20. As discussed below, the prior Tylden Road proceeding was compromised in 1991. It is a clear abuse of process to seek to bring a second claim in 2005 which relies upon the same facts and alleges the same damage as the earlier compromised proceeding.

(c) the prior Woodleigh Heights proceeding

21. The Woodleigh Heights land has also been the subject of previous proceedings. In 1995, the Plaintiff commenced proceedings in the Supreme Court against the Council, the Authority and two individuals in respect of the Woodleigh Heights land (**"the prior Woodleigh Heights proceeding"**).[25] Fraud was alleged by Mr Thompson against the Council in that proceeding. It is noteworthy that Mr Thompson now concedes that he made the allegation of fraud in that proceeding in circumstances where he "*could not say or demonstrate what the fraud was or who was responsible for it*"[26].

22. The comparative table in paragraph 45 of the first Dixon summary judgment affidavit clearly shows that allegations of fact made in the prior Woodleigh Heights proceeding are now sought to be advanced again in the present proceeding. Like the prior Tylden Road proceeding, the prior Woodleigh Heights claims included claims founded in tort.

23. The amended statement of claim contains amended particulars of loss and damage in respect of the Woodleigh Heights land. The amended particulars set out the basis upon which the plaintiffs' alleged loss is to be calculated. A similar, if not identical basis, was adopted by the plaintiffs in the particulars of loss and damage in the prior Woodleigh Heights proceeding.[27]

24. As discussed below, the prior Woodleigh Heights proceeding was settled in 1999. The plaintiffs instituted that claim in 1995 and settled it in 1999. It is not open to them to bring a second proceeding based on the same facts and alleging the same

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23 See para 30 of the first Dixon summary judgment affidavit
24 See paras 25, 26 and 30 of the first Dixon summary judgment affidavit
25 See paras 34 to 37 of the first Dixon summary judgment affidavit and tabs 16 to 30 of the exhibits folder
26 See para 50(a) of the Thompson summary judgment affidavit.
27 See paras 50 and 51 of the first Dixon summary judgment affidavit.