- referred to in condition 8 of Planning Permit 2191 was the reticulated water supply which enabled compliance with the then Planning Policy of the first Defendant.
- 37) As a consequence paragraph 156 of the reasons for Judgement is correct however paragraphs 72, 157, 160, 162 and 163(c) of the reasons for Judgement are manifestly wrong.
- 38) Paragraph 73 of your Honours reasons is simply wrong with no possible basis of a belief by you as to its accuracy. Planning Permit PP278 permitting the Cluster Re-subdivision was issued on 5/11/1980 and at this time a water supply from the Second Defendant was not even a consideration and the Planning Permit as a matter of fact has no condition relating to water at all. The very first approach to the Second Defendant seeking a water supply provided by the Second Defendant was by letter dated 5th March 1981. The purported Water Supply Agreement which followed was not entered into until 1st January 1982 and the supply provided by that agreement was not available until many months after that. Your paragraph 73 is, as with most of your reasons is completely wrong and misleading and your Honour has no possible basis at all for the matters set out in that paragraph.
- 39) In relation to this aspect it is to be noted that the Defendants did not dispute the terms of the Planning Permit as alleged by the Plaintiffs. This was an aspect raised by your Honour despite having said that's not the sort of question that would be resolved at this stage." And without having heard any argument from myself on the subject.
- 40) From these documents it is clear, as stated by me at the hearing, potable water is simply irrelevant. There is no possible basis for a belief by your Honour or Major General Garde that anything other than a reticulated water supply, potable or not, was a prerequisite to subdivision. Potable water is simply not relevant. As a consequence each of paragraphs 69, 147, 152, 153, 155, 163(a), 163(c), 163(d), 163(e), 167, 168, 168(a), 169, 170, 174, 178, 181(b), 181(c), 181(d) of your Honours Judgement and each and every footnote which relies upon or refers to "potable" is either or all of wrong, misleading, and irrelevant.
- 41) Your Honour made engineering determinations which were both wrong and which you were not qualified to make and which were out of context and irrelevant. At paragraph 168 you state that the water supply pursuant to the agreement could not simply be connected to the private reticulation system envisaged by the original permit and you then state 2 reasons. These reasons are plainly fallacious as a mere extension of the system to the roadway could facilitate such a connection and in addition the simple fact is that, the reticulation system to the extent that it existed was so connected and this fact is attested to by the fact that clause 6 of the Water Supply Agreement required the intermittent filling of a storage tank within the subdivision and the fact is that the water tanks forming part of the private system were and remain the only such tanks on the