

IN THE COUNTY COURT

AT MELBOURNE.

Action No.:

B E T W E E N :

GLENN ALEXANDER THOMPSON
and CHERYL MAREE THOMPSON

Plaintiffs

- and -

THE PRESIDENT COUNCILLORS AND RATEPAYERS
OF THE SHIRE OF KYNETON

Firstnamed Defendant

- and -

THE KYNETON WATER BOARD
(formerly THE KYNETON SHIRE WATERWORKS TRUST)

Secondnamed Defendant

STATEMENT OF CLAIM

1. The firstnamed Defendant is and was at all material times:

(a) a body corporate pursuant to the provisions of the Local Government Act 1958 (as amended) ('the LGA'); and

(b) capable of being sued in the said name.

2. The Kyneton Shire Waterworks Trust ('the KSWT') was at all material times prior to the creation of the secondnamed Defendant:

(a) a body corporate pursuant to the provisions of the Water Act 1958 (as amended) ('the WA'); and

(b) an Authority within the meaning of the WA.

3. The secondnamed Defendant is:

- (a) a body corporate pursuant to the provisions of the laws of the State of Victoria;
- (b) capable of being sued in the said name;
- (c) the successor in title of the KSWT, which upon its creation and pursuant to an Order made under s.8 of the Water and Sewerage Authorities (Restructuring) Act 1983 assumed all the land easements works property powers rights liabilities and obligations of the KSWT.

4. On about 12 February 1980 a Mr K.R.Buchanan ('the subdivider') lodged with the firstnamed Defendant notices in the form of the Thirtieth Schedule to the LGA of intention to subdivide into 18 residential allotments a block of residential land owned by him and situated in Tylden Road, Kyneton in the State of Victoria ('the land').

5. The land was at all material times:

- (a) the whole of Crown Allotment 129 and part of Crown Allotment 132 Parish of Lauriston;
- (b) under the operation of the Transfer of Land Act 1958; and
- (c) situated within the district of the firstnamed Defendant.

6. The land was not at any material time situated within:

- (a) the urban district;
- (b) the rural district;

of the secondnamed Defendant or of the KSWT.

7. On or about 20 February 1980 the firstnamed Defendant served the subdivider with a written notice of requirement pursuant to ss.569E(1) & 569E(1A) of the LGA ('the requirement') requiring him:
 - (a) to construct specified works, including roadworks, on the land; and
 - (b) to give or cause to be given to the firstnamed Defendant a written statement from the KSWT that an agreement had been made for the provision of water supply to the land.
8. On or about 21 May 1980 the firstnamed Defendant sealed the various plans of subdivision provided by the subdivider in relation to the land with endorsements that a requirement under s.569E(1A) had been made.
9. In or about October 1980 and at the request of the subdivider the Plaintiffs provided a signed requisition to the Manager of the Commercial Bank of Australia Ltd. (as it then was) at Thomastown ('the Bank') for the issue to the firstnamed Defendant of a Bank Guarantee ('the first Bank Guarantee') to be available until cancelled for such sum or sums not exceeding in the aggregate the sum of \$25,000 which were or might become payable by the Plaintiffs to the firstnamed Defendant in connection with the subdivision of the land.