53. Putting them at their highest, the circumstances alleged by the plaintiffs to constitute "concealment" are as follows:

(a) at the time of signing the terms of settlement in respect of the prior Tylden Road proceeding (*being 14 June 1991*) Counsel for the Council and the Water Authority handed to Mr Thompson a large black folder containing copies of various documents (**"the black folder"**);[45]

(b) Mr Thompson took the black folder home and "*gave it a cursory glance but because I considered the matter to be at an end, I archived the folder and did not look again at its contents until August 2000*". That is, he left it in the cupboard for 9 years and now, after fourteen years, wishes to sue relying upon its contents;[46]

(c) in August 2000, Mr Thompson, for the purpose of preparing a defence and counterclaim against the Council in respect of a rates dispute, re-examined the contents of the black folder;[47]

(d) upon examining the documents in the black folder it became apparent to Mr Thompson that there were two versions of the plans for the Industrial land component of the Tylden Road land, being "complete" versions and "clipped" versions;[48]

(e) Mr Thompson recognised the clipped versions as being the same as those which had been admitted into evidence by Wilson (of the Council) in the 1987 Magistrates Court proceeding[49];

(f) Mr Thompson noticed that the clipped versions of the plans had been clipped in copying in such a manner as to remove or omit the identifying number which was present on the complete version;[50]

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45 See para 26 of the Thompson summary judgment affidavit.
46 See para 26 of the Thompson summary judgment affidavit.
47 See para 53(a) of the Thompson summary judgment affidavit.
48 See para 53(b) of the Thompson summary judgment affidavit.
49 Being the proceeding referred to in para 23 of the Thompson summary judgment affidavit whereby the Council sought to recover from the plaintiffs the overrun of road construction costs in respect of the Tylden Road land. See para 53(b) of the Thompson summary judgment affidavit.

(g) Mr Thompson noticed that the black folder also contained copies of "the residential series of the Tylden Road plans of subdivision", that those plans had also been clipped and that Mr Thompson recognised such clipped plans as being identical to those admitted into evidence in the 1987 Magistrates Court proceeding and the related Supreme Court Appeal;[51]

(h) it was a result of reviewing the documents in the black folder and reflecting upon the evidence given in previous proceedings that Mr Thompson reached certain conclusions which now form the basis of the allegations pleaded in the omitted paragraphs.[52]

54. It is apparent from the Thompson summary judgment affidavit that the "critical document" from the black folder which led Mr Thompson to reach the conclusions which now *underpin* the allegations in the omitted paragraphs was the copy of the *"complete version"* of the plans for the industrial allotments. No other documents from the black folder are mentioned by Mr Thompson in his affidavit as assisting him in reaching the conclusions he did.

55. The complete version of the plans for the industrial allotments is considered by Mr Thompson to be the "*critical piece of the puzzle*" which enabled Mr Thompson to comprehend fully the events which he now alleges took place twenty five years ago, in 1980.[53]

56. It is apparent from a review of the relevant authorities on the issue of fraudulent concealment that the period between 14 June 1991 and August 2000 can not be viewed as being a "period of concealment" for the purposes of section 27(b) of the *Limitation of Actions Act.*

57. In *Hamilton v Kaljo*,[54] McLelland J considered what was meant by the expression "fraudulently concealed" for the purpose of section 55 of the Limitation Act 1969 (NSW)[55]. After considering the English authorities on this issue, His Honour stated:

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50 See para 53(b) of the Thompson summary judgment affidavit, and exhibit "GAT-7" to that affidavit, being a bundle of the "complete" version of the plans.
51 See para 53(c) of the Thompson summary judgment affidavit.
52 See para 53 (c)-(h) of the Thompson affidavit.
53 See para 53 of the Thompson summary judgment affidavit.
54 (1989) 17 NSWLR 38.