

- (a) no concealment. The evidence establishes the "critical document" was discovered in the earlier proceeding in 1989, inspected and a copy provided;
- (b) no evidence of "fraud" – how could there be when the document relied on was discovered.

81. Further:

- (a) the Plaintiffs have failed to show that they acted with reasonable diligence;
- (b) the evidence establishes there is no arguable case for postponement to 31 May 1999. The documents in question have been in the physical possession of the Plaintiffs since 1991. At best for the Plaintiffs, time ran from 14 June 1991, the date of the settlement at Court and expired on 14 June 1997.

No concealment of the cause of action: book of pleadings

82. The plaintiffs key contention in the current proceeding (which is said to underpin the misfeasance in public office allegations) is that the initial sealing of the plans of subdivision was unlawful or illegal and that the plans were sealed in such a way so as to avoid the operation of section 9 of the Sale of Land Act 1962 (Vic).

83. The plaintiffs contend that they only worked out that the initial sealing of the plans of subdivision was unlawful or illegal when Mr Thompson opened the "black folder" in August 2000 and reviewed the copy of the complete plans for the industrial allotments.
84. However, what is clear from a book of pleadings annotated by Mr Thompson for use in the prior Tylden Road proceeding is that Mr Thompson had formed the view prior to the settlement of the prior Tylden Road proceeding in 1991 that the initial sealing of the plans of subdivision was unlawful. The "new"