

CROWN SUB-DIVISION

Crown sub-division is the original division of land into Crown allotments, sections, parishes, etc.

Crown sub-divisions are the original surveys performed in Victoria by Licensed Surveyors employed by the Department of Crown Lands and Survey; these surveys are generally concerned with the sub-division of Crown Land into broad acres, and with the creation of government roads.

NORMAL SUB-DIVISION

The private licensed surveyor is extensively involved in "normal" sub-division. There are various controls over the manner in which land can be sub-divided.

Firstly, as mentioned before, the surveyor must perform a title survey of the area, so that the original land boundaries may be re-established. He may then divide the land into residential, industrial or commercial allotments. During this process the surveyor is required to ensure that each allotment conforms to certain minimum dimensions. For example, each lot must conform to a minimum frontage, minimum depth and minimum area. The surveyor must also ensure that each lot is of such a shape that it is feasible to erect a dwelling, a factory, or shop upon it.

Roads have to be of a minimum width as determined by the Health Act.

If the area to be sub-divided is of considerable size, and there would therefore be a large number of lots, the surveyor must strike a balance between obtaining a maximum number of allotments for his client and implementing the basic concepts of good sub-divisional design. It is obvious that the larger the number of lots, the more profit will accrue to the developer, yet if sound planning principles are not employed, the overall standard of the development will fall, and so will the value of each allotment. Consequently, there would appear to be a *break even* point, where going beyond a certain number of lots would not be economic because any advantage gained from this would be offset by the overall fall in value of each lot.

From many points of view, the basic road pattern is also an important aspect of sub-divisional design. The road pattern must provide convenient access to all allotments in the sub-division, but it must do so in a way which does not create traffic hazards. Four-way intersections, or encouragement of through traffic to use the roads as alternatives to main thoroughfares, are undesirable. An additional factor requiring careful consideration is the *cost* of road construction. This is important in a sub-division which has an extensive road pattern. If the sub-division is designed with a road pattern that is considered wasteful, then the cost of development, and consequently the cost of allotments, will be unnecessarily increased.

In addition to these design concepts of a sub-division, the surveyor must provide a sufficient number of reduced levels over the area, usually at the corner of each lot, so that road, drainage, sewerage and other services design can proceed. When the plan of sub-division is being prepared, the surveyor must make provision for the placement of these services by the creation of easements. These may be easements of way, drainage or sewerage, and they are usually created as an integral part of the sub-divisional design.

The surveyor must prepare the plan of sub-division in a manner which is acceptable to local authorities as well as to the Office of Titles. When the plan has been prepared, it must be submitted to the local municipality for approval. Prior to this submission of the formal plan of sub-division, the surveyor may have had many discussions with council officers over aspects of the development and the surveyor would most likely have submitted a tentative plan of sub-division to the council for comment and criticism.

Upon receipt of the formal plan the municipality is required, under the legislation of the *Local Government Act*, to circulate a copy of the plan to all concerned authorities, such as the sewerage and water authority, gas, electricity, fire and telephone authorities, and other organisations which the council considers are interested in the development.

Within 100 days of receipt of the plan, the municipality must either approve it, or alternatively, not approve it and state the reasons for this action. Section 569 of the Victorian *Local Government Act* enumerates these reasons.

Assuming that the plan is approved by the council, it may then be lodged for registration at the Office of Titles under Section 97 of the Victorian *Transfer of Land Act*. The Office of Titles will examine the application, including a mathematical examination of the plan of sub-division and the copy of the surveyor's fieldnotes. Upon approval by the Office of Titles, the separate certificates of title for each lot will be issued and the lots may be offered for sale. It should be noted that it is an offence against the *Sale of Land Act* in Victoria to sell or offer for sale lots on a plan of sub-division which has not been finally approved by the Office of Titles, except under special circumstances as detailed by the *Transfer of Land Act*.

The above discussion of the surveyor's role in sub-divisional procedure has been, of necessity and by design, a simplified one. A detailed investigation of the surveyor's role in sub-divisional development is not within the scope of this course, but it is considered desirable for an overview of his involvement to be included.

STRATA SUB-DIVISION

The legislation which enabled land to be sub-divided in strata was first enacted in Victoria in 1967, through the *Strata Titles Act*. Prior to the introduction of this Act, the sub-division of land into various levels was a cumbersome and unwieldy process which will not be discussed here.

The *Strata Titles Act* enables the sub-division of property into units which may or may not have a portion of the ground surface of the site as part of the unit.

When certificates of title are issued, the estates granted by them include:

- (a) the ground surface of the parcel;
- (b) the area *below* that ground surface down to a specified depth, generally a depth of 15 metres, and
- (c) the area *above* the ground surface to an unlimited height.

Consequently, it should be possible to sub-divide the "land", not only at the *level* of the ground surface, but also at various levels *above* that surface.

The *Strata Titles Act* provides for the sub-division of land in this manner, that is, the *Strata Titles Act* provides for the sub-division of land in layers (strata).

The boundaries of the units are not generally defined by mathematical means such as bearings and distances, but are defined by the position of the constructed walls, floors, ceilings, fences, etc. That is to say, wherever the wall, for example, is erected, this becomes the title boundary of the unit. Thus there is no necessity for the surveyor to make precise measurements of the position of title boundaries as these are "a priori" defined by the position of physical construction.

Prior to any construction, however, the licensed surveyor must make a survey of the site to be developed, and re-establish its external boundaries so that buildings, fences, etc., may be placed on or within these boundaries.

When the construction has taken place the surveyor then measures the position of the constructed buildings and fences, etc., relative to the external boundaries of the site. These measurements are of relatively low accuracy. Such measurements are only necessary to enable these features to be *plotted* on the plan of sub-division.

The plan of sub-division prepared by the surveyor contains a diagram showing the external boundaries of the site (with their dimensions), together with the *plotted* positions of all improvements (no measurements shown), as well as schedules stating which units are residential units, or accessory units, or car park units, and which portion of the site is common property. The plan will also stipulate the manner in which units may be sold; singly or, say, as pairs. For example, it may be stipulated that a residential unit cannot be sold unless it is accompanied by a car park unit.

This plan is then submitted to the local municipality for consideration. The municipality has 70 days in which to either approve or reject the plan. Normally the process of approval does not take the full 70 days, as the municipality is not required to circulate a copy of the plan to any other authorities.

After approval and sealing by the council, the plan may then be lodged at the Office of Titles for registration and the issuing of the Certificates of Title.

As distinct from Certificates of Title issued under the *Transfer of Land Act*, the certificate in the case of a unit on a plan of strata-sub-division does not carry a diagram. Reference is made in the wording of the title to the plan of strata-sub-division, should it be necessary to consult a diagram.

The Office of Titles does not undertake a mathematical examination of the surveyor's work, as all title description relies on the *position* of buildings, etc., and their *plotted* position.

Consequently, the issue of the Certificates of Title for each unit is a much quicker process. As distinct from "normal" sub-division, units on a plan of strata-sub-division may be offered for sale prior to approval of the

sub-division by the Office of Titles, provided that any monies paid for such a sale are held in trust by a solicitor or a licensed real estate agent. The Act also provides for the recovery of these monies in certain circumstances.

CLUSTER SUB-DIVISION

The introduction of the concept of cluster sub-division brought with it an entirely new concept in sub-divisional procedures. Under this Act, it is possible to vary sizes of allotments and roads which would not conform to those requirements as stipulated for normal sub-division.

Here the requirements are not stipulated as specific requirements in terms of adhering to minimum distances and areas, etc. Instead, it is necessary to satisfy stated objectives. For example, the Act may provide that each allotment should be designed so that the privacy of each allotment is maintained. This is not controlled by stipulated minimum distances from side boundaries or maximum heights of buildings, etc. in the first instance, but by the developer demonstrating that this, and other objectives of the Act have been satisfied or fulfilled as a result of the suggested type of development. Hence, the Act will state various objectives which must be satisfied, and it is the responsibility of the developer to demonstrate that these objectives have been fulfilled. These objectives are stated as part of a cluster code, which must be read in conjunction with the Act.

As in the case of a normal sub-division, the surveyor will be required to re-establish the title boundaries of the parcel of land, and perhaps also to perform a survey which will define the overall "shape" of the area.

When these surveys have been performed, the surveyor must consult with other professionals such as engineers, architects and planners. The design of a cluster sub-division is very much a team exercise, which involves many areas of expertise.

One of the important concepts of cluster sub-division is the provision of "building envelopes". These envelopes indicate the area of each allotment within which a building will be contained. It is not necessary under this Act to construct any or all of the dwellings on the development prior to approval of the plan.

Therefore, any person who purchases an allotment in a cluster sub-division will have the advantage of knowing that on the allotment next door, a building can only be constructed within a certain area of that allotment and to a particular height. He is also restricted himself by the requirements of his own building envelope.

The surveyor, after discussion with the other professionals involved in the development, will prepare a plan of sub-division which details mathematically, the shape of each allotment and the roads. A considerable problem emerges at this stage as to the position of easements for the provision of services. The surveyor may need to consult with many authorities in order to ascertain their requirements with respect to the positioning of easements.

The plan of cluster sub-division is submitted to the local municipality for approval, and once again relevant authorities need to be circulated for comment and approval.

Cluster sub-division in some respects is a combination of principles embodied in strata sub-division and normal sub-division. In common with strata sub-divisions, there is the provision for common property, whilst, as with normal sub-division, each lot must be mathematically defined.

Once the plan has been approved by the municipality, it may be lodged at the Office of Titles for registration and the issue of the Certificates of Title. As with normal sub-division, the surveyor must submit a copy of his fieldnotes for examination within the Office of Titles, and lots on a plan of cluster sub-division may not be dealt with prior to final approval.

It has been apparent from the previous discussion that the licensed surveyor is an important and necessary part of the processes of land sub-division in all forms. It is therefore important for the valuer to have an appreciation of the role of the surveyor in this area.

• Amendment of Title

An important concept of the Torrens System of land registration as enforced by the Victorian *Transfer of Land Act* is that the position of boundaries, once defined, are *not* fixed for all time.

Title boundaries may be amended for a variety of reasons, including road widening, road alignment, correction of an error in the dimension of the land, and so on. It is one of the main attributes of the Torrens System, that titles can be amended through machinery which, in the main, is efficient and quick.

TRANSFER OF LAND ACT SECTION 60. TITLE BY POSSESSION

This section provides for amendment of the Register Book where a person or persons claim that the ownership of a parcel of land under the Act, registered in another person's name, should vest in their name due to establishment of possessory rights.

The basic requirement under this section is that the trespasser must enter into the land as though he were the owner. He must enclose the land so as to exclude all other persons; he must use the land for the purpose for which it was intended; and he must pay the rates on the property.

The application is usually accompanied by a surround plan of survey and a copy of fieldnotes of the land enclosed by the applicant, and certified by a licensed surveyor.

One of the surveyor's most important tasks in this form of survey is to ensure that all fences and gates which surround the land under consideration are accurately measured and their positions noted.

As the land is under the operation of the *Transfer of Land Act*, the surveyor will re-establish the title boundaries, and then, from the survey of the fenced or occupied area, determine the titles affected by the application, and the extent of encroachment on each title.

It should be further noted that the *Limitations of Actions Act* stipulates that there can be no adverse possession against the Crown. Thus, for example, if the land concerned abutted a Crown Reserve, and survey disclosed that portion of the area fenced encroached into the Reserve, then

this portion would have to be excised from the application.

The claim is examined by an Examiner of Titles and if he is satisfied that a title by possession has been established, he will recommend that a vesting order be issued for that portion of land which has been adversely occupied.

This means that the applicant will, in fact, possess two titles - one for the land which he owned before the application, and the other for the portion he acquired adversely. If he so desires, he may then apply to have these two titles consolidated into one.

The procedure of title by possession is normally a lengthy and expensive process which can take an average of 18 months or 2 years to complete.

SECTION 99

This section provides for the amendment of a Crown Grant or a Certificate of Title to accord with dimensions disclosed by survey of the occupation boundaries, where such land is bona fide (in good faith) occupied by the proprietor as being the land contained in his title. The application is, in effect, a statutory declaration and *must* be accompanied by a plan of survey and a copy of fieldnotes prepared by a licensed surveyor.

This form of application is made when excess land, or land in another owner's Certificate of Title or General Law land, has been included within occupation boundaries, and such land has been occupied in the belief that the fenced boundaries accord with title dimensions.

The Office of Titles, after examination has been made of the discrepancy, decides what amount of encroachment may be allowed. No limit has been specified, and if they are of the opinion that the differences are too large, the application must be made under Section 60.

The application is generally made when, as a result of a survey, the surveyor advises his client of discrepancies existing between the land occupied and the title boundaries. The client may decide that these differences are such that he wishes to apply to have his title amended to accord with the actual occupation boundaries, or the surveyor may recommend that it could be in his client's interests to make such an application.

SECTION 103

Under this section, the Registrar of Titles is granted power to correct or rectify errors in the Register Book. This is the authority whereby Certificates of Titles may be amended to correct patent errors, e.g., name of proprietor spelt incorrectly, an error in the description of the land, or in the diagram on the face of the title.

The section is also used to amend title dimensions where no other titles are affected. This amendment must also be based on a survey, and therefore a plan of survey and a copy of fieldnotes prepared by a licensed surveyor are required to support this application.

A situation such as this can arise where there is an excess of land in the vicinity of the title so affected. That is, there is actually more land

available than is required to satisfy requirements of titles, and a proprietor decides to take up his share of the excess land which he is occupying.

Finally, another manner in which the Register Book may be altered, is when the Department of Crown Lands and Survey issues a Certificate of Correction or a Certificate of Adjustment.

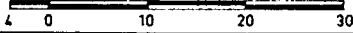
The Certificate of Correction is used solely to amend description of titles. For instance, it is used when a Crown description has been duplicated, or where some doubt arises as to Crown description.

The Certificate of Adjustment is used to alter the dimensions or boundaries of a Crown Grant, and its use usually arises where an error is discovered in an old survey or an old Crown Grant.

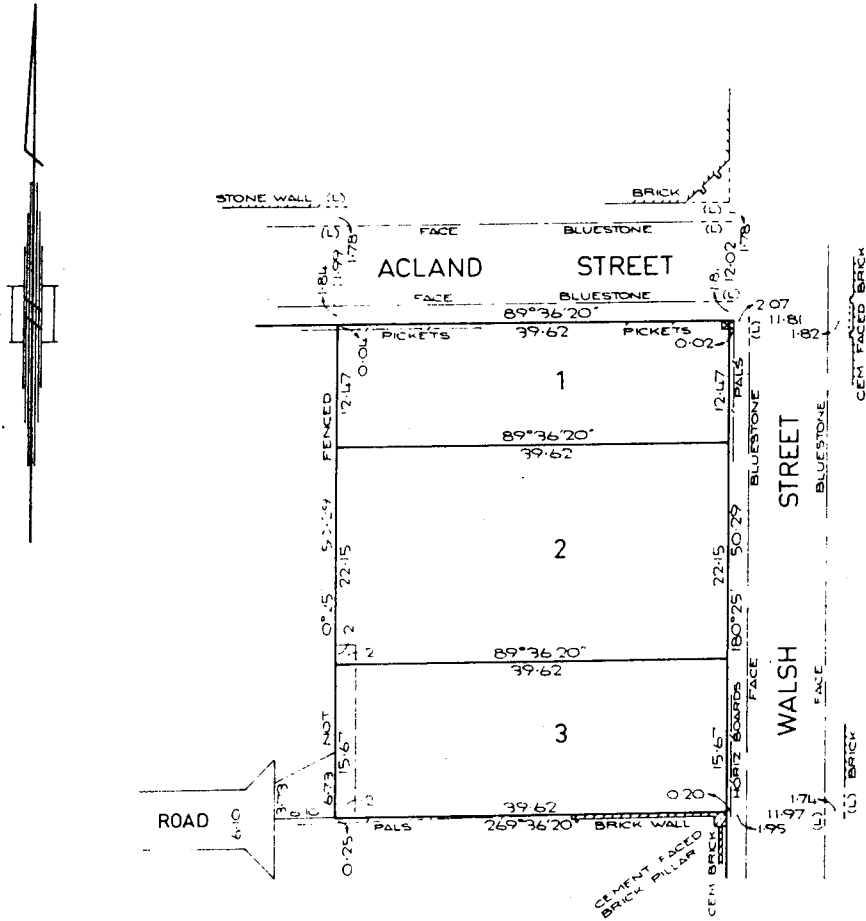
In conclusion, it should be stated that the foregoing discussions are not to be taken as complete or exhaustive in this area, but are meant to give some overall picture of title amendment.

PLAN OF SUBDIVISION OF
PART OF CROWN PORTION
9 AT SOUTH YARRA
PARISH OF MELBOURNE
SOUTH
COUNTY OF BOURKE

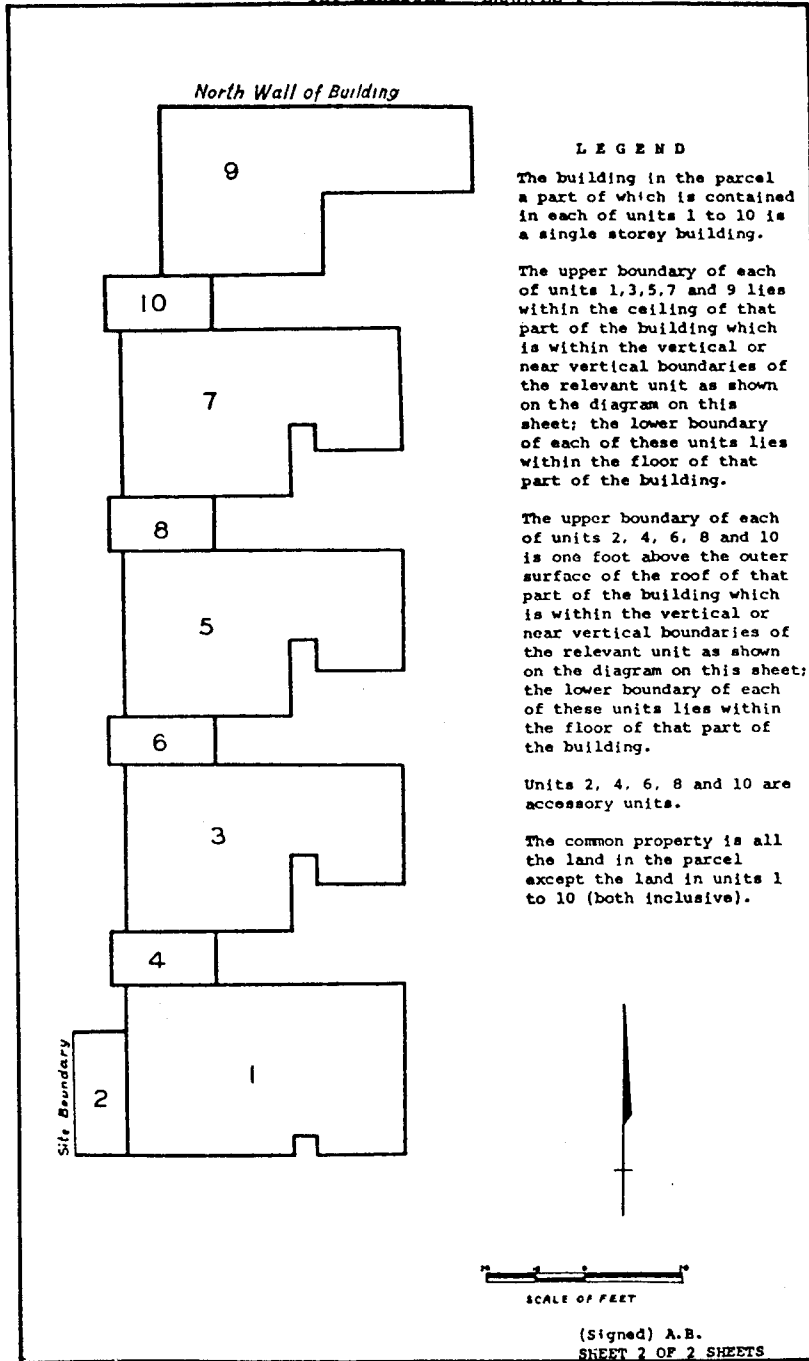
SCALE OF METRES



APPROPRIATIONS	NOTATIONS
BLUE - DRAINAGE & SEWERAGE	THE LAND COLORED YELLOW IS AN APPURTENANT DRAINAGE & SEWERAGE EASEMENT VIDE TR G120035 FOR APPURTENANT EASEMENTS SEE TR G 73001 002



REF. NO. 2515/1
C. W. B. VAUGHAN & ASSOCIATES
SURVEYORS & ENGINEERS
110 THE KINGSWAY
GLEN WAVERLEY 3150
PHONE: 561 2366



10.

PLAN OF STRATA SUBDIVISION

THE PARCEL - The whole of the land described in Certificate of Title Volume 9732 Folio 428 being part of Crown Allotment 18 Section 23 Parish of Allendale County of Donald.

POSTAL ADDRESS OF BUILDINGS - 280 Stephen Road, East Camden.

ADDRESS OF BODY CORPORATE FOR SERVICE OF DOCUMENTS - 280 Stephen Road, East Camden.

REGISTERED
TIME
DATE

Diagram showing the external boundaries of the site and the location in relation thereto at ground level of all buildings in the parcel.

SURVEYORS CERTIFICATE

I (A.B. of) a surveyor licensed under the Land Surveyors Act 1958 certify that this plan and any measurements on which it is based have been made by me or under my personal direction and supervision; that the standard of accuracy of any measurements made to determine the external boundaries of the site complies with that required by the Land Surveyors Regulations Part 2; that the plan accurately represents as at the _____ day of _____ 19____ in the manner required by the Strata Titles Act 1967, the Strata Titles Regulations 1967, and the Land Surveyors (Strata Titles) Regulations 1967 and within the limitations of the scale used and the standard of accuracy required, the boundaries of the units and the location at ground level of all buildings in the parcel in relation to the external boundaries of the site; and that all units are within the parcel.

Signature _____ Date _____

SEAL OF MUNICIPALITY AND ENDORSEMENT

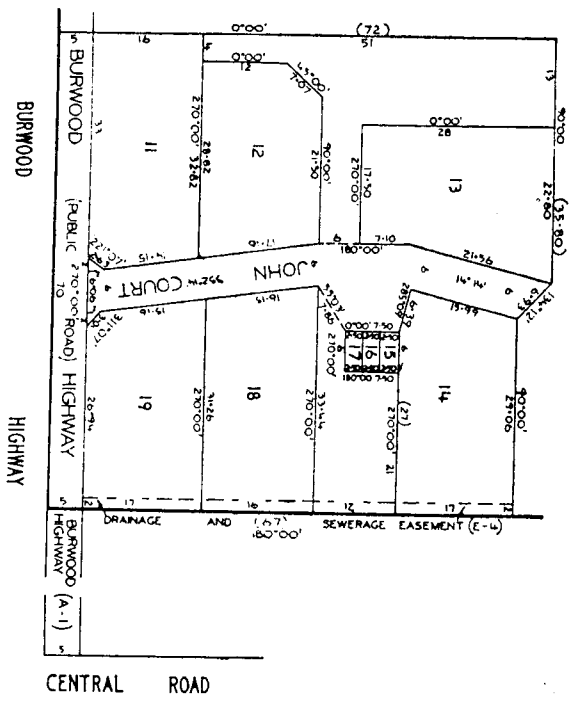
SCHEDULE OF UNIT ENTITLEMENT AND UNIT LIABILITY

Unit No.	Entitlement	Liability	Unit No.	Entitlement	Liability
1	15	15	6	1	1
2	1	1	7	12	12
3	12	12	8	1	1
4	1	1	9	12	12
5	12	12	10	1	1
			TOTAL	68	68

(Signed) A.B. SHEET 1 OF 2 SHEETS.

PLAN OF CLUSTER SUBDIVISION
 SUBDIVISION DETAIL SHEET

SCALE
 (GRAPHICAL SCALE TO BE INSERTED HERE)
 LENGTHS ARE IN METRES



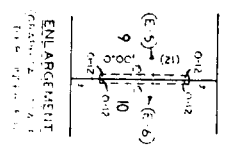
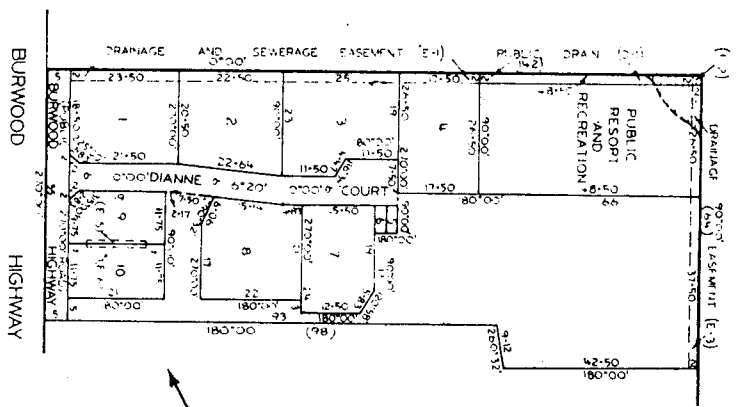
SHEET 4

CONTRACT REFERENCE NUMBER

LICENSED SURVEYOR

PLAN OF CLUSTER SUBDIVISION
 SUBDIVISION DETAIL SHEET

SCALE
 (GRAPHICAL SCALE TO BE INSERTED HERE)
 LENGTHS ARE IN METRES



SHEET 3

CONTRACT REFERENCE NUMBER

LICENSED SURVEYOR