

i) As the residential series of plans were filed with the Council on or after the 4th March 1980 the Notice of Requirement given in evidence had been falsely dated 20th February 1980. ...

ii) The plan of subdivision considered by the Council on 20th February 1980 had been abandoned by both the Council and Buchanan and not further processed. The seven plans comprising the residential series of plans were processed in substitution.

iii) That the Notice of Requirement had in fact been fabricated and that Wilson's evidence in the Magistrates Court could not be correct.

115 As I have already noted the amended statement of claim served in the Tylden County Court proceeding expressly alleged:

- (a) There were no proper or sufficient notices given by the subdivider pursuant to s.569(1) of the LGA in respect of the plans of sub-division pursuant to which lots purchased by the plaintiffs were created;
- (b) Such plans including plan 79305G did not show at all or show clearly all new streets and roads required to be made in connection with the sub-division; and
- (c) The firstnamed defendant did not serve or cause to be served any or any proper requirements with respect to the making of such roads pursuant to s.569E(3)(b).

116 It seems to me that it is clear that at the date of this document in May 1991 the plaintiffs were fixed with knowledge of what is now said to be the central fact namely that valid notices of requirements were not served pursuant to s.569E(3)(b) in respect of the relevant lots.

117 Longstanding knowledge of this fact is further confirmed by a book of pleadings discovered in the Tylden County Court proceeding by the plaintiffs and containing handwritten notations by the firstnamed plaintiffs . As Master Efthim observed, it is clear these notes were made prior to 1993. Master Efthim further highlighted the relevant extracts from the document in his decision which I shall amplify:

Page 2

- *'On 12 February 1980, Buchanan lodged a notice to the effect of the 13th schedule of the LGA.'*

Page 5

- *'Notwithstanding that it was illegal Buchanan has sold at least 2 of the allotments ... in order to avoid the provisions of Section 9 of the Sale of Land Act which at that time prevented the sale of allotments on subdivision of more than two allotments etc. Buchanan then lodged seven separate plans which were contrived to create several subdivisions of two lots each.'*

Page 6

- *'Buchanan lodged 30th schedule notices in relation to these new contrived plans.'*

Page 7

- *'The Council served a separate 'Notice of Requirement' in relation to each of the contrived plans which were numbered 79305E-79305K. The Notices of Requirement were dated 20/2/80 but served by registered mail of 6/3/80 ie 2 days after the contrived plans were lodged.'*

Page 8

- *'Although Buchanan thought that he had exploited a loophole in the law he had in fact broken the law because as it was his clear intention to subdivide the land into 18 allotments he was bound to give one 30th schedule notice and one plan showing all allotments.'*

Page 10

- *'Buchanan therefore approached the Council' (that notation is on a letter written by Mr Buchanan to Mr Wilson, Shire Engineer of the Shire of Kyneton. The last paragraph of that letter states 'Would it be possible for approval to be given at the next Council meeting to accept the bank guarantees so that the requirement on the subdivision may be lifted'.)*

Page 14

- *'At the time of providing the guarantee I had the reasonable expectation that the Council and Water Trust would only accept the guarantees in relation to a legally enforceable agreement between themselves and Buchanan or a legal requirement upon Buchanan.'*

Page 15

- *'As I now know the Council and the Water Trust accepted the guarantees for the purpose of giving effect to the unlawful intention indicated in Council's letter of 7 May 1980 which was an intention to act in breach of Section 569E(3)(a) of the LGA.'*

Page 17

- *'The Council however always intended that the requirements were "secretly still on foot"....But without authority of law' (Here there is knowledge of alleged covert or secret activity).*

C3

- *'The claim was derived from the evidence of the Shire Engineer's given at the Bendigo Magistrates' Court.'*

C4

- *'Discovery however indicates that the Council's evidence at Bendigo was false. Discovery reveals that the "relevant" 30th schedule notices were dated 4th March 1980.'*



C6

- *'I think it is significant that Mr Wilson did not evidence a 30th Schedule Notice at the Bendigo Magistrates court. To have done so would have shown that the "Notices of Requirement" predated the 30th Schedule Notices which is impossible.' (Precisely the point now made)*

C12

- *'Mr Buchanan had illegally sold two of the lots and had been able to do so as the Council was prepared to accept plans of the subdivision contrived in such a manner as to appear to be two lot subdivisions.'*

C15

- *'Subsequently upon receipt of my guarantee Council gave effect to its original intent by lying to the Registrar of Titles'.*

118 These extracts demonstrate that the plaintiffs were well aware as at the date of the annotations (prior to the delivery of the amended statement of claim in the County Court proceeding) that:

- (a) The Council served separate notices of requirement in relation to each of the 'contrived' plans which were approved being 79305E to 79305K.
- (b) The notices of requirement were dated 20 February 1980, but were served by registered mail on 6 March 1980 (two days after the contrived plans were lodged).
- (c) The relevant 30th schedule notices were dated 4 March 1980 i.e. post dated the purported requirement of 20 February 1980.
- (d) There was no notice of requirement served or pursued in respect of the original proposal to subdivide the whole of the land