

62 The County Court proceedings were settled and the plaintiffs gave a release to both the Council and the Water Board for valuable consideration of "all claims, suits and demands whatsoever the subject matter of this proceeding."

The Woodleigh Land

63 In 1995 the plaintiffs instituted proceedings in this Court in respect of the wrongful refusal of water supply to the Woodleigh land. The claim alleged that the plaintiffs had suffered the loss of the difference between the value of the land if serviced with a reticulated water supply and the value achieved on a mortgagees sale, in circumstances where the Council and the Water Board maintained the plaintiffs had no rights to a reticulated water supply to the Woodleigh land.

64 The claim was formulated as one based upon fraudulent representations by the defendants as to the status of the Woodleigh land and in particular its entitlement to water supply.

65 This claim was also settled for value and a release was executed by the plaintiffs which released the Council and the Water Board from "all actions, suits, demands and costs, arising out of or in any way related to the subject-matter of the proceedings."

66 The amended further statement of claim dated 17 March 1999 filed in the Woodleigh Supreme Court proceeding pleaded the background facts in substantial detail. In particular it alleged that the subdivider applied on 22 November 1978 to develop the Woodleigh land by subdividing it pursuant to the provisions of the *Cluster Titles Act* 1974 into 45 allotments averaging approximately two acres in size, together with substantial areas of common property and provision for the installation of a privately owned and operated water supply and reticulation system forming part of the common property.

67 The application included a submission prepared by consultants which described the proposed private water supply system.

68 The amended further statement of claim in the Supreme Court proceeding made allegations in terms reflecting this submission:

"7. The proposal for the privately owned and operated water supply and reticulation system (as contained within the Submission), consisted of:

- (a) a storage reservoir with a surface area of 4½ acres and a capacity of 8,500,000 gallons;
- (b) a high level header tank of 100,000 gallon capacity;
- (c) rising main between the reservoir and high level tank;
- (d) a reticulation system comprising main pipes from the tank through the estate and smaller pipes from the main pipe to the individual allotments;
- (e) household drinking and bathroom water was to be supplied by means of roof rainwater tanks which were to be installed concurrently with the construction of houses;
- (f) the reticulated water supply was for non-domestic uses only."

69 It is thus abundantly clear that as at this date the plaintiffs understood that the reticulated water supply contemplated by the permit application was not a supply of potable water from the Water Board.

70 Thereafter it was alleged that the Council issued a planning permit authorising cluster subdivision but requiring by condition that:

"(a) The development to be carried out in accordance with the plans and submission which formed part of this application."

71 It was alleged the Council then approved the water reticulation system required pursuant to the permit⁹ and the cluster plans of subdivision were registered. At the time of registration the statement of claim alleged that the following works had been carried out in relation to the water supply system contemplated by the permit:

"(a) The lake referred to in the submission had been constructed and was near full of water.

⁹ Such water supply not being concerned with the provision of potable water.

- (b) Two 50,000 gallon concrete high level water tanks had been constructed in lieu of the single 100,000 gallon high level tank referred to in the Submission.
- (c) The rising main had been laid between and connecting the lake and the high level tanks as referred to in the submission.
- (d) Primary reticulation pipes had been laid in the common property and connected to the concrete high level tanks to convey non domestic water from the tanks to the allotments as referred to in the Submission.
- (e) The high level tanks contained water."

72 Reference to the submission adopted by the permit condition, shows that what was required in respect of water mains was the provision of 2160 lineal metres of mains of varying dimensions, laid out in accordance with an attached plan. The mains were proposed to run from a header tank at the north eastern corner of the block, and would decrease in size from 100 millimetres diameter to 50 millimetres diameter as they spread away from it. The mains would not extend to the public roadway abutting the western side of the subdivision but would run towards it. PVC piping would be used for the smaller mains. It would of course be necessary for each allotment to ultimately be connected to these mains (as paragraph 7 of the further amended statement of claim set out above indicates) but such connections to individual lots were not intended to be installed as part of the works described in the submission. It is also relevant to note the planning permit did not allow residential use of the cluster allotments without further secondary permission.¹⁰

73 Thereafter the subdividers made application for a cluster redevelopment dividing each allotment created by the initial cluster subdivision into three smaller allotments. This was evidently approved by the Council subject to the augmentation of water supply.¹¹

74 The plaintiffs then purchased part of the Woodleigh land. By April 1984 they were in dispute with a company, Woodleigh Heights Resort Developments Pty Ltd

¹⁰ The terms of the relevant permit conditions are analysed further below.

¹¹ Plaintiffs' oral submissions to this Court.