

**THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION**

Court Number: **6321 of 2005**

BETWEEN:

**GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON**

Plaintiffs

- and -

MACEDON RANGES SHIRE COUNCIL

First Defendant

- and -

THE COLIBAN REGION WATER AUTHORITY

Second Defendant

PLAINTIFFS' COSTS SUBMISSION

Date of Document: - ~~30th October 2006~~ 8/12/06
Filed on behalf of: The Plaintiffs
Prepared by: The Plaintiffs.

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- 1) On 29th November 2006 your Honour delivered Judgement in the appeal in this matter. Judgement was against the Plaintiffs.
- 2) As a matter of demonstrable fact your substantive reasons for Judgement are manifestly wrong and without any basis in fact or reason.
- 3) For the reasons set out below, including having made contradictory written submissions to a different Court of Record, the Defendants are also aware that your reasons for Judgment are manifestly wrong and based upon their specific misrepresentations made before your Honour. As will be seen from ~~the~~ ^{THEIR} written submission the submission of Major General Garde as to potable water was simply wrong and with no possible basis in fact or reason at all.
- 4) I will be appealing this Judgement.
- 5) The question at the present time is as to whether or not your Honour will award costs and in particular punishing costs in knowledge of the matters and facts set out below and the further question is as to whether or not the Defendants will seek costs and in particular punishing costs in



full knowledge that the Judgement is flawed and flawed at least in part due to their specific misrepresentations to your Honour.

- 6) Since Judgement last Wednesday I have been to Melbourne twice and to each of Canberra, Sydney and Adelaide. In addition I have substantial duties as Chairman of a Public Company. I have also had to begin preparation of the appeal. As a consequence I have had to prepare this submission in haste and without ordinary regard to nicety and turn of phrase. It is 'as is' but accurate.
- 7) In relation to Woodleigh Heights, from the material which I set out below it is demonstrable and beyond dispute that the Defendants have previously made and relied on joint written submissions to a Court of Record on the subject of the private water supply being a precondition to the subdivision and which joint submissions specifically contradicts a substantive basis of the reasons wrongly and without reasonable basis concluded by your Honour.
- 8) In relation to Tylden Rd it is clear and beyond dispute that Mr. Justice Kay proceeded and made Judgement on the basis that a s569E Notice requiring construction of roads was lawfully issued and served but there was no or no proper or sufficient requirement providing for the giving and receiving of my bank guarantees. It is also clear that the previous Tylden Rd proceeding at paragraphs 7 and 20 pleads exactly the same thing as was understood by Mr. Justice Kay. Notably paragraph 7 is admitted to on four separate occasions by the Defendants. Notably your honour completed omitted paragraph 7 from what purports to be a reasonable factual conclusion by your Honour as to the previous pleadings. This conclusion by your Honour is set out at paragraphs 56 and 57 of your reasons.
- 9) In relation to paragraph 57 of your reasons it is clear that the previous proceeding simply does not plead that the plans were unlawfully sealed. To do so would have been pointless and to fly in the face of s569B(10) of the Local Government Act and which section was well known to me and my Counsel of the day and described in my submissions, this section is also transcribed by you at paragraph 32 of your reasons. Despite and in the face of your assertions my affidavit is completely correct, it is your Honour who is manifestly incorrect. The County Court pleading merely makes note of the fact that the plans were in breach of 569A(1)(a). There is simply no allegation at all of unlawful sealing and no point to such an allegation. In addition Paragraph 7 plainly alleges that a s569E Notice requiring construction of roads was served. Notably your Honour failed to transcribe paragraph 7 of that pleading. You did however transcribe paragraph 20.
- 10) In relation to paragraph 7 the Defendants fully understood that it specifically said and alleged that a s.569E Notice requiring construction of roads was served, they had given this evidence in the Magistrates Court and the Supreme Court and admitted to it 4 times in the County Court. The