

- (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 21.60 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.

("WHRD") associated with the original subdivider, which was developing a timeshare resort on the cluster subdivision. WHRD wished to compel the plaintiffs to complete the sale of land by the plaintiffs back to it.

75 In or about March and April of 1984 a director of WHRD advised the firstnamed plaintiff that WHRD had a private water supply agreement between itself and the Water Board for the supply of water to the whole of the cluster subdivision. It was further said that under the water agreement, WHRD controlled the supply of water from the Water Board to the cluster subdivision.

76 The plaintiffs then made enquiries of the Council and the Water Board and were advised that WHRD had the benefit of a water supply agreement with the Water Board. They were advised that under that agreement, WHRD controlled the supply of water obtained from the Water Board within the cluster subdivision. The Water Board would not transfer the benefit of the water agreement to the body corporate of the cluster subdivision except with the agreement of WHRD nor enter into a separate water supply agreement with the body corporate except with the agreement of WHRD.

77 The plaintiffs were further advised that unless the plaintiffs' allotments had access to a reticulated water supply the Council would not issue building permits for the plaintiffs' land.

78 Thereafter the plaintiffs' land was sold by mortgagee at a loss, because of representations by the Council and Water Board that such land was not entitled to reticulated water supply.

79 It was specifically alleged that such representations were fraudulent.

80 It was further alleged that the loss suffered resulted from the fact that the plaintiffs' land was sold for a total price of \$135,000 when, had the plaintiffs' land been sold on the basis that there was an entitlement to "an approved private water supply and reticulation system" its sale value would have been \$431,500. It is this same