

1 MR THOMPSON: And that as a consequence of the then planning
2 scheme, he proposed a private reticulation system which
3 was to be present at the time that the plans were sealed.
4 That is fully described in that submission including the
5 plans which show the reticulation, the lake, the header
6 tanks and so on. That was the basis that it was sealed
7 on in 1978 and then what happened was - and just to put
8 you in the picture, that was - the subdivision was
9 initially I forget now, some 30 or 40 odd blocks of three
10 acres each.

11 A little bit later on, what happened was it was re-
12 subdivided because they wanted to build a time share
13 resort there. At that point in time, on my understanding
14 later was that it was necessary to augment the supply
15 that was out there initially. The supply that was
16 provided by the Kyneton Water Board by the second
17 defendant cannot be confused with the supply that should
18 have been there in 1978. Sorry, 1979 at the time of the
19 sealing. The one, the one is contained entirely in the
20 subdivision and is the property of the body corporate and
21 should have been (indistinct) in 1979. The one that was
22 bought in 1982 was bought pursuant I might say to an
23 unlawful water supply agreement. Nobody in fact could
24 establish as it was some - the defendants' allegations at
25 the moment say that at that particular point in time when
26 I knew of the second water supply that my right of action
27 accrued from then. Well it didn't because it was an
28 unlawful water supply and no right to that water supply
29 existed. Nobody had a right to it, it was simply
30 unlawful. Now it did not and cannot be said to replace
31 the water supply that should have been out there in 1979.

