

5. For the reasons set out below I believe that both the "complete" versions and the "clipped" versions of the plans, which are exhibits "GAT-7", "GAT-8" and "GAT-9" to the Thompson Affidavit, were discovered by Council in the prior Tylden Road Proceeding, and that those documents were inspected by Thompson's then solicitors, Nevile & Co.
6. In the course of acting in this matter I have reviewed Court documents filed in the prior Tylden Road Proceeding. Maddock Lonie & Chisholm (as Maddocks was then known) acted for both Defendants in the prior Tylden Road Proceeding.
7. The Council gave discovery in the prior Tylden Road Proceeding by way of four affidavits of documents. Now produced and shown to me and marked:
 - 7.1 "MED-7", is a copy of Council's Affidavit of Documents sworn 5 April 1989 in the prior Tylden Road Proceeding.
 - 7.2 "MED-8", is a copy of Council's Supplementary Affidavit of Documents sworn 23 May 1989 in the prior Tylden Road Proceeding;
 - 7.3 "MED-9", is a copy of Council's further Supplementary Affidavit of Documents sworn 17 July 1989 in the prior Tylden Road Proceeding; and
 - 7.4 "MED-10", is a copy of Council's third Supplementary Affidavit of Documents sworn 3 January 1990 in the prior Tylden Road Proceeding,("the Affidavits of Documents").
8. Now produced and shown to me and marked "MED-11" is a copy of a Consolidated List of Documents which lists each document discovered by the Council in the prior Tylden Road Proceeding according to its number in the particular Affidavit of Documents by which it was discovered, and by a numerical list of all documents discovered by the four separate Affidavits.
9. I have reviewed the documents discovered by Council in the prior Tylden Road Proceeding, listed in the Affidavits of Documents. Each of the documents which comprises exhibit "GAT-7" to the Thompson Affidavit, described by Thompson as the "complete" plans, was discovered by Council in the prior Tylden Road Proceeding as discovered document number 4 in its Supplementary Affidavit of Documents sworn 23 May 1989 (exhibit "MED-8"). These plans are numbered "53-4" in the top right hand corner, being their corresponding number in the

Consolidated List of Documents which is exhibit "MED-11". Now produced and shown to me and marked "MED-12" is a copy of these "complete" plans discovered by Council. I have compared them to exhibit "GAT-7" to the Thompson affidavit and have not been able to identify any differences between the two, save that the number "53-4" appears in a different corner of the document.

10. The documents exhibited as "GAT-8" and "GAT-9" to the Thompson Affidavit, which Thompson describes in his Affidavit as the "clipped" version of the plans, were also discovered by Council in the prior Tylden Road Proceeding as document number 13 in Council's Affidavit of Documents sworn 5 April 1989 (document number 13-13 in the Consolidated List of Documents). Copies of the "clipped" version of the plans discovered by Council are now produced and shown to me and marked "MED-13".
11. Further, it appears from the correspondence in the prior Tylden Road proceeding that Neville & Co requested, and were provided with, a copy of all of the documents discovered by Council by its Supplementary Affidavit of Documents sworn 23 May 1989, other than document number 9 (which document was not requested by them) on about 17 May 1989. This included a copy of the "complete" version of the plans which is exhibit "GAT-7" to the Thompson Affidavit.
12. In this regard I refer to the copy bundle of correspondence passing between Neville & Co and Maddock Lonie & Chisholm, and other documents from the prior Tylden Road Proceeding, which is now produced and shown to me and marked "MED-14". In particular I refer to:

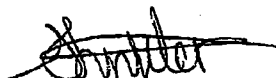
- 12.1 the letter from Maddock Lonie & Chisholm to Neville & Co dated 18 April 1989 which states in part:

"We refer to the above matter and confirm that you will attend at our offices to inspect documents on Friday 21 April at 10:30am"

(page 1 of exhibit "MED-14");

- 12.2 the letter from Maddock Lonie & Chisholm to Neville & Co dated 21 April 1989 which states in part:

"We refer to your inspection of documents at our office today and now enclose herewith copy documents numbered 3, 4, 5, 6, 7, 10, 12, 18, 24, 40, 42, 44 and 47 as requested by you"



(page 2 of exhibit "MED-14");

- 12.3 the letter from Neville & Co to Maddock Lonie & Chisholm dated 26 April 1989 which states, in part:

"We refer to your client's Affidavit of Documents and to our recent inspection of documents at your office and are instructed that your client's Affidavit is deficient in that certain notices and correspondence relating to the matters raised in the Statement of Claim have not been listed".

(page 3 of exhibit "MED-14");

- 12.4 the letter from Neville & Co to Maddock Lonie & Chisholm dated 15 May 1989 referring to our client's Supplementary Affidavit (supplied unsworn on 11 May 1989) and requesting a viewing of the documents within 48 hours. (page 4 of exhibit "MED-14");

- 12.5 the letter from Maddock Lonie & Chisholm to Neville & Co dated 17 May 1989 which states in part:

"We refer to our telephone conversation of the 16th May 1989 between our Ms Neal and your Mr Nugent and now enclose herewith copy documents as contained in our Supplementary Affidavit of Documents.

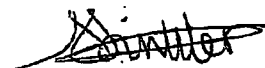
We confirm your advice that document 9 is not included as it is not relevant to these proceedings and also because our client is currently unable to locate it."

(page 5 of exhibit "MED-14");

- 12.6 the letter from Maddock Lonie & Chisholm to Neville & Co dated 21 July 1989 referring to Neville & Co's inspection of Council's discovered documents on 19 July 1989 and enclosing a number of documents. (page 6 of exhibit "MED14");

- 12.7 the letter from Neville & Co to Maddock Lonie & Chisholm dated 21 July 1989 which states in part:

"In relation to the Plaintiff's answers to interrogatories we advise that these cannot be fully considered until such time as the documents requested by Mr Thompson following his inspection of 20 July have been received at this office"



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(page 7 of exhibit "MED-14");

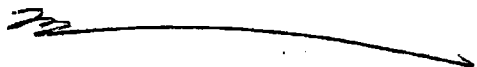
12.8 an undated handwritten note signed by "G Thompson" which states in part:

"Please supply the following docs of further supplementary defendant"

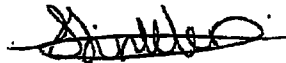
(page 8 of exhibit "MED-14").

SWORN at Melbourne in the State of
Victoria this 28th day of October 2005

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Before me:



SUZANNE TINKLER
140 William Street, Melbourne, 3000
A natural person who is a current
practitioner within the meaning of
the Legal Practice Act 1986