

53) A further critical understanding is the correct understanding and concepts of the private reticulated water supply and system in question in relation to the Woodleigh Heights subdivision as distinct from a reticulated water supply and system provided by the Second Defendant.

**54) A reticulated water supply vis-à-vis an approved Reticulated Water Supply**

- i) An approved Reticulated Water Supply is a reticulated water supply which has the status of Reticulated Water Supply for the purpose of the then Shire of Kyneton Planning Scheme.
- ii) Knowledge of a reticulated water supply does not constitute or include knowledge of an approved Reticulated Water Supply
- iii) Knowledge of or belief in the private water supply and reticulation system which was apparently present in 1979 does not include knowledge of or belief in an approved Reticulated Water Supply.
- iv) A reticulated water supply provided by the Second Defendant is an approved Reticulated Water Supply.
- v) A precondition to the grant of building permits on the Woodleigh Heights allotments was that the allotments be serviced by an approved Reticulated Water Supply.

**b) The Woodleigh Heights private water supply and reticulation system.**

- i) The Woodleigh Heights subdivision was in an area where under the Shire of Kyneton Planning Scheme subdivision into allotments less than 6 acres in area was prohibited unless the proposed allotments were serviced by an approved Reticulated Water Supply.
- ii) The area where the Woodleigh Heights subdivision was located was not serviced by a reticulated water supply provided by the Second Defendant and so subdivision into allotments of less than 6 acres was effectively prohibited.
- iii) To overcome this problem the subdivider, Kenneth Raymond Buchanan proposed a completely private and self contained water supply and reticulation system.
- iv) This private water supply and reticulation system is detailed in the **submission dated 3/11/78** and referred to in the particulars to paragraph W2 of the present Amended Statement of Claim.<sup>4</sup>
- v) As detailed in the submission this private water supply and reticulation system consisted of a lake with a surface area of approximately 6 acres, a rising main, a 100,000 gallon header tank and a system of pipes comprising the reticulation system.

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<sup>4</sup> See GAT-5B at GAT-5 and in particular the Engineering Report of that submission.

vi) Although unusual, being a country boy the concept of private or community based water supplies and electricity systems was well known to me and I had personal knowledge of such things in small rural communities.

vii) In 1979 at the time of purchase I was aware that the water supply was a private system, the lake and the water tanks were present as highly visible palpable facts and were also depicted on the glossy brochure<sup>5</sup> and marked "water" and because neither I nor any ordinary person would have an expectation that allotment holders were expected to visit the tanks with their teapots and toilet buckets I had a more than reasonable basis for a belief that a reticulation system was also present but installed underground and therefore not visible and not depicted on the glossy brochure.



viii) The private water supply and reticulation system defined in the submission constituted an approved Reticulated Water Supply for the purpose of the Shire of Kyneton Planning Scheme.

ix) The operation of the Shire of Kyneton Interim Development Order required compliance with Planning Permit 2191 and accordingly pursuant to condition 8 of that permit the private water supply and reticulation system was required by law to be completed in 1979 at the time that the plans were sealed and condition 6 of that permit required it to be under the control of the Body Corporate.

x) The private water supply and reticulation system as defined in the submission was entirely contained within the common property and was common property.

**xi) As the Plaintiffs now know the principle water main comprising the reticulation system were not completed in 1979 as required by law but were instead laid in 1982. As a consequence, as alleged in paragraph W10 of the present Amended Statement of Claim there was no reticulated water supply present when the plans were sealed in 1979.**

**c) A reticulated water supply provided by the Second Defendant.**

i) The Woodleigh Heights subdivision was completely outside the Kyneton Waterworks Urban District and part within and part without the Kyneton Waterworks District. The Second Defendant had power to provide water to land within its district by agreement under s.307AA(2) but could only do so with the approval of the Governor in Council in respect to land outside its Waterworks District.

ii) The reticulation system of the Second Defendant is entirely contained within public lands and generally along public road or within easements over private lands.

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<sup>5</sup> See GAT-1