

Simply wrong

The plaintiffs in 2005 rely upon the same facts pleaded in earlier proceedings brought by them long since compromised and the subject of releases in the Council's favour. It is difficult to conceive of a case which more clearly exhibits the hallmarks of an abuse of process, one appropriate for summary disposition.

(b) The prior Tylden Road proceeding

16. This is not the first claim in tort brought by these plaintiffs against the Council concerning the Tylden Road Residential land. That land and essentially the same facts relied upon here was the subject of County Court proceedings commenced by the plaintiffs in 1988 against the Council and the Water Authority ("the prior Tylden Road proceeding").²¹

17. The comparative table set out in paragraph 22 of the first Dixon summary judgment affidavit shows quite clearly that allegations of fact made in the prior Tylden Road proceeding are the same allegations sought to be relied upon by the plaintiffs in this proceeding to constitute the cause of action relied upon and for the relief sought.

18. In the prior Tylden Road land proceeding the plaintiffs claimed "consequential" loss and damage arising from the sale of the Residential land component of the Tylden Road land.²² In the current proceeding, the plaintiffs claim the same consequential loss and damage.²³ The particulars of such consequential loss and damage provided by the plaintiffs in both the prior Tylden Road proceeding and the current proceedings are substantially the same.²⁴

19. The plaintiffs have purported to file and serve an amended statement of claim pursuant to Rule 36.03 dated 4 November 2005. The amendments relate to particulars of loss and damage. In respect of the claims relating to the Tylden Road land, the amended particulars concern the Residential land only. Whilst the amended particulars seek to explain why the residential allotments were allegedly sold at less than market value, the plaintiffs' alleged loss and damage in respect of the Residential land remains unchanged from that alleged in the prior Tylden Road proceeding.

²¹ See paras 10 and 15-21 of the first Dixon summary judgment affidavit

²² See paras 25 to 27 of the first Dixon summary judgment affidavit