

Alternatively, the Trust by engaging in the conduct described in this paragraph did so with reckless disregard as to the existence of any lawful authority or power to do so.

T33. Further and in the alternative to paragraphs T29-T32 the Trust's conduct described in those paragraphs was undertaken with reckless disregard as to the probability that such conduct would occasion harm to the Plaintiffs or to a class of persons which included the Plaintiffs.

T34. Further and/or in the alternative to paragraphs T29 to T32 inclusive, the conduct complained of in those paragraphs and attributed to the Water Board in relation to the receipt and acceptance of the guarantee, the issue of demands upon the Plaintiffs to provide water and the calling up of the guarantee was Porter's conduct. At the time that Porter engaged in the aforementioned conduct he was:

- (a) an officer of the Water Board duly appointed in accordance with the statutory provisions pleaded in paragraph 9;
- (b) acting in the course of his employment as an officer of the Water Board.


Accordingly the Water Board was vicariously liable for the acts done by Porter.

AS TO THE WOODLEIGH HEIGHTS LAND, THE PLAINTIFFS PLEAD THEIR CAUSE OF ACTION AS FOLLOWS:

All paragraphs relating to the Cause of Action in respect of the Woodleigh Heights land are denoted thus: W1, W2, etc.

W1. The Woodleigh Heights Land was part of a larger parcel of land known as the Woodleigh Heights Estate and;

- (a) was, as at 1978, owned by Buchanan;
- (b) was within the municipal district of the Council as designated pursuant to the provisions of the Local Government Act 1958;
- (c) was in 1978 part within and part without the Waterworks District of The Trust designated pursuant to the provisions of Subdivision 3 of part III of the Water Act 1958;
- (d) was in 1978 outside both the Urban District and the Rural District of The Trust as designated pursuant to the provisions of the Water Act 1958.

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- W2. By Application dated 22nd November 1978 Buchanan applied to the Council for a permit ("the First Application") to develop the Woodleigh Heights Estate by subdividing it pursuant to the provisions of the Cluster Titles Act 1974, such subdivision consisting of 45 allotments averaging approximately 2 acres in size, together with substantial areas of common property and provision for the installation of a privately owned and operated water supply and reticulation system forming part of the common property.

PARTICULARS

The First Application consisted of the following relevant documents:

- (a) Application for Permit dated 10th November 1978 accompanied by a;
- (b) Submission dated 3.11.78, prepared by James A. Harris & Associates Pty. Ltd. ("the Submission").

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- W3. The submission contained details of a proposed reticulated water supply.

- W4. On 15th November 1978 the First Application came before the Council for consideration. The Council approved the Application, issuing Permit No. PP2191 ("the First Permit"). The Permit authorised Buchanan to develop the Woodleigh Heights Estate on certain conditions.

- W5. It was a condition of the First Permit that the Woodleigh Heights Estate be developed in accordance with the Plans and Submission comprising the Application for Cluster Subdivision, including the construction and installation by Buchanan of the water supply and reticulation system as set out in the Submission.

PARTICULARS



The Plaintiffs refer to condition 8 of PP2191 which states:

- (a) "The development to be carried out in accordance with the plans and submission which formed part of this application".

- W6. At the time of the First Application, the Council had in place a planning policy. The said planning policy provided, (inter alia) in respect of the land in which the Woodleigh Heights Estate was situated, that the issue of any proposed planning permit for a proposed subdivision was conditional upon:

- (a) no proposed allotment being smaller in size than 3 acres;

- (b) any proposed allotment less than 6 acres would be served by a reticulated water supply.
- W7. In or about November 1978 Buchanan lodged with the Council and the Council accepted a Plan of Cluster Subdivision ("the First Cluster Plan").
- W8. Maliciously, intending to cause harm to the Plaintiffs or to a class of persons which included the Plaintiffs, the Council, in or about August 1979 exercised power under s.569B(4) of the Local Government Act for an ulterior purpose, namely, to avoid the effect of s.9 of Sale of Land Act 1958 by causing the First Cluster Plan to be sealed with the seal of the Municipality.
- W9. Further and in the alternative to paragraph W8 above the Council, acting maliciously and with the same intention pleaded in that paragraph, purported to comply with the provisions of s.569B(4)(b) to approve the said plan by sealing it with the seal of the Municipality.
- W10. Whether exercising a power for an ulterior purpose as described in paragraph W8, or purporting to comply with its statutory obligations as described in paragraph W9, at the time of sealing the First Cluster Plan, the Council in any event well knew;
- (a) all of the facts and circumstances pleaded in paragraphs W2, W3, W4, W5 and W6 above;
- (b) that no reticulated water supply system had been installed in accordance with condition 8 of PP2191 or at all.
- (c) that it had not complied with its obligations under s.569B(2)(ac) of the Local Government Act;
- (d) that the proposed Cluster Subdivision described in the First Cluster Plan was not permitted by the Interim Development Order then in force and that accordingly, Council was obliged not to seal the plan by virtue of the provisions of s.6(1)(b) of the Cluster Titles Act;
- (e) that having regard to the facts and circumstances referred to in subparagraphs (a) to (c) above, the provisions of s.569B(7) imposed a duty upon the Council to refuse to seal the First Cluster Plan. By failing to refuse to seal the plan the Council wilfully disregarded its obligations under s.569B(7).
- (f) that the act of sealing the First Cluster Plan would, by virtue of the operation of s.569B(10), represent to all persons including the Registrar of Titles, that the