

68. So to in the present case, putting the plaintiffs' case at its highest, the provision of the black folder on 14 June 1991 containing the "critical document" relevantly placed Mr Thompson on notice of the claims he now seeks to advance in the statement of claim some 15 years later. Further, the "first seen in 1991" point is not factually correct as the second Dixon summary judgment affidavit reveals.
69. Mr Thompson goes to great lengths in the Thompson summary judgment affidavit to seek to establish fraudulent concealment on the part of the Council and the Water Board. However, Mr Thompson *fails* to mention certain critical facts, the existence of which clearly demonstrate that his allegation of fraudulent concealment prior to 1991 is in any event completely without foundation.
70. As stated above, the critical piece of the puzzle which led Mr Thompson, according to him, to the conclusions which now underpin the matters pleaded in the omitted paragraphs is said to be the copy, contained in the black folder, of the complete versions of the plans for the industrial allotments. The picture Mr Thompson seeks to paint in his summary judgment affidavit is that the first time the complete version of the plans was made available to him was when they were supplied to him in the black folder in June 1991 after the Terms of Settlement in the prior Tylden Road proceedings were signed. That is not so.
71. What Mr Thompson fails to disclose in the Thompson summary judgment affidavit is that:
- (a) the complete version of such plans *were discovered* in the prior Tylden Road proceeding by way of a supplementary affidavit of documents sworn 23 May 1989;<sup>63</sup>
  - (b) a copy of the complete version of such plans *was provided* to Mr Thompson's solicitors in the prior Tylden Road proceeding, Neville & Co, during the currency of that proceeding by the Council's solicitors (Maddock Lonie & Chisholm) under cover of a letter dated 15 May 1989;<sup>64</sup>

<sup>63</sup> See paragraph 9 of the second Dixon summary judgment affidavit and exhibits MED-8, MED-11 and MED-12 to that affidavit.

<sup>64</sup> See paras 11, 12.4 and 12.5 of the second Dixon summary judgment affidavit and page 5 of the exhibit MED-14 to that affidavit.