purchaser's default shall be recoverable by the Vendor from the Purchaser as liquidated damages provided that proceedings for the recovery thereof be commenced within 12 months of the termination of this agreement. The Vendor may retain any money paid by the Purchaser on account of the purchase other than the deposit money forfeited under this clause as security for any deficiency arising on a resale or for any damages or compensation (including any allowance by way of occupation fee or for rents or profits from a Purchaser who has been in possession of the property or in receipt of the rents or profits thereof) awarded to him for the Purchaser's default provided that proceedings for the recovery of such damages or compensation be commenced within 12 months of the termination of this agreement.

17. Should it be established that at the date of this agreement the property was affected by any one or more of the following:
- (a) any provision of any planning scheme, whether prepared or prescribed, or any interim development order made under the provision of the Local Government Act, 1919;
  - (b) any Residential District Proclamation under Section 309 of the Local Government Act, 1919;
  - (c) any proposal for realignment widening siting or alteration of the level of a road or railway by any competent authority;
  - (d) any mains or pipes of any water sewerage or drainage authority passing through the property;
  - (e) any provisions of or under the Mines Subsidence Compensation Act, 1961;
  - (f) ~~any other~~

and the substance of such affectation is not

~~disclosed in the Fourth Schedule hereto~~, then the Purchaser shall be entitled to rescind this agreement but shall not be entitled to make any other objection requisition or claim for compensation in respect of any such matter. Any right of the Purchaser to rescind under this clause shall be exercised by notice in writing given to the Vendor prior to completion. In relation to paragraph (c) hereof, the property shall be deemed to be affected by a proposal if the Purchaser produces a written statement of the authority concerned, the substance of which is other than that the property is not affected by any proposal of the authority.

18. If before transfer of title the Purchaser is given the benefit of possession of the property then until transfer of title
- (a) he shall not let or part with possession of or make any structural alteration or addition to the property;
  - (b) he shall
    - (i) keep the property in good repair having regard to its condition at the date of possession and permit the Vendor or his agent at all reasonable times to enter and view the state of repair;
    - (ii) keep all buildings fully insured against fire or as the Vendor may reasonably require and deliver the policy and renewal receipts to the Vendor; **and outgoings**
    - (iii) punctually pay all rates and taxes on the property and any necessary apportionment shall be made at the date provided in clause 6 or the date of possession whichever is the earlier; and
    - (iv) comply with the provisions of all statutes and regulations and of any instrument or covenant or order affecting the property.

If the Purchaser shall make default in any of these obligations the Vendor may without notice make good the default and without prejudice to his other rights may recover from the Purchaser as a debt the cost of so doing with interest thereon on 10% per annum until repayment and such amount and interest shall until repayment be a charge on the property.

19. Where the balance of the purchase price is payable by instalments before transfer of title:

- (a) if default by the Purchaser in payment of any instalment of the purchase price or interest hereunder shall continue for four weeks (in this respect time being of the essence) the balance of the purchase price then owing with accrued interest shall immediately without notice to the Purchaser become due and payable irrespective of the transfer of title;
- (b) the Purchaser shall not be required to tender the assurance as stipulated in clause 4 hereof but shall tender it within 14 days after making the final payment hereunder; and
- (c) the deposit shall be accounted for under clause 1 of this agreement and any necessary authority in that regard shall be given forthwith on the signing of this agreement.

20. If this agreement is rescinded (as distinct from terminated) pursuant to any express right to rescind (as distinct from a right to terminate) conferred by this agreement the rescission shall be deemed to be a rescission ab initio, and

- (a) the deposit and all other money paid by the Purchaser hereunder shall be refunded to him;
- (b) neither party shall be liable to pay the other any sum for damages costs or expenses; and
- (c) if the Purchaser is or has been in occupation or in receipt of the rents or profits of the property he shall account for or pay to the Vendor the net rents and profits received or a fair occupation rent for the property (whichever is the greater) until the date of rescission but the Vendor shall give the Purchaser credit for any interest paid by the Purchaser and the resulting balance payable by the Purchaser may be deducted by the Vendor from the deposit and other moneys before returning the same to the Purchaser.

21. Where herein used words importing the singular number or plural number shall include the plural number and singular number respectively and words importing the masculine gender shall include the feminine or neuter gender.

22. (a) Service of any notice or document under or relating to this agreement:

- (i) may be effected as provided in Section 170 of the Conveyancing Act, 1919; and
  - (ii) shall be sufficient service on a party if effected on his solicitor in any manner provided in that section.
- (b) A notice given or document signed and served on behalf of any party hereto by his solicitor shall be deemed to have been given or served by that party personally.

23. Schedule III of the Conveyancing Act, 1919, shall not apply to this agreement.

Annexure "A" to the Affidavit  
of Colin Elliott Good

\*In cash on completion

Assessments,  
strata  
covenants, etc.  
(Clause 7).

THE SECOND SCHEDULE

The covenants conditions and stipulations contained in the Crown Grants.

Tenancies  
or  
occupancies  
(Clause 13).

THE THIRD SCHEDULE

Part Occupied	Tenant's Name	Nature of Occupancy	Rental
---------------	---------------	---------------------	--------

NIL.

Zoning etc.  
(Clause 17).  
Delete  
if not  
applicable.

THE FOURTH SCHEDULE

\*The property is affected as shown in the copy certificate under Section 342AS of the Local Government Act, 1919 annexed hereto.

The property is zoned Non-Urban "A".

SIGNED by the Vendor in the presence of

Vendor

SIGNED by the Purchaser in the presence of

..... Purchaser

Witness.....

Purchase Price \$85,000

Deposit 8,500

Balance \$76,500

Vendor's Solicitor J K Smith, 1 McLaren Street, North Sydney, 2060, Tel No 1929020C

Purchaser's Solicitor Noel Dennis & Co., 188 George Street, Sydney, Tel No 278331

R. T. Kelly Pty. Ltd., Printers, 470 Elizabeth St., Sydney, N.S.W.  
ONLY AUTHORISED PRINTERS FOR THIS COPYRIGHT FORM.



CREST BLUE CIRCLE  
SOUTHERN

BLUE CIRCLE SOUTHERN CEMENT  
LIMITED

Portland House 1 McLaren St North Sydney 2060 Telephone 929 0200  
Box 1571 GPO Sydney 2001 Cables PORTCEMENT, Telex SYDCEM AA 22466

3 September 1980

Mr A C Good  
C/- Charbon Cement Works  
CHARBON NSW

Dear Colin

I refer to our discussions on the 29 August 1980 and wish to confirm the following:- 10

- (a) You are requested to take immediate action to arrange for the removal of the plant and equipment being purchased by you at our Maldon Cement Works.
- (b) Provided BCSC is satisfied with your performance in removing the equipment purchased by you at our Maldon Cement Works, we will be prepared to enter into a contract with you for the removal of the "O" mill from Charbon Cement Works.
- (c) You were to forward me a letter confirming that there would be no change in your quotation for the cost of removing the "O" mill regardless of whether the point of delivery is Berrima or Maldon. 20
- (d) Your alternate proposal for financial contras for the cost of removing the "O" mill against the balance of payments owing under the contract for the Charbon plant, etc, is not acceptable.
- (e) The Hartley County Council have indicated to us that the isolation of the power supply at Brogans Creek Quarry should be completed on or about the 12 September and as such we have given notice to Murdoch & Co to be ready to remove the maintenance shed from site, 30
- (f) Ledger Demolition Co have also been contacted and have been given notice to complete their obligations under the contract for the sale of the No. 3 kiln.
- (g) Notice will also be given to Mr L. Savage for him to remove the remaining plant from site but I understand from our discussions that you have the contract with Mr Savage for the removal of plant. On that basis, we would be pleased if you would ensure that the appropriate action is taken to complete this contract as soon as possible. 40

Annexure "B" to the Affidavit  
of Colin Elliott Good

- (h) Mr M. Newell will contact the Mines Department and will let you have a written specification of work which is required to be completed for the removal of plant, etc, from land used by BCSC under various mining leases.

.....2

Mr A C Good

-2-

3 September 1980

- (i) A plan of sub-division for Charbon Cement Works is expected to be available this week and as advised Mr M Newell will ensure that this plan reaches the Rylstone County Council in time for it to be presented to the next Council meeting. 10

We also discussed the question of the next quarterly payment due under the contract for the purchase of plant and equipment at Charbon and you indicated you would contact us on Monday, 1st September, regarding payment.

Your urgent attention to the above matters would be appreciated.

Yours sincerely

K Howes

20

K A Howes  
Assistant Director - Finance &  
Administration

This and the preceding page is the annexure marked "B" referred to in the Affidavit of COLIN ELLIOTT GOOD sworn at this day of 1981 before me:

-----  
A Justice of the Peace.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED

1st Defendant 10

BLUE CIRCLE SOUTHERN CEMENT LTD.

2nd Defendant

AFFIDAVIT

Deponent: R.W. Washington  
Sworn: 13/10/81

I, RONALD WILLIAM WASHINGTON of 16 Church Street Mudgee in the State of New South Wales, Solicitor, says on oath:

1. I am the solicitor for Colin Elliott Good.

2. At 5.10 p.m. on Monday 12th October, I telephoned Blue Circle Southern Cement Limited at North Sydney. I said, "My name is Washington, solicitor. Can I speak to Mr. Keith Howes?" The person to whom I was speaking said, "No, he has gone to Melbourne for a week for the Cement Conference". I said, "To whom am I speaking?" He said, "David Whitfield." I said to Mr. Whitfield, "I am acting for Colin Good who purchased the Charbon Cement Works from your Company. Mr. Good's manager apparently had a telephone conversation with Mr. Howes on Friday in which Mr. Howes indicated that workmen from your company would be coming to Charbon tomorrow to commence demolition

Affidavit of Ronald  
William Washington

Affidavit of Ronald  
William Washington

on an item called an "O" Mill. Do you know anything about that at all?" He said, "No, that is not in my field. I am in sales, but I do understand that the "O" Mill was not to pass to Mr. Good and belongs to us". I said, "There appears to be a difference of opinion on that. I was wondering if you could pass a message as soon as possible to those who are involved in this side of things that Mr. Good is making an application to the Supreme Court in its Equity Jurisdiction tomorrow seeking an injunction to restrain Blue Circle Southern Cement Limited from entering upon the Charbon Cement Works or taking any steps to demolish the "O" Mill, as he is of the view that any rights that Blue Circle Southern may have had in connection with the "O" Mill have now been lost if they were ever in existence. Would you be kind enough to just pass that message on?"

-2-

He said, "I will speak to the company solicitor. In fact I will try and get you transferred to him now". He then said, "The company solicitor is unavailable." I said, "Would you pass that message on to him. I will be available if he wishes to call me tomorrow", and gave him my telephone number.

SWORN by the deponent at )  
Mudgee on the 13th )  
day of October 1981 ) R. Washington  
before me: )

----- John P. Peters J.P. -----  
A Justice of the Peace.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED

1st Defendant

10

BLUE CIRCLE SOUTHERN CEMENT LTD.

2nd Defendant

AFFIDAVIT

Deponent F.I. Webb  
Sworn 13/10/81

I, FREDERICK IAN WEBB of 62 Mudgee Street, Rylstone in the State of New South Wales, Manager, says on oath:

1. I am the manager of the Charbon Cement Works and employed in such capacity by the proprietor thereof, Colin Elliott Good.

2. On Friday, 9th October, 1981, I was at my office at the Charbon Cement Works when I received a telephone call at approximately 2.00 p.m. from a person who identified himself as Keith Howes, the Assistant Director Finance & Administration of Blue Circle Southern Cement Limited. He said to me, "You denied access to B.H.P. to look at the "O" Mill." I understood him to be referring to a cement making mill that is contained within the Charbon Cement Works. I replied, "No, I didn't. I just asked them to ring Colin Good." He then said, "The "O" Mill is ours. It was in the contract that we can enter and

20

Affidavit of Frederick Ian Webb

remove it". I understood him to be referring to the Contract for Sale under which Colin Elliott Good purchased the cement works from Blue Circle Southern Cement Limited. He then said, "On Tuesday, I will have a crowd there to remove it. It will be between Adrian Vaughan who was our agent in the area and you. Don't try and deny us access." I said, "Colin Good is at the Cambridge Inn at the moment. I am making no comment. Please contact him about this." There was no further conversation relevant to the "O" Mill.

10

SWORN by the deponent at )  
Sydney on the 13th. )  
day of October 1981 )  
before me: )

Signed F.I. Webb

-----Signed S. Bennett-----

A Justice of the Peace.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED and BLUE CIRCLE SOUTHERN CEMENT  
LIMITED

10

Defendants

AFFIDAVIT

On Wednesday the 21st day of October, One thousand nine hundred and eighty-one, I, KEITH ALBERT HOWES of 5 Jacinta Avenue, Beecroft in the State of New South Wales, Company Officer, being duly sworn make oath and say:-

1. I am the Executive General Manager - Finance & Administration of the second defendant.

2. The first defendant is a wholly owned subsidiary of the second defendant.

20

3. I have read the Affidavits of Frederick Ian Webb and Ronald William Washington both sworn 13 October, 1981.

4. To the best of my knowledge, information and belief the matters set out in the Affidavits of Frederick Ian Webb and Ronald William Washington are correct.

5. I have read the Affidavit of Colin Elliott Good sworn 13 October, 1981.

6. To the best of my knowledge, information and belief the matters set out in paragraphs 1 and 2 of Mr. Good's Affidavit are correct.

30

21. Affidavit of Keith Albert Howes

7. As to paragraph 3 of Mr. Good's Affidavit I say that:-  
J. Ford K. Howes

-2-

- (a) The "proposal" referred to by Mr. Good in the fourth sentence therein was a proposal that the second defendant accept the plaintiff's tender for a contract for the removal of the "O" Mill from Charbon Cement Works to another cement works site owned by the second defendant. 10
- (b) Acceptance of the proposal was conditional upon, inter alia, the second defendant being satisfied with the plaintiff's performance in complying with its obligations set out in clause 3 of an Agreement between the first defendant and the plaintiff dated 23 November 1979, requiring the plaintiff to remove the plant and equipment the subject of the Agreement from, inter alia, the Maldon Cement Works. A true copy of the Agreement is annexed hereto and marked with the letter "A". 20
- (c) On or about 29 August 1980 I spoke to the plaintiff and said words to the effect: "We wish you to take immediate action to remove your plant from the Maldon site. You are anxious for us to give you the contract for the removal of the "O" Mill at Charbon, but basically Colin you are a non-performer. No decision will be made regarding the letting of a contract for the removal of the "O" Mill until you



Affidavit of Keith Albert  
Howes

show us that you can perform by cleaning up Maldon.  
Then we can talk about Charbon".

J. Ford

K. Howes

-3-

- (d) As a result of the above conversation, it was mutually understood between the plaintiff and the defendants that the defendants would not be required to remove the "O" Mill prior to 3 December, 1980. 10
- (e) I exchanged the following correspondence with the plaintiff after 3 September, 1980, in relation to the plaintiff's obligation to remove certain plant and equipment from the Maldon Cement Works:-
- (i) Letter dated 5 November, 1980 from the second defendant to the plaintiff, a true copy of which is annexed hereto and marked with the letter "B".
  - (ii) Letter dated 26 November 1980 from the plaintiff to the second defendant, a true copy of which is annexed hereto and marked with the letter "C". 20
  - (iii) Letter dated 4 December, 1980 from the second defendant to the plaintiff, a true copy of which is annexed hereto and marked with the letter "D".
  - (iv) letter dated 27 January 1981 from the second defendant to the plaintiff, a true copy of

which is annexed hereto and marked with the  
letter "E".

- (v) Letter dated 13 February 1981 from the second  
defendant to the plaintiff, a true copy of  
which is annexed hereto and marked with the  
letter "F".

J. Ford

K. Howes

-4-

10

- (vi) Letter dated 18 February 1981 from the plain-  
tiff to the second defendant, a true copy of  
which is annexed hereto and marked with the  
letter "G".

- (vii) Letter dated 18 February 1981 from the second  
defendant to the plaintiff, a true copy of  
which is annexed hereto and marked with the  
letter "H".

- (viii) Letter dated 16 July 1981 from the second  
defendant to the plaintiff, a true copy of  
which is annexed hereto and marked with the  
letter "I".

20

- (f) To date the plaintiff has not satisfactorily remov-  
ed the said plant and equipment from either the Maldon  
Cement Works or the other locations the subject of  
the above Agreement dated 23 November 1979.
- (g) Prior to 9 October 1981, the plaintiff made no  
complaint to me whatsoever about the non-removal of

the "O" Mill, nor did the plaintiff claim any rights in respect of the "O" Mill.

8. As to paragraph 4 of Mr. Good's Affidavit, I say that following 3 September 1980:-

- (a) On 7 September, 1981 in my office, the plaintiff spoke to me and said words to the effect: "I am interested in purchasing the "O" Mill. I am prepared to offer Blue Circle Southern Cement \$50,000 cash and to discharge its obligation to remove the mill from my site. Alternatively, I am prepared to dismantle and put on transport the depot which I have purchased from A&K at Cooks River

J. Ford

K. Howes

-5-

in exchange for the "O" Mill". I said to the plaintiff words to the effect, "I will put your proposal to the Managing Director".

- (b) On 15 September 1981 I am informed and verily believe that the plaintiff telephoned a Mr. W.M. Gale, who is an engineer employed by the second defendant and said words to the effect, "I have another offer for the "O" Mill. I would like to speak to Mr. Layt". I am informed and verily believe that Mr. Gale then said to the plaintiff, "It is no use. Agreement has been reached with BHP".

9. On 17 July 1981 the second defendant resolved not to

proceed with the proposal for the removal of "O" Mill to another of its cement works sites, but to take steps to sell it outright.

10. In or about July 1981 I commenced negotiations on behalf of the second defendant with The Broken Hill Proprietary Company Limited ("BHP") for the sale to BHP of "O" Mill.

11. On 11 August 1981 I visited the site of "O" Mill in company with Mr. Kenneth W. Leard, Mr. Gary Stacey and Mr. Dan Ravey of BHP, and two representatives of Vickers Ruwolt, engineers, for the purpose of surveying the site and identifying the equipment to be removed so that specifications for the removal of the "O" Mill could be drawn up. The Plaintiff's representative, Mr. Webb, did not object to us visiting "O" Mill at that time.

10

12. On 21 September 1981 the second defendant accepted the offer of BHP to purchase "O" Mill and on 9 October 1981 BHP placed

J. Ford

K. Howes

20

-6-

an order for "O" Mill with the second defendant.

13. On 9 October 1981 I first became aware that the plaintiff was denying access to the "O" Mill site. I then had a telephone conversation with Mr. Webb generally in the terms set out in paragraph 2. of the above affidavit of Frederick Ian Webb.

14. The plaintiff's action in denying access to the "O" Mill site is preventing the second defendant from complying with its

Affidavit of Keith Albert  
Howes

contractual obligations to allow BHP to remove the mill, and BHP is incurring additional cost and expense as a result thereof. BHP has already carried out significant preparatory design work in relation to the removal of the "O" Mill. BHP has also sent experts to the site who were denied access and turned away. BHP may require the second defendant to reimburse it for these costs. Annexed hereto and marked with the letter "J" is a true copy of a letter dated 14 October 1981 from BHP to the second defendant in which is set out the serious inconvenience being suffered as a result of the plaintiff's action.

10

SWORN at Sydney     )  
                          )  
before me:            )

                          K. Howes  
                          Keith Albert Howes

                          J. Ford  
                          Solicitor  
                          Sydney

"A"

AGREEMENT made the 23rd day of November BETWEEN STANDARD PORTLAND CEMENT COMPANY PTY LIMITED of 1 McLaren Street, North Sydney, New South Wales (hereinafter called "the Vendor") of the one part AND COLIN ELLIOTT GOOD of 19 Adrian Street, Welshpool, Western Australia (hereinafter called "the Purchaser") of the other part

WHEREAS (a) the Vendor is the owner of certain plant materials and equipment more particularly described in the Schedule hereto ("the goods")

10

(b) the Vendor has agreed to sell and the Purchaser to purchase the goods on the terms and conditions hereinafter more particularly described.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. The Seller agrees to sell and the buyer agrees to buy the goods for the sum of \$265,000 which shall be paid for in the following manner:-

(a) The sum of \$26,500 on the signing hereof.

(b) Upon removal of the said goods from the site the Buyer shall pay the Seller 90% of the price of each item shown against it in the Schedule hereto provided that the full purchase money for all the goods shall be paid within twelve months from the date hereof and in the event that items to the value of less than 25% of the whole shall have been paid for in any three months period then the Buyer shall pay the Seller at the end of each such period such amount if any as is required to make up one quarter of the total purchase price.

20

3. The Buyer covenants to remove all the goods hereby sold within twelve months from the date hereof except such goods as may be situated on land being sold to the buyer by the seller and property in the goods shall be deemed to have passed upon removal.

30

CG

4. From the date hereof all goods hereby sold shall be at the Buyers risk and any loss or damage to or deterioration of the goods from whatever cause arising shall be borne by the Buyer.

5. Examination of the goods has been made for and on behalf of the Buyer prior to signing of this Agreement and no warranty condition description or representation on the

40

Annexure "A" to the  
Affidavit of Keith Albert

Annexure "A" to the  
Affidavit of Keith Albert  
Howes

part of the owner is given or implied by this Agreement or has been given or is to be implied from anything said or written in the negotiations between the parties or other representatives prior to this Agreement at any statutory or warranty condition or representation expressed or implied as to the state quality or fitness of the goods subject to this Agreement is hereby expressly executed. 10

7. The Seller agrees to allow the Buyer access to its property on which the said goods are situated at all reasonable times for the purpose of removing the same but the Buyer shall indemnify and keep the Seller indemnified against all losses claims actions or damages which it may incur as a result of anything done by the Buyer its servants or agents in effecting this contract.
8. As and when requested by the Buyer the Vendor will make available to it any tenders received in respect to the goods hereby sold. 20
9. The Buyer agrees that he will not dispose of any of the goods to any person in competition with the Seller in the business of cement, lime or clinker manufacture without prior consent of the Seller.
10. In addition to any right of lien to which the Seller may by law be entitled the Seller shall be entitled to a general lien on all the goods in its possession (although such goods or some of them may have been fully or partly paid for) for the unpaid price of any of the goods deemed to have been delivered to the Buyer. 30
11. The time hereinbefore mentioned within which the Buyer is to pay for the goods shall be of the essence of this contract.
12. The Buyer shall effect insurance in the names of the Buyer and the Seller for their respective rights and interests in the goods whereby the parties are indemnified against loss or damage to CG

the goods such insurance to be for the full value of such goods. The Insurer and terms of insurance are to be approved by the Seller whose approval shall not be unreasonably withheld and the insurance shall be kept in force until all goods have been paid for provided that should the Buyer fail to insure as herein provided then the Seller shall be at liberty to do so and charge the Buyer for the cost thereof. 40

Annexure "A" to the  
Affidavit of Keith Albert  
Howes

Annexure "A" to the  
Affidavit of Keith Albert  
Howes

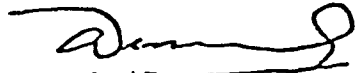
Signed for and on )  
behalf of )  
STANDARD PORTLAND )  
CEMENT COMPANY PTY )  
LIMITED by: )

\_\_\_\_\_ )  
in the presence of: )  
  
\_\_\_\_\_ )

Signed by )  
COLIN ELLIOTT GOOD )  
in the presence of: )

10

Colin Elliott Good  
Witness:



Solicitor  
Sydney

This and the preceding two pages comprise annexure "A"  
referred to in the affidavit of Keith Albert Howes sworn  
the 21st day of October 1981.

\_\_\_\_\_ )  
J. Ford )

20

~~A-Justice-of-the-Peace-~~  
Solicitor  
Sydney

Annexure "A" to the  
Affidavit of Keith Albert  
Howes



"B"

5 November 1980

Mr C Good  
C/- Charbon Cement Works  
CHARBON

Dear Mr Good

We refer to the contract between our subsidiary, Standard Portland Cement Co Pty Ltd, and yourself whereby you agreed to purchase certain equipment, etc, for the sum of \$265,000.

Clause 3 of this contract states the following:-

10

"The buyer covenants to remove all the goods hereby sold within twelve months from the date hereof except such goods as may be situated on land being sold to the buyer by the seller and property in the goods shall be deemed to have passed upon removal."

On that basis your contract expires on the 23rd November 1980, and it would appear to us that you would have very little hope of completing your obligations by this date. Accordingly, we would appreciate advice as to your intentions in this regard to this matter.

20

Yours sincerely

KH  
K A Howes  
General Manager - Finance &  
Administration

This is the annexure marked "B" referred to in the annexed affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

J. Ford  
A-Justice-of-the-Peace  
Solicitor  
Sydney

30

Annexure "B" to the  
Affidavit of Keith Albert  
Howes

31.

"C"

CREST

CAMBRIDGE INN

212 Riley Street, Sydney. N.S.W. 2010

Telex: AA 23813

Phone (02) 212 1111

Telegrams and Cables: TOPINN,  
Sydney

November 26th, 1980

Mr. Keith Howes

Dear Keith,

Confirming our discussion last Friday of the starting and finishing of the Kiln X Maldon.

10

This will be given top priority and will have this cleaned up mid January.

Re the further extension of time for the removal of the goods purchased in the overall package, we beg your indulgence of a further period of twelve months. This, I am sure, will benefit both parties to future prosperity.

For this consideration, I would like to offer Blue Circle Cement, the powerhouse gratis for which I have refused \$20,000.00 plus.

20

If you recall my comments twelve months ago, that with a situation that we were undertaking at the time, there would need to be some give and take on both sides and I feel that this should be fair to both parties.

Regards,

C Good

C. GOOD

This is the annexure marked "C" referred to in the annexed affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

30

J. Ford  
A-Justice-of-the-Peace  
Solicitor  
Sydney

Annexure "C" to the  
Affidavit of Keith Albert  
Howes

"D"

KAH:RG  
4 December 1980

Mr C Good  
c/- Charbon Works  
CHARBON NSW 2848

Dear Colin

We refer to your letter of 26 November in relation to your commitments under the contract between Standard Portland Cement Co Pty Ltd and yourself whereby it was agreed that all the goods sold would be removed from the various sites within 12 months of the 23 November 1979. 10

You have indicated in your letter that the removal of the kiln at Maldon will be top priority and will be cleaned up by mid January. As you know it is our wish that the entire Maldon site be cleared at the earliest possible date and we would like to receive your confirmation that the date of mid January covers the complete list of all equipment purchased by you at that site.

For your information the plant and equipment we refer to is as follows: 20

- M.1 Feeder - Plant No FE 10 Slurry Spoon Feeder - Borg Warner Gearbox M6 100:1 Ratio - No Motor
- M.2 Feeder - Plant No FE 11 Miag - Calcinator of 3-5 Dia x 2.5M long. No drive.
- Slurry Bowl - Plant No SB05 22'3" Dia x 14'9" high with a CPMC EE Concrete Walls with a capacity of 573.5 cubic ft. Agitator - Mechanical with 4" dia x 1" dia pipes. Gear Box - Jones 27:1 Ratio - No motor. 30
- Kiln - Plant No K101 Allis Chalmers - 150' long x 10 ft. I.D. x 7/8" thick plate carried on 2 sets of trunnion rollers with one set of check rollers on feed end tyre only. 1/2 set trunnion rollers removed. Drive bed plate castings in situ - no drive.
- Dust Collector Plant DC 35 Grit Arrestor
- Cooler - Plant No CC01 Allis Chalmers 60'0" long x 1/2" thick plate carried on 2 sets of trunnion rollers with a check roller on the discharge end tyre. 30' of inside length is bricked and the remainder is lined with steel lifter plates - No drive. 40

Annexure "D" to the  
Affidavit of Keith Albert  
Howes

Annexure "D" to the  
Affidavit of Keith Albert  
Howes

Coal Mill

Plant M108 Alfred Herbert size 17A attritor -  
No drive.

Mr C Good

-2-

4 December 1980

It was also discussed and agreed that you would give us a time-  
table for removal of the plant and equipment at Brogans Creek  
Quarry and at our mining leases. Would you please let us have  
this information as soon as possible.

10

Upon receipt of the information requested in this letter a firm  
decision will then be given regarding the extension of time as  
outlined in your letter of the 26th in the meantime would you  
please proceed with work at Maldon.

Regards

KH

K A HOWES  
General Manager  
Group Finance & Administration

This and the preceding page comprise annexure "D" referred to  
in the affidavit of Keith Albert Howes sworn the 21st day of  
October, 1981.

20

J. Ford  
A-Justice-of-the-Peace

Solicitor  
Sydney

"E"

KAH:RG  
27 January 1981

Mr C Good  
19 Adrian Street  
WELSHPOOL W.A. 6106

Dear Sir

The Agreement which our subsidiary Company Standard Portland Cement Company Pty Ltd entered into with you provides that you will remove all the goods sold by it within 12 months from the date of that Agreement and it is noted that you have failed to do so.

10

Please take note that unless you comply with the terms of the Agreement in full within 10 days of the date hereof Standard Portland Cement Company Pty Ltd will without further notice exercise such rights as may then be available to it.

Yours faithfully

KH

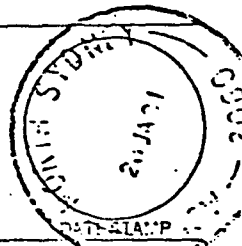
K A HOWES  
General Manager  
Group Finance & Administration

20

AUSTRALIAN POST OFFICE Certified Mail Posting Receipt  
TO BE COMPLETED BY THE SENDER

Article sent to: (Name and Address)

MR C GOOD  
19 ADRIAN STREET  
WELSHPOOL W.A. 6106



B-639052

If you require a RETURN RECEIPT (extra fee payable) write the letters 'AR' in the box on the gummed label. Obtain a Return Receipt Card from the Post Office, complete it and attach it to the back of the article. NO CONFIDENTIAL PAYABLE. See over for conditions and method of posting.

PM120

This is the annexure marked "E" referred to in the affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

J. Ford  
~~A-Justice-of-the-Peace~~  
Solicitor  
Sydney

Annexure "E" to the  
Affidavit of Keith Albert  
Howes

"F"

KAH:RG  
13 February 1981

Mr C Good  
c/- Charbon Colliery  
CHARBON NSW 2484

Dear Sir

We refer to our letter dated 27 January 1981 relating to the agreement which our subsidiary company, Standard Portland Cement Co Pty ltd, has with you which provides that all goods sold shall be removed from site within 12 months from the date of the Agreement. 10

In our letter of the 27 January 1981 ten days notice was given asking you to comply with the terms of the Agreement and as no further proposals have been received from you we hereby give you notice that we intend to proceed with our rights as are available to us and it is our intention to obtain firm quotations for the removal of the said equipment from our various works. The cost of which will be to your account.

When quotations are received these will be submitted to you. In the meantime should you wish to discuss this matter or have any firm offer to discuss we would be pleased if you would contact us. 20

Yours faithfully

KH

K A HOWES  
General Manager  
Group Finance & Administration

This is the annexure marked "F" referred to in the affidavit of Keith Albert Howes sworn the 21st day of October, 1981. 30

J. Ford  
A-Justice-of-the-Peace  
Solicitor  
Sydney

Annexure "F" to the  
Affidavit of Keith Albert  
Howes

"G"

Mr. Taylor  
Progress on cleaning up  
Maldon is not  
satisfactory  
K Howes

c/- Charbon Works  
CHARBON NSW 2848

18 February 1981

Mr K A Howes  
General Manager  
Group Finance & Administration  
Blue Circle Southern Cement Ltd  
1 McLaren Street  
NORTH SYDNEY NSW 2060

10

Dear Sir

I refer to your letter of the 27 January 1981 relating to the agreement which I have with your subsidiary company, Standard Portland Cement Pty Ltd, which provides for the removal from site of all goods sold within 12 months from the 20 November 1979.

The question of removal of plant and equipment from the Maldon site has been discussed a number of times and I now agree to the following lines of action:

20

a) I undertake to commence work at Maldon within one month from the date of this letter and to man the site with sufficient equipment and manpower to complete the removal of all equipment etc within a period of three months from commencement.  
18 Mch  
18 June

b) I also agree BCSC must be satisfied that the equipment and manning proposed to clean up the Maldon site is capable of completing the project within three months from the commencement date.

30

c) In the event that BCSC does not agree with the manning and/or equipment levels proposed by me or that I do not commence work within one month from the date of this letter I agree that BSCS may proceed at my cost to engage a contractor to complete the removal of all plant and equipment purchased by me at your Maldon cement works.

Would you please confirm whether the above arrangements are satisfactory.

Yours faithfully

40

C Good

C GOOD

KAH Spoke to Good - he may require a short period of latitude.  
28/11

This is the annexure marked "G" referred to in the Affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

J. Ford

~~A-Justice-of-the-Peace~~ Solicitor Sydney  
Annexure "G" to the  
Affidavit of Keith Albert  
Howes

"H"

18 February 1981

Mr C Good  
C/- Charbon Cement Works  
CHARBON NSW

Dear Mr Good

We refer to your letter of today's date in which you have outlined your proposals regarding the removal of plant from our Maldon Cement Works.

The proposals are acceptable and we trust that an early commencement of this work can be arranged.

10

Yours sincerely

KH  
K A Howes  
General Manager - Administration  
& Finance

This is the annexure marked "H" referred to in the affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

J Ford  
~~A-Justice-of-the-Peace~~  
Solicitor  
Sydney

20



"I"

KAH:RG  
16 July 1981

Mr C Good  
c/- Charbon Cement Works  
CHARBON

Dear Mr Good

RE: CONTRACT - SALE OF EQUIPMENT

In your letter dated 18 February 1981 you agreed that all equipment purchased by you would be removed from our Maldon site within three months from that date. Part of the equipment in question has in fact been removed but for some weeks now very little action is evident. 10

I know that Mr Taylor discussed this matter with you on the 28 April and he indicated that you may require a short period of latitude. This agreement however was granted on the basis that you would provide sufficient equipment and manning at Maldon to complete the work as soon as possible.

In our opinion the existing situation cannot be allowed to continue any longer and it appears you now leave us no alternative but to engage other contractors to remove your equipment from site at your cost. 20

Accordingly I would be pleased if you would sign a copy of this letter agreeing to this course of action and return it to the company as soon as possible.

Yours faithfully  
K A HOWES  
General Manager - Group Finance  
& Administration

I, Colin Good, hereby agree to the proposed action outlined above and confirm that the cost of completing this work will be paid by me. 30

Signed \_\_\_\_\_

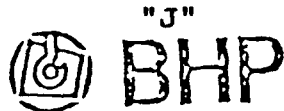
Dated \_\_\_\_\_

This is the annexure marked "I" referred to in the annexed affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

J. Ford  
~~A-Justice-of-the-Peace~~  
Solicitor  
Sydney

40

Annexure "I" to the  
Affidavit of Keith Albert  
Howes



The Broken Hill Proprietary Company Limited  
(Incorporated in Victoria)  
CENTRAL ENGINEERING  
Norplaza Building, 169-185 Miller Street,  
NORTH SYDNEY. N.S.W. 2060

14th October, 1981.

Blue Circle Southern Cement  
1 McLaren Street,  
NORTH SYDNEY N.S.W. 2060

10

Attention: Mr. K. ~~Bezant~~ KAH cc KJS

Dear Sir,

CHARBON #0 MILL

It is my understanding that Mr. Colin Good, the owner of the property on which the #0 mill is located, has taken out a district court injunction which prevents Blue Circle Southern Cement Ltd., or its agents, access to the mill.

The earliest possible completion of the project for which the mill has been purchased is of greatest importance to our client, the Electricity Commission of New South Wales, and to BHP itself, which is associated with the ECNSW in a joint venture on this project. 20

Since receipt of your letter dated 21st September, 1981, design has been proceeding based upon the #0 mill. Should it eventuate that the #0 mill was not available for purchase, the consequences to both the ECNSW and BHP will be extremely serious. Indeed, Central Engineering has already incurred costs as a result of lack of access to the mill, and may incur further costs attributable to lack of information about equipment in the #0 mill complex. 30

In the interest of all parties concerned, please endeavour to resolve the matter of the possession of the #0 mill expeditiously, keeping our Mr. S. Baker fully informed of developments. In addition, please advise me of your proposed approach to achieving the access required to remove the mill.

.....2/

All communications should be  
addressed to  
P.O. Box 1237  
North Sydney, 2060

Telephone (02) 929-8166  
Telex AA 25969

Your Ref: PEJ:SB:TC  
Our Ref:

Annexure "J" to the  
Affidavit of Keith Albert  
Howes

Annexure "J" to the  
Affidavit of Keith Albert  
Howes

-2-

Your co-operation in this matter will be greatly appreciated.

Yours faithfully,

J M Corlin  
For  
P.E. Jeans.  
Manager Central Engineering Sydney

10

This and the preceding page comprise annexure "J" referred to  
in the affidavit of Keith Albert Howes sworn the 21st day of  
October, 1981.

J. Ford  
~~A-Justice-of-the-Peace~~  
Solicitor  
Sydney

Annexure "J" to the  
Affidavit of Keith Albert  
Howes

41.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED and BLUE CIRCLE SOUTHERN  
CEMENT LIMITED

10

Defendants

AFFIDAVIT

ON Wednesday the 21st day of October, One thousand nine hundred and eighty-one, I, KEITH ALBERT HOWES of 5 Jacinta Avenue, Beecroft in the State of New South Wales, Company Officer, being duly sworn make oath and say:-

1. I am the Executive General Manager - Finance & Administration of the second defendant.

2. Annexed hereto and marked with the letter "A" is a true copy of a letter dated 21 October, 1981 to me from The Broken Hill Proprietary Company Limited received by me on 21 October, 1981.

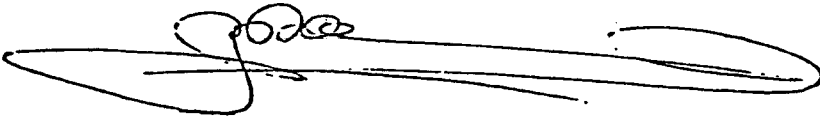
20

SWORN at Sydney

Before me:

)  
)  
)

K. Howes  
-----  
Keith Albert Howes

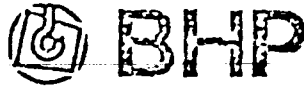


~~A-Justice-of-the-Peace~~

A Solicitor of the Supreme Court of New South Wales

Affidavit of Keith Albert Howes

"A"



The Broken Hill Proprietary Company Limited  
(Incorporated in Victoria)  
CENTRAL ENGINEERING  
Norplaza Building, 169-185 Miller Street,  
NORTH SYDNEY. N.S.W. 2060

21 October 1981

Blue Circle and Southern Cement Ltd.,  
Portland House,  
1 McLaren Street,  
NORTH SYDNEY N.S.W. 2060

10

Attention: Mr K. Howes

Dear Sir,

RE: CHARBON "O" MILL

Further to our letter dated 14th October, 1981, and your telephone conversation with our Mr S. Baker on 19th October 1981, we wish to again emphasise the urgency with which we require possession of the Charbon "O" Mill. The mill is being used in a pilot plant which the Electricity Commission of N.S.W. is having constructed at Wangi Power Station. Successful commissioning of this plant, could result in two immediate benefits to the Commission, these being significantly reduced power station construction and operating costs, and fewer power station maintenance problems.

20

Both Bayswater and Mt Piper power stations are being currently designed. For the above advantages to be realised, the technical process must be proven as soon as possible, which implies the pilot facility must be constructed now. Both the ECNSW and ourselves are currently examining methods to advance the completion date earlier than July 1981. 1982 EJB 21/10/81

30

Subsequent to discussions between our officers and BCSC on 25th August 1981, BHP Engineering proceeded to base the process around the Charbon # 0 Mill. The Areas of design work which are specific to the # 0 Mill are;

- 1) The Mill Foundation, the design and drawings of which are now practically complete.

All communications should be  
addressed to  
P.O. Box 2237  
North Sydney 2060

Telephone (02) 929-8166  
Telex AA 25969

40

43. Annexure "A" to the Affidavit  
of Keith Albert Howes

Annexure "A" to the Affidavit  
of Keith Albert Howes

-2-

- 2) The plant layout, now finalised, and which, because of the limited area available, is based around the length of the direct-drive system of the # 0 Mill. (This layout is now utilised in foundation drawings, nearing completion, of other plant and structures.
- 3) Plant Electrics. Because the mill motor voltage is non standard, design is specific to the kilowatt rating, impedance etc of this motor. Commitments have been made for the purchase of motor/control data from the current owners of that information. The specifications for purchase of the transformer for that motor are complete, whilst design of the high voltage switchgear for the plant, and low voltage switchgear for the mill is well under way. 10
- 4) Mill Relocation and Building Demolition, technical specifications are completed, and BHP Engineering have incurred cost in this area resulting from numerous visits to the Charbon site for technical evaluation purposes and from the visit to the site by a contractor ordered to remove the mill motor plus sundry electrics. 20

Failure by BCSC to fulfill its obligations to BHP Engineering (BHP Central Engineering) would result in a delay to the project of a minimum of four months should a mill of similar repair be available, and a possible maximum of twelve months should it be necessary to purchase a new mill. Such delays are totally unacceptable, given also that extensive inquiries were made in June regarding the availability of mills, and the Charbon # 0 Mill was the only acceptable equipment available. 30

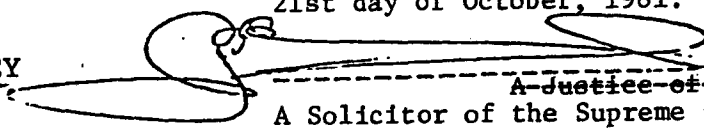
The estimated cost to date to BHP Engineering of design specific to the # 0 mill technical requirements is \$16,500 since agreement in principle of the sale was reached in August 1981. This figure is not to be considered as indicative of the cost of redesign should BCSC fail to meet its obligations.

You are instructed to keep all information in this letter confidential and any disclosure to a third party must be approved by BHP Engineering. 40

Yours faithfully,

P.E. Jeans  
P.E. Jeans  
MANAGER CENTRAL  
ENGINEERING SYDNEY

This and the preceding page comprise Annexure "A" referred to in the Affidavit of Keith Albert Howes sworn the 21st day of October, 1981.

  
~~A Justice of the Peace~~  
A Solicitor of the Supreme Court of N.S.W.  
Annexure "A" to the Affidavit  
44. of Keith Albert Howes

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)

No. 3739 of 1981.

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED and BLUE CIRCLE SOUTHERN  
CEMENT LIMITED

10

Defendants

AFFIDAVIT

ON Friday the 23rd day of October, One thousand nine hundred and eighty-one, I, KEITH ALBERT HOWES of 5 Jacinta Avenue, Beecroft in the State of New South Wales, Company Officer being duly sworn make oath and say:-

1. I am the Executive General Manager - Finance & Administration of the second defendant.

2. In mid 1979 the second defendant distributed within Australia and South East Asia a brochure in the form exhibited to me at the time of swearing this Affidavit, and marked "1". The handwritten notes and other markings were not included thereon at that time.

20

3. On or about 2 November 1979 I met with Mr. Good, the plaintiff herein, and discussed Exhibit "1" hereto with him. He had expressed interest in purchasing items referred to in the brochure. The handwritten notes and markings were on the document at the time of this discussion. I can recall saying in relation to the "O" Cement Mill, its building and associated equipment, words to the effect: "That's excluded from the

30

Affidavit of Keith Albert  
Howes

sale". Hereto annexed and marked "A" are notes taken by me during the meeting. They accurately record discussion which took place at the meeting.

Peter Smith

K. Howes

-2-

4. On or about 5 November 1979 I wrote to the plaintiff a letter, a true copy of which is annexed hereto and marked "B".

5. On 12 November 1979 I wrote an internal memorandum to Mr. Kevin Smith of the second defendant, a true copy of which is annexed hereto and marked "C". 10

6. On 8 November 1979 the plaintiff sent a telex to me, a true copy of which is annexed hereto and marked "D".

7. On 9 November 1979 I sent a telex to the plaintiff, a copy of which cannot presently be located.

8. On 13 November, 1979 the plaintiff wrote to me a letter, a true copy of which is annexed hereto and marked "E"?

9. On 23 November 1979 I am informed and verily believe that the said Mr. Kevin Smith of the second defendant, wrote to the plaintiff a letter, a true copy of which is annexed hereto and marked "F". 20

10. On 27 November, 1979 I wrote to the plaintiff a letter, a true copy of which is annexed hereto and marked "G".

11. On 4 December 1979 I wrote to the plaintiff a letter, a true copy of which is annexed hereto and marked "H".

SWORN at Sydney )  
before me: )  
Peter Smith  
Solicitor - NSW

K. Howes  
Keith Albert Howes

Affidavit of Keith Albert  
Howes



EXHIBIT "1"

As discussed Mr. K.A. Howes & Mr. C. Good

2/11/79 K.Howes

SALE BY TENDER  
CEMENT MANUFACTURING AND QUARRY PLANT

Due to the closure of its Charbon Cement Works (240 km north-west of Sydney) the entire Plant and equipment is available for immediate sale on the basis of "as is/where is".

The attached Brochure details equipment for sale and offers are invited for individual lots or as a whole.

10

In addition a selection of spare parts for most equipment is available for sale on a negotiated basis. Maximum production capacity of the Works was Clinker 250,000 t.p.a. Cement Milling 260,000 t.p.a.

Charbon Cement Works will be open for inspection each WEDNESDAY and THURSDAY from 7.30 am to 4.00 pm. Inspections at other times may be arranged by contacting Mr. K.A. Howes at the undermentioned address.

Interested parties planning to stay in the area overnight are advised to secure bookings as accommodation in the area is limited. Accommodation at Kandos is available at

20

Fairways Motel (063) 79 4406  
Railway Hotel (063) 79 4403

Charbon Cement Works is adjacent to the main Sydney to Mudgee railway line and has its own siding which is available by arrangement for use in removal of equipment.

The Brochure also contains details of a few items of plant for sale by tender at our other N.S.W. Cement Works at Berrima Maldon and Portland and at our Quarry at Marulan.

Inspections at these centres may be arranged by contacting the respective Works Managers direct.

30

Maldon Cement Works	99 km south west of Sydney	Phone (046) 77 1221
Portland Cement Works	171 km west of Sydney	Phone (063) 55 5000
Marulan Quarry	200 km south west of Sydney	Phone (048) 57 1645
Berrima Cement Works	145 km south west of Sydney	Phone (048) 77 1305

A coupon for use when submitting tenders is attached.

40

CONDITIONS:-

- a) The Company reserves the right to accept or reject any tender.

Exhibit "1" to the Affidavit  
of Keith Albert Howes

- b) Cost and responsibility of removal of purchases remain with the Tenderer although every effort will be made to facilitate removal.
- c) Quantities and descriptions are believed to be correct but are not guaranteed and Tenderers must satisfy themselves by personal inspection.
- d) Payment:- On Items of \$1000 value and above. 10  
25% deposit payable upon notification of acceptance of tender and the balance before removal of purchase.  
On Items below \$1000.  
Payment in full before removal of purchase.
- e) Removal of Equipment - Upon notification of acceptance of tender equipment must be removed from the site within six weeks.

Tenders will close at 5 pm 31st October 1979. Envelopes should be clearly marked "Charbon Tender" and be mailed or delivered to:- 20

Blue Circle Southern Cement Limited  
1 McLaren Street  
North Sydney N.S.W. AUSTRALIA

Phone: (02) 929 0200 Telex: SYDCEM AA 22466

SPECIFICATION - Charbon Cement Works

KILNS

- 1201 Crib Table and Stools Combined  
 1202 Conical Steel Hopper (Kiln Floor)  
 1203 4 Wheel Steel Trolley 7' x 4'  
 1204 Steel Tank 8' x 4'6" x 4'6"  
 1205 Set of Two Steel Shelves 10' x 2'  
 1206 Set of Aluminium Steps  
 1207 Bazooka Tank Pump and Motor  
 1208 1 Steel Locker 10  
 1209 Wooden Cupboard 7' x 6' x 2'  
 1210 No. 3 Kiln Motor Drive and Auxiliary Drive  
 10ft dia x 165 ft Vickers Rotary Kiln SOLD  
 75 rpm Motor 60hp British Rema Direct Firing System  
 Raymond Hydraulic Kiln Feed speed control  
 1211 No. 2 Kiln Motor and Drive  
 9ft dia x 150ft Edgar Allen Rotary Kilns  
 60 rph Motor 50 hp 580 rpm British Rema Direct Firing  
 System Raymond Hydraulic Kiln feed speed control  
 1212 No. 1 Kiln Motor and Drive 20  
 9ft dia x 150ft Edgar Allen Rotary Kilns  
 60rph Motor 50hp 580rpm British Rema Direct Firing System  
 Raymond Hydraulic Kiln feed speed control  
~~1213--No.-3-Kiln-Motor-Shed~~ SOLD  
 1214 No. 1 and 2 Kilns Motor Shed  
 1215 No. 1 Kiln Coal Fan  
 1216 No. 2 Kiln Coal Fan and Motor 50hp  
~~1217--2-Steel-Frestles~~ SOLD  
~~1218--No.-3-Kiln-Coal-Firing-Fan-and-Motor-50hp~~ SOLD  
~~1219--No.-3-Kiln-Air-Cooled-Nose-Ring-Fan-Aerex-Type-C30-and~~ 30  
~~Motor-3hp~~ SOLD  
 1220  
~~1221--No.-1-Kiln-Coal-Classifler-(British-Rema-RW100}~~ SOLD  
 1222 No. 2 Kiln Coal Classifler (British Rema RW 100)  
 1223 No. 1 and 2 Kiln Coal Hopper  
 1224  
~~1225--No.-3-Kiln-Coal-18"-Belt-Conveyer-plus-5hp-Motor-and~~  
~~Gearbox-40.1-Length-105ft~~ SOLD

Exhibit "1" to the Affidavit  
of Keith Albert Howes

~~1226~~ No. 1 and 2 Kiln Coal 18" Belt Conveyor plus 5hp Motor  
and Gearbox 37:1 Length 53ft

1227 Float Switch

1228 Kiln Coal Bunker to No. 1 and 2 Kiln

1229

1230

1231

1232

10

~~1233~~ ~~---No. 3 Blackman-K-B-Serial-No. V5428-Cooler-Fan-and-Motor~~  
~~50hp-~~ SOLD

SPECIFICATION - Charbon Cement Works

CEMENT MILLS

- 1401 7ft x 36ft Edgar Allen Mills No. 2 3 compartment 23.2 rpm  
spur gear drive. Charge weight approximately 45 tonnes  
Motor Bruce Peebles 600 hp 250rpm 415V. Synchronous  
Induction
- 1402 No. 2 Cement Mill Gear Fan
- 1403 7ft x 36ft Edgar Allen Mills NO. 1 3 compartment 23.2 rpm 10  
spur gear drive. Charge weight approximately 45 tonnes  
Motor Bruce Peebles 600 hp 250 rpm 415V. Synchronous  
Induction
- 1404 No. 1 Cement Mill Gear Fan
- 1405 No. 2 Cement Mill Owl Vibrator Cement Screen 6ft 9" x  
3ft and Motor
- 1406 No. 2 12" Screw Conveyor Length 10ft9½"
- 1407 No. 1 Cement Mill Owl Vibrator Cement Screen 6ft 9" X  
3ft and Motor
- 1408 No. 1 & 2 Cement Mill Cooler plus Motor and Gearbox 20
- 1409 Cement Mill No. 3 12" Screw Conveyor Length 17ft2½"
- 1410 Cement Mill No. 4 12" Screw Conveyor Length 19ft8"
- 1411 No. 1 Cement C100 F.K. Compressor and Motor 50hp
- ~~1412--No.--3--Cement--C100--F.K.--Compressor--and--Motor--50hp~~ SOLD
- ~~1413--No.--2--7"--F.K.--Pump--plus--Motor--50--hp~~ SOLD
- 1414 No. 0 Cement Mill and Auxilliaries WITHDRAWN  
8ft6" x 33ft5½" Smidth 'Unidan' Cement Mill rpm 18.2  
approximate charge weight 61 tonnes  
One fixed and one moveable main bearing. TS1150 Symetre  
gearbox 1000hp motor 1100hp 735rpm 2200 V. 30  
2 Smidth Type BHK60 Pendan Weighfeeder nos. 709603 and  
709604  
1 Gypsum Belt Feeder gear motor 3hp 1440 rpm 84.7:1  
1 3ft3" x 6ft6" Haver and Boecker 'Niagara' Type ME  
Cement Screen no. 4835 3mm or 4mm screens motor 3hp  
1420 rpm  
1 Screw Conveyor 20" Mill Discharge gear motor 5hp  
145C rpm Length 11ft

Exhibit "1" to the Affidavit  
of Keith Albert Howes

- ~~1 Watt Bucket Elevator Motor 25hp 1450 rpm gearbox  
M10 20:1 Height 70ft3"~~
- ~~1 13ft 1½" dia. Smidth Air Separator type FC 80hp motor  
720 rpm V-belt drive 12 off C210 belts with 48.75 in  
V-pulleys. Fennerflex FX14 coupling~~
- ~~1 20" Screw Conveyor (Return) motor 15 hp 1430 rpm gear-  
box M8 25:1 Length 66ft6"~~
- ~~1 14" Screw Conveyor (To Cooler) gear motor 5hp 1450rpm: 10  
175 rpm Length 27ft~~
- ~~1 14" Screw Conveyor (Finished Cement) gear motor 5hp  
1450 rpm : 175 rpm Length 22ft6"~~
- ~~1 Smidth Cement Sampler motor 0.5 hp 870 rpm reduspeed  
870:20~~
- ~~1 12" Screw Conveyor (Filter Discharge) gear motor 5hp  
1450:30 length 16ft2½"~~
- ~~1 S.F. Electrofilter type FAB-440 no. 706477 70kV 7000NM3  
at 120°C. 99%~~
- ~~1 Filter Fan Richardson 600 CR type no. 72504 motor 25hp 20  
1450 rpm~~
- ~~1 2.0m x 3.0m High Smidth Cement Cooler serial no. 704191  
motor 25hp 940rpm Richardson HW8 3.2:1~~
- ~~1 Mono Pump V-belt drive motor 3 hp 940 rpm timing pulley  
drive~~
- ~~1 Broomwade D13 Air Compressor serial no. 143017 motor  
10hp 1420 rpm water temperature control by Satchwell type  
FP3L thermostat~~
- ~~1 Vertical Air Receiver no. 139-u-787~~
- ~~1 Air Filter for Motor Room Richardson 4CL fan no. 76276 30  
motor 3 hp 1420 rpm including Gregory Rollo-Matic Filter~~
- ~~1415--Trolley-Crane-10-ton-Capacity WITHDRAWN~~
- 1416
- 1417
- ~~1418--Cement-Mills-Building-(Steel-Frame) WITHDRAWN~~
- 1419
- 1420
- 1421
- 1422 Steel Table 6ft x 3ft

- WORKERS 267 5977
- ① ✓ offer is for total package all locations. X
  - ② ✓ Includes land price - areas to be defined but approximately as discussed ✓
  - ③ ✓ Includes (1) rail line & water bounded east of (2) railway line ✓
  - ④ ✓ Includes ~~area~~ right for reasonable period to buildings on western side of railway line ✓
  - ⑤ ✓ Includes right to Progress Lumber Quarry plant (but not the quarry itself) areas for reasonable period.
  - ⑥ ✓ Availability of staff cottages for rent ✓
  - ⑦ ✓ Excludes "O" mill & spurs to building.
  - ⑧ ✓ Spares included for all stock other than "O" mill & other mill or returns.
  - ⑨ ✓ Includes all items within bounded discussed (subject to fence & drainage requirements for calling & staff cottages) ✓
  - ⑩ ✓ Includes ~~also~~ all Kila Allis Pelmar film at Meldon ~~site~~ (adjacent to existing Kila) not on list. ✓
  - ⑪ ✓ \$350,000 - offer 10% deposit & balance for - note over 12 months from the amount with values to be assigned to major equipment.

1948 Corp. Properties of Nicholson for Good

✓ Would like effort to agree for removal of 0" mill

✓ Reflex - to be separate

1. Interest 8 x 6 <sup>held</sup> mill at Portland (less notes) <sup>reflex</sup> up on the dump (since Nicholson) <sup>10-2</sup>

payment to include credits on any sale to Sevon (could be up to \$200,000) SILOS to be sold to Sevon by Good

✓ Low value to be lowest possible & also subject to warrant approval of sub/division

✓ Old stacks of timber at Portland

✓ Option on Nicholson and no. 2 file (existing)

✓ Contract with C. Good & Associates at Portland - General

✓ Restriction on use & sale to other concern

✓ To give details of old timber



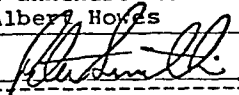
old copies of books

24<sup>087</sup> T 1, 2, 3, 4, 5, 6, 7, 8

~~24<sup>087</sup> T 1, 2, 3, 4, 5, 6, 7, 8~~  
8 4 5 3

0

This and the preceding 2 pages comprise annexure "A"  
referred to in the affidavit of Keith Albert Howes  
sworn the 23rd day of October 1981.



A Justice of the Peace  
SOLICITOR

WEEKEND 367 5979

- (1) ✓ Offer is for total package all locations. ✕
- (2) ✓ Includes land price - areas to be defined but approximately as discussed. ✓
- (3) ✓ Include (1) Rail line & make boundaries east of (2) Railway Lines. ✓
- (4) ✓ Includes xxx right for reasonable period to buildings on western side of railway line. ✓
- (5) ✓ Includes right to Brogan Creek Quarry plant (but not the quarry itself access for reasonable period. 10
- (6) ✓ Availability of staff cottage for rent. ✓
- (7) ✓ Excludes "O" mill & spares & building.
- (8) ✓ Spares included for all items other than "O" MILL & other items sold or retained.
- (9) ✓ Includes all items within boundaries discussed (subject to power & drainage requirements for colliery & staff cottages) ✓
- (10) ✓ Includes xxx old Kiln Allis Chalmers Kiln at Maldon xxx (adjacent to existing kiln) not on list. ✓
- (11) ✓ \$350,000 - offer 10% deposit & balance pro-rata over 12 mths. prior to removal with values to be assigned to major equipment. 20

(1948 Org. Prospectus at Maldon) for Colin Good.

- ✓ Would like oport. to quote for removal of "O" mill. ✕
- ✓ Telephone - to be separate. ✕  
Ball (NOT FOR SALE Replace No. 2
- ✓ Interested 8 x 6/Mill at Portland (less motor) That's coal up on the dump (Vince Rockchester) fuel
- ✓ Payment to include credits on any sales to Swan (could be up to \$200,000) SILOS to be sold to Swan by Good } ✓ 30
- ✓ Land value to be lowest possible & also subject to council approval of sub/division. \*
- ✓ Old stockpile of clinker at Portland. ✓
- ✓ Option on Maldon xxx No. 2 Kiln (existing) ✓
- ✓ Contract with C. Good & Associates or Nominees - Personal Guarantee ✕

Typed Copy of Annexure "A"  
to the Affidavit of Keith  
Albert Howes

Typed Copy of Annexure "A"  
to the Affidavit of Keith  
Albert Howes

- ✓ Restrictions on use & sale to other cement companies ✓
- ✓ To give details of other tenders. ✓

Old Clinker at Portland

087							
24 000 T		1,	2,	3,	4,	5,	6 & 8.
XXXXXXXXXXXXXXXXXX							
XXXXXXXXXX		8		4	5	3	

10

This and the preceding page comprise annexure "A" referred to in the affidavit of Keith Albert Howes sworn the 23rd day of October 1981.

Peter Smith  
-----  
A-Justice-of-the-Peace  
Solicitor.

ANNEXURE "B"

5 November 1979

Mr C Good  
19 Adrian Street  
WELSHPOOL W.A. 6106

Dear Mr Good

CHARBON TENDER

We refer to our recent discussions and wish to confirm our understanding of your offer of \$350,000.

The offer is for the total package at all locations subject to the following inclusions and exclusions:- 10

1. Inclusions

- (a) All spares applicable to plant and equipment listed unless already sold or withdrawn from sale.
- (b) Land at Charbon Cement Works as discussed, final boundaries dependant upon Council requirements and BCSC needs to retain full access to its coal loading facilities, coal mine and staff cottages (including power, drainage, etc.)  
  
Boundary on western side of Cement Works to be EAST of (2) railway lines. 20
- (c) Right of access for reasonable period to buildings on western side of railway for removal of equipment included in offer.
- (d) Right of access for reasonable period to Brogan's Creek Quarry for plant removal but not the right to the Quarry itself.
- (e) Old Allis Chalmers kiln at Maldon (adjacent to existing kiln) which is not on list (partly demolished).
- (f) In exchange for deletion of No. 2 kiln at Maldon, old clinker stockpiles at Charbon and Portland to be included at NO VALUE. Details to be supplied by BCSC. No guarantee of tonnages will apply. 30

2. Exclusions

- (a) "O" Mill, spares and building and other equipment indicated on schedule given to you on Friday (2.11.79).
- (b) No. 2 kiln at Maldon together with associated plant equipment (as discussed).

...2

Mr C Good

-2-

5 November 1979

- (c) Charbon telephone services, These are required to be retained for Colliery use. Internal telephone services within boundaries to remain.

3. Special Conditions

- (a) Plant, equipment, buildings, and land not to be used by Mr C. Good and Associates or any other organisation for the production of cement and/or related products. 10
- (b) Charbon plant, equipment, buildings and land not to be sold, transferred or disposed of to other cement companies or other parties which BCSC considers could be detrimental to its activities.
- (c) Mr G. Good & Associates to support offer by guarantees acceptable to BCSC.
- (d) BCSC to agree to credits being transferred from Swan Portland Cement Ltd as reduction of sale price in the event of BCSC accepting the offer. 20

4. Payment Terms

Mr G. Good & Associates offer based on 10% deposit with balance payable in full within 12 months from date of acceptance of offer.

Price offered to be dissected over major plant items on agreed basis with payment becoming due at time of removal from site.

5. Other Matters

- (a) BCSC to lease staff cottage at the rate of \$20.00 per week plus electricity at \$2.00 per week if vacant and available at time requested. 30
- (b) Mr C. Good & Associates be given the opportunity to quote for removal of "O" Mill at Charbon.
- (c) BCSC to advise Mr C. Good & Associates whether 8' x 6' Ball Mill (less motor) at Portland - on dump is for sale.
- (d) Values to be assigned to land purchase to be as low as possible.

Annexure "B" to the Affidavit  
of Keith Albert Howes

- (e) Mr C. Good & Associates be given first right of refusal for Maldon No.2 kiln if BCSC should decide to sell this equipment.
- (f) If offer is accepted BCSC would provide Mr C. Good & Associates with tender documents received.

Would you please advise whether the above details your offer as discussed at our meetings.

King regards

10

Yours sincerely

KH  
K A Howes  
Assistant Director - Finance &  
Administration

This and the preceding page comprise annexure "B" referred to in the affidavit of Keith Albert Howes sworn the 23rd day of October, 1981.

Peter Smith

-----  
~~A-Justice-of-the-Peace~~

Solicitor

20

ANNEXURE "C"

MR J.K. SMITH  
MR K.A. HOWES

12.11.79

CHARBON SALE

Mr C Good has now confirmed his offer of \$350,000 as set out in my letter of the 5th November 1979 and as such I would be pleased if you would proceed with the preparation of the necessary contract. Mr Good is extremely anxious to sign documents as soon as possible in order that the tenders received by BCSC will remain current. The additional information which you have requested is as follows:-

10

- (1) List of plant and equipment included in sale - list attached.
- (2) Land included in sale approximately as per the attached plan. It should be pointed out to the purchaser that the Company's store building between the railway tracks extends beyond the Company's freehold land and as such it will be necessary for BCSC to purchase a small section of land currently held under the mining lease.
- (3) Right of access - this must work both ways as BCSC has to remove the "O" mill from the land being purchased by Mr Good and likewise Mr Good has to remove the equipment from Brogans Creek, the ropeway and from other buildings on the western side of the railway lines. It is suggested that the contract should contain a clause giving access for a reasonable period, but stipulating that plant etc, to be removed must be completed within twelve months from exchange of contracts. 20
- (4) List of plant for the old Allis Chalmers kiln at Maldon is attached. 30
- (5) List of old clinker stock piles at Charbon and Portland to be included in sale - list attached.
- (6) Payment terms - as advised Mr Good is submitting a list dissecting the sale price over individual items of the plant which would become due and payable at the time of removal from site. It is our wish, however, that a clause be inserted in the contract providing that payments equalling 25% of the balance then outstanding be made each quarter regardless of whether the equipment be removed from site. 40
- (7) The contract is to provide for the purchaser to be given rights to the property on exchange of contracts.
- (8) For insurance purposes the property will pass to the purchaser at the date of exchange of contracts with final

Annexure "C" to the Affidavit  
of Keith Albert Howes

settlement for the land being due when BCSC is able to  
produce a valid certificate of title.

...2

Mr J.K. Smith

-2-

12 November 1979

- (9) Cost of preparing the sub-division, including survey costs, is to become BCSC's responsibility.
- (10) Purchaser to be given the right to erect buildings on the land after exchange of contracts. 10
- (11) BCSC to ensure other purchasers of equipment remove same from site within six weeks from (other than No. 6 exchange of contracts ( kiln)
- (12) Contract to contain clause that the plant at Brogans Creek Quarry and the ropeway on the mining leases are removed as soon as possible.
- (13) Contract to provide that the purchaser shall not carry on any business or activities which would have the effect of flooding the Company's drainage easements. As you are aware the drainage from the site extends under the railway lines on to the land adjoining the property purchased by Mr W. Thompson. 20

Should you require any additional information regarding the above please let me know. If possible Mr Good would like the contract to be available by no later than Wednesday, 14 November.

KH  
K.A. HOWES

This is the annexure marked "C" referred to in the affidavit of Keith Albert Howes sworn the 23rd day of October, 1981.

Peter Smith

30

-----  
~~A-Justice-of-the-Peace~~  
Solicitor



ANNEXURE "D"

(LOT 686) "O" MILL  
689)

IN

SYDCEM AA22466

8/11/79

ATTN: K HOWES

CONFIRM ACCEPTANCE AND AGREEMENT OF YOUR LETTER OF 5TH  
NOVEMBER LETTER FOLLOWING

C. GOOD

10

SYDCEM AA22466  
HERBCO AA92782  
SYDCEM AA22466

This is the annexure marked "D" referred to in the affidavit of  
Keith Albert Howes sworn the 23rd day of October, 1981.

Peter Smith

-----  
~~A-Justice-of-the-Peace~~  
Solicitor

ANNEXURE "E"

C. GOOD & ASSOCIATES.

19 Adrian Street,  
Welshpool, W.A., 6106.

Tel: 361 7877

November 13, 1979.

Attention Mr. K.A. Howes.

Blue Circle Southern Cement Limited,  
P.O. Box 1571 G.P.O.,  
SYDNEY, N.S.W., 2001.

10

Dear Sir,

Re: Telex of the 9th. November, 1979. We feel a fair break-up price of the items listed:

Charbon Cement Works, Land and Building,	= \$ 85,000-00	
Brogan's Creek Quarry,	= \$ 30,000-00	
Lots 301-800	= \$ 10,000-00	
Raw Mills 801-803	= \$ 35,000-00	
804-1209	= \$ 10,000-00	
Kilns 1211-1212	= \$ 30,000-00	
1213-1400	= \$ 10,000-00	20
Cement Mills 1401-1403	= \$ 35,000-00	
1404-2000	= \$ 10,000-00	
Spare Parts and Sundries,	= \$ 10,000-00	
	<hr/>	
	= \$265,000-00	
Maldon Cement Works,	= \$ 15,000-00	
Portland Cement Works,	= \$ 35,000-00	
Marulan Quarry,	= \$ 20,000-00	
Berrima Cement Works,	= \$ 15,000-00	
	<hr/>	
	= \$ 85,000-00	
	<hr/>	
<u>TOTAL</u>	= \$350,000-00	30

Annexure "E" to the Affidavit  
of Keith Albert Howes

Page 2.....

This offer excludes the items marked as SOLD OR WITHDRAWN by  
Mr. K. Howes on November 2, 1979.

Payment 10% deposit satisfactory documentation.

Balance prior to removal of the listed items and any outstanding  
balance to be settled not later than Twelve Months of signing  
of original agreements.

Regards,  
C. GOOD & ASSOCIATES.

10

C Good

CG:KP

C. GOOD.

This and the preceding page comprise annexure "E" referred to  
in the Affidavit of Keith Albert Howes sworn the 23rd day of  
October, 1981.

Peter Smith

-----  
~~A-Justice-of-the-Peace~~

Solicitor

ANNEXURE "F"

23 November 1979

Mr C E Good  
19 Adrian Street  
WELSHPOOL WA 6106

Dear Mr Good

We refer to our recent discussions with you and confirm our advice that removal of equipment already sold by us may result in some damage being caused to the property which you have agreed to purchase from us. In addition, removal of the "O" Mill by this Company may damage part of that property and we appreciate that when you remove some of the equipment which we have agreed to sell you damage to our property might likewise occur. Provided removal by you, our buyers and this Company is carried out in a responsible manner we have agreed that neither party may claim against the other and the Agreements which we are handing to your Solicitor today for signature are to be entered into subject to this Agreement.

10

Yours faithfully,

J K SMITH  
Corporate Solicitor

20

This is annexure "F" referred to in the affidavit of Keith Albert Howes sworn the 23rd day of October, 1981.

Peter Smith

-----  
~~A-Justice-of-the-Peace~~  
Solicitor

ANNEXURE "G"

27 November 1979

Mr C Good  
19 Adrian Street  
WELSHPOOL W.A. 6106

Dear Mr Good

We wish to confirm the following matters discussed between ourselves during the last few days:-

(1) Equipment at Portland, Marulan and Berrima

It was agreed that the equipment at these locations would be removed prior to the removal of equipment at Charbon. In each case payment of the balance of 90% is to be made to our Head Office at North Sydney prior to the removal of the equipment. We also agreed that the old clinker stock piles at Portland would also be removed as soon as possible, but it should be clearly understood that BCSC does not give any guarantee as to quantity or quality of the clinker concerned. 10

(2) Drilling Equipment - Portland

This equipment is under the control of our Geologist, Mr Malcolm Robinson, and as such it would be necessary for arrangements to be made for him to be on site at Portland when you wish to take delivery of this equipment. As Mr Robinson moves around quite a lot we would appreciate as much advance notice as possible of your intention to remove same. 20

(3) Brogans Creek Quarry

It was agreed that you will arrange for an alternative pumping arrangement for the primary crusher in order that BCSC can arrange for the isolation of the remaining equipment at this site. Until this has been completed we are unable to:- 30

- (a) Isolate the equipment purchased by you
- (b) Arrange an alternative power supply to the cottage.
- (c) Arrange for Murdoch to remove the shed purchased by them from site. All the switchgear, etc, purchased by you is under cover in this shed and cannot be removed until isolation is complete.

.....2

Mr C Good

-2-

27 November 1979

(4) Ropeway

The ropeway runs along a number of private properties over which BCSC has mining leases. These leases are controlled by Mr M. Newell and when you wish to obtain access, we would be pleased if you would advise me him of your movements in order that the individual property owners may be advised. The land at the beginning of the ropeway at Brogans Creek Quarry is, of course, owned by BCSC and you would have no problem regarding access to this site. It was agreed that the towers are to be cut off six inches below the ground and the holes filled in. Any brickwork, concrete, etc demolished for removal of towers should also be removed from site.

10

(5) Charbon Cement Works

(a) Mr M Newell has been instructed to arrange for the sketched plan of sub-division to be submitted to the Rylstone Shire Council in order that it may be presented to the next Council Meeting which we understand is late December. The necessary applications, however, must be lodged by the 7 December and we will meet that date.

20

(b) Removal of Equipment from Site

Notice has been given to Carrington Holdings and W.J. Murdoch & Co to remove the equipment purchased by them from the site within a period of six weeks. In the case of Ledger Demolition you are fully aware of the position and we understand that you have also discussed this matter with Mr Ledger direct.

30

(c) Arrangements for the payment of the balance of the purchase price of 90% are as follows:-

(1) Your representatives on site will hand to Mr R Reddish, or the BCSC representative, on a daily basis the discs showing the individual lot numbers for all equipment removed from site during that day.

(2) Each Monday a list will be prepared showing the purchase price for the items removed during that week and the balance of 90% of that purchase price will then be payable.

40

(3) The BCSC representative on site will give your

Annexure "G" to the Affidavit  
of Keith Albert Howes

representative a receipt for the cash and/or  
cheques received.

- (4) In the event that equipment removed from site during any one quarter does not equal 25% of the purchase price, BCSC will forward you an account showing the balance then owing, and it will be necessary for us to agree on an allocation by lot numbers of the amount then payable. 10

(d) Telephone Service

It was agreed that you are to make application to obtain your own telephone service to the Works and we would be pleased if you would arrange for this to be lodged as soon as possible.

...3

Mr C Good

-3-

27 November 1979

In the meantime, BCSC is prepared to make available its existing services on the basis that all local calls are to be paid for at the appropriate public telephone rate, and that any trunk calls must be made through the manual exchange in order that we may keep a record of the cost of each call. Requests for the use of the phone must be made through BCSC employees on site. 20

(e) Contract for Land and Buildings

As indicated we are in a position to exchange contracts for the sale of the land and buildings on Thursday, 29 November 1979 and we assume that your Sydney solicitor Noel Dennis will be in touch with us prior to that date. 30

We will write separately to you on the furniture but, in the meantime, we trust the above sets out the matters which we have discussed.

Kind regards

Yours sincerely

KH

K A Howes

Assistant Director - Finance &  
Administration

40

Annexure "G" to the Affidavit  
of Keith Albert Howes

This and the preceding two pages comprise annexure "G" referred  
to in the affidavit of Keith Albert Howes sworn the 23rd day  
of October, 1981.

Peter Smith

-----  
~~A-Justice-of-the-Peace~~  
Solicitor



ANNEXURE "H"

4 December 1979

Mr C Good  
19 Adrian Street  
WELSHPOOL WEST AUST 6106

Dear Colin

CHARBON - PICKING RIGHTS TO CABLE

We refer to our recent discussions regarding the sale of cable etc, to N.L. Perry Pty Ltd, Scrap Merchants, Regents Park in Sydney and wish to confirm that they will be allowed to remove cable from site on the following understanding:-

10

- (1) All cable and electrical wiring from starters to individual plant items not sold to yourself is not to be touched under any circumstances, and if it is removed reinstatement will be to your account.
- (2) All electrical wiring and main cables to the "O" Mill is being retained by BCSC and is not included in any sale.
- (3) Likewise, all electrical wiring, cable etc, associated with our weighbridge and coal loading facilities, staff cottages, coal mine etc., is to remain intact and must not be interfered with in any way.

20

It should be clearly understood that if N.L. Perry & Sons Pty Ltd or any contractors engaged by yourself, or any of your own staff cause damage to electrical circuits, etc, which has the effect of causing BCSC production delays or incurs BCSC with any additional expense it will be recovered from you, including any loss of profits arising from the coal mining activities.

- (4) That in the event we are unable to satisfy the Rylstone Shire Council regarding the necessary sub-division, BCSC and yourself will enter into a 99 year lease for the property in question.

30

We do not wish to appear to be unreasonable in this regard but we are certain you will agree that we must be very careful with removing electrical wiring etc, from site. I understand from discussions with Mr Martin Perry that he was unaware that certain items of plant was being retained by BCSC and that other items of plant had been sold to people other than yourself.

In the unlikely event that we are unable to satisfy the Council for the sub-division and we are unable to negotiate a 99 year lease satisfactory to both parties, we consider it fair and reasonable that proceeds received from N L Perry & Sons Pty Ltd for the sale of electrical cables, etc at the

40

Mr C Good

-2-

4 December 1979

Charbon Cement Works should become payable to BCSC.

We have also contacted Kilpatrick Green, the electrical engineering company concerned with the isolation of equipment at the power house at Charbon, and they have advised me that one main feeder cable to the sub-station near the raw mills is active together with feeder cables to the top raw meal silos. They have indicated that it should be possible to cut off the supply to this area and I have asked Mr R Reddish to examine this possibility. It should be clearly understood, however, that BCSC gives no guarantee that all electrical power supply cables have been isolated throughout the Works and we strongly suggest that all circuits should be checked by an electrician to ensure that the cables are, in fact, dead. 10

Other matters which we discussed are as follows:-

(1) Sale of equipment to Ledger Demolition Co from Portland

You have indicated that you will now arrange for the sale of this equipment to the abovementioned company and I assume you will let me know when this has been finalised in order that I may arrange for authority to be given for the equipment to be removed from Portland Works. 20

(2) The photographs you have asked for are \$30 each and these should be available within a week to ten days. A copy of an internal memo is enclosed for your information.

(3) A plan of sub-division has been lodged with the Council and there should be no reason why it should not be considered at the next meeting which is late December. A copy of my letter dated 3rd December to the Council is enclosed for your records. 30

(4) Notice has been given to Carrington Holdings Pty Ltd and to W.J. Murdoch & Co asking them to remove the plant and equipment purchased by them within a period of six weeks from the 27 November 1979. Copies of the letters in question are also enclosed.

The furniture in the store at Charbon has now been listed and if you are interested the purchase price is \$300.

Jim has indicated that he is living at the Kandos Hotel and may not require the staff cottage. Would you please let me have your views on the above as soon as possible. 40

Another matter which has been discussed is the restrictions

Annexure "H" to the Affidavit  
of Keith Albert Howes

placed on the various tenders from companies in competition with BCSC. These have been reviewed by Mr Taylor and I have now been given permission to advise you that the equipment listed on the following tenders could be sold:-

No. 9	G S Andersen, Southern Limestone Pty Ltd	
No.49	Newcastle Lime & Cement Ltd	
No.94	Adelaide Brighton Cement Ltd	
No.43	Australian Portland Cement Limited, Kandos	10
No.29	Australian Portland Cement Limited, Kandos	
No.82	North Australia Cement Ltd	

...3

Mr C Good

-3-

4 December 1979

This means the only restriction relates to Tender No 65 for the "O" Mill which BCSC has retained at any rate. Restrictions regarding sale of any other items of equipment as contained in our agreements still, of course, remains in force.

Our Berrima Works now have a special requirement for the Jacques L41 Excavator, Lot No. B24, which was the subject of a sale to you for \$727.00. As such we would be pleased if you would advise whether the equipment is for sale and what would be its price? 20

You were going to let me have your estimate for the cost of removing the "O" Mill together with an indication of time and receipt of this information would be appreciated in due course.

Colin, I trust the above covers the numerous matters which have arisen since we last spoke and I am certain that you would agree that we must be very careful with this electrical situation otherwise somebody will get killed. We have already had a close shave last weekend with the Malaysians and I do not want any repeats. 30

Kind regards

Yours sincerely  
K H  
K A Howes  
Assistant Director - Finance &  
Administration

This and the preceding 2 pages comprise annexure "H" referred to in the affidavit of Keith Albert Howes sworn the 23rd day of October, 1981. 40

Peter Smith

-----  
A-Justice-of-the-Peace  
Solicitor

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)  
)

No. 3739 of 1981.

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED and BLUE CIRCLE SOUTHERN  
CEMENT LIMITED

10

Defendants

AFFIDAVIT

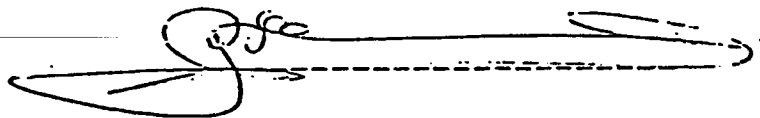
ON Wednesday the 21st day of October, One thousand nine hundred and eighty-one, I, WILLIAM MELVILLE GALE of 7 Wiltshire Place Warrawee in the State of New South Wales, Company Officer, being duly sworn make oath and say:-

1. I am Manager - Group Engineering of the second defendant.
2. On 15 September, 1981 the plaintiff telephoned me and said words to the effect "I have another offer from the "O" Mill. I would like to speak to Mr. Layt". I said to the plaintiff words to the effect "It is no use. Agreement has been reached with BHP".

20

SWORN at Sydney ) W.M. Gale  
                          ) WILLIAM MELVILLE GALE  
before me:            )

A-Justice-of-the-Peace  
A Solicitor of the Supreme Court of New South Wales



IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)  
)

No. 3739 of 1981.

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED and BLUE CIRCLE SOUTHERN  
CEMENT LIMITED

10

Defendants

AFFIDAVIT

ON the 23rd day of October, One thousand nine hundred and eighty-one, I, WILLIAM MELVILLE GALE of 7 Wiltshire Place, Warrawee, in the State of New South Wales, Company Officer, being duly sworn make oath and say:-

1. I am Manager - Group Engineering for the second defendant. I am a qualified mechanical and electrical engineer. I am the senior engineer of the second defendant with the responsibility for the general supervision of the second defendant's five cement works. Each of those cement works contains a number of cement mills similar to the "O" Mill. I have been working with cement works and cement mills since 1960.

20

2. The "O" Mill is cylindrical in shape and made of steel. It is approximately 33 feet long and approximately 8 feet in diameter. It weighs approximately 100 tonnes when it is empty. When it is full of grinding media, it weights approximately 160 tonnes. The mill rotates at a slow speed by virtue of a motor and gear box. Whilst rotating the grinding media tumbles over

Affidavit of William  
75. Melville Gale

Affidavit of William  
Melville Gale

and over inside and crushes the clinker and gypsum, which are the ingredients of cement.

Peter Smith

W.M. Gale

-2-

3. The "O" Mill is housed in a self-contained building primarily made of structural steel. The building is approximately five storeys high. The mill has a motor and gear box attached to it which, although heavy and large, can be separated without difficulty. A separator and further equipment is above the mill.

10

4. The "O" Mill sits on two white metal bearings (one at each end), which support the mill and provide a low friction bearing surface so that the mill can rotate. The bearings are bolted to concrete foundations which have been placed well below the floor level of the building.

5. I do not know the precise method which The Broken Hill Proprietary Company Limited ("BHP") proposes to use to remove the "O" Mill, but I know from my experience that a mill would normally be removed by knocking down one wall, jacking up the mill, and inching it out of the building onto a heavy road transport. Whilst the whole process, including knocking down one wall and preparatory work, would normally take approximately seven weeks, the actual process of lifting the mill and putting it on to a road transport would take approximately 2-5 days.

20

6. Apart from knocking down one wall, the building would be

Affidavit of William  
Melville Gale

unchanged. Because of the very high cost and long delivery time, it is not uncommon for existing cement mills to be removed to other sites.

7. On 22 October, 1981 I had a meeting with Mr. Baker of BHP who is the engineer in charge of the project for the removal of the "O" Mill. He said to me words to the effect: "The project is at a critical stage and access to the "O" Mill is required urgently for the following reasons:-

10

Peter Smith      W.M. Gale

-3-

- (a) The motor is a 2,200 Volt unit. This is a non standard voltage these days so that BHP require to know whether it is good enough condition to be used again, or a new motor purchased. For this reason, an order has been placed on a contractor to remove the motor and it was their intention to do that on Tuesday, 13 October when access to site was barred. The motor was to be removed to another contractor's workshop where the physical assessment could be made. This is still urgently required because a new motor will take 38 weeks (including enquiry period) and would be a standard voltage of 3,300 volts. 20
- (b) A transformer of 11,000 volts to 2,200 volts is required if the existing motor can be used. BHP have enquiries out now for this transformer and orders are scheduled to be placed early November. However,

Affidavit of William  
Melville Gale

if the motor has not been evaluated as in (a) above BHP will have to delay placing an order until it is known whether a 2,200 volt or 3,300 volt transformer is required. The delivery of a transformer is 20 to 26 weeks so that a decision in this area is critical.

- (c) BHP have to supply new high voltage switchgear for the mill motor but design of this cannot start until the electrical characteristics of the motor are measured. This can only be satisfactorily determined in the Contractor's shop when and if the condition of the motor is passed as satisfactory. In order to complete the
- 10

Peter Smith      W.M. Gale

-4-

project on time, the orders for switchgear need to be placed again by early November. Thus, the motor is again critical.

- (d) Removal of the mill itself is scheduled to start early December. In the meantime BHP must issue their tenders which require that prospective tenderers visit the site and assess the problems for themselves over and above what is required in the specification. These site visits are required to commence no later than 2 November, 1981, if project deadlines are to be met. The successful contractor must then be established on site by early December in order to
- 20



Affidavit of William  
Melville Gale

have the mill on the project site in time. Seven weeks have been allowed to remove the mill and those associated items of equipment required by BHP. Another 15 weeks will be required to dismantle the building and the equipment being retained by Blue Circle Southern Cement.

(e) In order to meet the project finishing date the foundations must be started in mid-November so that the concrete will have time to reach adequate strength before the mill is placed in position and since these foundations will be suitable for the "O" Mill only, then any delays in removing the mill etc., is critical. 10

(f) Being second-hand equipment it is probable that many items will require maintenance before they can be installed. Which items require

Peter Smith                      W.M. Gale

-5-

20

maintenance cannot be determined until the equipment is dismantled and removed for inspection. Therefore early access is required because of this factor".

SWORN at Sydney

before me:

)  
)                      W.M. Gale  
) WILLIAM MELVILLE GALE

Peter Smith

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
EQUITY DIVISION

)  
)  
)  
)  
)

No. 3739 of 1981

CORAM: WADDELL, J.  
TUESDAY: 27th October, 1981.

GOOD v. STANDARD PORTLAND CEMENT CO. PTY. LIMITED

MR. MASON Q.C. appeared with MR. VINCENT for the plaintiff  
MR. MacFARLAN appeared for the defendant.

-----

MR. MASON: As I understand the matter, the matter has been put on for a claim by the plaintiff for injunctive relief to restrain a trespass and a cross-claim by one of the defendants for rectification of a contract for sale. 10

(Copy certificate of title Vol. 14381 Fol. 83 tendered and marked Exhibit "A".)

(Copy transfer registered No. S452308 whereby that land was transferred by the first defendant to the plaintiff tendered and marked Exhibit "B".)

(Copy letter from the 1st defendant to the plaintiff dated 12th October, 1981, tendered and marked Exhibit "C".)

The first defendant contracted to sell the subject land to the plaintiff by contract dated 3rd December, 1979. That contract contained a special condition providing that the first defendant would be authorised to enter on the subject property and remove from it the "O" Mill situated on it, the removal to be effected in any event from the date of the contract. The first defendant took no steps to move the mill in the 12 months' period and it is the plaintiff's case that, having refrained from taking such steps, it has lost any right to do so. 20

The summons was filed on 13th October, 1981. The cross-claim was filed on 23rd October, 1981. 30

(Mr. Mason read affidavit of Frederick Ian Webb sworn 13th October, 1981, and affidavit of Ronald William Washington sworn 13th October, 1981.)

(Mr. MacFarlan read affidavit of Keith Albert Howes sworn 23rd October, 1981.)

(Exhibit 1 to the above affidavit of Keith Albert Howes tendered and marked Exhibit 1 in the proceedings.)

MR. MASON: Is your Honour taking it in its present form with the handwritten notes?

MR. MacFARLAN: I tender it with the handwritten notes and markings as being those described in par. 3, being on the document at the relevant time. (Mr. Mason objected to the portion at the top of p.1 in Exhibit 1 which was not pressed.)

HIS HONOUR: The handwritten note on the top of p.1 is to be omitted from Exhibit 1.

MR. MacFARLAN: I call for telex dated 9th November, 1979, from Mr. Good to either of the defendants or from either of the defendants to Mr. Good (not produced).

(Pars. 1 and 2 of Mr. Good's affidavit of 13th October, 1981, together with annexures set out in that affidavit tendered and marked Exhibit 2.)

10

MR. MacFARLAN: I read the affidavit of Keith Albert Howes sworn 21st October, 1981, but I do not read the first clause of par. 7 nor sub-pars. (a) or (b), except in sub-par. (b) the last sentence is read which just refers to the annexing of the agreement: (objected to on the ground of relevance).

MR. MacFARLAN: It is part of the evidence on which I base an estoppel.

MR. MASON: I did not come here to meet an estoppel. This is the first I have been aware of any estoppel argument.

20

HIS HONOUR: I will admit the evidence and if there are problems later, the question of adjournment and the question of the duration of the undertaking will have to be considered. It can be noted that that sentence is objected to and admitted without prejudice to any rights the plaintiff may have on the ground of surprise.

(Objection to par. (d) of the affidavit: not pressed but leave sought to ask one question in chief on that topic.)

(Objection to the correspondence annexed on the same basis as to annexure A; admitted on the same basis.)

30

(Par. 8, cl.1 not read except for sub-para. (a); sub-par (a) objected to on ground of relevance; pressed on same basis, that it is evidence in relation to the estoppel argument: admitted both on the rectification and the estoppel issues, subject to any rights the plaintiff may have on the ground of surprise.)

(Sub. paragraph as to information and relief not read. Objection to par. 9: not pressed. Objection to par. 10: pressed on the estoppel question: admitted subject to the plaintiff's rights.)

40

HIS HONOUR: It can be noted that the balance of the affidavit is objected to and is allowed on the same basis.

(Objection to the sentence on what BHP is doing on additional ground or relevance: pressed.)

MR. MacFARLAN: I seek to read that whole paragraph.

MR. MASON: In relation to par. 12 I seek to object to that on a further ground, on the ground of form: (par. 12 rejected).

(Copy letter dated 11th September, 1981, from BHP to the second defendant: copy letter dated 21st September, 1981, from the second defendant to BHP and copy order dated 9th October, 1981, from BHP addressed to the second defendant tendered, objected to, admitted on the basis that they tend to establish detriment to the second defendant and marked Exhibit 3.) 10

MR. MASON: I renew my objection to part of par. 14. I object to everything from the word "and" in the third line, down to the end of that paragraph, on two grounds: firstly detriment to BHP could not ground any relevant estoppel; secondly, this witness cannot give evidence as to what BHP may or may not require.

MR. MacFARLAN: I do not read the words in the first sentence, "and BHP has incurred additional costs and expenses as a result thereof". I do read the next sentence: rejected and "BHP has sent experts" not read. The next sentence pressed; rejected. The last sentence pressed and admitted. 20

I will read the affidavit of Keith Albert Howes sworn 21st October, 1981. (Objection to the letter from BHP annexed to the affidavit: pressed; admitted purely as evidence of claim.)

I will now read the affidavit of William Melville Gale sworn 21st October, 1981: (objection to the affidavit on the same ground as par. 8(a) of Mr. Howes' affidavit, which par. 8 (a) was admitted: affidavit of W.M. Gale admitted on the same basis.) 30

(Short adjournment.)

(Further affidavit of William Melville Gale sworn 23rd October, 1981, read.)

(Defendants' photographs tendered and marked Exhibit 4.)

(Plaintiff's photographs tendered and marked Exhibit "D".)

HIS HONOUR: In par. 6 the next sentence after "would be unchanged" is objected to on the ground of relevance. It seems to me that paragraph seeks to provide some evidence relating to the issues and I admit it. (Objection to par. 7: pressed as evidence of the nature of the claim made by BHP: objection pressed: par.7 rejected.) 40

MR. MacFARLAN: I seek to reserve my position in relation to further correspondence relating to BHP's position.

MR. MASON: In answer to the cross-claim I tender from the conveyancing file of Mr. J.J. Smith, the corporate solicitor of the first defendant: the original of the inter-office memorandum of 12th November, 1979; copy inter-office memorandum 28th November, 1979 from Mr. Smith to Mr. Howes; file note of Mr. Smith dated 3rd December, 1979; file note dated 3rd December, 1979, with the initials "I.A.G.: C.D."; letter dated 29th April, 1981 from Mr. Smith to Mr. Good.

10

(Above correspondence admitted and marked Exhibit "E".)

(From the Rylstone Shire Council file: building application dated 1st May, 1961, works layer plan WP156, elevations, drawing number CM137, footing details drawing No. CM145/2, letter dated 4th May, 1961 from the first defendant to the shire clerk of the Rylstone Shire Council, general specification for excavation and concrete work is "O" cement mill and cement pumping cooling station, Charbon, New South Wales, tendered and marked Exhibit "F".)

20

KEITH ALBERT HOWES  
Sworn and examined:

Q. Do you live at 5 Jacinta Avenue, Beecroft? A. Yes.

Q. You are the executive general manager, finance and administration of the second defendant? A. Yes.

Q. You have sworn three affidavits which you have heard read this morning? A. Yes.

Q. Are the contents of those affidavits true and correct?  
A. Yes.

Q. Are you familiar with the Charbon cement plant? A. Yes  
I am. 30

Q. Are you familiar with something on it called the No. 3 kiln? A. Yes. That is a piece of equipment which has now been removed from the site.

Q. In general terms when was it removed? A. I would guess 18 months back.

Q. Look at this photograph. Does that bear any similarity to the No. 3 kiln? A. Yes. It is a photograph of our No.2 cement kiln at Northern Cement Works which is a piece of equipment which we sold to Mr. Good. It certainly is a similar piece of equipment to the No. 3 kiln at Charbon.

40

Q. How many kilns are shown in that photograph? A. Two.

Q. Are they the long cylindrical things that look like pipes? A. Yes.

Q. The No. 3 kiln at Charbon is similar to each of those kilns shown in the photograph? A. Yes.

(Photograph tendered; objection on ground of relevance; objection not pressed; admitted and marked Exhibit 5.)

Q. Do you recall in your lengthy affidavit of 21st October you said words to this effect: "Prior to 9th October, 1981, the plaintiff made no complaint to me whatsoever about the non-removal of the "O" Mill nor did the plaintiff claim any rights in respect of the "O" Mill". Do you remember making that statement? A. Yes.

10

Q. Do you recall giving evidence about discussions with and correspondence with BHP in relation to the mill? A. Yes.

Q. Would you tell the court, if the plaintiff prior to 9th October 1981, had told you that he asserted that he was the owner of the "O" Mill, whether you would have acted any differently in your communications and discussions with BHP? (Objected to as leading: rejected.)

20

Q. If the plaintiff had asserted to you prior to 9th October, 1981, that he was the owner of the "O" Mill would that have affected your conduct in any respect? A. Yes, most certainly. In all our discussions and I had quite a number of discussions with Colin Good - (objected to). Certainly we would not have tried to sell it if we had known he claimed ownership.

CROSS-EXAMINATION:

MR. MASON: Q. When did you first try to sell the "O" Mill?

A. I was given the permission of my company, from memory, on 11th July, 1981, which was the first time I had permission to actually sell the mill.

30

Q. (Approaching) I am showing you copies of the documents which make up Exhibit 3, a letter of 11th September, 1981, from BHP, a letter of 21st September, 1981, from a Mr. Besant and what company is he from? A. Blue Circle Southern Cement.

Q. And the third document is an order dated 9th October, 1981, from BHP and as you see it was typed addressed "To the attention of Mr. Besant" and that has been crossed out and your name has been inserted? A. Yes.

40

Q. Had that crossing out been made before the document came to your attention? A. I don't know. I don't know when it was

I also was rather surprised at what had happened at Charbon. I tried to contact Mr. Good at the Cambridge Inn.

Q. Had you yourself contacted BHP and told them there would be a problem in removing the mill? A. The contact told me there would be no problems in removing the mill.

Q. Have you ever told them there was a problem in removing the mill? A. No. In fact they told us.

Q. You became aware that Mr. Good was denying access to his property? A. When I returned from Melbourne. 10

Q. When was that? A. Monday 19th October.

Q. Did you contact anyone from BHP after your return?  
A. Yes. I spoke to Steve Baker a number of times.

Q. Did you tell him that access had been denied? A. No. Steve Baker in fact told Blue Circle that access had been denied when he sent specialists up there from the company called E.T.P. from Wollongong to draw up the specifications to remove some of the equipment.

Q. Do I understand it to be your attitude that there is no obligation upon Blue Circle to remove the mill? That is something which it can authorise someone else to do? A. Yes. 20

Q. When to your involvement was there some discussion with Mr. Good about allegations that he was in breach of his agreement to remove equipment from the Maldon Cement Works? A. The date as best I can remember, basically we had a contract to sell the total package. We would not force Mr. Good to move his equipment from all our different sites within the 12 months' period. Likewise he would not ask Blue Circle to remove the "O" Mill or any equipment from the site.

Q. But you were involved in making complaints to him about his tardiness in removing goods from the Maldon Cement Works? A. That is right. The reason - 30

Q. I am not asking you about reasons. Do you remember having some discussions with Mr. Good in September of this year about him acquiring the "O" Mill? A. Yes.

Q. At the same time you had that discussion there was talk about you removing equipment from the Maldon Cement Works? A. Not that I can clearly recall. That is not to say we didn't discuss it, because we had discussed the Maldon situation many times. 40

Q. Did you ask him on that occasion whether if he paid \$50,000 cash that would discharge your company's obligation to

remove the mill? A. No. He made an offer to us. We didn't seek an offer. He just made the offer to us.

Q. Did you read the contract for sale of the Charbon Cement Works land to Mr. Good before it was signed? A. Yes.

Q. You read it right through? A. Not the printed form but all the special conditions inside, yes.

Q. You approved those special conditions? A. Yes.

Q. You were then of the belief that those special conditions adequately protected your company so far as the removal of the "O" Mill was concerned? A. Yes, on the basis of what our corporate solicitor stated, yes. 10

Q. You instructed your corporate solicitor to exchange a contract on those terms? A. Yes.

Q. Were you personally involved in the exchange in some way? A. In the exchange of the land contract, no. In exchange for the contract for the sale of the plant equipment, yes.

Q. When was it that it first occurred to you, if it ever did, that some clause had been left out of the contract for sale? A. I didn't believe we had left any clause out. It was a clear understanding from both parties as far as I was concerned and the contract covered the removal of the "O" Mill. 20

(Witness retired.)

WILLIAM MELVILLE GALE  
Sworn and examined:

MR. MacFARLAN: Q. What is your full name? A. William Melville Gale.

Q. Do you live at 7 Wiltshire Place, Warrawee? A. Yes.

Q. You are the manager, group engineer for the second defendant? A. That is right. 30

Q. You have sworn two affidavits which you have heard read this morning? A. Yes.

Q. Are they true and correct? A. Yes.

Q. Do you recall describing in your lengthier affidavit the "O" Mill situated at the Charbon Cement Works? A. Yes.

Q. Do you recall referring to two white metal bearings? A. Yes.



Q. Have a look at that document and tell me whether that bears any relationship to the bearings you are talking about?  
A. That is the same style. Not identical but the same style.

Q. Describe in words which part is actually the bearing?  
A. The under part of this section here is the part and there is the journal and the white metal bearing is contained in there and that is lubricated and that forms the bearing on which that journal fits.

Q. What is the journal? A. Well it is cylindrical too, smaller in diameter than the mill itself, approximately two feet in diameter and 2 to 3 feet long, depending on the mill. 10

Q. That is a protrusion from one end of the cylindrical mill? A. That is right, on each end.

Q. That fits inside a hole which constitutes the bearing?  
A. It sits in a basic semi-circle which is the bearing itself and then a cap is bolted on top of that and that cap can be taken off.

Q. The semi-circle in this drawing appears to be continuous?  
A. Yes. 20

Q. Is it continuous in the one in the "O" Mill? A. It is cut across the centre to take the top part off.

Q. Is there a similar bearing on each end of the "O" Mill?  
A. I would expect so, yes. I am not 100 percent familiar with that mill but yes, it would be.

(Document tendered and marked Exhibit 6.)

Q. Is the motor and the gearbox situated in the same room as the mill? A. No.

Q. Are they somewhere in the immediate vicinity of the mill?  
A. Yes. 30

Q. Where? A. There is a small partition between the room that houses the motor and gearbox and the shaft of the gearbox comes through that partition and joins on to the mill.

Q. The motor and gearbox are affixed to the ground in some way? A. They are bolted to their base plates.

Q. You have referred to the bearing being bolted to the concrete foundations. What is the reason why they are so bolted? (Objected to; question rephrased.)

Q. As a matter of engineering principle why would bearings

such as you have described in this "O" Mill be bolted to the ground? A. They are bolted to take into account the dynamic starting forces when the mill is started. They are also bolted so that if the bearings runs out of lubricant and it ceases to be a bearing for a short time, there is not severe damage: the bearing stays in place for that period, during those periods.

Q. When you say taking into account dynamic movement -?

A. Yes, that is only for starting up the mill.

Q. How does it take that into account?

10

HIS HONOUR: Q. If you didn't have them bolted down, they would fall off? A. Yes. They would move sideways. Move out of position. You have to locate them.

MR. MacFARLAN: Q. What about the motor and the gearbox? As a matter of engineering principle why are they bolted down?

A. They are tied down to take into account the same sort of force, the starting up of the mill and if something misses by misadventure, happens to the gearbox and moved out of position.

CROSS-EXAMINATION:

MR. MASON: Q. Without the motor and the gearbox the mill itself would not function, would it? A. No.

20

Q. You have closely examined this building in which the mill is housed? A. I have been there but I have not closely examined it.

Q. You would agree that the mill has been put in place and the building has been built around it? A. I can't say that because I don't know the method of construction.

Q. If the mill were to be moved it would require a heavy crane to lift it? A. Not necessarily.

Q. How would it be lifted? A. It could be by preparation work. You could put sleepers into position, a lot of them, jack the mill up and slowly inch it, inch by inch, settle it down, jack it up, move it an inch, settle it down, jack it up, move it an inch, settle it down and that is common to that heavy equipment.

30

Q. You would need to remove virtually the whole of one wall to do that? A. To take it out, get it outside, you would have to take something out of the way, yes.

Q. Virtually the whole of the wall? A. No, not necessarily. Just a big enough opening to get the mill out.

40

Q. That is the whole height of the building? A. No.

Q. Part of the mill is attached to the ceiling? A. Not the "O" Mill itself, no. The "O" Mill is not attached to the ceiling at all.

Q. I am showing you photograph G which is part of Exhibit "D". Would you agree that that is a photograph of the feeding mechanism which is part of the mill? A. I can't say that categorically. I would say that is a cement cooler, not even the feed mechanism at all. I would say that is a cement cooler, just from the photograph, not feed at all.

10

Q. Does the word "mill" when you are using it mean any more than the cylindrical portion? A. If I am talking about moving the mill I could move the cylindrical rotating section separately; I could leave the motor section and the gearbox, if you ask me about specific pieces of equipment. Generally when I am talking about the mill, yes, I am talking about the cylindrical section.

Q. Why is this particular mill, the "O" Mill, located in a building which is obviously 3 or 4 or 5 storeys high? A. It is a closed circuit cement mill and that requires an elevator which takes the cement from the mill up above the mill to a separator, coarse particles are separated and returned to the mill for grinding the second time and the finished product is then taken away to a cement cooler before being sent to the silo, so you have to have height for that and there is also an electrostatic precipitator in there for pollution control.

20

Q. Your company wants to regain all of those parts you mention? A. Yes.

Q. They are all part of the mill? A. Not necessarily. You can put the mill in as an open circuit mill and we can put those parts on any mill and convert it from an existing open circuit mill to a closed circuit mill.

30

Q. All of those parts used in this multi-storey building are what, when it was the owner of the land, the company personnel would describe as the "O" Mill? A. Yes.

Q. Have you been involved in any way in examining the site at which it is proposed the "O" Mill will be taken to after it is removed from the plaintiff's land? A. No I haven't.

Q. Would you agree that in order to locate the mill it will be necessary in a new site to pour concrete? A. For the mill?

40

Q. Yes. A. Yes.

Q. And it will be necessary to prepare a concrete base that is fixed into the ground at some alternative site? A. Yes.

Q. Have you been involved in the removal of a mill from one site to another? A. I have been associated with, not directly, but where a mill has been taken from the works where I have worked to another site and also a mill portion and done similar things to this too, on the site.

Q. Are these situations where a mill has been taken from where it was manufactured to where it was to be installed?

A. No. Taken from where it was installed to a new site.

(Witness retired.)

10

FREDERICK IAN WEBB  
Sworn and Examined:

MR. MASON: Q. What is your full name? A. Frederick Ian Webb.

Q. Where do you reside? A. 62 Mudgee Street, Rylstone.

Q. You are the manager of the Charbon Cement Works? A. Yes.

CROSS-EXAMINATION:

MR. MacFARLAN: Q. You are an employee of Mr. Colin Good?

A. Yes.

Q. Does Mr. Good play any role in the management of the cement works at Charbon? A. Yes.

20

Q. What role does he play? A. Oh he tells me what to do.

Q. Where does he live? A. He is basically based in Sydney.

Q. Does he visit the cement works on a regular basis?

A. Oh not really, no. Once a fortnight.

Q. Do you keep in regular contact with him? A. Yes.

Q. How frequent would the contact have been over the last six months? A. Oh, weekly.

Q. Do you recall a visit in August last year by Mr. Howes to the site? A. Yes.

Q. He was in company with some people? He had some people with him? A. Yes.

30

Q. Who do you recall being with him? A. Oh the only name I can recall was the fellow, the BHP fellow with the moustache.

Q. Mr. Stacey? A. Stacey.

Q. You are aware that he was from BHP? A. Yes. He told me so.

Q. Did he indicate what his job was with BHP? A. Yes.

Q. What did he say? A. He is the product engineer and he was measuring up the "O" Mill.

Q. Did he say why he was doing that? A. No, not specifically.

Q. Were you aware at the time why he was doing that?

A. No. (Objected to; question allowed,)

10

Q. Were you aware at the time why he was measuring up the mill? A. He told me so. I didn't know why they were there but after asking him, he said that they were taking it away.

Q. There were other BHP representatives there as well as Mr. Stacey? A. Yes, there were five or six.

Q. Mr. Howes was there on behalf of Blue Circle Southern Cement? A. Yes.

Q. Was there anyone else there from Blue Circle? A. There possibly was but I can't recall the names. They were not known to me.

20

Q. Was Mr. Good at the site at the time? A. I don't think so but -

Q. Did you at any time either before or after the actual visit discuss with him the fact that there had been a visit or was going to be a visit? A. Oh yes. That there had been a visit.

Q. There had been one prior to that time as well hadn't there? A. In actual fact as I recall there were three. Couple of fellows from BHP came up initially, then the crowd and then Mr. Howes again.

30

Q. When was the first visit from the couple of people?

A. I can't say.

Q. About July, would you agree with that? A. Yes, it would have to be. It was well prior to the other people.

Q. You said you spoke to Mr. Good about the visit from the large group of people? A. Look, I am sorry - I think that Colin Good was there because I am sure Stacey spoke to him there on that second visit.

Q. Did you raise any objection to the BHP representatives or Mr. Howes to their being on the property? A. No.

Q. Did you make any suggestion to any of them that the mill was in fact owned by Mr. Good? A. No.

Q. Did Mr. Good make any of those suggestions in your presence? A. No.

Q. When was the third visit that you mentioned, of Mr. Howes alone? He was alone, was he? A. Yes.

Q. Were there any representatives of BHP present at that time? 10  
A. No. Just Mr. Howes came into the office saying that Colin was pretty slack and he had to shift this and that and quite a few other things.

Q. Did he make any reference to the "O" Mill? A. No, I don't think he did.

Q. What is your recollection now as to whether Mr. Good was present at the time of this second inspection? A. Yes, yes, I am sure he was because the man Stacey spoke to him.

Q. Did you hear what they were speaking about? A. No.

(Witness retired.)

20

(Luncheon adjournment.)

ON RESUMPTION:

(Letter dated 28th July, 1981, from BHP to the second defendant, copy letter 18th September, 1981, from BHP to the second defendant and letter dated 10th August, 1981, from the second defendant to BHP tendered and marked as part of Exhibit 2.)

PLAINTIFF

Sworn and examined:

MR. MASON: Q. What is your first name? A. Colin Elliott  
Good. 30

Q. Where do you reside? A. 212 Riley Street, Surry Hills.

Q. You are a cement works proprietor? A. Yes.

Q. Did you have a solicitor acting for you in relation to any part of the purchase of the land from Standard Portland Cement Co. Pty. Limited? A. Yes.

- Q. Who was that? A. Noel Dennis.
- Q. On what part of the transaction did he act for you?  
A. In reference to the signature and the initial deposit. He had a look at the documents I believe.
- Q. By the time the completion of the contract came about was Mr. Dennis acting for you? A. Yes.
- Q. Did any other solicitor give you any assistance in relation to the contract? A. No.
- Q. Do you remember the occasion when you signed the contract? 10  
A. Yes.
- Q. Do you remember when you read the contract? A. I remember glancing through the contract but not reading it specifically word for word.
- Q. Were you at that time aware of any mistakes or error in the contract? A. No.
- Q. Were you aware at that time that the contract had a special condition which made reference to the "O" Mill? A. Yes.
- Q. When did you first assert against Standard Portland Cement Co. Pty. Limited the claim that that company was not entitled to go upon your land and remove all or any part of the "O" Mill? A. Only in the last two or three weeks after we made contact with Mr. Washington or Mudgee? Were we made aware that we did have some rights? 20
- Q. When did you first see Mr. Washington? A. Approximately the 9th, on a Friday, it was discussed.
- Q. The 9th of what? A. The 10th.
- Q. Prior to the 9th October what was your belief as to whether you were entitled to prevent Standard Portland Cement from removing the "O" Mill? A. I honestly wasn't aware of any rights of prevention. 30
- Q. When was it that you became aware of any such rights?  
A. It would have been the 9th of this month.

CROSS-EXAMINATION:

MR. MacFARLAN: Q. Do you recall being at the Charbon Cement Works in about August of this year when there was a visit from some representatives of BHP? A. Yes, I recall the contact with them.

Q. Was that in that month? A. I can't honestly give you a date.

Q. It was about that time, was it? A. If it wasn't this month it was last month.

Q. It was certainly earlier than October? A. Yes.

Q. Do you recall the contact being your presence on the site when a visit was made of representatives of BHP? A. Yes.

Q. Who do you recall was there to represent BHP? A. I believe it was Stephen Baker and an associate of his.

Q. Do you recall Mr. Stacey? A. I honestly can't, but there was someone with him who could have been Mr. Stacey. 10

Q. Did either of those gentlemen say in what capacity they were employed by BHP? A. Yes.

Q. What did they say about that? A. That they were engineers.

Q. Did they say what the purpose of their visit was? A. Yes.

Q. What did they say? A. To investigate removal of the "O" Mill machinery and plant. It was a preliminary visit and an investigation.

Q. Are you aware whether there was a visit prior to that visit that you have just described? A. Yes. 20

Q. Were you present on the prior visit? A. No.

Q. Was Mr. Webb present? A. Yes, I believe so.

Q. He is an employee of yours? A. Yes.

Q. No objection was taken by you on the occasion at which you were present to the entry of the BHP representatives on to the site? A. No.

Q. Did you at that time suggest to anyone from BHP that you were entitled to the "O" Mill? A. No.

Q. Was any representative of either of the defendants present at that visit at which you were present? A. Could you repeat the question? 30

Q. Was Mr. Howes present? When those BHP representatives came at the time you were at the cement works? A. No.

Q. Was anyone on behalf of the defendants there? A. Not to my knowledge.

Q. I suggest to you that Mr. Howes was in fact present at



that time. Are you able to deny that or is it simply a matter of lack of recollection on your part? A. Most definitely Mr. Howes and I were not on the site at the same time.

Q. Have you spoken to Mr. Howes in relation to that visit?  
A. No.

Q. Have you at any time given instructions to Mr. Webb to exclude representatives of BHP or the defendants from the site unless they obtain your permission? A. Yes. This occurred on the 9th when I became aware of my rights. 10

Q. You had not given those instructions at any time prior to that? A. No.

Q. Prior to the 9th October you did not give Mr. Webb any instructions to inform the representatives of BHP or one of the defendants who came to the site that the ownership of the mill was vested in yourself? A. No.

(Witness retired.)

MR. MASON: Would your Honour on my application pursuant to s.12 of the Evidence Act direct that any correspondence between the second defendant and BHP relating to negotiations for sale of the "O" cement mill or any part thereof either before or after 9th October, 1981, which are in court, be produced to the court? 20

MR. MacFARLAN: I would not oppose that.

HIS HONOUR: On the application of the plaintiff, without objection by the defendants, I direct that any correspondence between the second defendant and BHP either before or after 9th October, 1981, relating to a proposal for the sale of any part of the "O" Mill which is in court, be produced to the court.

MR. MacFARLAN: I assume that excludes any copies of the documents which comprise Exhibit 3? 30

MR. MASON: Yes, I intended that.

HIS HONOUR: This does not extend to documents copies of which are in Exhibit 3.

MR. MacFARLAN: I have prepared an outline of the submissions on behalf of the defendants and I hand a copy of that to your Honour and also to my learned friend.

(Three documents produced in answer to Mr. Mason's call: telex from BHP to the second defendant dated 8th October, 1981; handwritten note signed by Mr. Baker of BHP, undated; letter dated 4th August, 1981, from BHP to the second defendant.) 40

(Counsel addressed.)

IN THE SUPREME COURT

OF NEW SOUTH WALES

EQUITY DIVISION

)  
)  
)  
)  
)

No. 3739 of 1981.

CORAM: WADDELL, J.

Thursday, 12th November 1981.

GOOD -v- STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED

JUDGMENT

HIS HONOUR: The plaintiff is the registered proprietor of the whole of the land comprised in certificate of title Volume 14381 Folio 83. The land is part of a larger site previously owned 10  
by the first defendant and used as its Charbon Cement Works. The first defendant is a wholly owned subsidiary of the second defendant. The plaintiff purchased the land from the first defendant pursuant to a contract dated 3 October 1979, the purchase price being \$85,000. The contract was completed on or about 22 April 1981. It is common ground that a building and cement-making equipment located on it, known collectively as the "O" Mill, were "excluded" from the sale. Special condition 9 of the contract provided:

"Should completion be effected before the expiration of 20  
twelve months from the date hereof the Purchaser will grant the Vendor licence to enter upon the property for the purpose of removing the 'O' Mill situated thereon such removal to be effected in any event within twelve months from the date hereof."

Nothing was done to remove the "O" Mill from the property until July 1981 when engineers from Broken Hill Proprietary Company Limited began to investigate what was necessary. Subsequently arrangements were made by the second defendant with BHP for the sale of the Mill to that company for a price of \$180,000, 30

it being the responsibility of BHP to remove the mill from the land. Early in October BHP made preparations to send workmen on to the site for this purpose.

The plaintiff commenced these proceedings by summons filed on 13 October claiming orders restraining the defendants, their servants and agents from entering on the plaintiff's land and from removing the mill. On that date an ex parte injunction was granted to the plaintiff until further order in terms of the relief sought in the summons. The proceeding is now before the Court for a final hearing. The defendants have filed a cross-claim seeking an order that the contract for the sale of the land be rectified by inserting at the end of the description of the property sold the words "excluding thereout the 'O' Mill, its building and associated equipment". They also seek an order that the plaintiff be restrained from obstructing or otherwise interfering with the first defendant, its servants and agents, having access to the land for the purpose of removing the "O" Mill, its building and associated equipment.

The respective claims for relief raise a variety of issues, none of which is easy to determine. Before mentioning what they are, it is convenient to set out the circumstances in which the contract was entered into as these are relevant to an understanding of the subject matter with which the parties were dealing, the claim to rectification, and questions of estoppel raised by the defendants.

In mid-1979 the second defendant distributed widely a brochure offering for sale by tender cement manufacturing and quarry plant located at its Charbon Cement Works, its Maldon Works and at other places. On 2 November 1979 Mr. Howes, the executive general manager - finance and administration, of the second defendant had a meeting with the plaintiff. They discussed the purchase of items in the brochure. The copy which they had had been altered in ink. Some items had been added. Others had been crossed out with a note "sold" or "withdrawn" added. Mr. Howes made notes of the discussion. So far as is relevant these indicate that the plaintiff made an offer for "total package all locations", that is, for all the equipment still on offer, and also for portion of the land previously used for the Charbon Cement Works. A number of items were excluded, these including "'O' Mill & spares & building" at Charbon which were marked in the brochure as "withdrawn". Mr. Howes wrote on 5 November to Mr. Good to confirm his understanding of the plaintiff's offer of \$350,000. In the letter he included among the exclusions a reference to the "O" Mill, spares and building and other equipment indicated on the schedule given to the plaintiff at their discussion. He also stated, under the heading of "Other matters", that the plaintiff was to be given the opportunity to quote for the removal of the "O" Mill at Charbon. On 8 November the plaintiff sent a telex to Mr. Howes confirming "acceptance and agreement" of the letter. By a letter of 13 November the plaintiff suggested

to Mr. Howes a break-up in price of the items included in his offer which included the sum of \$85,000 for the Charbon Cement Works, land and building, and \$265,000 for the various items of equipment. On 23 November Mr. Smith, the corporate solicitor of the second defendant, wrote to the plaintiff referring to recent discussions confirming that they had agreed that reasonable damage caused in the removal by the plaintiff of the equipment purchased by him or of the "O" Mill by the defendant would not be the subject of a claim by either party and that the agreements were to be entered into subject to that agreement. As already mentioned contracts for the sale of the land were exchanged on 3 December. It is to be noted that there is no evidence that the parties had any negotiations before exchange about the time within which the defendants were to remove the "O" Mill from the property to be sold. However, Mr. Howes had given the matter consideration. In an internal memorandum dated 12 November to Mr. Smith he said

"(3) Right of access - this must work both ways as BCSC has to remove the 'O' Mill from the land being purchased by Mr. Good and likewise Mr. Good has to remove the equipment from Brogans Creek, the ropeway and from other buildings on the western side of the railway lines. It is suggested that the contract should contain a clause giving access for a reasonable period, but stipulating that plant etc, to be removed must be completed within twelve months from exchange of contracts."

Special condition 9 reflected this observation.

The method adopted to give effect to the plaintiff's offer was to prepare two contracts, one of them relating to the sale of land and the other to the sale of equipment on the

various sites. The latter was exchanged on 23 November.

Clause 3 provided:

"3. The Buyer covenants to remove all the goods hereby sold within twelve months from the date hereof except such goods as may be situated on land being sold to the buyer by the seller and property in the goods shall be deemed to have passed upon removal."

Apart from the "O" Mill and equipment already referred to there 10  
was other equipment on the land to be sold which was not to be sold to the plaintiff and which was marked in the brochure as already sold or withdrawn from sale. Removal of this equipment was provided for by special condition 3 of the contract which was in the following terms:

"3. The Vendor shall use its best endeavours to ensure that Buyers of its equipment situated on the property remove the same within six weeks from the date hereof provided that No. 3 kiln may remain thereon for a period twelve months from the date 20  
hereof and in the event that completion is effected before the said kiln is removed the Purchaser covenants to allow the Vendor or its nominee reasonable access for the purpose of removing the same."

No. 3 kiln referred to was a very large and heavy item of equipment which had already been sold.

I turn first to the question whether the "O" Mill and the plant contained in it are fixtures or not as this is a question upon which a number of submissions made by the parties depend. It is to be noted that the reference in cl.9 quoted 30  
above in the contract is simply to the "O" Mill. It is common ground that this expression includes both the building and the plant and equipment located inside it. An application to the local council for its approval to erect the building was made

by the first defendant in May 1961. The proposal was described as "to construct a cement mill building and feed hopper for our new No. 'O' cement mill, integral with housing for our existing nos. 1 & 2 cement mills and cement cooling/pumping station". The plans with the application show that the building was to be of a substantial size, more than 180' high, and to be in the form of a steel framework enclosed with metal sheeting erected on concrete foundations. There is no dispute that the building itself is a fixture although its form of construction would facilitate its removal apart from its concrete foundations. The mill itself has been described in evidence as cylindrical in shape, made of steel and approximately 33' long and 8' in diameter. It weighs about 100 tonnes when empty and when full of grinding media about 160 tonnes. In operation it rotates at a slow speed driven by an electric motor and gear box. During rotation the grinding media inside the mill tumbles over and over and crushes the clinker and gypsum which are the ingredients of cement. The mill sits on two white metal bearings, one at each end, which support it and provide a low friction surface on which it rotates. The bearings are bolted to concrete foundations of a very substantial nature which extend well below the floor level. The motor and gear box are bolted to their base plates and thus affixed to the ground. The bearings are bolted to their foundations to keep them steady when the mill is started and in case they run out of lubricant. The motor and gear box are bolted down for the same reason. There is no

evidence as to the nature of the other fixed equipment in the building. The case appears to have been conducted upon the basis that this equipment is a fixture if the mill itself is to be so regarded. The mill itself could be removed from the building. It would be necessary to make an opening in a wall big enough to let it out. It would be moved by jacking it up and inching it out onto a heavy road transport. The whole process would take approximately seven weeks, the actual moving of the mill and putting it on to a road transport taking approximately 2-5 days. Because of the very high cost of a mill and long delivery time, it is not uncommon for existing cement mills to be moved to other sites. 10

The principles which govern whether or not an article is a fixture are stated by Jordan, CJ in Australian Provincial Assurance Co. Limited, (1938) 38 SR (NSW) 700 at 712 as follows:

"A fixture is a thing once a chattel which has become in law land through having been fixed to land. The question whether a chattel has become a fixture depends upon whether it has been fixed to land, and if so for what purpose. If a chattel is actually fixed to land to any extent, by any means other than its own weight, then prima facie it is a fixture; and the burden of proof is upon anyone who asserts that it is not: if it is not otherwise fixed but is kept in position by its own weight, then prima facie it is not a fixture; and the burden of proof is on anyone who asserts that it is: ... The test of whether a chattel which has been to some extent fixed to land is a fixture is whether it has been fixed with the intention that it shall remain in position permanently or for an indefinite or substantial period: ... or whether it has been fixed with the intent that it shall remain in position only for some temporary purpose: ... In the former case, it is a fixture, whether it has been fixed for the better enjoyment of the land or building, or fixed merely to steady the thing itself, for the better use or enjoyment of the thing fixed: ... .. If it is proved to have been fixed merely for a temporary 20 30



purpose it is not a fixture: ... . The intention of the person fixing it must be gathered from the purpose for which and the time during which user in the fixed position is contemplated: ... . If a thing has been securely fixed, and in particular if it has been so fixed that it cannot be detached without substantial injury to the thing itself or to that to which it is attached, this supplies strong but not necessarily conclusive evidence that a permanent fixing was intended: ... . On the other hand, the fact that the fixing is very slight helps to support an inference that it was not intended to be permanent. But each case depends on its own facts."  
(712-3)

10

The references to authorities are omitted. Although the principles may be stated in simple terms difficulties may arise in their application in a particular case.

The defendants rely upon the decision of Fullagar, J. in Attorney-General of the Commonwealth -v- R. T. Co. Pty. Limited (No. 2), (1957) 97 CLR 146. There the question was whether two large printing presses and their electrical equipment situated in the basement of a city building should be regarded as fixtures. Each weighed about 45 tons and was attached by nuts and bolts to a concrete foundation. His Honour expressed the view "after consideration of the more recent cases" that the presses and their equipment were not fixtures. The cases he referred to were as follows: Reid -v- Smith, (1905) 3 CLR 656, where it was held by a Full High Court that an ordinary dwelling house, erected upon an ordinary town allotment in northern Queensland resting upon piers with iron plates to break the continuity between the superstructure and the ground to prevent access by white-ants was a fixture. The Court placed reliance upon the purpose and object with which the building had been attached to

20

20

the land. It made it clear that in other circumstances, for instance a manager's house similarly erected on a gold mining lease, the same conclusion might not necessarily follow Spyer -v- Phillipson, (1931) 2 Ch 183 a decision of the Court of Appeal. It was held that decorative panelling put up in a leased flat were tenants' fixtures in that the object and purpose in annexing them to the building was to enjoy them during the lease and not to benefit the demised premises. Hulme -v- Brigham, (1943) KB 152, which was a case in which it was held that printing machines weighing from 9-12 tons standing on the floor of a factory stable and secure by their own weight driven by electric motors attached to them and also attached to the freehold were not fixtures and, therefore, did not pass to a mortgagee of the freehold. Birkett, J clearly regarded the fact that the machines were attached only indirectly to the freehold as of overriding importance. Billing -v- Pill, (1954) 1 QB 70, in which an Army hut was held by Lord Goddard, CJ not to be a fixture on the ground that although attached to a concrete bed which had become part of the land, it was erected merely for a temporary purpose. Fullagar, J distinguished Craven -v- Geal, (1932) VLR 172 in which tile-making machinery attached to the land was held to be a fixture because of the finding in that case that the machinery had been erected "for the better use of the land at the site of tile manufacturing operations". He referred also to the decision of the Full High Court in Commissioner of Stamps (WA) -v- L. Whiteman Limited,

10

20

(1940) 64 CLR 407 in which a brick-making machine was held to be a fixture because "it (was) affixed to the land and (was) essentially being used for the better enjoyment of the land" (411).

The plaintiffs rely upon a number of decisions. In Holland -v- Hodgson, (1872) LR 7 CP 328 it was held that textile mills secured to the floor of a factory building by nails were fixtures which passed to a mortgagee of the realty. The judgment of the Court in Banc delivered by Blackburn, J, is regarded as an important source of principle. In Hobson -v- Gorringe, (1897) 1 Ch 182 the Court of Appeal held that a gas engine let out on hire purchase attached to the land by bolts and screws to prevent it from rocking and used for the purpose of the owner's trade was a fixture and passed to a mortgagee who went into possession. 10

A decision referred to by Jordan, CJ in the passage quoted above is instructive in the present circumstances. In Reynolds -v- Ashby & Son it was held by the House of Lords that machines affixed to concrete beds in the floor of a factory by nuts and bolts to obtain steadiness which could have been removed without injury to the building or the beds were fixtures. 20

Lord Lindley said:

"The purpose for which the machines were obtained and fixed seems to me unmistakable; it was to complete the use of the buildings as a factory. It is true that the machines could be removed if necessary, but the concrete beds and bolts prepared for them negative any idea of treating the machines when fixed as moveable chattles." 30

It seems to me that the circumstances of that case are indistinguishable from the present.

In my opinion an application of the principles set out by Jordan, CJ in the passage quoted above, having regard to the authorities mentioned, can produce only one result and that is that the mill and its engine and gear box are fixtures. It then follows that the other fixed plant and equipment in the building should, having regard to the way in which the case has been conducted, also be treated as fixtures. 10

I turn now to the defendant's cross-claim for rectification. The description in the contract of the property sold simply refers to land which is part of a designated certificate of title as shown in a plan annexed. The plaintiff's claim is that there should be added to this description the words "excluding thereout the 'O' Mill, its building and associated equipment".

It is perfectly clear from the letter of 5 November 1979 written by the second defendant to the plaintiff confirming his offer and his telexed acceptance of its terms, that the "O" Mill and its associated plant and the building in which it was contained was to be excluded from the sale. As already mentioned, the offer was implemented by an agreement for the sale and purchase of equipment at the Charbon Works and at other sites and by the subject agreement for the sale and purchase of the land. The question is whether the qualification of the description which the defendants seek to have added was omitted from 20

the contract by common mistake of the parties. As was said by Mason, J in Maralinga Pty. Limited -v- Major Enterprises Pty. Limited, (1973) 128 CLR 336 at 351: "The Court must be satisfied that the instrument" (in this case the contract) "does not reflect the true agreement of the parties".

The intention of the parties to exclude the "O" Mill from the sale required for its implementation, because it was a fixture, provisions in the contract reserving, either expressly 10 or by implication, a right to the defendant to remove it from the land before completion and, if the parties so agreed, a licence to enter and remove the mill after completion. The only provision made in the contract in these respects is special condition 9 which does no more than provide a licence to remove the mill after completion should completion take place within twelve months and then only between its date and the expiry of that period. There is no express provision in the contract authorising the first defendant to remove the mill before completion. It is arguable that special condition 9 impliedly 20 authorises such a removal but if it does not it is, I think, clear enough that some such provision should be inserted in the contract by rectification if it were necessary to do so in order to resolve the rights of the parties in the circumstances which now exist. However, it is not necessary to do so because the contract has now been completed.

There is, in my opinion, no reason to consider further the remedy of rectification unless it can be shown that the

contract did not give expression to what the parties had agreed in so far as it provided for the removal of the mill after completion.

In my opinion the evidence does not establish that this is so. The agreement by the parties that the mill should be excluded raised for consideration the question whether the first defendant should have any right to remove it after completion and, if so, for how long. It seems to me that it must be concluded that the parties turned their mind to that question and resolved it, however imperfectly, by special condition 9. The terms of that condition reflect faithfully the instructions given by Mr. Hayes to his company's corporate solicitor and reflect, therefore, the protection of which the first defendant wished to be assured by the contract. Mr. Good read the special conditions before he signed the contract and had a solicitor acting for him at the time. There is no evidence to suggest that so far as he was concerned there was any mistake in the contract which did not reflect his intentions. Essentially cl.9 provided for a matter which had not been previously agreed and does not embody any mistake in giving expression to the intention of the parties. 10 20

It is submitted for the defendants that, properly construed, special condition 9 provides expressly and by implication an obligation on the part of the first defendant to remove the "O" Mill by completion or within twelve months of the date of the contract, whichever is the later, and a corresponding

obligation on the plaintiff to grant the first defendant a licence for this purpose. It is said that it is implicit in special condition 9 that the first defendant had promised to remove the mill prior to completion because the condition is framed as a qualification to such a promise: that is, that the first defendant has twelve months to remove the mill if settlement occurs within twelve months of the contract. Then it is said that the plaintiff's licence to enable removal to be implied from the condition subsists so long as the obligation of the first defendant to remove the mill subsists (Ray -v- Davies, (1909) 9 CLR 160 at 170) and that that obligation will disappear only if the contract is terminated, which may be done by the plaintiff only by reliance on a breach of the first defendant's promise to remove the mill if time to do so is first made of the essence of the contract by an appropriate notice. This not having been done, the first defendant still has a licence to enter the land to remove the mill which should be enforced by the injunction sought by the cross-claim.

10

20

I do not think that the construction which the defendant seek to put on special condition 9 is correct. Although its expression is somewhat confused it seems to me to be tolerably clear that it is based upon the exclusion of the mill from the sale and that the words "such removal to be effected in any event within twelve months from the date hereof" impose an obligation upon the first defendant to remove the mill within that time irrespective of how long completion might be delayed.

The confusion arises because the clause attempts to deal with two topics in the one sentence, namely the first defendant's obligation to remove the mill and its right to enter for that purpose should completion take place within twelve months.

The first topic should logically have been dealt with first and the second as an ancillary provision. The draftsman, however, dealt with the ancillary provision first and attached the first topic to it as a qualification. Nonetheless, as I say, the meaning is, I think, tolerably clear.

10

This interpretation is supported by other provisions in the contract. Special condition 1 provides that after exchange of contracts the plaintiff was to be at liberty to move into possession as a licensee. Special condition 2 provided that the plaintiff might, upon taking possession, erect buildings on the land which it might remove if the contract was rescinded. Special condition 3, as to which the defendants make an alternative submission which will be considered later, imposes an obligation on the first defendant in relation to the removal of its equipment on the land already sold to other buyers within six weeks from the date of the contract and an obligation to remove a substantial piece of equipment, No. 3 kiln, within twelve months with a licence to enter for that purpose should completion be effected before then. This condition is clearly in aid of special conditions 1 and 2. If they were not in the contract there would be no reason to require the first defendant to remove any equipment before completion. Further,

20



special condition 6 precluded any use by the plaintiff of the land for cement making and, therefore, any use by him of the mill. Special condition 9 continues the pattern of special condition 3 in relation to the "O" Mill. It provides an obligation to remove the mill within twelve months of the date of the contract should completion be delayed beyond that period, that is, the same period as that provided by special condition 3 for the kiln.

10

The problem which presents itself is, does the first defendant have any remedy in the following circumstances:

1. The "O" Mill and associated equipment has at all relevant times been a fixture.
2. Its exclusion from the sale was given effect, so far as is relevant, by special condition 9 of the contract.
3. The first defendant was obliged pursuant to this condition to remove the "O" Mill from the land within twelve months of the date of the contract.
4. The first defendant breached the contract by not performing this obligation.
5. Completion of the contract has taken place and the "O" Mill and its associated equipment is vested in the plaintiff; and
6. The first defendant wishes to remove the "O" Mill but the plaintiff is not willing to permit it to do so.

20

As already mentioned, the defendants submit that the obligation of the first defendant to remove the "O" Mill still continues and gives rise to an implied licence to enter for that purpose. In Ray -v- Davies, Isaacs, J referred with approval to a principle of construction expressed by Lord Blackburn as follows:

"I think I may safely say, as a general rule, that where in a written contract it appears that both parties have agreed that something shall be done, which cannot effectually be done unless both concur in doing it, the construction of the contract is that each agrees to do all that is necessary to be done on his part for the carrying out of that thing, though there may be no express words to that effect."

10

Applying that principle to the present case it is clear that if cl.9 had not provided a licence to enter one would have been implied. It is, however, one thing to imply in a contract a licence which is necessary for the performance of an obligation imposed upon a party, but it is entirely different to seek to imply the licence necessary not for the performance of an obligation but only to enable a party to remedy a breach which is already completed. It seems to me that in the present circumstances it is for the plaintiff to determine what steps it will take as a consequence of the first defendant's breach in not having removed the mill within the time limited. If it is disadvantaged it might sue for damages in which event its refusal to permit the first defendant to have the mill removed would no doubt be relevant to the measure of damages to which it would be entitled. If it is able to dispose of the mill profitably it is entitled to do so as the owner.

20

30

I turn now to the defendants' submission on special  
condition 3 which reads:

"3. The Vendor shall use its best endeavours to ensure that Buyers of its equipment situated on the property remove the same within six weeks from the date hereof provided that No. 3 kiln may remain thereon for a period twelve months from the date hereof and in the event that completion is effected before the said kiln is removed the Purchaser covenants to allow the Vendor or its nominee reasonable access for the purpose of removing the same."

10

It is submitted that "equipment" includes the "O" Mill, either within the ordinary meaning of the term or in the light of extrinsic evidence of the list of equipment, the letter of 5 November and the telex of 8 November 1979, all of which have already been mentioned. If the special condition applies to the "O" Mill then it is said that the first defendant has a licence to enter to remove it on the same grounds as are submitted in respect of special condition 9. However, reference to the list of equipment shows, in my opinion, that the No. 3 kiln, which was item 1210, had already been sold and it is clear that special condition 3 was concerned only with equipment which had been sold. Accordingly, whether or not the "O" Mill should be regarded as properly described as equipment, it was not in the light of the extrinsic evidence, intended to be dealt with by special condition 3. This conclusion is reinforced by the terms of the contract. As the "O" Mill is dealt with by special condition 9 there is no reason to suppose that the parties intended that it also be dealt with by special condition 3 so as to impose, in relation to it, obligations additional to those created by special condition 9.

20

30

It is submitted for the defendants that if the mill is and was a fixture, the first defendant is entitled to an easement of necessity to enable it to have access to the mill which would then permit it to remove it. Alternatively, it is said such an easement is to be implied. However, an easement of necessity arises only where, on a disposition by a common owner of part of his land, either the part disposed of or the part retained is left without any legally enforceable means of access: 10 Gale on Easements, 14th Edn. p.122. Here there was no disposal of the land on which the mill stood, simply a right reserved to remove the mill from the land. In any event the existence of any easement of necessity would be in conflict with the contract. In my opinion this submission fails.

The whole effect of the contract in the present circumstances is, in my opinion, that the "O" Mill was to be excluded from the sale to the extent to which special condition 9 provided an opportunity for the first defendant to remove it from the land. If I am wrong in holding that special condition 9 imposed an obligation on the first plaintiff but merely an opportunity to do so then a fortiori the conclusion must follow that the first defendant is no longer entitled to enter the plaintiff's land and remove the "O" Mill. 20

I turn now to the defendants' final submissions based upon estoppel which are put forward as providing grounds upon which the injunction sought by the cross-claim should be granted. The relevant facts are as follows:

1. As already concluded, the obligation of the first defendant under the contract was to remove the mill within twelve months of its date, that is by 3 December 1980. It was a term of the plaintiff's offer, confirmed by Mr. Howes' letter of 5 November 1979, that the plaintiff be given the opportunity to quote for removal of the "O" Mill. In Mr. Howes' letter of 4 December 1979 to the plaintiff he referred to the fact that the plaintiff was going to let him have an estimate for the cost of removing the "O" Mill. 10
2. The agreement by which the plaintiff purchased plant and equipment on the Charbon Cement Works land and the other sites of the first defendant contained a covenant by the plaintiff to remove all the goods within twelve months from its date, namely 23 November 1979, the goods to remain the property of the first defendant until removed although at the plaintiff's risk. On or about 29 August 1980 Mr. Howes told the plaintiff that his company was anxious for him to remove his plant from the Maldon site, that they were anxious to give him the contract for the removal of the "O" Mill, but that no decision would be made in this regard until he had shown them that he could perform by cleaning up the Maldon site. By letter dated 5 November 1980 Mr. Howes 20

drew the plaintiff's attention to his obligation under the contract to remove the goods, pointed out that the contract expired on 23 November 1980 and that it appeared to the company that he had very little hope of completing his obligations by that date and asked as to his intentions. The plaintiff replied by letter dated 26 November seeking a further twelve months to remove the goods purchased in the overall package and offering a particular item of plant for this consideration. The letter concludes:

"If you can recall my comments twelve months ago, that with a situation that we were undertaking at the time, there would need to be some give and take on both sides and I feel that this should be fair to both parties."

Further correspondence followed between the parties. By letter dated 18 February 1981 Mr. Howes accepted proposals made by the plaintiff. But by letter dated 16 July 1981 Mr. Howes wrote to the effect that the existing situation could not be allowed to continue any longer and that it appeared that the plaintiff had left his company no alternative but to engage other contractors to remove the plaintiff's equipment from the site at his cost. He asked the plaintiff to confirm his agreement to this course of action.

3. In or about July 1981 Mr. Howes commenced

negotiations on behalf of the second defendant for the sale to BHP of the "O" Mill.

4. There were three visits to the site of the "O" Mill by BHP representatives investigating its removal. One was in July when two engineers from BHP were present and spoke to Mr. Webb, the plaintiff's manager at the site. The next was in August when five or six representatives from BHP and Mr. Howes were present, as also was, again, Mr. Webb. Mr. Webb's evidence is to the effect that the plaintiff was present at this second visit but the plaintiff denies being present on the site at any time when Mr. Howes was there. On the evidence it seems probable that the plaintiff was present and that either he or Mr. Webb was mistaken as to whether or not Mr. Howes was present. However, it does not matter. Mr. Webb told the plaintiff of the July visit. Accordingly, by the end of August the plaintiff was well aware that there was a proposal for the "O" Mill to be removed for some purpose in which BHP was engaged. 10 20
5. On 7 September 1981 the plaintiff saw Mr. Howes in his office and made an offer to purchase the "O" Mill himself for what was apparently certain plant and equipment, \$50,000 in cash, and a discharge to the first defendant of its obligations to remove the mill from the subject land. Alternatively, he

offered in exchange for the "O" Mill a depot which he had purchased from A & K at Cooks River.

6. At no time until 9 October did the plaintiff or anyone on his behalf make any claim to the "O" Mill or assert that the first defendant was no longer entitled to remove it.
7. By letter dated 11 September 1981 BHP informed the second defendant that approval had been given by a public authority for whom it was constructing a plant to offer to purchase the "O" Mill for \$180,000 on certain terms and conditions. The letter concluded by referring to a need for further negotiation and a hope that a formal order could be placed as soon as possible. A further letter dated 18 September followed from BHP setting out further equipment which it wished to include in the purchase. The second defendant replied by letter dated 21 September accepting the offer of BHP with amendments listed in the letter. The letter asked for a formal order as an assurance that the conditions set out in it were satisfactory. Such an order dated 9 October 1981 was sent to the second defendant. There is no evidence as to whether it was posted or delivered or when it arrived. It was not necessary for Mr. Howes to take any action when the order arrived because BHP was attending to the removal of the plant.



8. The plaintiff did not become aware that he had a claim to the "O" Mill until Friday, 9 October 1981 when he consulted his solicitor, Mr. Washington, at Mudgee. After receiving this advice access by BHP to the Mill was denied.
9. The second defendant would not have proceeded with the sale to BHP if the plaintiff had challenged the right of the first defendant to remove the mill. 10

The defendants rely upon various kinds of estoppel. It is submitted that the facts give rise to a promissory estoppel. It is said that the plaintiff impliedly represented that he would not insist upon a strict adherence to the time limit of twelve months for the removal of the mill. The implication arises from his failure in the post-contract correspondence to dispel the necessary inference that he would adopt the same flexible approach to the time for removal of the "O" Mill as the first defendant was adopting in relation to the time for removal by the plaintiff from the other sites of the equipment 20 he had purchased, and from the conversations with Mr. Howes of 29 August 1980 mentioned above, from permitting, without objection, the inspections by BHP and from his offer to purchase the mill in September 1981.

The plaintiff also submits that there is a common law estoppel arising from the conduct mentioned involving an implied representation that the first defendant remained after December 1980 the owner of the mill, or otherwise remained entitled to

it. Finally, it is submitted that the conduct described above establishes a proprietary estoppel in that the plaintiff led the first defendant to believe that it remained after December 1980 the owner of the mill or otherwise entitled to it and it was dishonest in an equitable sense for the plaintiff to stand by and say nothing to disabuse the first plaintiff of this belief. In the case of each estoppel it is submitted that the defendant changed its position by agreeing to sell the mill to BHP. 10

In all the circumstances it seems to me to be unrealistic to regard the conduct relied upon as giving rise to the implied representations mentioned above under the headings of promissory or common law estoppel. The conduct of the plaintiff was an acquiescence in the assertion by the first defendant of its claimed right to remove the mill rather than any representation that the right existed. It seems to me that the post-contract correspondence does not give rise to any inference that the plaintiff would adopt a flexible approach to the time for removal 20 of the mill. The inspections by BHP commenced in July and it was against the background of these inspections which, of course, indicated to the plaintiff that the first defendant was negotiating to sell the mill to BHP, that he himself made his offer to purchase. His offer should be seen as an acceptance of the first defendant's position rather than as a representation that the position was correct.

So far as proprietary estoppel is concerned it seems to

me that the evidence does not establish that the conduct of the plaintiff led the first defendant to believe that it was entitled to remove the mill. That was a belief entertained by the first defendant quite independently of the conduct of the plaintiff as is shown by the commencement of negotiations with BHP in July 1981. It can hardly be said to have been dishonest of the plaintiff not to object earlier than he did because his evidence is, and it is not challenged, that it was not until 9 October 1981 that he became aware that he had a right to prevent the first defendant from removing the mill. 10

In respect of each kind of estoppel relied upon it seems to me to be not established by the evidence that the first defendant changed its position in reliance upon any representation by the plaintiff. There is no evidence that the attitude of the plaintiff was a factor which was taken into consideration in the decision by the defendants to sell the mill to BHP.

In my opinion the most that it can be said the evidence 20 discloses is that in ignorance of his legal rights under the contract the plaintiff acquiesced until 9 October 1981 in the preparations initiated by the first defendant for the sale of the mill to BHP. This acquiescence was implied by the plaintiff's failure to object to inspections and express in his offer to purchase the mill himself. The inference to be drawn from the evidence is that he did not seek legal advice until after his attempts to purchase the mill proved unsuccessful.

The plaintiff's acquiescence was in the first defendant's assertion of a right under the contract. It was an assertion which the plaintiff could not have been expected to challenge without legal advice as its acceptance did not depend upon questions of fact. In my opinion, it cannot be said that it is unconscionable for the plaintiff now to assert his contractual rights.

In my opinion there is no basis for any estoppel in favour of either of the defendants.

10

For the foregoing reasons the plaintiff is entitled to the relief claimed. The cross-claim should be dismissed.

I certify that this and the preceding pages are a true copy of the reasons for judgment herein of his Honour Mr. Justice Waddell.

G. James  
Associate

Date: 12th November 1981

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
EQUITY DIVISION

)  
)  
)  
)  
)

3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT LIMITED

First Defendant

BLUE CIRCLE SOUTHERN CEMENT LIMITED

Second Defendant

STANDARD PORTLAND CEMENT LIMITED  
BLUE CIRCLE SOUTHERN CEMENT LIMITED

10

Cross-Claimants

COLIN ELLIOTT GOOD

Cross-Defendant

ORDER

THE COURT ORDERS that -

1. The Order dated 12 November 1981 and entered 25 January 1982 be amended by substituting the following for paragraph 1 thereof.

"1. The Defendants and each of them their servants or agents be restrained from entering on to or remaining on the lands of the Plaintiff being all that land contained in Certificate of Title Volume 14381 Folio 83, being the lands upon which is erected all buildings, plant and machinery known as the Charbon Cement Works more particularly shown as the land delineated in red on the plan annexed hereto."

2. The first and second defendants pay the costs of the

Order

plaintiff of the motion and occasioned by the amendment.

3. Final leave be granted to the appellants to appeal to Her Majesty in Council.

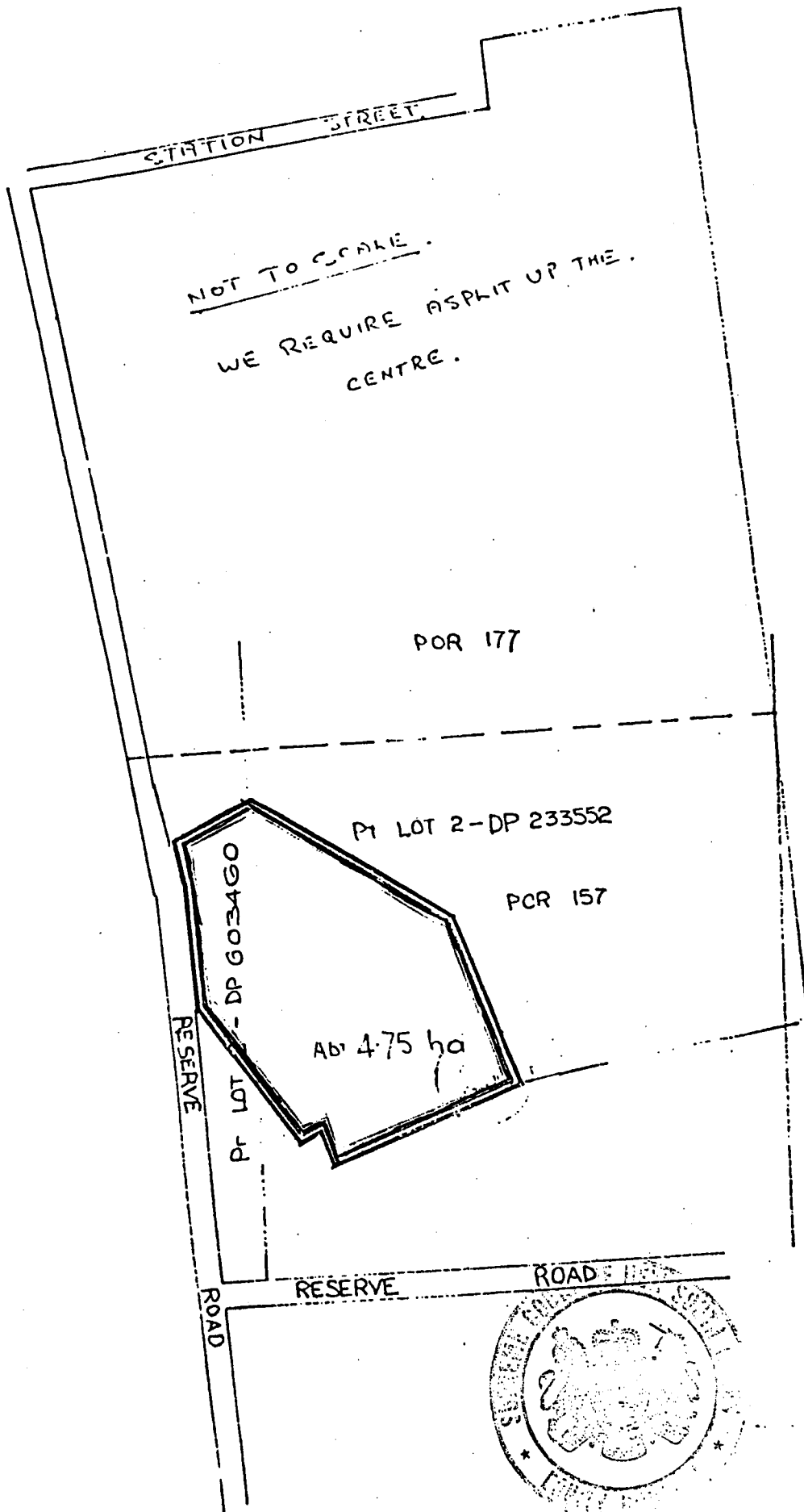
ORDERED 3 March, 1982

AND ENTERED 10 March, 1982.

By the Court

(L.S.)

G. LAZAR  
DEPUTY REGISTRAR



NOT TO SCALE.  
WE REQUIRE ASPHALT UP THE  
CENTRE.

POR 177

P1 LOT 2 - DP 233552

PCR 157

Abt 4.75 ha

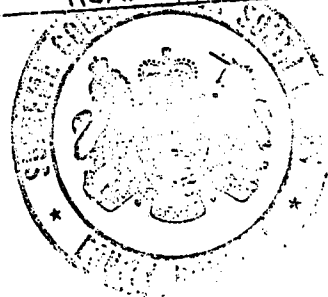
Pr LOT 1 - DP 603460

RESERVE

ROAD

RESERVE


ROAD

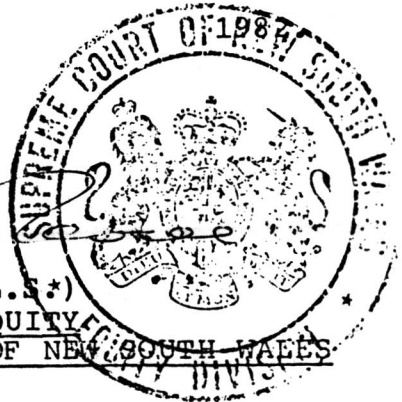


CERTIFICATE OF REGISTRAR IN EQUITY VERIFYING  
TRANSCRIPT RECORD

I, ANTHONY GEORGE NEVILL Registrar in Equity of the Supreme Court of New South Wales do hereby certify that this transcript record contains a true copy of all the documents relevant to the appeal by the Appellants to Her Majesty in Her Majesty's Privy Council from the judgment pronounced in these proceedings on 12 November 1981 and that the said documents together with the reasons for the said judgment and an index of all documents and exhibits in the said proceedings are included in the said transcript record which true copy is remitted to the Privy Council pursuant to the Order of His Majesty in Council on 2 May 1925.

DATED AND SEALED on *22 March*

  
A. G. Nevill (L.S.)\*  
REGISTRAR IN EQUITY  
SUPREME COURT OF NEW SOUTH WALES





# CERTIFICATE OF TITLE

NEW SOUTH WALES

REAL PROPERTY ACT, 1950

FORFEITS OFFICE  
Sydney

Crown Grants Vol. 1312 Fol. 110  
Vol. 3778 Fol. 56

Vol. **14381** Fol. **83**

Prior Titles Vol. 10757 Fol. 171  
Vol. 14033 Fol. 125

EDITION REVISED

31 3 1981



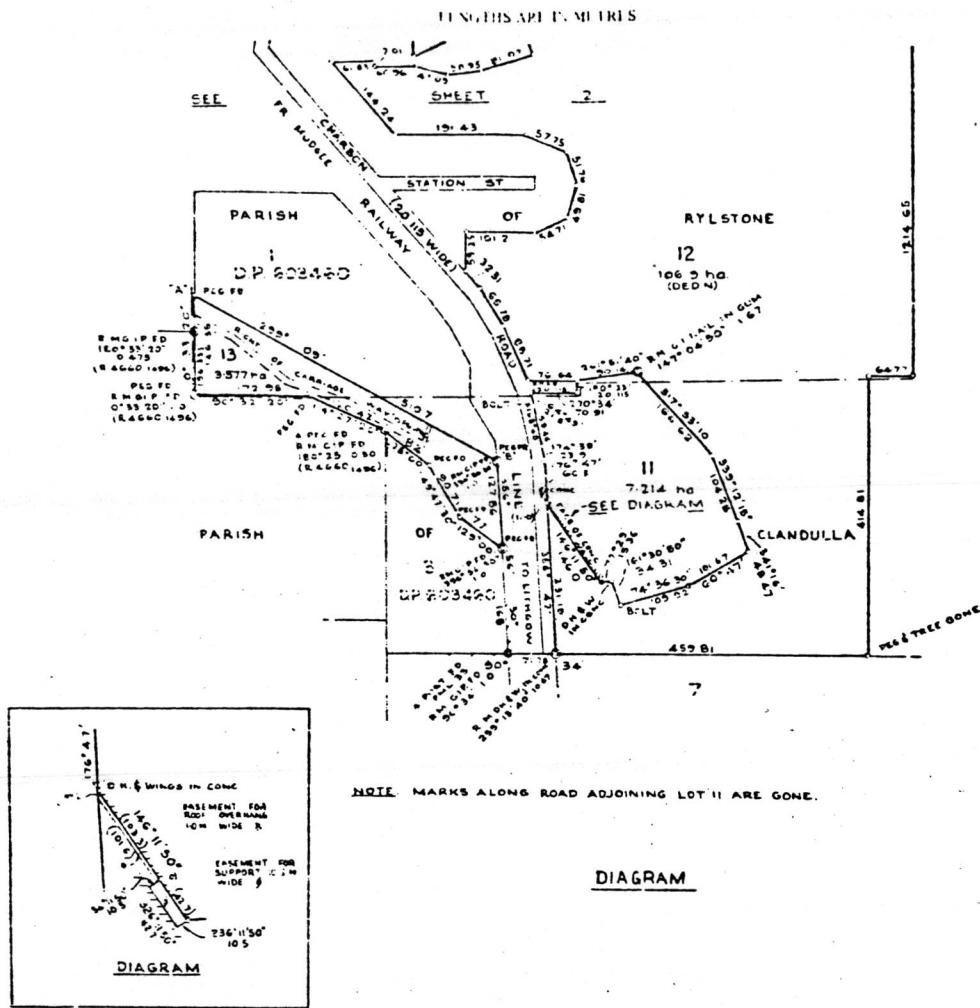
14381 Fol. 83

I certify that the person described in the First Schedule is the registered proprietor of the undivided estate in the land within described subject nevertheless to such exceptions, encumbrances and interests as are shown in the Second Schedule.

*[Signature]*  
Registrar General.



### PLAN SHOWING LOCATION OF LAND



13th October, 1981  
PERSONS ARE CAUTIONED AGAINST ALTERING OR ADDING TO THIS CERTIFICATE OR ANY NOTIFICATION HEREON

WARNING: THIS DOCUMENT MUST NOT BE REMOVED FROM THE REGISTRAR GENERAL'S OFFICE.

### ESTATE AND LAND REFERRED TO

Estate in Fee Simple in Lot 11 in Deposited Plan 613183 at Charbon in the Shire of Rylstone Parishes of Clandulla and Rylstone and County of Roxburgh. EXCEPTING THEREOUT the minerals reserved by the Crown Grants.

### FIRST SCHEDULE

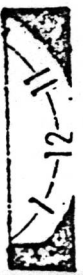
STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED.

### SECOND SCHEDULE

1. Reservations and conditions, if any, contained in the Crown Grants above referred to.
2. DP61183 Easement for overhanging roof appurtenant to the land above described.
3. DP61183 Easement for support affecting the land shown so burdened in Deposited Plan 613183.
4. DP61183 Easement for support appurtenant to the land above described.

NOTES IN THESE RULES THROUGH AND AUTHENTICATED BY THE SEAL OF THE REGISTRAR GENERAL ARE CANCELLED

Exhibit "A" - Certificate  
128. of Title



FIRST SCHEDULE (continued)

REGISTERED PROPERTY

Colin Elliott Good by Transfer S452308. Registered 14-5-1981

SECOND SCHEDULE (continued)

PARTICULARS

REGISTER GENERAL

CANCELLATION

13th October, 1981

NOTATIONS AND UNREGISTERED DEALINGS

S452308 TR

NOTES: ENTRIES RULED THROUGH AND AUTHENTICATED BY THE SEAL OF THE REGISTRAR GENERAL ARE CANCELLED



5452508

8

TRANSFER

REAL PROPERTY ACT, 1900

(See Instructions for Completion on back of form)

OFFICE USE ONLY

B	1 of 1	X
\$ 21.		

Torrens Title Reference	If Part Only, Delete Whole and Give Details	Location
Certificate of Title Vol. 14381 Folio. 83	WHOLE	AT CHARBON
of STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED, 1 McLAREN STREET, NORTH SYDNEY.		OFFICE USE ONLY N

(the abovenamed TRANSFEROR) hereby acknowledges receipt of the consideration of \$ 85,000.00 and transfers an estate in fee simple in the land above described to the TRANSFEREE

COLIN ELLIOTT GOOD, of 19 ADRIAN STREET, WELSHPOOL, WESTERN AUSTRALIA. as joint tenants/tenants in common	OFFICE USE ONLY S
---	----------------------

subject to the following PRIOR ENCUMBRANCES 1. D.P. 613183 EASEMENT FOR OVERHANGING

2. D.P. 613183 EASEMENT FOR SUPPORT 3. D.P. 613183 EASEMENT FOR SUPPORT

DATE OF TRANSFER 22.4.81

We hereby certify this dealing to be correct for the purposes of the Real Property Act, 1900.

Signed in my presence by the transferor who is personally known to me

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
Address and occupation of Witness



The COMMON SEAL of STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED was hereunto affixed in accordance with the Articles of Association in the presence of:-

*[Signature]*  
DIRECTOR.

*[Signature]*  
Signature of Transferor  
SECRETARY.

Signed in my presence by the transferee who is personally known to me

*[Signature]*  
Signature of Witness

*John Kevin Smith*  
Name of Witness (BLOCK LETTERS)

*1 McLAREN ST  
NORTH SYDNEY*  
Address and occupation of Witness

*[Signature]*  
Signature of Transferee

LODGED BY <i>J.K. SMITH</i> <i>1 McLAREN ST</i> <i>NORTH SYDNEY</i>		TO COLLECT		LOCATION OF DOCUMENTS	
Delivery Box Number <i>50</i>		OTHER		Herewith. <i>[initials]</i>	
Extra Fee		Checked by <i>[initials]</i>		In R.G.O. with	
REGISTERED <i>1-5-1981</i>		Produced by		Produced by	
Registrar General <i>[Signature]</i>		[Stamp]		<i>LP</i> <i>CT</i> <i>14/5/81</i>	

Exhibit "B" - Registered Transfer

\$21 e TO COLLECT

INSTRUCTIONS FOR COMPLETION

This dealing should be marked by the Commissioner of Stamp Duties before lodgment at the Registrar General's Office.

Typewriting and handwriting should be clear, legible and in permanent black non-copying ink.

Alterations are not to be made by erasure; the words rejected are to be ruled through and initialed by the parties to the dealing.

If the space provided is insufficient, additional sheets of the same size and quality of paper and having the same margins as this form should be used. Each additional sheet, identified as an annexure and signed by the parties and the attesting witnesses.

If it is intended to create easements, covenants, &c., use forms RP13A, RP13B, RP13C as appropriate.

Rule up all blanks.

The following instructions relate to the SIDE NOTES on the form.

- (a) Description of land:
  - (i) TOPRENS TITLE REFERENCE.—Insert the current Folio Identifier or Volume and Folio of the Certificate of Title Crown Grant for the land being transferred, e.g., 135 SP12345 or Vol. 123 of the Local Government Act, 1919.
  - (ii) LOCATION.—Insert the locality shown on the Certificate of Title Crown Grant, e.g., at Chullera. If the locality is not shown, insert the Parish and County, e.g., Ph. Lumere Co. Res.
- (b) Show the full name, address and occupation or description.
- (c) If the estate being transferred is a lesser estate than an estate in fee simple, delete "fee simple" and insert appropriate estate.
- (d) Delete if only one transferee. If more than one transferee, delete either "joint tenants" or "tenants in common", and, if the transferees hold as tenants in common, the shares in which they hold.
- (e) In the memorandum of prior encumbrances, state only the registered number of any mortgage, lease, charge or writ to which this dealing is subject.
- (f) Execution:
  - GENERALLY (i) Should there be insufficient space for execution of this dealing, use an annexure sheet.
  - (ii) The certificate of correctness under the Real Property Act, 1900, must be signed by all parties to the transfer, each party to execute the dealing in the presence of or not being a party to the dealing, to whom he is personally known. The solicitor for the transferee may sign the certificate on behalf of the transferee, the solicitor's name (not that of his firm), to be typewritten or printed adjacent to his name. Any person falsely or negligently certifying is liable to the penalties provided by section 117 of the Real Property Act, 1900.
  - ATTORNEY (iii) If the transfer is executed by an attorney for the transferor/transferee pursuant to a registered power of attorney, the form of attestation must set out the full name of the attorney and the form of execution must indicate the source of his authority, e.g., "AB by his attorney (or receiver or delegate, as the case may be) XY pursuant to power registered Book No. . . . and I declare that I have no notice of the revocation of the said power of attorney".
  - AUTHORITY (iv) If the transfer is executed pursuant to an authority (other than specified in (iii)) the form of execution must indicate the statutory, judicial or other authority pursuant to which the transfer has been executed.
  - CORPORATION (v) If the transfer is executed by a corporation under seal, the form of execution should include a statement that the seal has been properly affixed, e.g., in accordance with the Association of the corporation. Each person attesting the affixing of the seal must state his position (e.g., director, secretary) in the corporation.
- (g) Insert the name, postal address, Document Exchange reference, telephone number and delivery box number of the lodging party.
- (h) The lodging party is to complete the LOCATION OF DOCUMENTS panel. Place a tick in the appropriate box to indicate the whereabouts of the Certificate of Title in an abbreviated form, other documents lodged, e.g., stat. dec. for statutory declaration, pbts for probate, L/A. for letters of administration, &c.

OFFICE USE ONLY

DIRECTION: PROP		FIRST SCHEDULE DIRECTIONS				
No. OF NAMES:		(B)	(C)	(D)	(E)	NAME AND DESCRIPTION
(A)	FOLIO IDENTIFIER	No.	SHARE	TYPE	DEALING NUMBER	DETAILS

SECOND SCHEDULE & OTHER DIRECTIONS					
(F)	(G)	(H)	(I)	(J)	(K)
FOLIO IDENTIFIER OR PROB. DEEDS & FOLIO IDENTIFIERS	DIRECTION	MINOTN TYPE	DEALING NUMBER	DETAILS	DETAILS

to	MR J.K. SMITH	date	12.11.79
from	MR K.A. HOWES	our ref	
subject	CHARBON SALE	your ref	

Mr C Good has now confirmed his offer of \$350,000 as set out in my letter of the 5th November 1979 and as such I would be pleased if you would proceed with the preparation of the necessary contract. Mr Good is extremely anxious to sign documents as soon as possible in order that the tenders received by BCSC will remain current. The additional information which you have requested is as follows:-

10

- (1) List of plant and equipment included in sale - list attached.
- (2) Land included in sale approximately as per the attached plan. It should be pointed out to the purchaser that the Company's store building between the railway tracks extends beyond the Company's freehold land and as such it will be necessary for BCSC to purchase a small section of land currently held under the mining lease.
- (3) Right of access - this must work both ways as BCSC has to remove the "O" mill from the land being purchased by Mr Good and likewise Mr Good has to remove the equipment from Brogans Creek, the ropeway and from other buildings on the western side of the railway lines. It is suggested that the contract should contain a clause giving access for a reasonable period, but stipulating that plant etc, to be removed must be completed within twelve months from exchange of contracts. 20
- (4) List of plant for the old Allis Chalmers kiln at Maldon is attached. 30
- (5) List of old clinker stock piles at Charbon and Portland to be included in sale - list attached.
- (6) Payment terms - as advised Mr Good is submitting a list dissecting the sale price over individual items of the plant which would become due and payable at the time of removal from site. It is our wish, however, that a clause be inserted in the contract providing that payments equalling 25% of the balance then outstanding be made each quarter regardless of whether the equipment be removed from site. 40
- (7) The contract is to provide for the purchaser to be given rights to the property on exchange of contracts.
- (8) For insurance purposes the property will pass to the purchaser at the date of exchange of contracts with final

settlement for the land being due when BCSC is able to produce a valid certificate of title.

...2

Mr J.K. Smith

-2-

12 November 1979

- (9) Cost of preparing the sub-division, including survey costs, is to become BCSC's responsibility.
- (10) Purchaser to be given the right to erect buildings on the land after exchange of contracts. 10
- (11) BCSC to ensure other purchasers of equipment remove same from site within six weeks from (other than No. 6 exchange of contracts ( kiln)
- (12) Contract to contain clause that the plant at Brogans Creek Quarry and the ropeway on the mining leases are removed as soon as possible.
- (13) Contract to provide that the purchaser shall not carry on any business or activities which would have the effect of flooding the Company's drainage easements. As you are aware the drainage from the site extends under the railway lines on to the land adjoining the property purchased by Mr W. Thompson. 20

Should you require any additional information regarding the above please let me know. If possible Mr Good would like the contract to be available by no later than Wednesday, 14 November.

K. Howes

K.A. HOWES

*Terrible deal!  
KAH insistent!*

MR K A HOWES

28 11 79

J K SMITH

RE: SALE TO C E GOOD

I am enclosing the original Contract for Sale and exchange is effected by handing this to the Purchaser's solicitor in exchange for the duplicate copy, duly completed by the Purchaser. You will also need to ensure that the certificate under Section 1(c) of the Land Sales Act, which is the first document inserted inside the Contract, has been completed. It is not a matter for completion by the Vendor.

10

I am also sending you a letter concerning the Section 342AS Certificate, i.e. the certificate from the Rylstone Shire Council concerning zoning etc. and I think you ought to hand that to the Purchaser's solicitor before exchange. If you do not then because the certificate is not attached to the Contract, then it would be a relatively easy matter for the Purchaser to get out of the deal should he choose to do so.

As I will not be here tomorrow, I have not made any arrangements with the Purchaser's solicitor and I will leave you to do that in order to fit in with your other arrangements.

20

J K SMITH

Encls

3 December 1979

FILE NOTE:

RE: STANDARD PORTLAND CEMENT CO PTY LIMITED  
TO C E GOOD

---

Mr Howes instructed me to proceed to settlement on the basis of the understanding already entered into with Good, namely, that the Contract would be rescinded if he "ran into any zoning problems". I pointed out to him as the property is zoned Non-Urban "A", Good should be aware of what that means and should take the property subject to that zoning for it makes the Contract fairly useless from our point of view tying us as it does and not Good.

10

After exchange had been effected I showed him the letter from Noel Dennis & Co. and he was quite happy to accept it.



FILE NOTE

At 2.00 p.m. I rang Mr. Dennis and informed him that the property subject to the Contract of Sale to be exchanged was zoned Non Urban "A". Mr. Dennis rang Mr. Good in Perth to confirm this and Mr. Good stated that he was quite happy with the arrangement subject to the gentlemen's agreement, made previously, that he would be entitled in the event of zoning problems to cancellation of the contract. I did not agree with this and told Mr. Dennis that the agreement was that the parties would reconsider the contract in the event of any problems with zoning. He did not dispute this. 10

At exchange of contracts Mr. Dennis handed to me the attached letter and I again stated that my understanding of the agreement was that the parties would reconsider the contract if need be, but that I could not agree that Mr. Good would be entitled to arrange for a cancellation of the contract. Mr. Dennis accepted this.

IAG:CB  
3.12.79

29th April, 1981

Mr. C.E. Good,  
19 Adrian Street,  
WELSHPOOL. W.A. 6106

Dear Sir,

re: Standard Portland Cement Co. Pty. Ltd. sale of land to you.

We confirm that Transfer of Certificate of Title Vol. 14381 Folio 83 has now been stamped and lodged with the Registrar General for registration. When the dealing has been registered we will notify you that the Certificate of Title is available for you.

10

We also confirm that Notices of Sale have also been given to the proper authorities.

Yours faithfully,

J.K. Smith,  
Corporate Solicitor.

EXHIBIT "1"  
As discussed Mr. K.A. Howes & Mr. C. Good  
2/11/79 K.Howes  
SALE BY TENDER  
CEMENT MANUFACTURING AND QUARRY PLANT

Due to the closure of its Charbon Cement Works (240 km north-west of Sydney) the entire Plant and and equipment is available for immediate sale on the basis of "as is/where is".

The attached Brochure details equipment for sale and offers are invited for individual lots or as a whole.

10

In addition a selection of spare parts for most equipment is available for sale on a negotiated basis. Maximum production capacity of the Works was Clinker 250,000 t.p.a. Cement Milling 260,000 t.p.a.

Charbon Cement Works will be open for inspection each WEDNESDAY and THURSDAY from 7.30 am to 4.00 pm. Inspections at other times may be arranged by contacting Mr. K.A. Howes at the undermentioned address.

Interested parties planning to stay in the area overnight are advised to secure bookings as accommodation in the area is limited. Accommodation at Kandos is available at

20

Fairways Motel (063) 79 4406  
Railway Hotel (063) 79 4403

Charbon Cement Works is adjacent to the main Sydney to Mudgee railway line and has its own siding which is available by arrangement for use in removal of equipment.

The Brochure also contains details of a few items of plant for sale by tender at our other N.S.W. Cement Works at Berrima Maldon and Portland and at our Quarry at Marulan.

Inspections at these centres may be arranged by contacting the respective Works Managers direct.

30

Maldon Cement Works	99 km south west	Phone (046) 77 1221
	of Sydney	
Portland Cement Works	171 km west of	Phone (063) 55 5000
	Sydney	
Marulan Quarry	200 km south west	Phone (048) 57 1645
	of Sydney	
Berrima Cement Works	145 km south west	Phone (048) 77 1305
	of Sydney	

A coupon for use when submitting tenders is attached.

40

CONDITIONS:-

- a) The Company reserves the right to accept or reject any tender.

- b) Cost and responsibility of removal of purchases remain with the Tenderer although every effort will be made to facilitate removal.
- c) Quantities and descriptions are believed to be correct but are not guaranteed and Tenderers must satisfy themselves by personal inspection.
- d) Payment:- On Items of \$1000 value and above. 10  
25% deposit payable upon notification of acceptance of tender and the balance before removal of purchase.  
  
On Items below \$1000.  
Payment in full before removal of purchase.
- e) Removal of Equipment - Upon notification of acceptance of tender equipment must be removed from the site within six weeks.

Tenders will close at 5 pm 31st October 1979. Envelopes should be clearly marked "Charbon Tender" and be mailed or delivered to:- 20

Blue Circle Southern Cement Limited  
1 McLaren Street  
North Sydney N.S.W. AUSTRALIA

Phone: (02) 929 0200 Telex: SYDCEM AA 22466

SPECIFICATION - Charbon Cement Works

KILNS

1201	Crib Table and Stools Combined	
1202	Conical Steel Hopper (Kiln Floor)	
1203	4 Wheel Steel Trolley 7' x 4'	
1204	Steel Tank 8' x 4'6" x 4'6"	
1205	Set of Two Steel Shelves 10' x 2'	
1206	Set of Aluminium Steps	
1207	Bazooka Tank Pump and Motor	
1208	1 Steel Locker	
1209	Wooden Cupboard 7' x 6' x 2'	10
1210	No. 3 Kiln Motor Drive and Auxiliary Drive 10ft dia x 165 ft Vickers Rotary Kiln 75 rpm Motor 60hp British Rema Direct Firing System Raymond Hydraulic Kiln Feed speed control	SOLD
1211	No. 2 Kiln Motor and Drive 9ft dia x 150ft Edgar Allen Rotary Kilns 60 rph Motor 50 hp 580 rpm British Rema Direct Firing System Raymond Hydraulic Kiln feed speed control	
1212	No. 1 Kiln Motor and Drive 9ft dia x 150ft Edgar Allen Rotary Kilns 60rph Motor 50hp 580rpm British Rema Direct Firing System Raymond Hydraulic Kiln feed speed control	20
<del>1213</del>	<del>No. 3 Kiln Motor Shed</del>	SOLD
1214	No. 1 and 2 Kilns Motor Shed	
1215	No. 1 Kiln Coal Fan	
1216	No. 2 Kiln Coal Fan and Motor 50hp	
<del>1217</del>	<del>2 Steel Trestles</del>	SOLD
<del>1218</del>	<del>No. 3 Kiln Coal Firing Fan and Motor 50hp</del>	SOLD
<del>1219</del>	<del>No. 3 Kiln Air Cooled Nose Ring Fan Aerex Type C30 and Motor 3hp</del>	SOLD 30
1220		
<del>1221</del>	<del>No. 1 Kiln Coal Classifier (British Rema RW100)</del>	SOLD
1222	No. 2 Kiln Coal Classifier (British Rema RW 100)	
1223	No. 1 and 2 Kiln Coal Hopper	
1224		
<del>1225</del>	<del>No. 3 Kiln Coal 18" Belt Conveyor plus 5hp Motor and Gearbox 40 ft length 105ft</del>	SOLD

1226 No. 1 and 2 Kiln Coal 18" Belt Conveyor plus 5hp Motor  
and Gearbox 37:1 Length 53ft

1227 Float Switch

1228 Kiln Coal Bunker to No. 1 and 2 Kiln

1229

1230

1231

1232

10

~~1233--No.--3-Blackman-K-B-Serial-No.--V5428-Cooler-Fan-and-Motor~~  
~~50hp-~~ SOLD

SPECIFICATION - Charbon Cement Works

CEMENT MILLS

- 1401 7ft x 36ft Edgar Allen Mills No. 2 3 compartment 23.2 rpm  
spur gear drive. Charge weight approximately 45 tonnes  
Motor Bruce Peebles 600 hp 250rpm 415V. Synchronous  
Induction
- 1402 No. 2 Cement Mill Gear Fan
- 1403 7ft x 36ft Edgar Allen Mills NO. 1 3 compartment 23.2 rpm 10  
spur gear drive. Charge weight approximately 45 tonnes  
Motor Bruce Peebles 600 hp 250 rpm 415V. Synchronous  
Induction
- 1404 No. 1 Cement Mill Gear Fan
- 1405 No. 2 Cement Mill Owl Vibrator Cement Screen 6ft 9" x  
3ft and Motor
- 1406 No. 2 12" Screw Conveyor Length 10ft9½"
- 1407 No. 1 Cement Mill Owl Vibrator Cement Screen 6ft 9" X  
3ft and Motor
- 1408 No. 1 & 2 Cement Mill Cooler plus Motor and Gearbox 20
- 1409 Cement Mill No. 3 12" Screw Conveyor Length 17ft2½"
- 1410 Cement Mill No. 4 12" Screw Conveyor Length 19ft8"
- 1411 No. 1 Cement C100 F.K. Compressor and Motor 50hp
- ~~1412--No.-3-Cement-C100-F.K.-Compressor-and-Motor-50hp~~ SOLD
- ~~1413--No.-2-7"-F.K.-Pump-plus-Motor-50-hp~~ SOLD
- 1414 No. 0 Cement Mill and Auxilliaries WITHDRAWN  
8ft6" x 33ft5½" Smidth 'Unidan' Cement Mill rpm 18.2  
approximate charge weight 61 tonnes  
One fixed and one moveable main bearing. TS1150 Symetre  
gearbox 1000hp motor 1100hp 735rpm 2200 V. 30  
2 Smidth Type BHK60 Pendan Weighfeeder nos. 709603 and  
709604  
1 Gypsum Belt Feeder gear motor 3hp 1440 rpm 84.7:I  
1 3ft3" x 6ft6" Haver and Boecker 'Niagara' Type ME  
Cement Screen no. 4835 3mm or 4mm screens motor 3hp  
1420 rpm  
1 Screw Conveyor 20" Mill Discharge gear motor 5hp  
145C rpm Length 11ft

1 Watt Bucket Elevator Motor 25hp 1450 rpm gearbox  
M10 20:1 Height 70ft3"  
1 13ft 1½" dia. Smidth Air Separator type FC 80hp motor  
720 rpm V-belt drive 12 off C210 belts with 48.75 in  
V-pulleys. Fennerflex FX14 coupling  
1 20" Screw Conveyor (Return) motor 15 hp 1430 rpm gear-  
box M8 25:1 Length 66ft6"  
1 14" Screw Conveyor (To Cooler) gear motor 5hp 1450rpm: 10  
175 rpm Length 27ft  
1 14" Screw Conveyor (Finished Cement) gear motor 5hp  
1450 rpm : 175 rpm Length 22ft6"  
1 Smidth Cement Sampler motor 0.5 hp 870 rpm reduspeed  
870:20  
1 12" Screw Conveyor (Filter Discharge) gear motor 5hp  
1450:30 length 16ft2½"  
1 S.F. Electrofilter type FAB-440 no. 706477 70kV 7000NM3  
at 120°C. 99%  
1 Filter Fan Richardson 600 CR type no. 72504 motor 25hp 20  
1450 rpm  
1 2.0m x 3.0m High Smidth Cement Cooler serial no. 704191  
motor 25hp 940rpm Richardson HW8 3.2:1  
1 Mono Pump V-belt drive motor 3 hp 940 rpm timing pulley  
drive  
1 Broomwade D13 Air Compressor serial no. 143017 motor  
10hp 1420 rpm water temperature control by Satchwell type  
FP3L thermostat  
1 Vertical Air Receiver no. 139-u-787  
1 Air Filter for Motor Room Richardson 4CL fan no. 76276 30  
motor 3 hp 1420 rpm including Gregory Rollo-Matic Filter

~~1415--Trolley-Crane-10-ton-Capacity~~

WITHDRAWN

1416

1417

~~1418--Cement-Mills-Building-(Steel-Frame)~~

WITHDRAWN

1419

1420

1421

1422 Steel Table 6ft x 3ft



28th July, 1981

Blue Circle and Southern  
Cement Ltd  
1 McLaren Street  
NORTH SYDNEY NSW 2060

Attention: Mr J.E. Layt, Managing Director

Dear Sir,

Re: No. 0 Cement Mill, Charbon

By arrangement with your Mr K. Howes, officers of Central Engineering have inspected the grinding mill at Charbon, and, as a result of preliminary reports, we are most interested in instigating discussions on your sale of this mill to Central Engineering.

10

Central Engineering is considering the purchase of this equipment for installation in a plant which it is constructing for a public authority, and, as is usual in such cases, approval of the purchase would have to be obtained from the public authority.

This office is currently assembling data on which to base a recommendation to the public authority and an offer to Blue Circle and Southern Cement Ltd for the purchase of the mill, and I expect to submit this offer to you in the very near future. On this understanding, I request that you defer any decision on the sale of the mill until Central Engineering is able to confirm an offer.

20

Yours faithfully,

P.E. Jeans  
Manager Central Engineering Sydney

SB:DH



**BLUE CIRCLE  
SOUTHERN**

BLUE CIRCLE SOUTHERN CEMENT LIMITED

PORTLAND CEMENT 1 MILLER ST NORTH SYDNEY 2060 TELEPHONE 879 0700  
BOX 1571 G.P.O. SYDNEY 2071 CABLES PORTCEMENT TELEF SYDCEM AA27466

10 August 1981

Mr P E Jeans  
Manager  
Central Engineering  
The Broken Hill Proprietary Co Ltd  
169-185 Miller Street  
NORTH SYDNEY NSW 2060

Dear Mr Jeans

RE "O" Cement Mill Charbon

10

I refer to your letter of 4 instant and subsequent discussions with Mr Steve Baker and confirm that I have handed to your representative, Mr King Stacey, at Charbon the following documents:

- a) The following drawings to be used for remarking the various items comprising the building and the "O" Mill plant equipment:-

- SO-TR-SO-1
- SO-TR-SO-2
- SO-TR-SO-3
- SO-TR-SO-4
- SO-TR-SO-5
- SO-TR-SO-6
- SO-TR-SO-7
- SO-TR-SO-8

20

- b) A series of drawings indicating the main production units comprising the "O" Mill.

- c) Copy of BCSC Specification No 150 in which we invited tenders for the removal of the "O" Mill from Charbon to Berrima. This specification you will note is dated 9 April 1980. I would draw you attention to Clause 7 relating to insurance and a copy of our instructions in this regard are also enclosed. Four tenders were received for this work and after excluding the cost of the work detailed in category J and K as mentioned on page 5, the cost of work was quoted by three of the tenderers between \$200 000 to \$300 000. The fourth tenderer quoted in excess of \$500 000.

30

.../2

Mr P E Jeans  
The Broken Hill Proprietary Co Ltd

2.

The "O" Mill is situated on land now owned by Mr Colin Good who is a resident of Perth Western Australia. Mr Good maintains an office at the Charbon Cement Works and I understand that his current representative on site is Mr Ian Webb. BCSC's representative at Charbon is the Colliery Manager, Mr Adrian Vaughan, and any requests for access to site should be arranged through him. 10

Our electrical engineer from the Charbon Cement Works is now employed at our Portland Works and should your engineers wish to discuss any aspect regarding the "O" Mill electricians it will be necessary for them to make arrangements to see this engineer by contacting the Portland Works Manager Mr Terry McCarthy. Unfortunately we can not make him available to meet your representative at Charbon on 11 August.

As mentioned the "O" Mill is for sale "as is where is" and I will detail what is required at Charbon with your Mr King so that you may fully understand your Company's commitments regarding removal of foundations etc. 20

We also have available for sale, again on the basis of "as is where is" a number of spares for the "O" Mill. These spares have been removed from Charbon and are currently under storage at our Berrima Cement Works. A list of spares is attached but no guarantee is given as to the condition and/or quantity of the items listed. Inspection of these spares could be arranged by contacting Mr Neville Cooper at our Berrima Cement Works and if we get to the stage where a sale is possible a complete detailed list with quantities being verified will be compiled. 30

Your further advice would be appreciated.

Yours faithfully  
BLUE CIRCLE SOUTHERN CEMENT LIMITED

K Howes  
K A HOWES  
Executive General Manager  
Finance & Administration

Encl

KAH:RK

40

BLUE CIRCLE SOUTHERN CEMENT LIMITED

SPECIFICATION NO. 150

INVITATION TO TENDER FOR REMOVAL

OF NO. 'O' CEMENT MILL SYSTEM

AND BUILDING FROM CHARBON AND SUBSEQUENT

RELOCATION AND STORAGE

1. Preamble

This Specification outlines work required to dismantle crate, transport, relocate and store a cement mill and auxillary systems and building, presently located at a disused Cement Works in Charbon, New South Wales. 10

The Work to be done has been placed into selected categories and the successful Tenderer shall be expected to perform all those categories of Work.

At this time the location selected for the relocation of all items shall be at the Cement Works operated by B.C.S.C. at Berrima, New South Wales. Any change in the area of relocation for any of the items, or to the scope of Work shall be advised.

2. Scope of Work

20

Prior to building demolition, the successful Tenderer shall identify all building components in accordance with overall Marking Plan Drawings to be provided by B.C.S.C. and shall then proceed to carry out all work covered by this Specification including but not restricted to the supply of all labour, materials, equipment, tools,

9.4.80

Cont'd ...../2

- 2 -

scaffolding, craneage, consumables, temporary site storage, waste dumping areas, site accommodation and transport required to dismantle and relocate to nominated B.C.S.C. storage areas off-load and store all items covered by all Work Categories. 30

3. Form of Tender and Price

Tenderers are bidding for a Lump Sum Contract. The Contract shall not be subject to rise and fall in costs. Tenderers shall submit prices for each of the Work

Categories covered by this Specification and any variation in the extent of work shall be in accordance with those fixed prices and the work scope for each of the Work Categories.

It is anticipated all Work Categories covered by this Specification shall be performed by one Contractor.

4. Sub-Contractors

Tenders shall include a list of all Sub-Contractors to be used and identify the respective Work Areas in which those Sub-Contractors shall be engaged. 10

5. Terms of Payment

Progress payments shall be made against invoices submitted for each Work Category.

One Progress Claim for payment only shall be submitted within any calendar month however may include any number of Work Categories which have been completed.

Initial Progress payments shall only be made up to 95% of the value of each Work Category. Progress claims shall only be submitted against Work Categories which are 100% completed. 20

The 5% balance of monies withheld by the Purchaser shall become payable to the Contractor upon the satisfactory completion of all Work covered by the Contract Specifications.

9.4.80

Cont'd...../3

- 3 -

6. Conditions of Contract

Australian Standard CA24.1 - 1964 "General Conditions of Contract for Civil Engineering Works" shall form part of the contract otherwise than as modified by this Specification. 30

7. Insurance

The Contractor shall comply with the attached "Blue Circle Southern Cement Limited Insurance Instructions To Contractors "B" - 1".

The Contractor shall supply evidence of having complied with those Insurance Instructions prior to commencing work.

8. Time for Completion

Tenders shall include a programme stating (where possible) the duration of each Work Category and also stating the total time for completion of all work covered by this Specification.

9. Hours of Work

No restriction is known to exist for hours worked at Charbon however the Works Manager at B.C.S.C. Works should be contacted regarding any restriction to working hours at B.C.S.C. Works.

10

10. Safety

The Contractor shall be required to comply with all safety directives and shall contact the Works Manager to determine those directives.

11. Unions

The Contractor shall contact the Works Manager and shall ensure all categories of labour employed on all B.C.S.C. sites shall belong to their respective Unions as determined by the Works Manager.

20

9.4.80

Cont'd ...../4

- 4 -

12. Inspection of Sites

Tenderers shall inspect all sites and surroundings which are relevant to all Work Categories and shall be satisfied regarding any restrictions on plant access, working conditions agreements and other things or matters which are relevant and may have an effect upon the Contract.

Extra payment for claims over and above the Contract price shall not be made for costs incurred by unexpected difficulties.

30

13. Work Categories and Extent of Work

The following Work Categories define the extent of work to be completed by the Contractor.

Category A

Covers all work required to clean (where required) and identify all structural and other steel components in

accordance with overall Marking Plan Drawings to be provided by B.C.S.C.

Category B

Covers all work required to dismantle all building and structural steelwork and sheetings prior to loading for transport.

Category C

Covers all work required to clean and dismantle all mechanical items of equipment prior to mothballing and crating for transport.

10

Category D

Covers all work required to clean and dismantle all electrical items of equipment prior to mothballing and crating for transport.

Category E

Covers all work required to dismantle and/or demolish all items which shall be dumped and/or not be re-used and shall include all work required to clear the site of all unwanted materials and leave the site in a clean and tidy condition.

20

9.4.80

Cont'd ...../5

- 5 -

Category F

Covers all work required to further dismantle and mothball and/or crate all items covered by Category C.

Category G

Covers all work required to further dismantle and mothball and/or crate all items covered by Category D.

30

Category H

Covers all special items of work which are not covered by any of the other Work Categories and shall include obtaining outside specialist supervision for the mill drive gear reducer dismantling/removal/mothballing/crating/transporting and final storage.

Category I

Covers all work required to load onto transport all items which shall be relocated.

Category J

Covers all transport from Charbon site to B.C.S.C. Works site prior to unloading.

Category K

Covers all work required to off-load from transport all items which shall be relocated and shall include the storage of those items in designated areas of B.C.S.C. Works site. 10

14. Schedule of Drawings

The following list of Drawings shall be provided by B.C.S.C. and form part of this Specification.

- 6 -

15. Definitions

- Purchaser: Blue Circle Southern Cement Limited,  
1 McLaren Street,  
North Sydney, N.S.W. 20
- Principle: Blue Circle Southern Cement Limited,  
1 McLaren Street,  
North Sydney, N.S.W.
- Engineer: Blue Circle Southern Cement Limited,  
1 McLaren Street,  
North Sydney, N.S.W.
- Contractor: The Tenderer whose offer is accepted  
by the Purchaser.
- Works Manager: The Works Manager at the Cement Works 30  
operated by Blue Circle Southern Cement  
Limited located at Berrima, N.S.W.
- Sites: A. Disused Cement Works previously  
operated by Blue Circle Southern  
Cement Limited and located at  
Charbon, N.S.W.  
B. The Cement Works operated by Blue  
Circle Southern Cement Limited  
located at Berrima, N.S.W.

9.4.80



Category I

Covers all work required to load onto transport all items which shall be relocated.

Category J

Covers all transport from Charbon site to B.C.S.C. Works site prior to unloading.

Category K

Covers all work required to off-load from transport all items which shall be relocated and shall include the storage of those items in designated areas of B.C.S.C. Works site. 10

14. Schedule of Drawings

The following list of Drawings shall be provided by B.C.S.C. and form part of this Specification.

- 6 -

15. Definitions

Purchaser:	Blue Circle Southern Cement Limited, 1 McLaren Street, North Sydney, N.S.W.	20
Principle:	Blue Circle Southern Cement Limited, 1 McLaren Street, North Sydney, N.S.W.	
Engineer:	Blue Circle Southern Cement Limited, 1 McLaren Street, North Sydney, N.S.W.	
Contractor:	The Tenderer whose offer is accepted by the Purchaser.	
Works Manager:	The Works Manager at the Cement Works operated by Blue Circle Southern Cement Limited located at Berrima, N.S.W.	30
Sites:	A. Disused Cement Works previously operated by Blue Circle Southern Cement Limited and located at Charbon, N.S.W.  B. The Cement Works operated by Blue Circle Southern Cement Limited located at Berrima, N.S.W.	

BLUE CIRCLE SOUTHERN CEMENT LIMITED

INSURANCE INSTRUCTIONS

TO

CONTRACTORS

"B" - 1

1.7.80

-1-

1. REQUIRED INSURANCES

10

FOR WORK ON A BLUE CIRCLE SOUTHERN LTD SITE

1.1 Evidence of Contractor's Insurances to be produced to the Principals Insurance Officer and accepted by him before the contract commences or any plant and equipment is brought on to our property.

1.2 Certificate of Currency required with policy details and endorsements including the Principal's name for their respective rights and interests for this or other contracts.

1.3 Insurances Required:-

20

1. Contractors Public Liability Insurance including unregistered mobile plant and equipment with Indemnity of \$1 million to cover damage to any property i.e., buildings, plant, ways, etc., owned by the Principal.

2. Motor Insurance (Third Party Property Damage) Indemnity \$1 million in respect of registered vehicles used on our property.

3. Workers' Compensation Insurance with Common Law Indemnity unlimited.

30

1.4 Insurances to remain in force till all the Contractors and Sub-Contractors employees and property have been removed from the Site.

1.7.80

-2-

- 2.1 The Contractor shall ensure thall all policies of insurance effected by the Contractor and his sub-contractors in performance of the Contractor's obligations under this Clause shall be maintained in full force for their respective terms.
- 2.2 The Contractor and/or Sub-Contractor shall effect a Workers' Compensation Insurance Policy in the joint names of themselves and the Principal with the Common Law benefit being unlimited. 10
- 2.3 The Contractor shall ensure that each Policy shall be endorsed to provide;
- (a) that such policy shall not be varied, cancelled or allowed to lapse until (7) seven days written notice of such variation, cancellation or potential lapsing shall have been given to the Principal by the insurer under such policy and
- (b) that any breach of the terms and conditions of such policy by the Contractor or his sub-contractors as the case may be shall not prejudice the rights which the Principal would otherwise have had under such policy. 20
- 2.4 The Contractor shall provide the Principal at the Principal's request with any documentation that the Principal may reasonably require to substantiate the continuing existance of the insurances.
- 2.5 Should the Contractor default in any of his obligations the Principal shall be entitled where possible to effect the necessary insurance to remedy the Contractor's default and the Principal may deduct the cost of so doing (including the continuing cost of premiums) from any money payable by the Principal to the Contractor under the Contract AND IN ANY EVENT the Contractor shall indemnify the Principal against any claim against expense incurred by or liability of the Principal arising directly or indirectly from the Contractor's default. 30

1.7.80



THE BROKEN HILL PROPRIETARY COMPANY LIMITED  
 (Incorporated in Victoria)  
 CENTRAL ENGINEERING  
 Norplaza Building, 169-185 Miller Street,  
 NORTH SYDNEY. N.S.W. 2060

11th September, 1981

Blue Circle Southern Cement Ltd.,  
 Portland House,  
 1 McLaren St,  
 North Sydney 2060

10

Att: Mr. K. Howes

Dear Sir, re: CHARBON #0 MILL

Approval has been given by our client for BHP Engineering to proceed with the aquisition of the Charbon #0 mill, for which purpose B.H.P. Engineering has been authorised to offer a purchase sum of \$180,000.

The conditions of the purchase are as follows:

- 1) B.H.P. Engineering takes possession of, and removes from the Charbon site the following equipment:
  - a) One 8'6" dia. X 33'5 ½" long Smidth Unidan cement mill including approximate charge weight of 61 tonnes, 20
  - b) One fixed and one moveable main bearing TS 1150 Symetre gearbox 1000 hp.,
  - c) One motor 1100hp 735rpm 2200V A.E.I.,
  - d) Various electrical cabinets located in the mill motor room of the #0 mill,
  - e) One mill stopping device,
  - f) Water cooling equipment for mill bearings, which includes water pump, water tank and air compressor, and receiver, 30
  - g) Pressurizing unit for mill motor room,
  - h) The mill building material and rubble resulting from demolition by BHP of the #0 mill extension to mill floor level but excluding the concrete hopper at the mill inlet end of the structure,
  - j) Spare parts as specified on the attached list and which are currently stored at Berrima. No list attached

All communications should be addressed to  
 P.O. Box 1237  
 North Sydney. 2060

Telephone (02)929-8166  
 Telex AA 25969

Your Ref:  
 Our Ref: PEJ:SB:PL

Exhibit 3 - Letter from BHP

....Page 2....

- 2) B.H.P. undertakes to demolish the #0 mill extension as per item 1h/above and to remove with due care major equipment items, but excluding chutes, conveyors, piping flues, etc. the design and construction of which are entirely upon the geometry of the existing structure. Major items of equipment will be stored and covered on BCSC Ltd property at an area not greater than 1.5km from the #0 mill. 10
- 3) BCSC are to arrange for BHP Engineering or its subcontractors, unhindered access to, and movement around, the #0 mill site.
- 4) The price offered is a fixed price and payment will be made upon removal of the mill and its associated equipment (items 1a to 1h above).

Further negotiation may be required regarding items 1h) and 2) above, and it is our hope that these negotiations can be concluded next week, such that a formal order can be placed on BCSC Ltd as soon as possible. 20

For any further enquiries please contact our Mr.S. Baker at BHP Engineering's North Sydney office.

Yours faithfully,

P.E. Jeans  
P.E. Jeans  
Manager Central Engineering Sydney

- (a) Need to cover removal of water pipe as discussed. Colliery water supply must not be stopped
- (b) Space over rail tracks to be filled in for crane access but must be removed at B.H.P. cost afterwards. K. Howes

18th September, 1981

Blue Circle Southern Cement Ltd.,  
Portland House,  
McLaren Street,  
NORTH SYDNEY

Att: Mr. K. Bezant

Dear Sir,

RE CHARBON MILL #0 MILL

Subsequent to our discussions of Wednesday 16th September, I wish to advise that BHP Engineering wishes to include the following listed equipment in its proposed purchase of the #0 Mill. Item numbers are derived from the schedule detailed on BSCC drawing No. SO-TR-SO-5, a copy of which is attached.

3. Clinker Feeder F,L.S. Pendan Type BHK - 60
4. Gypsum Feeder F,L.S. Pendan Type BHK - 60
5. 12" Belt Conveyor
6. P.L.S. Symetro Gear Type Mill 41'-8"X9' Dia
7. P.L.S. Symetro Gear Type TS - 1150
8. Mill Motor A.E.I. 1100 H.P. 773 R.P.M. 3 PH. 50 PER 2200V
9. F.L.S. Internal Water Cooling Equipment 20
10. F.L.S. Mill Stopping Device
- 13 13.6'X3' Niagara Vibratory Screen
14. Fuller Rotary Valves
21. Eriez Star Magnetic Separator
22. Water Pump For (9)
23. Air Compressor For (9)
26. Exhaust Fan Pichardson 600 CR Fan 25HP Motor
27. Pressurising Unit For Mill Motor Room
28. Resistor Bank No. 1
29. Resistor Bank No. 2 30
30. Resistor Bank No. 3
31. Resistor Bank No. 4
32. Resistor Bank No. 5
33. Water Tank For (9)
34. Mill Motor Exhaust
35. E.E. Distribution Panel
36. A.E.I. Auxiliary Panel
37. A.E.I. Mill Motor Panel
38. F.L.S. Control Panel

Items which BHP does not intend to demount intact for BSCC Ltd. 40

(cont.) ....2....  
SJB:PL

....2....

disposal are:

1. Sample Bin & Scale At Pandan Feeder
2. Gypsum Hopper
25. Precipitator Exhaust

The remaining items will be demounted pipes etc. will be demounted and placed covered at an agreed location on BCSC Ltd property within 1.5km of the #0 Mill.


10

I trust this listing is in accord with your intentions.

Yours faithfully

Stephen J. Baker  
Project Engineer

Mr. Howes  
copy letter sent to BHP  
29/9

 21 September 1981

BHP Proprietary Co. Ltd.  
Central Engineering,  
Norplaza Building,  
169 - 185 Miller Street,  
NORTH SYDNEY, N.S.W. 2060

Dear Sirs,

10

CHARBON 'O' MILL

We accept your offer of \$180,000 for the purchase of the Charbon 'O' Mill. The conditions are generally as set out in your letter reference PEJ:SB:PL of the 11th September 1981, with the following amendments which were discussed with Mr. S. Baker at Portland House on 16th September.

1. The plant included in the sale is as listed in your letter of 18th September.
2. The spare parts list was not attached to your letter of 11th September but was delivered by hand. Availability of these parts has been confirmed. BHP will be responsible for collection of these parts from Berrima Works prior to completion of the sale. 20
3. Your condition (2) excludes chutes, conveyors, piping, flues etc from the plant to be stored. The bucket elevator, with casing, and screw conveyors are to be removed with due care and stored. The plant not to be stored, other than connecting pipework, ducts, chutes and air-slides is as shown on the marked-up drawing SO-TR-SO-5 which accompanied your letter of 18th September. 30
4. Reasonable access for removal of the mill will be arranged in accordance with your condition (3). The area available will be delineated by B.C.S.C. However, BHP or its sub-contractors will be responsible for any sitework necessary to effect the removal. Included in this requirement are:-
  - (i) preparation of hard standing for cranes. This may necessitate temporary covering of rail tracks which will have to be restored on completion.
  - (ii) relocation of the pipe supplying water to Charbon Colliery as necessary and maintain continuity of supply. 40

Cont'd...../2



- 2 -

5. The minor items of plant excluded from the sale and not required to be stored for B.C.S.C. shall be removed from the site and disposed of by BHP Engineering.
6. It is confirmed that there are no prior agreements or contracts which can be expected to impede removal of the mill and associated plant by BHP Engineering.
7. It is a condition of this sale that you are to indemnify us from and against any loss or damage incurred by us or claims for damage, loss or injury made by anyone else of whatsoever nature or kind arising from anything done or purported to be done arising out of our agreement. 10

One aspect of the sale which was not covered by discussion is the timing of the removal of the mill. You gave us to understand that it is a matter of some urgency. Assuring that the foregoing conditions are satisfactory, will you please advise the expected completion date when you place your formal order.

Finally, in our discussions we did not emphasise the need for your Engineers to discuss with our Engineers acceptable procedures to be followed for the removal of critical items such as the Separator and Precipitator. These procedures are not particularly onerous. 20

Yours faithfully,

K.W. BEZANT,  
GENERAL MANAGER - CEMENT  
PRODUCTION & TECHNICAL SERVICES.

KWB:EABF



# THE BROKEN HILL PROPRIETARY COMPANY LIMITED

(INCORPORATED IN VICTORIA - REGISTERED OFFICE: 140 WILLIAM STREET, MELBOURNE)

## CENTRAL ENGINEERING ~~Division~~

169-185 MILLER STREET,  
NORTH SYDNEY, N.S.W.  
DW: LF

P.O. BOX 1237  
NORTH SYDNEY, 2060.

Telephone (02) 929 8166  
Telex AA 25969

Date 9 October 1981

<p>Blue Circle &amp; Southern Ltd G P O Box 1571 SYDNEY NSW 2001</p> <p>Attn: Mr <del>K-W Bezaft</del> <i>K A Howes</i></p>
---

ORDER NUMBER	
<b>CE</b>	<b>4931</b>

Job No.: T10-7-20

Enquiry No.: --

Despatch per --  
To "IN SITU"

INVOICE TO BE POSTED TO: P.O. Box 1237, North Sydney, N.S.W. 2060.

ORDER NUMBER MUST BE SHOWN ON PACKAGE, PACKING SLIP AND INVOICE

IMPORTANT NOTICE: This order is given and delivery of the goods will be accepted only on the strict condition that the manufacturer and/or supplier has fully complied with all Australian Government Regulations and provisions.

SUBJECT: WANGI PILOT FACILITY - BALL MILL

This order is for the purchase of the following:

ITEM	QUANTITY	DESCRIPTION	FIXED PRICE
1	1 only	BALL MILL - Secondhand Smidth "Unidan" Cement Mill plus ancilliary equipment as detailed below	\$180,000.00

### BASIS OF ORDER

- a) BHP order no CE 4931 including attachment Nos 1 & 2.
- b) Blue Circle and Southern letters dated 10.8.81 and 21.9.81.
- c) BHP letters dated 28.7.81, 11.9.81 and 18.9.81.

### ITEMS INCLUDED IN PURCHASE

See attachment No 1 to order CE 4931 for a detailed list of items including spares as part of this order.

### CONDITIONS OF PURCHASE AND SCOPE OF WORK

See Attachment No 2 to order no CE 4931 for a detailed description of the Conditions of Purchase and the Scope of Work

### COMPLETION OF REMOVAL OF MILL

BHP Engineering anticipate that all the works described in this order and

Terms: 100% 30 days after completion Delivery: end April 1982 ...2/..

INSURANCE OUR CARE Point of Delivery: "IN SITU" AS IS WHEREIS

Sales Tax: Not Applicable

PRICE:  
Lump Sum \$180,000 Fixed

*RET*  
MANAGER - CENTRAL ENGINEERING - SYDNEY  
THE BROKEN HILL PROPRIETARY COMPANY LIMITED

SYD.-93.

160. Exhibit 3 - Order dated 9.10.1981

Exhibit 3 - Order dated  
9.10.1981

-2-

ORDER NO CE 4931 dated 9 October 81

---

its attachments will be completed by the end of April, 1982.

TERMS OF PAYMENT

The fixed Lump Sum for the mill and its associated equipment will be paid in full 30 days after the removal of all the equipment from B.C.S.C. Ltd property.

---



Exhibit 3 - Order dated  
-161. 9.10.1981

ATTACHMENT NO. 1 TO ORDER CE 4931

ITEMS INCLUDED IN PURCHASE OF #0 CEMENT MILL

Equipment and material being purchased from B.C.S.C. (item numbers are derived from schedule on B.C.S.C. drawing SO-TR-SO-5)

- |      |     |  |    |
|------|-----|--|----|
| Item | 3)  | Smidth Type BHk60 Pendan Weighfeeder No. 709603  |    |
|      | 4)  | Smidth Type BHk60 Pendan Weighfeeder No. 709604  |    |
|      | 5)  | Gypsum Belt Feeder   |    |
|      | 6)  | 8'6" x 33'5 ½" Smidth 'Unidan' Cement Mill<br>18.2 rpm, including charge weight of 61 tonnes | 10 |
|      | 7)  | TS1150 Symetre gearbox 1000 hp   |    |
|      | 8)  | A.E.I. Mill Motor 1100 hp, 733 rpm, 3 ph, 50<br>per 2200V.                                   |    |
|      | 9)  | Smidth Cement Cooler No. 704191  |    |
|      | 10) | F.L.S. Mill Stopping Device  |    |
|      | 13) | 3'3" x 6'6" Hover and Boecher "Niagara" Type<br>ME Cement Screen (3 mm or 4 mm screens)      |    |
|      | 14) | 3 off Fuller Rotary Valves   |    |
|      | 21) | Eriez Star Magnetic Separator  |    |
|      | 22) | Mono Pump V-belt drive   | 20 |
|      | 23) | Broom & Wade D13 Air Compressor plus<br>Vertical Air receiver                                |    |
|      | 27) | Air Filter for Motor Room including<br>Gregory Rollo-matic Filter                            |    |
|      | 28) | Resistor Bank No. 1  |    |
|      | 29) | Resistor Bank No. 2  |    |
|      | 30) | Resistor Bank No. 3  |    |
|      | 31) | Resistor Bank No. 4  |    |
|      | 32) | Resistor Bank No. 5  |    |
|      | 33) | Water Tank for internal water cooling equipment  | 30 |
|      | 34) | Mill Motor Exhaust Duct  |    |
|      | 35) | E.E. Distribution Panel  |    |
|      | 36) | A.E.I. Auxiliary Panel   |    |
|      | 37) | A.E.I. Mill Motor Panel  |    |
|      | 38) | F.L.S. Control Panel   |    |
|      | 39) | Spares, as per the listing on pages 2, 3 & 4<br>of this Attachment to order.                 |    |

Note: The spares are held at the Berrima Works of Blue Circle and Southern Ltd.

LIST OF SPARES FOR O MILL AT CHARBON

S CATALOGUE NUMBER	DESCRIPTION	UNIT	QTY
1 DRA0080	FLS MILL- GEAR WHEEL 70mm 1-11-362	ONLY	1
1 DRA0160	FLS MILL- PINION 70mm 819871	ONLY	1
1 DRA0240	FLS MILL- SCREW BLADE 532441	ONLY	26
1 DRC0080	FLS MILL- BOLT-ANVIL 25X825 CM486/3	ONLY	3
1 DRC0160	FLS MILL- BOLT-ANVIL 25X975 CM486/4	ONLY	2
1 DRC0240	FLS MILL- PACKING 7X800 315	ONLY	1
1 DRC0320	FLS MILL- HAMMER HEAD CM456/1	ONLY	6
1 DRC0560	FLS MILL- CHAIN WHEEL 5/8" 33T 495607	ONLY	1
1 DRC0640	FLS MILL- CHAIN WHEEL 5/8" 15T 585555	ONLY	1
1 DRC0720	FLS MILL- CHAIN WHEEL 5/8" 33T 495609	ONLY	1
1 DRC4000	FLS MILL-PLUG IN BULBS 24V 3W	ONLY	12
1 DRC4040	FLS MILL-ANGLES 267-13	ONLY	19
1 DRC4160	FLS MILL-PLASTIC BOXES 287-1	ONLY	1
1 DRC4400	FLS MILL-CONTACT LADDERS 480-7	ONLY	2
1 DRC4480	FLS MILL-RELAY COILS 110V	ONLY	1
1 DRC4520	FLS MILL-RELAY COILS 220V	ONLY	1
1 DRC4800	FLS MILL-COMPRESSION SPRINGS 106-74	ONLY	8
1 DRC5640	FLS MILL-MAGNET RECTIFIER EM2/4-83	ONLY	1
1 DRC5700	FLS MILL-THERMIC RELAYS 611	ONLY	1
1 DRC5800	FLS MILL-RESISTANCES 2500 OHMS MRA50	ONLY	1
1 DRC5840	FLS MILL-RESISTANCES 4000 OHMS MSA50	ONLY	2
1 DRC5880	FLS MILL-RESISTANCES 2500 OHMS MHB50	ONLY	1
1 DRC5900	FLS MILL-MAGNET TRANSFORMER SILMA3860	ONLY	1
1 DRC6080	FLS MILL-CARBON BRUSHES 81 881 25	ONLY	1
1 DRC6360	FLS MILL-DISCHARGE ELECTRODES 452650-27	ONLY	35
1 DRC6400	FLS MILL-HEATING ELEMENTS 376655	ONLY	1
1 DRC6440	FLS MILL-ERECTION OUTFITS 443741	ONLY	1
1 DRC6460	FLS MILL-SOLDER GLANDS	ONLY	1
1 DRC6500	FLS MILL-CON SUPPORT INSULATORS 417368	ONLY	1
1 DRC6580	FLS MILL-CABLE OIL	ONLY	5
1 DRC6600	FLS MILL-PACKINGS	ONLY	1
1 DRC6700	FLS MILL-PORCELAIN LEAD-INS	ONLY	1
1 DRC6900	FLS MILL-DIELECTRIC SHAFTS 355312A	ONLY	1
1 DRE0060	FLS MILL- GASKET-MANHOLE CM544	ONLY	8
1 DRE0160	FLS MILL- SCRAPER-RUBBER OIL 662900	ONLY	7
1 DRE0240	FLS MILL- RING-TIGHTENING CM462/2	ONLY	1
1 DRE0320	FLS MILL- INLET PIECE CM462/1	ONLY	1
1 DRE0400	FLS MILL- SCOOPING DEVICE CM463	ONLY	1
1 DRE0560	FLS MILL- LINING-SPLIT CM507	ONLY	1
1 DRE0640	FLS MILL- LIFTERS CM498	ONLY	10
1 DRE0720	FLS MILL- PIECE-SPLIT COLLECT CM517	ONLY	1
1 DRE0880	FLS MILL- LIFTERS CM501	ONLY	10
1 DRE0960	FLS MILL- SEAL RING-RUBBER 471158A	ONLY	1
1 DRE1040	FLS MILL- SEAL RING-RUBBER 471158B	ONLY	1
1 DRE1120	FLS MILL- DEVICE-SPLIT SCOOP CM523	ONLY	1
1 DRE1280	FLS MILL- SECTION 1/16 RET RING CM595	ONLY	1
1 DRE1360	FLS MILL- SECTION 1/8 RET RING CM496	ONLY	1

Exhibit 3 - Attachment to  
Order dated 9.10.1981

1	DRE1520	FLS MILL-	GLAND-SPLIT PACKING CM505	ONLY	2	
1	DRE2000	FLS MILL-	GRATE-DOUBLE PARTITN CM442	ONLY	8	
1	DRE2080	FLS MILL-	GRATE-SINGLE PARTITN CM447	ONLY	12	
1	DRE2160	FLS MILL-	GRATE-OUTLET HEAD CM444	ONLY	5	
1	DRE2240	FLS MILL-	GRATE-OUTLET HEAD CM449	ONLY	4	
1	DRE2320	FLS MILL-	PLATE-INLET HEAD LIN CM410	ONLY	7	
1	DRE2400	FLS MILL-	PLATE-INLET HEAD LIN CM470	ONLY	8	
1	DRE2480	FLS MILL-	PLATE-LINER CM415	ONLY	7	10
1	DRE2560	FLS MILL-	PLATE-MANHOLE LINER CM411	ONLY	1	
1	DRE2640	FLS MILL-	PLATE-MANHOLE LINER CM417	ONLY	4	
1	DRE2720	FLS MILL-	RING-ANNULAR CM645/1	ONLY	8	
1	DRE2800	FLS MILL-	RING-RETAINER CM436	ONLY	13	
						.../2
						3.
1	DRE2880	FLS MILL-	SECTOR-DOUBLE PART CM456	ONLY	8	
1	DRE4400	FLS MILL-LAMPS	3,5V 43C	ONLY	10	
1	DRE4600	FLS MILL-PHOTO	ELECTRIC UNIT COMPLETE	ONLY	1	
1	DRE5000	FLS MILL-POINTER	NEEDLE EXTENSIONS	ONLY	1	20
1	DRG0160	FLS MILL-	CHAIN TRANSPORT 101	ONLY	2	
1	DRG0280	FLS MILL-	WHEEL-CHAIN 65MM CM489/2	ONLY	2	
1	DRG0320	FLS MILL-	WHEEL-CHAIN 60MM CM489/1	ONLY	2	
1	DRG0400	FLS MILL-	INDICATOR-DEPLECT 717052	ONLY	1	
1	DRG0480	FLS MILL-	GEAR-PRECISION KOPP 2K125	ONLY	1	
1	DRG0560	FLS MILL-	GEAR-PRECISION KOPP 3K125	ONLY	1	
1	GRG0720	FLS MILL-	IRIS PLATE VA2 16V-0038-0C	ONLY	2	
1	DRG0880	FLS MILL-	IRIS PLATE VA4 128S-104	ONLY	1	
1	DRG4060	FLS MILL-CHAIN	ADJUSTERS	ONLY	1	
1	DRG4100	FLS MILL-ROLLER	CHAIN 8X3X5MM LONG	16 ONLY	1	30
1	DRG4150	FLS MILL-CONNECTING	LINKS	ONLY	1	
1	DRG4200	FLS MILL-MAGNET	COILS 110V 50C	ONLY	1	
1	DRG4400	FLS MILL-CONDENSORS	.05UF	H ONLY	2	
1	DRG5000	FLS MILL-INSERTS	COMPLETE	ONLY	1	
1	DRG5200	FLS MILL-DIODES	0A85	ONLY	6	
1	DRG5400	FLS MILL-CARBON	BRUSHES SE9	ONLY	6	
1	DRG5600	FLS MILL-CARBON	BRUSHES PM60	ONLY	5	
1	DRL0080	FLS MILL-	WORM SHAFT COMP. CM487/1	ONLY	1	
1	DRL0160	FLS MILL-	VANE-R.H. THREAD CM487/2	ONLY	1	
1	DRL0240	FLS MILL-	VANE-L.H.THREAD CM487/2	ONLY	1	40
1	DRL0320	FLS MILL-	VANE-CENTRAL CM487/3	ONLY	1	
1	DRL0400	FLS MILL-	SHAFT CM487/4	ONLY	1	
1	DRN0020	FLS MILL-	BUSH-SPACER CM552A/8	ONLY	34	
1	DRN0040	FLS MILL-	BUSH-SPACER CM552A/7	ONLY	13	
1	DRN0050	FLS MILL-	BUSH-SPACER CM552A/6	ONLY	8	
1	DRN0060	FLS MILL-	BUSH-SPACER CM491/2	ONLY	1	
1	DRN0160	FLS MILL-	BUSH-LOWER CM491/1	ONLY	1	
1	DRN0400	FLS MILL-	BOLT CM477/8	ONLY	6	
1	DRN0560	FLS MILL-	PLATE-WEARING CM502	ONLY	1	
1	DRN0580	FLS MILL-	PLATE-WEARING CM477/7	ONLY	20	50
1	DRN0720	FLS MILL-	SPRING-TENSION CM494	ONLY	1	

Exhibit 3 - Attachment to  
Order dated 9.10.1981

1	DRN0800	FLS MILL-	GEAR SET-BEVEL	584613	ONLY	1	
1	DRN0880	FLS MILL-	LABYRINTH SEAL	GK2213	ONLY	1	
1	DRN0960	FLS MILL-	LOUVER	CM519/1	ONLY	1	
1	DRN1040	FLS MILL-	LOUVER	CM519/2	ONLY	1	
1	DRN1120	FLS MILL-	LOUVER	CM519/3	ONLY	1	
1	DRN1440	FLS MILL-	DISC-SEPARATING	CM552A/4	ONLY	1	
1	DRN1700	FLS MILL-	VANE	CM477/2	ONLY	12	
1	DRP0080	FLS MILL-	SHOE-SUPPORTING	CM506	ONLY	1	10
1	DRP0160	FLS MILL-	SPRING-DISC	C/S67106	ONLY	4	
1	DRP0240	FLS MILL-	SHOE-GUIDE	CM513	ONLY	2	
1	DRP0320	FLS MILL-	MEMBRANE-GEAR		ONLY	12	
1	DRP0400	FLS MILL-	MEMBRANE-DRIVEN		ONLY	12	
1	DRP0480	FLS MILL-	BOLTS-MEMBRANE		ONLY	64	
1	DRP0560	FLS MILL-	REAMER-HAND 35,5MM DIA.		ONLY	1	
1	DPR0640	FLS MILL-	CARTRIDGES-FILTER		ONLY	7	
1	DPR0800	FLS MILL-	PINION-41T	GF24418	ONLY	1	
1	DRP0840	FLS MILL-	RIMS-INTER WHEEL	340T	ONLY	2	
1	DSA0120	BOLTS-DIAPHRAGM PLATE		R578	ONLY	45	
1	DSA0210	BOLTS-COVER PLATE		R133/1	ONLY	15	20
1	DSA0240	BOLTS-COVER PLATE		R133/2	ONLY	7	
1	DSA0420	BOLTS-LINER PLATE		R494/2	ONLY	3	
1	DSA0630	BOLTS-LINER PLATE		R141/1	ONLY	520	
1	DSA0660	BOLTS-LINER PLATE		R141/2	ONLY	58	
1	DSA0690	BOLTS-LINER PLATE		R548	ONLY	263	
1	DSA0720	BOLTS-MANHOLE DOOR PLATE		R138	ONLY	127	
1	DSA0900	BOLTS-MANHOLE DOOR PLATE		R567/1	ONLY	782	
1	DSA0930	BOLTS-MANHOLE DOOR PLATE		R567/2	ONLY	102	
1	DSA1000	BOLTS-ANGLE PLATE		CM418/31	ONLY	138	
1	DSA1030	BOLTS-ANGLE PLATE		CM418/32	ONLY	59	30
1	DSA1060	BOLTS-ANNULAR RING & GRATE		CM418/106	ONLY	103	
1	DSA1090	BOLTS-CLOSING PLATE		CM418/61	ONLY	7	
1	DSA1120	BOLTS-DIAPHRAGM PLATE		CM418/23	ONLY	127	
1	DSA1140	BOLTS-DIAPHRAGM PLATE		CM418/104	ONLY	60	
1	DSA1150	BOLTS-DIAPHRAGM COVER PLATE		CM418/21	ONLY	96	
1	DSA1180	BOLTS-DIAPHRAGM COVER PLATE		CM418/22	ONLY	83	
1	DSA1210	BOLTS-DISCHARGE END LINER PLATES		CM418/84	ONLY	72	

Ⓢ .../3

S CATALOGUE NUMBER	DESCRIPTION	UNIT	QTY	4.	
1	DSA1240	BOLTS-DISCHARGE END LINER PLATE	CM418/25	ONLY	40
1	DSA1270	BOLTS-DOUBLE PARTITION	CM418/81	ONLY	36
1	DSA1300	BOLTS-DOUBLE PARTITION	CM418/41	ONLY	17
1	DSA1330	BOLTS-DOUBLE PARTITION	CM418/71	ONLY	14
1	DSA1360	BOLTS-FEED END LINER PLATE	CM418/81	ONLY	73
1	DSA1450	BOLTS-GRATE & OUTER LINING	CM418/20	ONLY	69
1	DSA1480	BOLTS-INNER GRATE	CM418/210	ONLY	32
1	DSA1510	BOLTS-INNER LINER PLATE	CM418/28	ONLY	41
1	DSA1540	BOLTS-INNER LINER PLATE	CM418/51	ONLY	150
1	DSA1570	BOLTS-MANHOLE LINER PLATE	CM418/104	ONLY	20
1	DSA1600	BOLTS-MANHOLE DOOR PLATE	CM418/72	ONLY	122

Exhibit 3 - Attachment to  
Order dated 9.10.1981

Exhibit 3 - Attachment to  
Order dated 9.10.1981

1 DSA1630	BOLTS-FEED END LINER PLATE	CM418/11	ONLY	15
1 DSA1660	BOLTS-OUTER GRATE	CM418/26	ONLY	50
1 DSA1690	BOLTS-OUTER GRATE	CM418/29	ONLY	49
1 DSA1700	BOLTS-OUTER LINER PLATE	CM418/25	ONLY	50
1 DSA1710	BOLTS-OUTER LINER PLATE	CM418/27	ONLY	64
1 DSA1720	BOLTS-RETAINER RING	CM418/107	ONLY	47
1 DSA1740	BOLTS-STEPPED LINER PLATE	CM418/111	ONLY	52
1 DSA1750	BOLTS-WEARING PLATE	CM418/105	ONLY	58
1 DSA1780	BOLTS-WEARING PLATE	CM418/102	ONLY	292
1 DSA1810	BOLTS-WEARING PLATE	CM418/103	ONLY	193
1 DSA1900	BOLTS-STRONGBACK DOOR	CM418/108	ONLY	95

10





CONDITIONS OF PURCHASE

CHARBON #0 CEMENT MILL

The following conditions shall apply to the purchase of the #0 Mill and its associated equipment.

- a) The following equipment is to be carefully demounted, by BHP Engineering, and stored, covered, at a designated area on B.C.S.C. Ltd. property within 1.5 km of the #0 Cement Mill.

- |      |  |    |
|------|--|----|
| Item | 11) SPC 20" Sluicing Screw No. 1           | 10 |
|      | 12) Bucket Elevator                        |    |
|      | 15) F.L.S. Rotary Separator type VC        |    |
|      | 16) F.L.S. Cement Cooler                   |    |
|      | 17) 14" Tube Sluicing Screw No. 2          |    |
|      | 18) SPC 14" Delivery Screw No. 5           |    |
|      | 19) SPC 20" Return Screw No. 3             |    |
|      | 20) Cement Sampler                         |    |
|      | 24) F.L.S. Electrostatic Dust Precipitator |    |
|      | 26) Richardson Exhaust Fan                 |    |

- b) All remaining equipment within the mill building, including chutes, ducts and piping are to be removed from the mill site and disposed of by BHP Engineering. 20

- c) There are no prior agreements or contracts which will impede removal of the mill by BHP Engineering.

- d) B.C.S.C. Ltd. will give timely advice to the landholder, of the removal of the mill and associated equipment and will arrange for BHP Engineering or its sub-contractors reasonable access to, and movement around, the mill.

- e) BHP Engineering will maintain acceptable water supply to the B.C.S.C. Charbon Colliery during colliery working hours. Any disruption to supply will be made after consultation and agreement with the colliery manager. 30

- f) BHP Engineering will be responsible for all siteworks necessary to effect removal of the Mill and its associated equipment. Any temporary converging to rail tracks will be removed and the area restored on completion.

2.

g) BHP Engineering is to demolish the #0 Mill building annexure above concrete floor level, and to dispose of the resultant building material. This demolition includes:-

- 1) all plinths above floor level
- 2) all masonry walls above floor level excepting the walls separating #0 and #1 mill areas
- 3) all structural steelwork and cladding excepting that common to #0 and #1 mill areas,

10

but excludes reinforced concrete walls, floors and bunkers at the ball mill inlet end of the structure.

h) BHP Engineering will indemnify B.C.S.C. Ltd. from and against any loss or damage incurred by them or claims for damage, loss or injury made by anyone else of whatsoever nature or kind arising from anything done or purported to be done arising out of this order.





**BLUE CIRCLE  
SOUTHERN**

BLUE CIRCLE SOUTHERN CEMENT LIMITED

PORTLAND HOUSE 1 McLEAREN ST NORTH SYDNEY 2000 TELEPHONE 828 8200  
BOX 1571 G.P.O. SYDNEY 2071 CABLES PORTCEMENT TELLEX SYDCEM A42746G

12 October 1981

1

Mr. C.E. Good  
C/- Charbon Cement Works,  
CHARBON, N.S.W.

Dear Sir,

As you know the 'O' Mill situated on your land at Charbon is our property and we remind you of the written agreement between us whereby we are entitled to enter your land for the purpose of removing that Mill.

10

We understand that you have instructed your manager to refuse us entry and the purpose of this letter is to let you know that we will take steps to enforce our rights should that become necessary.

You are aware that we have agreed to sell the 'O' Mill and have given you adequate notice of our intention to remove it.

Should you therefore take any action to prevent us removing our property we will, in addition to any other rights we may have, hold you liable for any loss we incur arising in particular from our inability to deliver to the purchaser.

20

Yours faithfully,

W.M. Gale  
W.M. GALE,  
MANAGER - GROUP ENGINEERING.

WMG:EABF

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY  
EQUITY DIVISION

)  
)  
)  
)  
)  
)

No. 3739 of 1981

COLIN ELLIOTT GOOD

Plaintiff

STANDARD PORTLAND CEMENT COMPANY PTY.  
LIMITED

1st Defendant

10

BLUE CIRCLE SOUTHERN CEMENT LTD.

RCS CG

2nd Defendant

AFFIDAVIT

Deponent: Colin Elliott Good RCS CG  
Sworn:

I, COLIN ELLIOTT GOOD of c/- Cambridge Inn, 212 Riley Street,  
Surry Hills in the State of New South Wales, Cement Works  
Proprietor, says on oath:-

1. I am the proprietor of the Charbon Cement Works the par-  
ticulars of title to which are more particularly set out in the 20  
copy Contract annexed hereto and marked with the letter "A",  
which particulars also appear in the Summons filed herein.

2. Identical with the copy Contract annexed hereto and mark-  
ed with the letter "A" is a true photocopy of the Contract  
entered into between Standard Portland Cement Company Pty.  
Limited and myself on 3rd December 1979. This Contract was  
completed on or about the 22nd April 1981 at which time I paid  
the whole of the balance of purchase money in cash.

Exhibit 2 - Paragraphs 1 &  
2 of Affidavit of Colin  
Elliott Good

Contract For Sale of Land

Private Treaty

by

Public Auction

VENDOR'S AGENT.

Vendor's name, firm and occupation.

DESCRIPTION OF PROPERTY

All that part of Lot 2 County Roxburgh Parish Clandulla contained in Certificate of Title Volume 10757 Folio 171 in Deposited Plan 233552 and that part of Lot 2 in the same county and parish Certificate of Title Volume 3780 Folio 56 Deposited Plan 603460 as delineated in red on the plan annexed hereto.

AUCTION CONDITIONS - Upon a sale by auction:

- (a) the highest bidder shall be the Purchaser. In case of any dispute the property shall be put up again at any former bidding and no bidding shall be retracted.
(b) the sale is subject to a reserve price and the right to bid is reserved on behalf of the Vendor.
(c) upon the fall of the hammer the Purchaser shall sign the following agreement the conditions of which, with these conditions, are the conditions of the sale by auction.

AGREEMENT made the

3rd

day of

December

1979

BETWEEN STANDARD PORTLAND CEMENT COMPANY PTY. LIMITED of 1 McLaren Street, North Sydney

Vendor's name, firm and occupation.

(herein called the Vendor) of the one part

AND COLIN ELLIOTT GOOD of 19 Adrian Street Welshpool Western Australia

Hammer's name, firm and occupation.

(herein called the Purchaser) of the other part

WHEREBY the Vendor agrees to sell and the Purchaser agrees to purchase, if more than one as JOINT TENANTS/TENANTS IN COMMON IN THE FOLLOWING SHARES:

Lot is not cable

with joint and several liability under this agreement, the property above described (herein referred to as "the property") for the sum of Eighty five thousand dollars

(85,000)

upon and subject to the following terms and conditions:-

1.- The Purchaser shall upon the signing of this agreement pay as a deposit to the Vendor's Agent herein named or his substitute the sum of

(8,500)

which shall vest in the Vendor upon and by virtue of completion and which shall be accounted for to the Vendor upon receipt of the deposit from the Purchaser or his Solicitor authorizing such payment. The deposit may be paid by cheque but if the cheque is not honoured on presentation the Purchaser shall immediately and without notice be in default under this agreement.

The balance of the purchase price shall be paid as stipulated in the First Schedule hereto. Any moneys payable to the Vendor hereunder by the Purchaser or the Agent shall be paid to the Vendor's Solicitor or as he may direct in writing.

Lot is not cable

2.- The title to the land is under.

THE REAL PROPERTY ACT, 1900, (not being Qualified Title or Strata Title)

STRATA TITLE (Conveyancing (Strata Titles) Act, 1961)

OLD SYSTEM

QUALIFIED TITLE (Part IVA of the Real Property Act and Old System)

CROWN LANDS (CONSOLIDATION) ACT, 1912

OTHER ACT RELATING TO CROWN LANDS, namely

3.- After the date of this agreement and within a reasonable time after written request by the Purchaser or prior thereto if the Vendor so desires the Vendor shall furnish to the Purchaser a written statement of his title which shall comprise:-

(a) FOR LAND UNDER THE REAL PROPERTY ACT (including Strata Title): particulars of title and the form of any restrictive covenant easement or other interest to be created by the transfer sufficient to enable the Purchaser to perfect the transfer. The Purchaser shall not be entitled to an abstract of any document affecting the title. Any instrument in respect of which a caveat is entered on the register shall, if in the possession of the Vendor or of any mortgagee of the property, be produced to the Purchaser free of charge;

(b) FOR LAND UNDER OLD SYSTEM TITLE: a proper abstract of his title together with the form of any restrictive covenant easement or other interest to be created by the conveyance of or the registration of or during a proper abstract of the Vendor's title may as to relevant documents to be abstracted consist of copies of the documents themselves legible) of such documents PROVIDED THAT where the abstract is a photographic copy of a document the Vendor shall furnish as part of his abstract and in addition to the foregoing requirements a chronological index of all the facts events and documents which comprise his title stating as regards the documents to be so indexed brief particulars of -

(i) the date of the document, (ii) its general nature; (iii) the parties to the document, and (iv) its registration details.

Exhibit 2 - Annexure "A" to the Affidavit of Colin Elliott Good

The Vendor shall not be called upon to abstract the Crown Grant unless it is the only good root of title or to abstract produce or for a covenant to produce any deeds or documents in support of the title or in verification of the abstract which are not in the power of the Vendor or of any mortgagee of the property. No objection shall be made to the execution of any document under a power attorney authorizing its execution;

- (c) FOR LAND UNDER QUALIFIED TITLE: paragraph (a) of this clause shall apply to that part of the title evidence instruments registered under the Real Property Act and paragraph (b) shall apply to that part of the title not so evidenced;
- (d) FOR LAND UNDER ANY ACT RELATING TO CROWN LANDS: particulars of title sufficient to enable the Purchaser to prepare his transfer and an abstract of title as provided in paragraph (b) of this clause in respect of the relevant facts the documents of title which are not in a form prescribed by or pursuant to the Act under which the land is held and form of any restrictive covenant easement or other interest to be created by the transfer or conveyance;
- (e) FOR LAND UNDER MORE THAN ONE TITLE: a statement of title shall not be complete until furnished in respect of each title to the property.

4.- The Purchaser shall be deemed to have waived any objection or requisition which he has not made and delivered to the Vendor within twenty-one days after the delivery of the Vendor's statement of title. Within twenty-eight days from the delivery of the Vendor's statement of title the Purchaser shall at his own expense tender to the Vendor for execution the appropriate assurance of the proper procedure however that if the assurance requires the consent of the Minister for Lands or other prescribed authority the time for tender thereof under this clause shall be the twenty-eighth day period aforesaid or fourteen days from the notification to the Purchaser of consent having been granted, whichever is the later.

5.- No error or misdescription of the property shall annul the sale but compensation if demanded in writing before completion but not otherwise shall be made or given as the case may require, the amount to be settled in case of a difference by an arbitrator appointed by the parties by mutual agreement or failing agreement nominated by the President for the time being of The Law Society of New South Wales, Clause 15 hereof shall not apply to any such claim for compensation.

insert "the completion" or other agreed date.

6.- The Vendor shall be entitled to the rents and profits and shall pay or bear all rates taxes and outgoings up to and including the date of completion from which date the Purchaser shall be entitled to and shall pay or bear the same respectively and any necessary apportionment thereof shall be made and adjusted. Where the Vendor has paid or is liable to pay land tax on the property for the year current at the date of apportionment to the Commissioner of Land Tax or to a predecessor in title the amount to be apportioned as land tax under this clause be the sum which would have been payable by the Vendor for land tax on the property as used by him if the property had been owned by him at midnight on 31st December then last past and the Vendor were a natural person.

7.- No objection or requisition or claim for compensation shall be made by the Purchaser in respect of any of the following matters:

- (a) the ownership or location of any dividing fence as defined by the Dividing Fences Act, 1951;
- (b) any water supply or sewerage or drainage service to the property being a joint service with any other property, the water supply sewerage or drainage pipes or connections for the property passing through other land or the water supply sewerage or drainage pipes or connections for any other land including mains or pipes of any water sewerage or drainage authority) passing through the property;
- (c) any wall being a party wall in any sense of that term;
- (d) any exception reservation or condition contained in any relative Crown Grant;
- (e) the existence of any other exception or reservation the substance of which is disclosed in the Second Schedule hereto;
- (f) the existence of or departure from the terms of any easement or restrictive covenant affecting the property provided that the substance of any such easement or restrictive covenant is disclosed in the Second Schedule hereto.

8.- If the property is sold subject to the provisions of the Strata Plan under the meaning of the Conveyancing Act, 1900, or this clause called "the Act") then the Purchaser shall take title subject to the provisions of the Act and the Regulations thereunder in general and in particular to the following matters:-

STRATA TITLE - SUBSTITUTED CLAUSE 8 TO BE ANNEXED

- (a) the by-laws of the Body Corporate created or to be created by virtue of the registration of the Strata Plan as contained in the First and Second Schedules to the Act subject only to such conditions variations or deletions as are in substance disclosed in this agreement;
- (b) clause 7 of this agreement shall be read as applying equally to the property and to the parcel (as defined by the Act);
- (c) For the purposes of this agreement:
  - (i) "outgoings" shall include contributions to the Body Corporate pursuant to Section 15 (2) of the Act;
  - (ii) unless and until separate assessments of rates and taxes are issued in respect of the said lot of lots by the relevant authorities all necessary adjustments between the parties (whether on or after completion) shall be made on the basis that the lot shall be liable to that proportion of any such rates taxes and outgoings (other than land tax) as or assessed against the parcel (as defined by the Act) as a whole which the unit entitlement of each lot or lots bears to the total entitlement of all lots comprised in the Strata Plan; and
  - (iii) unless and until contributions under Section 15 (2) of the Act are fixed outgoings paid by the Vendor which properly be the subject of such contributions when fixed shall be adjusted between the parties on the same basis as provided in paragraph (ii) of this sub-clause.
- (d) If the Strata Plan has not been registered the Vendor shall take all necessary steps to have it registered and complete this agreement is subject to the Plan being registered within a reasonable time after the date hereof or such other time may be specified expressly or by necessary implication in this agreement.
- (e) The Purchaser shall not make any objection requisition or claim in respect of:
  - (i) any minor variations as regards the subject lot between the Strata Plan produced to the Purchaser and the Strata Plan as registered which may be required by any statutory authority or by the Registrar-General;
  - (ii) any minor alterations which may be required by any statutory authority or by the Registrar-General in the size location or unit entitlement of any lot or lots in the Strata Plan (other than the subject lot) or in or to the common property provided that the proportionate unit entitlement of the subject lot shall not thereby be varied;
- (f) notwithstanding any rule of law or equity to the contrary the risk of the property shall not pass to the Purchaser until completion;
- (g) the property is sold subject to a warranty that the Vendor is not aware of:
  - (i) any actual or contingent liabilities of the Body Corporate of the said Strata Plan (other than for normal operating expenses); or
  - (ii) any defects (whether patent or latent) in the common property which may involve the said Body Corporate in expenditure of money for repair or replacement (other than for ordinary wear and tear);
- (h) without prejudice to any rights arising under the last preceding sub-clause if it should be established that there is any actual or contingent liability of the Body Corporate of the said Strata Plan (other than for normal operating expenses) the Vendor shall be liable to indemnify the Purchaser therefrom.

9.- (a) if the property sold is land under Qualified Title, notwithstanding the provisions of the Real Property (Conveyancing) Title Amendment Act, 1967, and save as herein otherwise provided expressly or by necessary implication the provisions of the Conveyancing Act, 1919, which do not apply exclusively to land under the provisions of the Real Property Act, 1900, shall be deemed to apply, mutatis mutandis, to that part of the title of the land subject to this agreement which is not evidenced by instruments registered under the provisions of the Real Property Act, 1900.

(b) if the Purchaser so requires the Vendor shall in addition to any transfer and conveyance of his title...

\*Delete words not applicable.

10.- If the property sold is land under any Act relating to Crown Lands:

- (a) if the time for issue of a certificate of conformity has passed the Vendor shall at his own expense produce the certificate or an official letter stating that the certificate was issued;
- (b) land held under a purchase tenure is sold subject to freehold tenure to the Crown to complete the purchase when the same is subject to payment by the Purchaser of the purchase price then the Vendor shall pay any rates and interest shall be apportioned as an outgoing under clause 6 hereof;
- (c) the rent of the land held under a leasehold tenure shall be apportioned as an outgoing under clause 6 hereof.

11.- The Vendor shall apply for any necessary consent of the Minister for Lands or other prescribed authority for the transfer of property or any part of it whether still under Crown tenure or not and shall pay all costs and fees (other than those of the Purchaser's Solicitor) in respect thereof. The Purchaser shall jointly and severally with the Vendor and the Vendor shall jointly and severally with the Purchaser be bound to join in the application with which either if such consent is refused either party may rescind this agreement. If consent is refused subject to any condition with which either party may be unable or reasonably unwilling to comply that party may give to the other party in writing that the condition is not acceptable to him and thereupon the consent shall be deemed to have been refused provided that the Vendor on his own election

SPECIAL CONDITIONS

1. After exchange of contracts the Purchaser shall be at liberty to move into possession of the subject property under licence at a licence fee of \$1 per week payable on completion (if demanded) and in that event shall pay all rates taxes and outgoings payable in respect of the property. 10
2. The Purchaser may upon taking possession of the property erect buildings thereon but in the event that this contract is rescinded then he shall be entitled to remove the same at his expense but shall not be entitled to any additional compensation.
3. The Vendor shall use its best endeavours to ensure that Buyers of its equipment situated on the property remove the same within six weeks from the date hereof provided that No. 3 kiln may remain thereon for a period twelve months from the date hereof and in the event that completion is effected before the said kiln is removed the Purchaser covenants to allow the Vendor or its nominee reasonable access for the purpose of removing the same. 20
4. The Vendor will at its expense in all things arrange for the preparation and registration of a plan of subdivision of the land owned by it to enable it to obtain a separate title for the land hereby sold and the Purchaser waives any rights he might have hereunder for compensation or otherwise in the event that major alterations to the land shown hatched red in the annexure hereto are required by any competent authority to allow registration of the said plan but nothing in this clause contained shall be construed so as to oblige the vendor to sell land outside the boundaries of the area hatched red on the plan hereto. 30
5. This Agreement is subject to registration by the Registrar General of the plan referred to in Clause 4 hereof and completion shall be effected seven days after notification to the Purchaser that the Registrar General has registered the said Plan. 40
6. The Purchaser as to the land hereby sold and with intent to bind all persons in whom the said land shall for the time being be vested but not so as to be personally liable under this covenant after he has parted with all interest in the said land hereby covenants with the Vendor not to use or permit to be used any part of the said land for the purpose of making cement, limestone or clinker and it is hereby agreed and declared that the

Exhibit 2 - Annexure "A"  
to the Affidavit of Colin  
Elliott Good

land which is subject to the burden of the restrictions hereinbefore set out is the land hereby sold and the land to which the benefit of such restrictions is appurtenant is Lot 2 on Deposited Plan 233552 being the land contained in Certificate of Title Volume 10757 Folio 171 and Lot 2 on Deposited Plan 603460 being part of the land contained in Certificate of Title Volume 3780 Folio 56.

10

7. The Vendor reserves to itself in fee simple out of the property sold as appurtenant to both areas referred to as Lot 2 in Clause 6 hereof full and free right of using all drains power and water supply pipes now in or over the property with power at any time upon giving previous reasonable notice to enter upon the property sold to make lay repair cleanse and maintain any pipes or drains.



8. The Purchaser agrees that he will not make any objection, requisition or claim for compensation in receipt of any building not wholly within the bounds of the property hereby sold.

20

9. Should completion be effected before the expiration of twelve months from the date hereof the Purchaser will grant the Vendor licence to enter upon the property for the purpose of removing the '0' Mill situated thereon such removal to be effected in any event within twelve months from the date hereof.

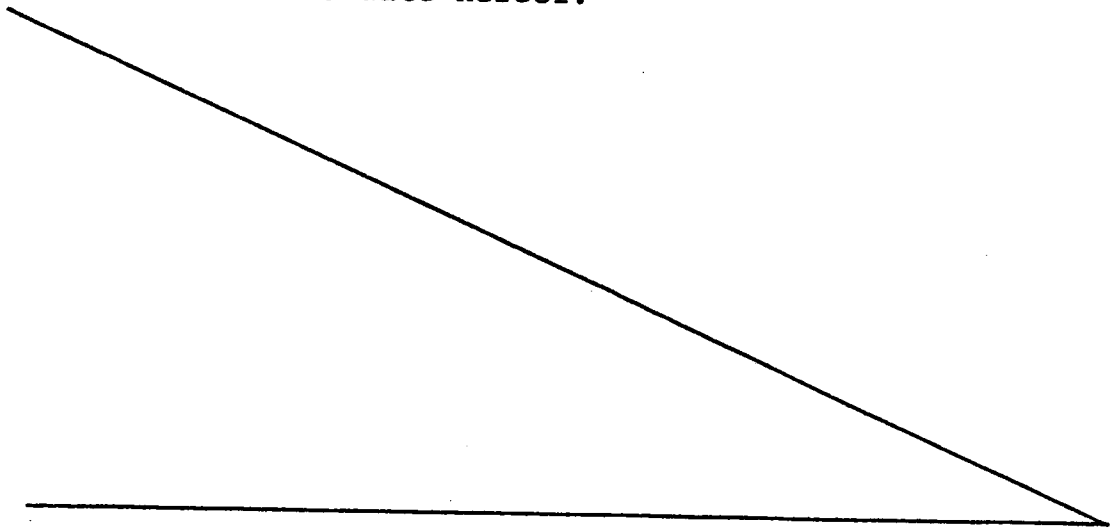
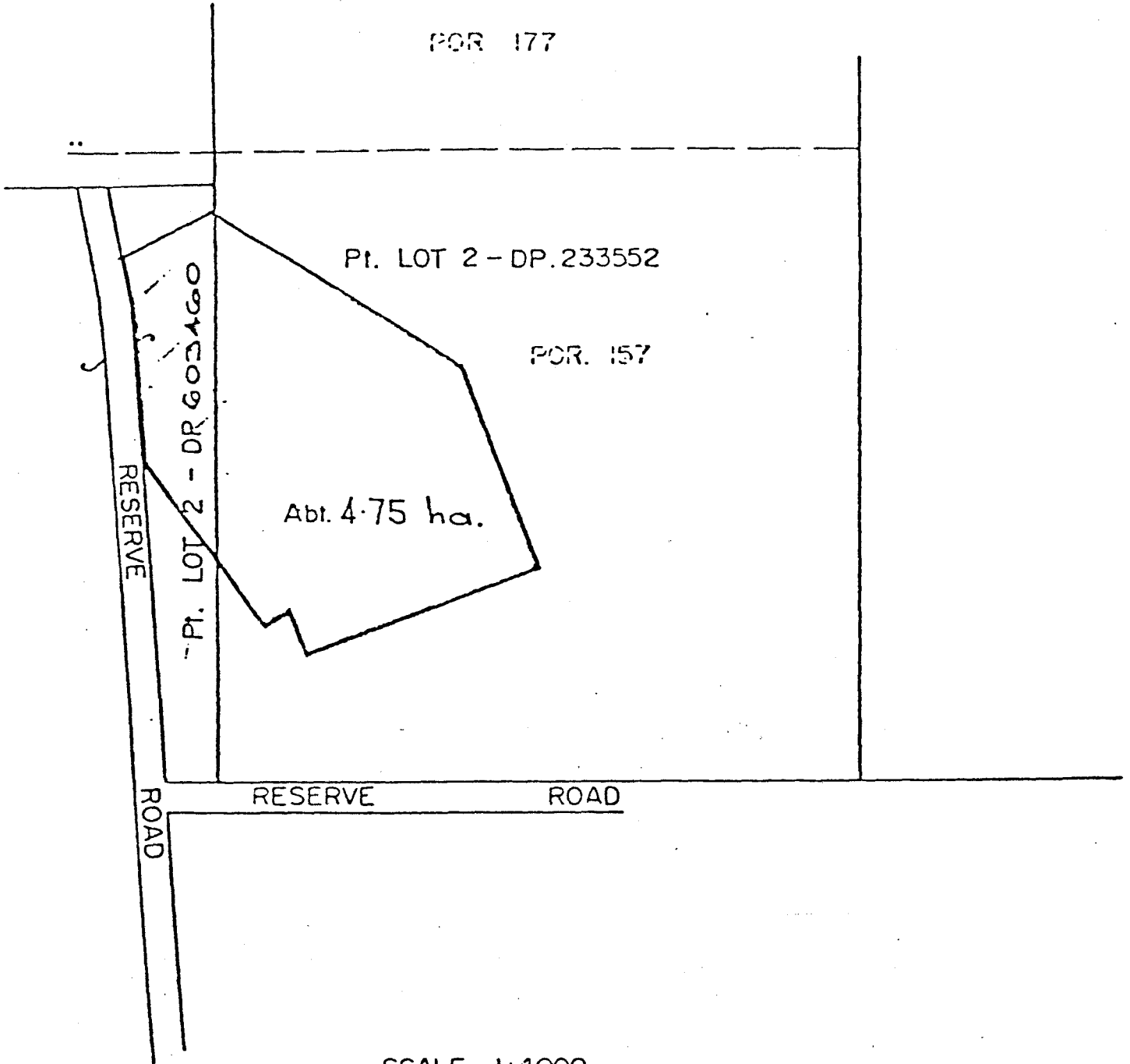


Exhibit 2 - Annexure "A"  
to the Affidavit of Colin  
Elliott Good



Parish of Clandulla  
COUNTY OF ROXBURGH



SCALE 1:4000



Exhibit 2 - Annexure "A"  
to the Affidavit of Colin  
Elliott Good

alternative to making application for the consent of the Minister or other authority as aforesaid at his own expense make application to the Minister pursuant to the provisions of the Crown Lands and Other Lands (Amendment) Act, 1970, for a certificate under section 13 of the Minister enabling the property to be transferred without such consent.

11.- The Vendor shall not whether before or after completion be bound to contribute to the erection or cost of erection of any fence or wall between the property and any adjoining land owned by the Vendor. If so required the Purchaser shall include in the conveyance or transfer a restrictive covenant on his part in such form as the Vendor shall reasonably require for the benefit of the adjoining land of the Vendor, binding himself and his successors in title, which will exempt the Vendor and his successors in title from liability to make or pay any such contribution.

12.- The property is sold  
\*with vacant possession  
~~with vacant possession~~  
the benefit of which shall be given to the Purchaser ~~with vacant possession~~ on completion.

14.- The requirements existing at the date of this agreement of any valid notice issued prior to the date of this agreement by any competent authority or by an owner or occupier of land adjoining the property necessitating the doing of work or expenditure of money on or in relation to the property or any footpath or road adjoining the same must be fully complied with by the Vendor prior to completion and any such requirements not existing at the date of this agreement must subject to completion of this agreement be complied with by the Purchaser who shall indemnify the Vendor in respect thereof. Nothing herein contained shall release the Vendor from liability in respect of any work done prior to the date of this agreement upon the property or upon any footpath or road adjoining the same and the Vendor agrees to indemnify the Purchaser against all liability in respect thereof notwithstanding the completion of this agreement. If without default of the Purchaser this agreement is rescinded the Vendor shall repay to the Purchaser any amount expended by the Purchaser in complying with any such requirement which was in the nature of capital expenditure or has resulted in a benefit to the Vendor.

15.- If the Vendor shall be unable or unwilling to comply with or remove any objection or requisition which the Purchaser has made and shall not have waived within 14 days after the Vendor has given him notice of intention to rescind this agreement the Vendor, whether he has or has not attempted to remove or comply with the objection or requisition and notwithstanding any negotiation or litigation in respect thereof and whether the Purchaser has or has not taken possession, shall be entitled by notice in writing to rescind this agreement.

16.- If the Purchaser defaults in the observance or performance of any obligation imposed on him under or by virtue of this agreement the deposit paid by him hereunder, except so much of it as exceeds 10% of the purchase price, shall be forfeited to the Vendor who shall be entitled to terminate this agreement and thereafter either to sue the Purchaser for breach of contract or to resell the property as owner and the deficiency (if any) arising on such resale and all expenses of and incidental to such resale or attempted resale and the Purchaser's default shall be recoverable by the Vendor from the Purchaser as liquidated damages provided that proceedings for the recovery thereof be commenced within 12 months of the termination of this agreement. The Vendor may retain any money paid by the Purchaser on account of the purchase other than the deposit money forfeited under this clause as security for any deficiency arising on a resale or for any damages or compensation (including any allowance by way of occupation fee or for rents or profits from a Purchaser who has been in possession of the property or in receipt of the rents or profits thereof) awarded to him for the Purchaser's default provided that proceedings for the recovery of such damages or compensation be commenced within 12 months of the termination of this agreement.

17.- Should it be established that at the date of this agreement the property was affected by any one or more of the following:  
(a) any provision of any planning scheme, whether prepared or prescribed, or any interim development order made under the provision of the Local Government Act, 1919;  
(b) any Residential District Proclamation under Section 309 of the Local Government Act, 1919;  
(c) any proposal for realignment widening siting or alteration of the level of a road or railway by any competent authority;  
(d) any mains or pipes of any water sewerage or drainage authority passing through the property;  
(e) any provisions of or under the Mines Subsidence Compensation Act, 1961;  
(f) ~~any other~~

any other item referred to be closed in Fourth Schedule

and the substance of such affectation is not disclosed in the Fourth Schedule hereto, then the Purchaser shall be entitled to rescind this agreement but shall not be entitled to make any other objection requisition or claim for compensation in respect of any such matter. Any right of the Purchaser to rescind under this clause shall be exercised by notice in writing given to the Vendor prior to completion. In relation to paragraph (c) hereof, the property shall be deemed to be affected by a proposal if the Purchaser produces a written statement of the authority concerned, the substance of which is other than that the property is not affected by any proposal of the authority.

18.- If before transfer of title the Purchaser is given the benefit of possession of the property then until transfer of title:  
(a) he shall not let or part with possession of or make any structural alteration or addition to the property;  
(b) he shall  
(i) keep the property in good repair having regard to its condition at the date of possession and permit the Vendor or his agent at all reasonable times to enter and view the state of repair;  
(ii) keep all buildings fully insured against fire or as the Vendor may reasonably require and deliver the policy and renewal receipts to the Vendor; and outgoings  
(iii) punctually pay all rates and taxes on the property and any necessary apportionment shall be made at the date provided in clause 6 or the date of possession whichever is the earlier; and  
(iv) comply with the provisions of all statutes and regulations and of any instrument or covenant or order affecting the property.

If the Purchaser shall make default in any of these obligations the Vendor may without notice make good the default and without prejudice to his other rights may recover from the Purchaser as a debt the cost of so doing with interest thereon on 10% per annum until repayment and such amount and interest shall until repayment be a charge on the property.

19.- Where the balance of the purchase price is payable by instalments before transfer of title:  
(a) If default by the Purchaser in payment of any instalment of the purchase price or interest hereunder shall continue for four weeks (in this respect time being of the essence) the balance of the purchase price then owing with accrued interest shall immediately without notice to the Purchaser become due and payable irrespective of the transfer of title;  
(b) the Purchaser shall not be required to tender the assurance as stipulated in clause 4 hereof but shall tender it within 14 days after making the final payment hereunder; and  
(c) the deposit shall be accounted for under clause 1 of this agreement and any necessary authority in that regard shall be given forthwith on the signing of this agreement.

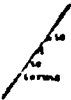
20.- If this agreement is rescinded (as distinct from terminated) pursuant to any express right to rescind (as distinct from a right to terminate) conferred by this agreement the rescission shall be deemed to be a rescission ab initio, and  
(a) the deposit and all other money paid by the Purchaser hereunder shall be refunded to him;  
(b) neither party shall be liable to pay the other any sum for damages costs or expenses; and  
(c) if the Purchaser is or has been in occupation or in receipt of the rents or profits of the property he shall account for or pay to the Vendor the net rents and profits received or a fair occupation rent for the property (whichever is the greater) until the date of rescission but the Vendor shall give the Purchaser credit for any interest paid by the Purchaser and the resulting balance payable by the Purchaser may be deducted by the Vendor from the deposit and other money before returning the same to the Purchaser.

21.- Where herein used words importing the singular number or plural number shall include the plural number and singular number respectively and words importing the masculine gender shall include the feminine or neuter gender.

22.- (a) Service of any notice or document under or relating to this agreement:  
(i) may be effected as provided in Section 170 of the Conveyancing Act, 1919; and  
(ii) shall be sufficient service on a party if effected on his solicitor in any manner provided in that section.  
(b) A notice given or document signed and served on behalf of any party hereto by his solicitor shall be deemed to have been given or served by that party personally.

23.- Schedule III of the Conveyancing Act, 1919, shall not apply to this agreement.

Exhibit 2 - Annexure "A"  
to the Affidavit of Colin Elliott Good



\*In cash on completion

THE SECOND SCHEDULE

The covenants, conditions, stipulations, etc. (Clause 7).

The covenants conditions and stipulations contained in the Crown Grants.

THE THIRD SCHEDULE

Tenancies for Occupancies (Clause 13).

Part Occupied	Tenant's Name	Nature of Occupancy	Rental
---------------	---------------	---------------------	--------

NIL.

THE FOURTH SCHEDULE

Zoning etc. (Clause 17). \*delete if not applicable.

\*The property is affected as shown in the copy certificate under Section 342AS of the Local Government Act, 1919 annexed hereto.

The property is zoned Non-Urban "A".

SIGNED by the Vendor in the presence of

*[Handwritten signature]*  
Vendor

SIGNED by the Purchaser in the presence of

Purchaser

Witness

Witness

Purchase Price \$85,000  
 Deposit 8,500  
 Balance \$76,500

Vendor's Solicitor J. K. Smith, 1 McLaren Street, North Sydney, 2060, Tel. No. 19290200

Purchaser's Solicitor Noel Dennis & Co., 188 George Street, Sydney, Tel. No. 278331

R. T. Kelly Pty. Ltd., Printers, 470 Elizabeth St., Sydney, ONLY AUTHORISED PRINTERS FOR THIS COPYRIGHT FORM.

Exhibit 2 - Annexure "A"  
to the Affidavit of Colin Elliott Good

"B"

CREST BLUE CIRCLE  
SOUTHERN SOUTHERN

BLUE CIRCLE SOUTHERN CEMENT  
LIMITED

Portland House 1 McLaren St North Sydney 2060 Telephone 929 0200  
Box 1571 GPO Sydney 2001 Cables PORTCEMENT, Telex SYDCEM AA 22466

3 September 1980

Mr A C Good  
C/- Charbon Cement Works  
CHARBON NSW

Dear Colin

I refer to our discussions on the 29 August 1980 and wish to confirm the following:- 10

- (a) You are requested to take immediate action to arrange for the removal of the plant and equipment being purchased by you at our Maldon Cement Works.
- (b) Provided BCSC is satisfied with your performance in removing the equipment purchased by you at our Maldon Cement Works, we will be prepared to enter into a contract with you for the removal of the "O" mill from Charbon Cement Works.
- (c) You were to forward me a letter confirming that there would be no change in your quotation for the cost of removing the "O" mill regardless of whether the point of delivery is Berrima or Maldon. 20
- (d) Your alternate proposal for financial contras for the cost of removing the "O" mill against the balance of payments owing under the contract for the Charbon plant, etc, is not acceptable.
- (e) The Hartley County Council have indicated to us that the isolation of the power supply at Brogans Creek Quarry should be completed on or about the 12 September and as such we have given notice to Murdoch & Co to be ready to remove the maintenance shed from site. 30
- (f) Ledger Demolition Co have also been contacted and have been given notice to complete their obligations under the contract for the sale of the No. 3 kiln.
- (g) Notice will also be given to Mr L. Savage for him to remove the remaining plant from site but I understand from our discussions that you have the contract with Mr Savage for the removal of plant. On that basis, we would be pleased if you would ensure that the appropriate action is taken to complete this contract as soon as possible. 40

Exhibit 2 - Annexure "B"  
to the Affidavit of Colin

Exhibit 2 - Annexure "B"  
to the Affidavit of Colin  
Elliott Good

- (h) Mr M. Newell will contact the Mines Department and will let you have a written specification of work which is required to be completed for the removal of plant, etc, from land used by BCSC under various mining leases.

.....2

Mr A C Good

-2-

3 September 1980

- (i) A plan of sub-division for Charbon Cement Works is expected to be available this week and as advised Mr M Newell will ensure that this plan reaches the Rylstone County Council in time for it to be presented to the next Council meeting. 10

We also discussed the question of the next quarterly payment due under the contract for the purchase of plant and equipment at Charbon and you indicated you would contact us on Monday, 1st September, regarding payment.

Your urgent attention to the above matters would be appreciated.

Yours sincerely

20

K Howes

K A Howes  
Assistant Director - Finance &  
Administration

This and the preceding page is the annexure marked "B" referred to in the Affidavit of COLIN ELLIOTT GOOD sworn at Sydney this 13th day of October 1981 before me:

S. Bennett

-----  
A Justice of the Peace.