


85. What Mr Thompson deposes to in respect of the 1999 Practice Court hearing⁷⁵ is as follows:

- (a) that during the course of the hearing the Council and the Water Authority showed Mr Thompson a reticulation plan for the Woodleigh Heights subdivision;
- (b) that the plan showed that the principal water mains were in fact laid in 1982 and not in 1979 as alleged by Mr Thompson and, on Mr Thompson's understanding, as required by law;
- (c) that at the time of showing Mr Thompson the reticulation plan both Counsel and the solicitors for the Council and the Water Authority pointed out that the plan disclosed that the water main was in fact laid in 1982 and not 1979 as alleged by Mr Thompson and said to Mr Thompson words to the effect "How do you explain that"?;
- (d) that Mr Thompson's entire cause of action in the prior Woodleigh Heights proceeding *"hinged upon the assertion that the subdivision had been completed according to law and that therefore a reticulated water supply should have been present in 1979 at the time of sealing of the plans of cluster subdivision"*;
- (e) that because of Mr Thompson's alleged *"ignorance of the facts as now pleaded in paragraphs W1 to W13 of the present Statement of Claim, the evidence disclosed by the reticulation plan that a water main had not been installed until 1982, seemed to me to be fatal to any prospects of ultimate success after appeal."*



86. It was this reticulation plan that Mr Thompson asserts he reflected upon in August 2000 after reviewing the unrelated documents contained in the black folder. It was after reflecting upon the reticulation plan, that Mr Thompson realised that if the "reticulated water supply was not present in 1979 as required by law but was instead

⁷³ See para 54(a) of the Thompson summary judgment affidavit. Emphasis added

⁷⁴ See para 55 of the first Dixon summary judgment affidavit and tab 31 of the exhibit folder

⁷⁵ At para 82 of the Thompson summary judgment affidavit

*laid in 1982" then the Council "had in fact sealed the plans of cluster subdivision in contravention of its statutory duty to refuse to seal them ..."*⁷⁸

87. What Mr Thompson fails to mention and what the objective documentary evidence establishes, is that he was aware and had been aware, at least since August 1987 (if not before), that the "reticulated water supply" had been laid in 1982 and not 1979.
88. The objective documentary evidence, in particular Mr Thompson's own correspondence, establishes that Mr Thompson was aware from at least 1987 that the reticulated water supply was laid in 1982. By a letter dated 24 August 1987, Mr Thompson advised the Council as follows concerning the "reticulated water supply" on the Woodleigh Heights subdivision:

"25. Sometime in 1980 or 1981 the timing of which is irrelevant the Kyneton Council approved the resubdivision of the Woodleigh Heights Subdivision into 131 allotments.

...

27. By minute dated 6 November 1980 the Kyneton Water Board resolved to advise the Kyneton Development Committee that it could supply 1,000,000 gallons annually in any reticulated area and that any anticipated consumption in excess of that figure would be subjected to negotiation.

...

30. Kyneton Water Board did subsequently enter into a water supply agreement between itself and Woodleigh Heights Resort Developments Pty Ltd for the supply of water to the whole of the Woodleigh Heights Subdivision.

...

33. Subsequent to the making of the above agreement trenches were dug and pipes laid along a considerable length of Edgecombe Road in order to facilitate the supply of water to the Woodleigh Heights Subdivision.

...

112. The Board under cover of letter dated 12 September 1985 made a copy of the agreement available [being the agreement referred to in paragraph 30 of the August 1987 letter] after my solicitor threatened to take legal action to force the Board to make a copy available.

⁷⁸ See para 54(a) of the Thompson summary judgment affidavit.