

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No 6321 of 2005

B E T W E E N

**GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON**

Plaintiffs

and

MACEDON RANGES SHIRE COUNCIL

First Defendant

-and-

THE COLIBAN REGION WATER AUTHORITY

Second Defendant

**OUTLINE OF SUBMISSIONS OF THE SECOND DEFENDANT
FOR 14 NOVEMBER 2005**

Date of document: November 2005

Filed on behalf of: the Second Defendant

Prepared by:

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Application & Material

1. The plaintiffs allege that they are owners of certain parcels of land described as (1) the Tylden Road land in December 1980, being 15 residential allotments identified in certificate of title volume 9408 folios 045, 046, 047, 048, 049, 051, 052, 054, 055, 056, 057, 058, 059, 060, 061, 062 and industrial land identified by lodged plan numbers 135199, 135200 and 135201 and (2) Woodleigh Heights land in and around late 1981, being the land described in certificates of title volume 9171 folios 687, 688, 693, 698, 700, 701, 704, 713 and 714 and carried on business of property developers.
2. The first defendant was formerly known as the Kyneton Shire Council. The second defendant was previously known as the Kyneton Water Board and the Kyneton Shire Water Works Trust.

1980, the plaintiffs provided bank guarantees obtained from the Commercial Bank of Australia Limited in the sum of \$25,000 for road construction and \$11,500 to cover water main and associated water works for the Tylden Road land. The plaintiffs claim that the second defendant called on the guarantees on 10 December 1982 to construct water main and associated water works in 1983 and 1984 and that it acted wrongfully and without lawful authority causing loss and damage to the plaintiffs. The plaintiffs claim that the Tylden Road land was not at any time situated within the urban district or rural district of the second defendant.

4. The plaintiffs further claim that they have suffered a loss of profit in that they were called on to sell the residential allotments at Tylden Road prematurely.
5. In relation to the Woodleigh Heights land, the plaintiffs allege that the second defendant entered into an agreement on or about 1 January 1982 for the supply and distribution of water to Woodleigh Heights Resort Development Pty Ltd (WHRD), a company incorporated by the previous owners of the land. The plaintiffs claim that the second defendant acted wrongfully and in excess of its powers in entering into an agreement with WHRD to supply and distribute water to the subdivision. The plaintiffs defaulted on their mortgage and their land was sold by public auction by Australian Guarantee Corporation Pty Ltd (AGC) on 17 November 1984.
6. The plaintiffs claim that the second defendant misrepresented to them the situation in relation to access to an approved reticulated water supply. The plaintiffs say as a result, the auction scheduled for 23 November 1985 was cancelled. Subsequently, the plaintiffs sold their land in 1989 to Deckwood Pty Ltd for a lower price than they otherwise would have obtained had reticulation been available on the land.

Orders Sought

7. The second defendant seeks the orders sought in the summons dated 20 September 2005 that the proceeding be dismissed or permanently stayed as