

148 It was this latter water supply to which the plaintiffs were denied access. This denial formed the gravamen of the Woodleigh Supreme Court proceedings.

149 The reticulation plan which the firstnamed plaintiff says he was shown during a break in proceedings in the Practice Court in 1999, was not produced in evidence before me.

150 The firstnamed plaintiff states in his primary affidavit:

"40. I elected not to appeal because:

(a) during the course of the Practice Court hearing the Council and Water Board showed me a reticulation plan for the subdivision. The plan clearly showed that the principal water mains were in fact laid in 1982 and not in 1979 as alleged by me and, on my understanding, as required by law. At the time of swearing this affidavit the [sic] I have been unable to locate a copy of this plan but crave leave to file and serve a copy prior to hearing."

151 The absence of the document relied upon is a serious gap in the plaintiffs' case. The firstnamed plaintiff effectively invites the Court to proceed on the basis of an inference he says he has drawn from a plan, in circumstances where the capacity to draw an inference of the type postulated basis cannot be evaluated.

152 I am satisfied, moreover, that the overwhelming probability is that any plan shown to the firstnamed plaintiff in 1999, described what was done in 1982, namely the provision of a reticulated potable water supply to the cluster subdivision. It was after all denial of access to this water supply which was the basis of the plaintiff's actions.

153 Such provision was of no relevance to the requirement imposed by the permit for subdivision, which was to provide a non potable supply as part of the development of the cluster subdivision.

154 If it is accepted for present purposes, as the plaintiffs submit, that, 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 (from the Water