IN THE SUPREME COURT OF VICTORIA AT MELBOURNE.
COURT OF APPEAL.
CIVIL DIVISION.

Court Number: **6321 of 2005**

B E T W E E N :

GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON *Appellants*

- and -

MACEDON RANGES SHIRE COUNCIL *First Respondent*

- and -

THE COLIBAN REGION WATER AUTHORITY *Second Respondent*

APPELLANTS' SUBMISSION

Date of Document: - 22nd August 2007
Filed on behalf of: The Appellants
Prepared by: The Appellants

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1) I make this submission in opposition to the application of the Respondents seeking orders that the Appellants provide security for costs and in default of that security the present appeal be stayed or struck out.

2) The Appellants oppose the present applications and say:

   a) The matters set out in the Affidavits and Outline of Submissions of the Respondents are misleading and do not set out the true facts.

   b) The Appellants respectfully submit that the present applications ought be struck out with costs to be paid by the solicitors and barristers for the Respondents.

3) The fundament grounds which the Respondents rely upon are two primary assertions:

   a) That the Appeal has no prospect of success.

   b) That the Appellants are impecunious.

4) These primary assertions are supported by what purport to be a number of statements of fact, to the effect:

   a) That the Appellant's case has been tested by each of Master Efthim and Justice Osborn and found wanting by each.

   b) That the Appellants have refused to perform previous Terms of Settlement.

   c) That the Appellants have failed and/or refused to pay a number of costs orders.

5) In reply I say the solicitors and barristers for the Respondents cannot hold a reasoned belief as to the substantive things said by them in their affidavits and outlines of submission.

6) The fundamental position of the Appellants is that, for the reasons set out below, they are entitled by right and the principles of natural justice to be heard at appeal.

7) In accord with the position held by me, I will not make any submissions as to my present financial position other than saying that previous submissions made by me in this regard do not purport to and cannot be construed to represent my present financial position.

8) I have not filed an affidavit in respect to the present submission. This, my submission, relies entirely upon documents already filed with the Court and in particular on the written Reasons for Judgment of each of Master Efthim and Justice Osborn.

9) **As to the first principle ground of the Respondents to the effect that the present appeal has no prospect of success, I say that they are fully aware that the judgment of Justice Osborn is manifestly wrong.**

10) **I also say that they are aware that the judgment of Master Efthim is also manifestly wrong.**

11) I am a layperson, the affidavits and submissions of the solicitors and barristers have been made under colour of office and silk. They say that my appeal has no prospect of success. I say otherwise, but a bald statement by me to that effect is of no effect. I must therefore set out, at least in part, my reasoning.

12) This document is necessarily detailed. It is an unassailable statement as to the manifest error of the Judgments of Master Efthim and Justice Osborn.

13) The fact of and the facts of the judgments of Master Efthim and Justice Osborn are matters of grave concern which, if let stand, will bring the administration of justice into disrepute in the minds of right thinking people.

The Judgments of Master Efthim and Justice Osborn.

14) **The questions which were before Master Efthim and Justice Osborn.**

a) Because the appeal before Justice Osborn was a re-hearing de novo, both hearings were in fact the hearing of the applications by the Respondents for summary judgment. The Respondents had applied to the Court to have judgment entered against the Appellants on the grounds that:

i) the proceeding sought to re-agitate issues which were raised and resolved upon settlement of earlier proceedings – res judicata and accord and settlement.

ii) the subject matter of the proceeding was so closely related to earlier proceedings that the principles of Anshun apply.

iii) the claims are manifestly statute barred.

b) The Appellants on the other hand relied upon s.27 of the Limitations of Actions Act.

c) For the Respondents to succeed they had to show that the matters and things which gave rise to the loss and damage and therefore gave rise to the cause of action were not concealed by the Respondents and were or ought to have been known to the Appellants at the time of the previous proceedings.

d) The Appellants on the other hand had to show that the matters and things giving rise to the cause of action had been fraudulently concealed by the Respondents.

e) The solicitors and barristers for the Respondents **did not identify the facts** pertinent to the questions before the Court. They instead **concealed those facts** by deception and obfuscation. They then concocted false argument which specifically deceived the Court. Master Efthim was deceived such that, from his Reasons for Decision, it is apparent that the facts pertinent to the questions before the Court were not considered by him, and he did not determine the matter on the pertinent facts.

15) **A compounding factor for Master Efthim.**

a) In this proceeding I initially retained Mr Lex Lasry of Counsel. Unfortunately at the time of the hearing before Master Efthim he was overseas on one of his famous defences of Australians under threat of death sentence. Mr John Middleton, now Justice Middleton of the Federal Court, was retained to appear before Master Efthim. Upon reading the transcripts during the Christmas 2005 break, I became aware that my counsel had failed to follow or heed my express and specific oral and written instructions. Not only did they fail to put my case, they specifically misrepresented me and my case. In January 2006, some **four months before Judgment was handed down, I wrote to my counsel and solicitors advising them** of their error and **of my view that**, on their submissions, **Master Efthim must find against me**. I sacked them at that time and demanded the return of the $86,000 which had been paid to Mr Middleton. In my view the submissions by my counsel did nothing to dispel, but instead provided verisimilitude to, the deceptive submissions of the solicitors and counsel for the Respondents. It appears to me that my counsel, new to the matter, may have been beguiled by the submissions of the solicitors and barristers for the Respondents and lost sight of the true issues.

b) The error and/or neglect of my counsel does not mitigate the deception of Master Efthim by the solicitors and barristers for the Respondents.

16) Justice Osborn was not deceived; he personally elected to act outside his authority. He determined the matter in part on questions of fact raised and determined by him without notice and in the complete absence of submission, and in part by omission and in the face of facts which were before him.

17) **The specific things giving rise to the causes of action.**

a) The present Amended Statement of Claim contains a number of allegations. The substantive allegations may be divided into three classes:

i) Those containing the allegations giving rise to the loss and damage and therefore giving rise to the causes of action.

ii) Those containing allegations which demonstrate mala fides but which of themselves do not and cannot cause loss and damage, and do not and cannot contribute to the cause of loss and damage, and therefore do not and cannot give rise to or contribute to the causes of action.

iii) Those making allegations as to the states of mind of the Respondents in respect to those things giving rise to the causes of action.

b) The tortious acts are clearly set out in the Statement of Claim and in my affidavit sworn by me on 18th October 2005 and are paraphrased by me at paragraph 55)b) of that Affidavit as "*My present cause of action is that the Council did in breach of its specific duty seal the residential series of plans and the industrial series of plans and the plans of cluster subdivision in full knowledge that the allotments thereby created were unusable due to a lack of services and in full knowledge that there was no lawful means to compel or cause construction of those services in order to make those allotments useable.*"

c) In the Amended Statement of Claim it is alleged that these things were done either maliciously or with reckless disregard to the probability that such conduct would occasion harm.

d) In relation to Tylden Rd, there are only two paragraphs in the Statement of Claim and Amended Statement of Claim which contain allegations of matters and things which give rise to the cause of action as defined. These are paragraphs T5 and T12 which specifically allege that the s.569E Notices of Requirement referred to therein were, respectively, never served and fabricated.

e) In relation to Woodleigh Heights, there is only one paragraph in the Statement of Claim and Amended Statement of Claim containing allegations of matters and things which give rise to the cause of action as defined. This is paragraph W10 and in particular subparagraph W10(b) and which specifically alleges that that the private "**reticulated water supply system**" pertinent to the water supply defined in paragraph W3 did not exist as required by law. The extent to which this water supply **system** did not exist is set out in paragraphs 9 and 40 of my affidavit sworn 18th October 2005. It existed in all respects except that the network of pipes comprising the reticulation **system** did not exist. In simple terms, the "water supply" existed, the **system** did not. As set out in paragraph 40 of my affidavit, the principal water mains were laid in 1982 and not 1979 as required by law and it was this fact which had been concealed by the Respondents until 1999.

f) The act of sealing the plans of subdivision and cluster subdivision without services and without lawful means to compel construction of those services facilitated the avoidance of the effect of s.9 of the Sale of land Act 1958, as alleged in paragraphs T7 and W8 of the Amended Statement of Claim.

g) **The matters and things giving rise to the causes of action therefore are**:

   i) **In relation to Tylden Rd, that the s.569E Notice referred to in paragraph T5 was never issued or served and those referred to in paragraph T12 were fabricated.**

   ii) **In relation to Woodleigh Heights, that the principal reticulation system (or mains) was not laid in 1979 as required by law but was instead laid in 1982.**

h) The plans of subdivision and cluster subdivision were sealed with either malicious knowledge of, or careless disregard for, **these two things and these things alone**.

i) **The matters and things which manifestly do not and cannot cause loss and damage** and which **merely demonstrate mala fides** include, inter alia, all those things set out in paragraph T9 of the Amended Statement of Claim and includes such things as:

i) Non compliance with ss569(1) and 569A of the Local Government Act 1958, per se.

ii) Plans of subdivision which do not show all allotments or roads.

18) **The Statement of Claim specifically precludes those things pleaded which demonstrate mala fides from being construed as being a matter or thing giving rise to the cause of action.**

a) In the case of Tylden Rd, **no thing pleaded, other than the absence of s569E Notices**, as pleaded at paragraphs T5 and T12 of the Amended Statement of Claim, **can, in the circumstances pleaded, give rise to, or facilitate, avoidance of the effect of s.9 of the Sale of Land Act 1958 as pleaded at paragraph T7.**

b) In the case of Woodleigh Heights, **no thing pleaded, other than the absence of the water supply system**, as pleaded at paragraph W10(b), **can give rise to, or facilitate, avoidance of the effect of s.9 of the Sale of Land Act 1958 as pleaded at paragraph W8**.

c) In any event, **those things demonstrating mala fides**, such as unlawful plans and/or lack of planning permits, per se, do not, and **cannot, of themselves cause harm**, and in any event such things were neutralized by **s.569B(10) of the Local Government Act 1958** and which section existed for the specific purpose of correcting or **neutralizing such things at law**.

19) **On the issues pleaded, the sole legitimate basis for the applications of the Respondents were:**

a) In relation to Tylden Rd, as to whether or not the things pleaded in paragraphs T5 and T12, and in particular as to whether or not the fact that no lawful Notice of Requirement had ever been served, **had <u>not</u> been fraudulently concealed by the Respondents**.

b) In relation to Woodleigh Heights, as to whether or not the thing pleaded at paragraph W10(b), and in particular whether or not the fact that the reticulation **system** did not exist prior to 1982, **had <u>not</u> been fraudulently concealed by the Respondents**.

20) **The solicitors and barristers for the Respondents did not make their applications on the only legitimate basis available to them. They did not even identify them. They instead relied upon deception by falsehood, omission and obfuscation so as to specifically conceal the true issues.**

a) I do not intend to dissect their numerous affidavits, submissions and documents: I simply say that every affidavit and submissions was false and deceptive in that none of the affidavits or submissions, written and/or oral, disclosed to the Court the causes of action and/or the matters giving rise to those causes of action.

b) They instead set out and relied upon deception and obfuscation.

i) In relation to Tylden Rd, inter alia, that the unlawful plans per se gave rise to the causes of action.

ii) In relation to Woodleigh Heights outright falsehoods and obfuscation to conceal the true cause of action.

c) As to the fact of the deception and obfuscation the facts set out below speak for themselves.

21) **A partial analysis of Master Efthim's Reasons for Decision.**

a) That Master Efthim was deceived is apparent from his Reasons for Decision as detailed herein.

b) Master Efthim's Reasons for Decision are nonsense, this is not, nor is it intended to be a specific reflection upon Master Efthim. Master Efthim was deceived by two Queen's Counsel, two junior counsel and a bevy of lawyers and this deception was provided verisimilitude by the neglect of my counsel and solicitor in failing to follow my specific written instructions.

c) I do not intend to completely dissect Master Efthim's reasons. It is adequate for the present purpose to merely provide two salient and glaring examples of the manifest wrongness of Master Efthim's Reasons for Decision.

d) **The manifest wrongness of Master Efthim in relation to Tylden Rd.**

i) As set out above the sole issue in relation to Tylden Rd is the question as to whether or not the fact that no lawful s569E Notice was ever served was fraudulently concealed by the Respondents.

ii) In my affidavit of 18th October 2005 I allege that the First Respondent concealed the fact that no lawful notice of requirement was ever issued by the giving of false evidence in the Magistrates Court and by swearing a false affidavit in the Supreme Court and by making false admission in the County Court.

iii) I now, momentarily, refer to the Reasons for Judgment of Justice Osborn for relevant detail of the said Magistrates Court and Supreme Court proceedings.

(a) At paragraphs 48 to 52 of his Reasons for Judgment Justice Osborn sets out the substantive detail of a 1988 Supreme Court proceeding before Justice Kaye. In that proceeding Justice Kaye determined issues in relation to the s.569E Notice of Requirement then thought to have been served by the First Respondent on or about 20th February 1980. The proceeding was an appeal against the finding of a Magistrate who had specifically determined, inter alia, that the Notice of Requirement was issued pursuant to s.569E(1)(b) or (d) (of the Local Government

Act 1958) and that the Council was therefore entitled to accept and call upon bank guarantees pursuant to that requirement.

(b) Justice Kaye found that the Magistrate was in error. Justice Kaye found that the requirement by its terms was a requirement pursuant to s.569E(1)(a) and that the requirement was one requiring the owner to construct the roads and not one providing for the retaining or calling up of bank guarantees.

(c) In summary, and in other words, Justice Kaye found that there was a lawful requirement for the construction of road works but there was no or no proper requirement entitling the Council to retain and/or call up bank guarantees.

iv) It is manifest that the Magistrate made his determination **against me in the belief** that a **lawful Notice of Requirement had been issued** and that the requirement was made pursuant to s569E(1)(b) or (d) of the Local Government Act 1958.

v) It is also manifest that Justice Kaye made his Judgment **for me in the belief** that a **lawful Notice of Requirement had been issued** and that by its specific terms the requirement was made pursuant to s.569E(1)(a).

vi) Ipso facto, the fact, now relied upon by me, that the said notice had **never been either issued or served**, was in fact **fraudulently concealed from the Magistrates Court and the Supreme Court and myself** and was concealed for the **purpose of obtaining false judgment and concealing the present cause of action**.

vii) The only remaining question is whether or not the Respondents continued to fraudulently conceal the fact that the s.569E Notice relied upon by the Magistrate and Justice Kaye had in fact never either issued or served.

viii) I now, again momentarily, refer to the Reasons for Judgment of Justice Osborn, where:

(1) At paragraph 53 Justice Osborn states, "*The decision of Kaye J was the fount of subsequent proceedings. Thereafter in reliance upon his Honour's reasoning, the plaintiffs instituted proceedings in the County Court seeking damages from the defendants*".

(2) At paragraph 54 Justice Osborn summarizes paragraphs 4, 7 and 8 of the Amended Statement of Claim in the previous Tylden Rd proceeding. In relation to paragraph 7 he says "..... *On 20 February 1980 the Council had served a requirement pursuant to s.569E(1) and (1A) in respect of the construction of road works and the obtaining of a statement from the Water Board that an agreement had been entered into to make provision for water supply.....*" (Note: The actual pleading does not contain the word "had" in respect to the serving of a requirement, this word was inserted by Justice Osborn. The actual pleading states "..... the Council served.....")

ix) At paragraphs 57(12) of my affidavit of 18th October 2005 I say, and the fact is, that both Respondents admitted to paragraph 7 of the Statement of Claim and Amended Statement of Claim in the previous Tylden Rd proceeding. They did so in each of their defence, amended defence, re-amended defence and further re-amended defence.

x) Each of these four separate admissions constituted a further utterance of the false evidence given before the Magistrates Court and the Supreme Court and a **further four instances of overt and fraudulent concealment** of the fact that the Notice of Requirement had in fact never been either issued or served and there never was any requirement in respect to construction of roads and construction of water works.

xi) It is manifestly obvious that the First Respondent did overtly and fraudulently conceal the fact that the Notice of Requirement referred to in paragraph 7 of the Statements of Claim in the previous Tylden Rd proceeding and this overt concealment was done by;

(1) False evidence and falsified documents in the Magistrates Court.

(2) False affidavit and falsified documents in the Supreme Court.

xii) It is also manifestly obvious that both Respondents did further conceal the fact that the Notice of Requirement referred to in paragraph 7 of the Statements of Claim in the previous Tylden Rd proceeding when both Respondents:

(1) Falsely admitted to paragraph 7 of the said Statements of Claim in each of their:

(a) Defence dated 16/12/88

(b) Amended Defence dated 31/5/89

(c) Re-Amended Defence dated 9/8/90

(d) Further Re-Amended Defence dated 3/6/91

xiii) In addition the Respondents further concealed the fact by making discovery of, inter alia, the same documents as which deceived the Magistrates Court and the Supreme Court.

xiv) There was nothing discovered, at any time, which disclosed that the Magistrates Court and Supreme Court had been deceived by false evidence and falsified documents and that the County Court and I had been deceived by false admissions and deceptive discovery.

xv) Compare now the patent concealment, which is obvious and set out above, with paragraph 55 of Master Efthim's Reasons for Decision, where he says "***..... One may ask why Mr. Wilson's evidence had the effect of concealing the First Defendants true conduct from the Court and Mr. Thompson. This is not a credible explanation***".

xvi) I now pose the opposing questions.

(1) How is it possible that the Master was not aware of these overt and fraudulent acts of concealment in relation to the specific thing giving rise to the cause of action in relation to Tylden Rd?

(2) How is it that Master Efthim was of the belief that the Magistrate and Justice Kaye were not deceived?

xvii) I say that **Master Efthim was deceived by the solicitors and barristers for the Respondents.** Before him, **the Magistrate was plainly deceived, Justice Kaye was plainly deceived and I was deceived** by false evidence and affidavits and falsified documents. Subsequently **the County Court and I were deceived** by false admissions and by discovered documents which did not disclose either the deceit of the false admissions or the perjury which went before. **The facts of and the fact of this deceit and fraudulent concealment are unassailable.**

e) It is difficult to determine what was actually adjudicated or judged by Master Efthim in relation to Tylden Rd. The one thing for certain is that **he did not adjudicate or judge upon the absent s.569E Notices giving rise to the cause of action.** It appears he was not even aware of the deception of the Magistrate and Justice Kaye or the false admissions or perhaps not even aware that this deception was relevant.

f) **The manifest wrongness of Master Efthim in relation to Woodleigh Heights.**

i) The question in respect to Woodleigh Heights was or ought to have been as to whether or not the fact that the water **system** had been laid in 1982 instead of 1979 as required by law was fraudulently concealed by the Respondents.

ii) **Master Efthim was deceived by the solicitors and barristers for the respondents.**

(1) In relation to Woodleigh Heights, the solicitors and barristers for the Respondents specifically misrepresented the facts. They obfuscated the issues so as to conceal the things giving rise to the cause of action. At paragraph 88 of the Outline of Submissions on behalf of the First Defendant dated 9th November 2005 they said "***What Mr. Thompson fails to mention*** *and what the objective documentary evidence*

establishes, is that he was aware and had been aware, at least since August 1987 (if not before), that ***the*** *"reticulated water supply" had been* ***laid*** *in 1982 and not 1979".*

(2) This statement by the solicitors and barristers for the First Respondent contains at least two points of obfuscation and one patent and critical falsehood.

(a) The obfuscation:

(i) The first point to observe is that the subject of this submission is said to be "the" (as distinct from "a") "*reticulated water supply*" which is said to have been "laid" in 1982 and not 1979.

(ii) The second point to observe is that a "water supply" cannot be "laid", water mains or **systems** are "laid", water supplies are supplied.

(b) The falsehood or outright lie (as apparently accepted and relied upon by Master Efthim):

(i) In the premise that "*the*" "water supply" referred to is a reference to the only water supply which was **supplied** in 1982, then the statement of the solicitors and barristers for the Respondents is either an **outright lie** or a falsehood resulting from gross neglect and incompetence.

(ii) The fact is that, not only did I mention the fact of the water supply which was supplied in 1982, **I specifically pleaded it** at paragraphs W21 and W30 to W35 of the Amended Statement of Claim, and paragraph W31 states that my awareness was from April 1984. As is obvious, **I specifically pleaded what they say "*Mr. Thompson fails to mention*"**. In addition I say that I knew about it 3 years before they deceptively alleged to establish.

(c) In the premise that "the" water supply which is said to have been "laid" in 1982 is intended to include a meaning that the water **system** was laid in 1982 then no such

nexus is possible, but instead is a clear and unequivocal obfuscation of the sole legitimate issue.

(d) In the premise that "the" water supply is intended to include a meaning that "the" water supply is one and the same as the water supply referred to in paragraph W3 of the Amended Statement of Claim then no such nexus is possible and in any event such meaning is precluded by the fact that the water supply referred to in paragraph W3 (in the form of the lake) was in fact present in 1979, only the **system** was absent.

(e) In the premise that knowledge of "the" water supply which was supplied in 1982 is intended to imply or show that this knowledge includes knowledge that the water supply referred to in paragraph W3 of the Amended Statement of Claim was not present and reticulated in 1979, then no such nexus is possible.

(f) A further important issue is that, for the reasons set out in paragraphs W20 to W71 of the Amended Statement of Claim, "the" water supply provided in 1982 was not a lawful water supply and was supplied in fraudulent circumstances and used for the purpose of fraud. As such it does not, and cannot, constitute a "water supply" as represented by the solicitors and barristers for the Respondents. The fact of this illegality was or ought to have been well known to Major General Garde, counsel for the Second Respondent, and was or ought to have been known to the other solicitors and barristers for the Respondents.

(3) Therefore I say, the submission at paragraph 88 of the Outline of Submissions on behalf of the First Defendant dated 9th November 2005 is an **outright falsehood and deception**, and every oral submission given in support of this submission is a further utterance of that falsehood and deception.

(4) In reliance on this submission, at paragraph 60 of his Reasons for Decision, Master Efthim states "..... *Submissions have been put to me that the objective documentary evidence establishes that Mr. Thompson was aware from at least 1987 that the reticulation water supply was laid in 1982 ..... which are inconsistent with the allegations made by Mr. Thompson*". Master Efthim then went on to transcribe **from** the **"*objective documentary evidence*"** put forward by the solicitors and barristers for the Respondents. **He relies particularly on paragraphs 30 and 33 of that "*evidence*" as evidence of what "*Mr. Thompson fails to mention*".** The facts in relation to these two paragraphs however are.

(a) The **matters of paragraph 30 of the "*objective documentary evidence*" are specifically pleaded** by me at paragraph W21 of the Amended Statement of Claim.

(b) The pipe referred to in **paragraph 33 of the "*objective documentary evidence*" is also specifically pleaded** by me at paragraph W34 of the Amended Statement of Claim. In any event, at the paragraph 33 relied upon by the Master, the pipe is stated by me to be "*a pipe laid along a considerable length of Edgcombe Rd*" which is a public road entirely outside the Woodleigh Heights cluster subdivision and cannot be construed to be or confused with any part of the "water supply **system**" referred to in paragraph W10(b) of the Amended Statement of Claim and therefore cannot and does not imply any knowledge of construction of the **system** at that time.

(5) The facts therefore are, not only did I specifically plead that which they said "*Mr. Thompson fails to mention.*" but I also **specifically pleaded the evidence which they relied upon to demonstrate my knowledge of what they alleged I failed to mention.**

(6) **Master Efthim** appears to have **relied upon the integrity of the submissions** by the solicitors and barristers for the Respondents, however these submissions were false, misleading, deceptive and **crafted to obfuscate and mislead**, and they did. The submissions were devoid of integrity and I am confident that far more serious conclusions are reasonable.

(7) It appears probable that Master Efthim's understanding of paragraph 88 of the Outline of Submissions on behalf of the First Defendant dated 9th November 2005, was that knowledge that "the" reticulated water supply referred to in paragraph 88 was supplied in 1982 included knowledge that the water supply referred to in paragraph W3 of the Amended Statement of claim had not been supplied in 1979, whereas the fact is, **no such nexus is possible**.

(8) It is impossible to conclude what was actually adjudicated or judged by Master Efthim in relation to Woodleigh Heights. It could have been on any one or more of the possible permutations of the obvious deliberate obfuscation. The one thing for certain is that **Master Efthim did not adjudicate or judge on the facts or the things giving rise to the cause of action.**

(9) Again I pose the question. How is it that the Master did not even know what he should have adjudicated on? Plainly the answer is he was deceived. **The matters and things giving rise to the cause of action were concealed from him in exactly the same manner as they were concealed from me until August 2000** - by deception, dishonesty and obfuscation as compounded by the neglect of my counsel.

22) **A partial analysis of Justice Osborn's Reasons for Judgment.**

a) Justice Osborn's Reasons for Judgment are cause for grave concern.

b) The solicitors and barristers for the Respondents repeated their deceptive submissions before Justice Osborn. In reply I made a substantive written submission in two documents entitled

"Plaintiffs Appeal Submissions Part 1" and "Plaintiffs Appeal Submissions Part 2". These documents clearly set out and allege the deception of the solicitors and barristers for the Respondents, as then understood by me, including the deception and obfuscation with respect to the water supply system. They also set out the true issues, and allegations and evidence of certain serious misconduct by Major General Garde and Mr Steven Mark Edward, solicitor for the Second Respondent.

c) Justice Osborn purports to make judgment on the matters giving rise to the causes of action however he manifestly does not make judgment according to either the facts or the principles of justice.

d) **The manifest wrongness of Justice Osborn in relation to Tylden Rd.**

i) In relation to Tylden Rd, Justice Osborn based his judgment on a number of findings. For the present purpose it is only necessary to demonstrate the wrongness of three of the principal statements upon which the remainder of his judgment relies.

(1) At paragraphs 54, 55 and 56 of his Reasons for Judgment Justice Osborn sets out a summary of the relevant allegations set out in the Amended Statement of Claim in the previous Tylden Rd proceeding. Then at paragraph 57 Justice Osborn states:

(a) "This pleading is manifestly inconsistent with the assertions made in the Firstnamed plaintiff's primary affidavit that:

(i) The Tylden Rd proceeding was predicated upon the belief that the Council had:-

1. lawfully sealed the plans of subdivision; and

2. lawfully issued notices of requirement in respect to the construction of roads and the construction of water works".

(2) Then at paragraph 58 Justice Osborn further states (of the previous Tylden Rd proceeding) *" ..... the amended statement of claim specifically alleged that the plans were not lawfully sealed and* ***lawful notices*** *of requirement were* ***not issued****".*

(3) Then at his paragraph 60 Justice Osborn states *"The critical allegation now relied on is that the Council did not serve* ***any or any proper*** *'requirements' upon the subdivider"* AND *"The underlying facts were squarely pleaded in 1991".*

ii) It is clear therefore that Justice Osborn unequivocally states of the Amended Statement of Claim of the previous Tylden Rd proceeding:

(1) *"specifically alleged ..... .That the plans were not lawfully sealed".*

(2) *"specifically alleged ..... Lawful Notices of Requirement were not issued".*

(3) *"The critical allegation now relied on is that the Council did not serve* ***any or any proper*** *'requirements' upon the subdivider"* AND *"The underlying facts were squarely pleaded in 1991".*

iii) Each of these statements by Justice Osborn, a Justice of this Court, schooled in pleadings, are so **manifestly wrong as to be false.**

(1) **In relation to the first statement,** *"the amended statement of claim specifically alleges that the plans were not lawfully sealed"*:

(a) It is manifest that the Amended Statement of Claim in the previous Tylden Rd proceeding **does <u>not</u> plead or allege** ***"that the plans were not lawfully sealed"****.*

(b) The only mention of unlawfulness in relation to plans is found at paragraph 20 of the said Amended Statement of Claim. This paragraph is fully transcribed by Justice Osborn at paragraph 56 of his Reasons for Judgment.

(c) At paragraphs (a)(ii)A and B of the said paragraph 20 of the Amended Statement of Claim (as transcribed in the Reasons for Judgment), it is alleged that the said plans contravened sections 569A(1)(a) and (c) of the Local Government Act 1958.

(d) This is not and cannot be construed to be an allegation *"that the plans were not lawfully sealed"* as wrongly asserted by Justice Osborn.

(i) It is important here to distinguish between the sealing of unlawful plans as distinct from the unlawful sealing of plans.

(ii) In the previous Tylden Rd proceeding the fact of unlawful plans was pleaded, however unlawful plans, per se, do not and cannot give rise to a cause of action, they do not and cannot cause loss and damage. It is irrelevant that the fact of unlawful plans were previously pleaded. They merely form part of a matrix of facts known then and which remain true today.

(iii)Such an allegation was effectively precluded by s.569B(10) of the Local Government Act 1958 which, is intended to and does (for excellent and obvious reason) render any such allegation impotent at law. Fortuitously s.569B(10) is transcribed at paragraph 32 of Justice Osborn's Reasons for Judgment (and in my written submission to him).

(e) Additionally, and pertinently, even if such an allegation was made in the previous proceeding, it did not and could not form part of the cause of action. Thus it is entirely irrelevant to and does not preclude the present cause of action, and does not and could not bar the present proceeding.

(i) The mere sealing of plans which are technically deficient, and do not give rise to any harm, does not and cannot give rise to an action based in tort or anything else for that matter.

(ii) The present proceeding does not allege that the unlawful plans of subdivision, per se, were unlawfully sealed. The present proceeding alleges to the effect that the plans were sealed "*in full knowledge that the allotments thereby created were unusable due to a lack of services and in full knowledge that there was no lawful means to compel or cause construction of those services in order to make those allotments useable*".

(f) **Justice Osborn's first statement "*The Amended statement of claim specifically alleged that the plans were not lawfully sealed*" is both manifestly wrong and manifestly irrelevant.**

(2) **In relation to the second statement,** "*The Amended statement of claim specifically alleged ..... lawful Notices of Requirement were not issued*":

(a) The first thing to observe in relation to Justice Osborn's second statement is the fact that it is a misleading truncation of what I said in my affidavit. He omitted the critical words "***in respect to the construction of roads and the construction of water works*".**

(b) My statement (as set out at paragraph 57 of Justice Osborn's Reasons for Judgment) was "*The Tylden Rd proceeding was predicated upon the belief that the Council had:- ..... (ii) lawfully issued notices of* ***requirement in respect to the construction of roads and the construction of water works***".

(c) My statement is manifestly correct, Justice Osborn's second statement is manifestly false and **the truncation of my statement provides verisimilitude to his false statement.**

(i) At paragraph 54 Justice Osborn summarizes paragraphs 4, 7 and 8 of the Amended Statement of Claim in the previous Tylden Rd proceeding. In relation to paragraph 7 Justice Osborn summarizes it as:

"…….. On 20 February 1980 ***the Council*** *had* ***served a requirement*** *pursuant to s.569E(1) and (1A)* ***in respect of the construction of road works and*** *the obtaining of a statement from the Water Board that an agreement had been entered into to* ***make provision for water supply*****……."** (Note: The actual pleading does not contain the word "had", this was inserted by Justice Osborn. The actual pleading states "…… the Council served…..")

(ii) This is a clear allegation that the Notice of Requirement was issued.

(d) **Ipso facto, from his own writings, Justice Osborn's second statement *"The Amended statement of claim specifically alleged ….. lawful Notices of Requirement were not issued"* is manifestly wrong.**

(3) **In relation to the third statement** *"The critical allegation now relied on is that the Council did not serve* ***any or any proper*** *'requirements' upon the subdivider"* AND *"The underlying facts were squarely pleaded in 1991".*

(a) This third statement by Justice Osborn is to the effect that the previous Tylden Rd proceeding alleged that *"that the Council did not serve* ***any or any proper*** *'requirements' upon the subdivider".*

(b) **This third statement by Justice Osborn is manifestly wrong.**

The manifest wrongness of the third statement.

(c) As stated by Justice Osborn at his paragraph 53 the previous Tylden Rd proceeding was instituted in reliance upon Justice Kaye's reasoning in OR/235/88.

(i) At paragraphs 48 to 52 of his Reasons for Judgment Justice Osborn sets out substantive detail of Supreme Court proceeding OR/235/88 before Justice Kaye. In that proceeding Justice Kaye determined issues in relation to the s.569E Notice of Requirement (then thought to have been) served by the First Respondent on or about 20th February 1980. The proceeding was an appeal

against the finding of a Magistrate who had specifically determined that the Notice of Requirement was issued pursuant to s.569E(1)**(b)** or **(d)** (of the Local Government Act 1958) and that the Council was therefore entitled to accept and call upon bank guarantees pursuant to that requirement.

(ii) Justice Kaye found that the Magistrate was in error because the requirement by its terms was a requirement pursuant to s.569E(1)**(a)** and that the requirement was one requiring the owner to construct the roads and was not a requirement providing for the retaining or calling up of bank guarantees as was wrongly determined by the Magistrate.

(iii)In summary, and in other words, Justice Kaye found that there was a lawful requirement for the construction of road works but there was no or no proper requirement entitling the Council to retain and/or call up bank guarantees.

(iv)It is manifest that the Magistrate made his determination against me **in the belief** that on or about 20th February 1980 the Council issued a **lawful Notice of Requirement** and that **the requirement was made pursuant to s569E(1)(b) or (d)** of the Local Government Act 1958.

(v) It is also manifest that Justice Kaye made his Judgment for me **in the belief** that on or about 20th February 1980 the Council issued a **lawful Notice of Requirement** and by its specific terms was a **requirement made pursuant to s.569E(1)(a)** and not s.569E(1)**(b)** or **(d)** as wrongly determined by the Magistrate.

(d) In other words:

(i) The Magistrate found that the Council had issued a Notice of Requirement providing for the retention and calling up of guarantees.

(ii) Justice Kay found that the Council had issued a Notice of Requirement providing for the construction of roads and water works but there was no or no proper requirement providing for the retention or calling up of guarantees.

(e) As alluded to by Justice Osborn at his paragraph 53, the Amended Statement of Claim in the previous Tylden Rd proceeding precisely reflects the judgment of Justice Kay in that, in summary, it specifically alleges that the Council had issued a notice of requirement providing for the construction of roads and water works but there was no or no proper requirement providing for the retention or calling up of guarantees. That this is so is seen from Justice Osborn's own writings.

1. At his paragraph 54 Justice Osborne states of the previous Tylden Rd Amended Statement of Claim.

   " ..... In particular it was pleaded ..... On or about 20th February 1980 the Council had served a requirement pursuant to s569E(1) and (1A) in respect of the construction of roads and the obtaining of a statement from the Water Board that an agreement had been entered into to make provision for water supply ..... "

2. Then at his paragraph 56 Justice Osborn sets out the abovementioned paragraph 20 of the said Amended Statement of Claim, and to reiterate, this paragraph states.

   "..... the firstnamed defendant was not entitled to retain and/or call up the first bank guarantee .....for the following reasons:

   (a) .....

   (iii) the firstnamed defendant ***did not serve*** *or cause to be served on the subdivider* ***any, or any proper or sufficient 'requirements'*** *....."*

(f) Therefore from Justice Osborn's paragraphs 54 and 56 it is clear that the previous Amended Statement of Claim specifically alleges:

(i) *On 20 February 1980 the Council had served a requirement pursuant to s.569E(1) and (1A) in respect of* ***the construction of road works and*** *the obtaining of a statement from the Water Board that an agreement had been entered into to* ***make provision for water supply*****.....**" (therefore)

(ii) "*..... The firstnamed defendant was not entitled to retain and/or call up the first bank guarantee either pursuant to s.569E, or at all*" (because)

(iii)" *the Firstnamed defendant did not serve or caused to be served on the subdivider any, or any* ***proper*** *or sufficient 'requirements' within the meaning of section 569E(3)(b)*" (for that purpose).

(g) Ipso facto the Amended Statement of Claim alleges exactly as was judged by Justice Kay which was to the effect that the Council had issued a notice of requirement providing for the construction of roads and water works but there was no or no proper requirement providing for the retention or calling up of guarantees.

(h) Compare this now with Justice Osborn's further statements at his paragraph 60, "*The critical allegation now relied on is that the Council did not serve* ***any or any proper*** *'requirements' upon the subdivider*" AND "*The underlying facts were squarely pleaded in 1991*".

(4) **The third statement by Justice Osborn that the underlying facts of the present proceeding "*were squarely pleaded in 1991*" is manifestly wrong.**

(5) The third statement by Justice Osborn depended upon omission of fact, and was composed in such a manner as to gain the appearance of truth and reason from

paragraph 20(a)(iii) of the previous Amended Statement of Claim which was quoted by him at his paragraph 59 in isolation and out of context.

(6) In context Justice Osborn's third statement is manifestly wrong, it is also a nonsense.

e) **The manifest wrongness of Justice Osborn in relation to Woodleigh Heights.**

i) Justice Osborn's conclusions in respect to Woodleigh Heights are found at paragraph 102 of his Reasons for Judgment. They include:

(1) Insofar as it is premised upon the plaintiffs' appreciation of the facts relating to the Tylden land it must also fail.

(2) The fundamental contention of the plaintiffs with respect to the nature of requirement for reticulated water supply at the date of the cluster subdivision and non compliance with such requirement should be rejected.

(3) The history of the provision of water supply was pleaded by the plaintiffs in the Woodleigh Supreme Court proceeding and there is no evidence of new facts discovered by the plaintiffs' since at least 1987.

ii) The remaining three conclusions set out at paragraph 102 of his reasons are dependant upon the first three set out above.

iii) **Each of the reasons set out above are manifestly wrong.**

(1) **The first reason of paragraph 102 is manifestly wrong.**

The solicitors and barristers for the Respondents alleged that the Woodleigh Heights cause of action was based upon a realization of the facts related to Tylden Rd. There is no evidence of this at all. To say that the evidence that the water system was not laid at Woodleigh Heights was "appreciated" from the facts relating to Tylden Rd is manifestly absurd. Justice Osborn accepted this absurd assertion by the solicitors and barristers for the Respondents without regard to fact or reason.

(2) **The second reason of paragraph 102 is not only manifestly wrong, it was in fact manufactured by Justice Osborn himself without notice and in the complete absence of submissions on the issues.**

(a) The second reason relied upon by Justice Osborn is a determination with respect to the conditions and effect of planning permit 2191 which is the initial planning permit for the Woodleigh Heights subdivision.

(b) In relation to this, a fundamental allegation of the Appellants was that condition 8 of the Planning Permit required the construction of the private water supply defined in the submissions, and that the plans of cluster subdivision were sealed in full knowledge that the water supply system was not present. These allegations are found at paragraphs W2 to W10 of the Amended Statement of Claim.

(c) The Respondents, in support of their applications for summary judgment, did not, and (for reasons which I shall address later) could not, make any opposing submissions in respect to the relevant terms of the Planning Permit, they instead relied upon an assertion that I was aware of the facts from at least 1987. This assertion by the solicitors and barristers for the Respondents is contained at paragraphs 87 and 88 of the document entitled "Outline of Submissions on behalf of the First Defendant" dated 9th November 2005

(d) I have previously dealt with the obfuscation of this paragraph 88 above in relation to the Reasons for Decision of Master Efthim and I made a substantial submission on this issue to Justice Osborn. It is my view that Justice Osborn could not find against me on this issue and he did not, he instead relied upon matters and things which he personally introduced and then determined unfairly, unjustly and wrong in fact.

(e) During the hearing Justice Osborn personally raised the issue of the planning permit and at pages 108 and 109 of the transcript of proceedings of the second day, the following exchange took place between Justice Osborn and I.

1. *"HIS HONOUR: Yes, that's not what I was putting to you Mr Thompson. You say it was in breach of the planning permit because - as I understand it, because there was no articulated water supply.*
2. *MR THOMPSON: Yes. Yes, that's correct.*
3. *HIS HONOUR: Yes.*
4. *MR THOMPSON: It was in breach of the planning permit.*
5. *HIS HONOUR: That's what you say.*
6. *MR THOMPSON: Yes.*
7. *HIS HONOUR: Yes, and it depends on construction of the planning permit as to whether that's right,* ***but that's not the sort of question that would be resolved at this stage.*** *"*

(f) Justice Osborn however went on to **summarily determine questions on the construction of the Planning Permit** and to then rely upon those determinations. In doing so he acted outside his authority and unfairly and unjustly and for the apparent purpose of finding against me. He effectively and in fact acted as advocate for the Respondents in respect to this and several other aspects.

(g) Paragraphs 153 to 163 of Justice Osborn's Reasons for Judgment are devoted to determinations made by him in respect to the conditions of the Planning Permit.

(h) The fact that these determinations were made at all by Justice Osborn is sufficient reason for their manifest wrongness however, in addition, his determinations were also wrong in fact. I do not propose to address the multitude of errors but instead for the present purpose I will demonstrate one manifest wrongness as to fact.

(i) My submission entitled "Plaintiffs' Costs Submission" was delivered to Justice Osborn on 7th December 2006 prior to him having made orders. (This

document was incorrectly dated 8th December 2006 by me and is on file and forms part of the Court records.)

(ii) The document "Appendix A" as attached to the abovementioned "Plaintiffs' Costs Submission" also now forms part of the Court records. I now refer to that document wherein the Respondents gave evidence to the Planning Appeals Tribunal and they said of the Woodleigh Heights subdivision – "***One of the conditions of that development required water to be provided by a large on-site dam and internal reticulation***".

(iii)Compare this now with the unequivocal determination of Justice Osborn at paragraph 63(c) where he states:

"***The permit did not require completion of the reticulated non-potable water supply as a condition of subdivision.***"

(i) **Ipso facto the second reason of paragraph 102 is manifestly false.**

(3) **The third reason of Paragraph 102 is also manifestly wrong.**

(a) The new thing discovered is set out at Justice Osborn's dot point at the top of page 25 of his Reasons for Judgment. Notably Justice Osborn mis-states the time it was discovered. It was discovered after Terms of Settlement of the previous proceeding were signed. It was specifically shown to me during the hearing before Justice Beach.

23) **The circumstances in which Justice Osborn's Orders were made.**

a) The hearing before Justice Osborn was held over two days on 30/10/2006 and 1/11/2006. Judgment was subsequently set down for 29/11/2006.

b) On 29/11/2006 I was en-route to Melbourne from Orange for Judgment but was forced to land at Mangalore due to weather. Upon landing I telephoned my Melbourne agent Mr Daniel Izakow and asked him to attend Court to explain my absence.

c) Mr Izakow attended as a friend of the Court. In the circumstances Justice Osborn merely handed down his written Reasons for Judgment and adjourned the Court until 7/12/2006 so as to provide me the opportunity to make submissions as to costs.

d) Mr Izakow telephoned me and advised me that judgment was against me. Although not stated by Mr Isakow my understanding was that, excepting for costs orders, orders disposing of the matter had been made.

e) Upon reading the Reasons for Judgment I was outraged at their gross error and determined to make a submission as to those errors on 7/12/2006.

f) At the time of writing my submission for 7/12/2006 I had not yet obtained copies of the transcript for 29/11/2006 and was of the mistaken belief that Orders disposing of the matter had already been made so that the only outstanding orders were as to costs.

g) I hastily prepared a written submission entitled "Plaintiffs' Costs Submission" (This document was incorrectly dated 8/12/06 by me and is now on file and forms part of the Court records.)

h) This document detailed the error of Justice Osborn's Reasons for Judgment including setting out in adequate detail all of the matters set out above.

i) Despite knowledge of these matters and things Justice Osborn went on to make his orders on 7th December 2006. That he did so is a matter of grave concern.

24) **Fabricated Authenticated Orders of this Court?**

a) As detailed above I believed that orders disposing of the matter had been made by Justice Osborn on 29th November 2006. Mr Isakow who had attended as a friend of the court faxed me a copy of the written Reasons for Judgment.

b) The final line of the written Reasons for Judgment states:

"In all the circumstances the appeal from Master <u>should</u> be dismissed".

c) I was outraged by the manifest wrongness of the Reasons for Judgment and determined to make a strong submission as to the impending costs orders but not as to the orders disposing of the matter because I fully believed that they had already been made.

d) I wrote my document entitled "*Plaintiffs' Costs Submission*" and delivered it to Justice Osborn as my submission. My intent was to demonstrate the error of Justice Osborn's reasons so that any costs orders made by him were made in full knowledge of the matters set out by me and accordingly any costs orders ought not be made at all or be stayed pending appeal.

e) In full knowledge of the matters and things set out in my document entitled "Plaintiffs' Costs Submission", Justice Osborn made the following orders on 7th December 2006.

i) "I'll order firstly that the appeal be dismissed;

ii) Secondly that there be judgment for the Defendants and;

iii) Thirdly that the Plaintiffs pay the Defendants' costs of the proceeding including the costs of the appeal on an indemnity basis."

f) I then obtained transcripts of proceedings of 29th November 2006 and from those transcripts it was clear that **no orders other than adjournment orders had been made on that day**.

g) I then filed and served my Notice of Appeal within time of the orders made on 7th December 2006.

h) The Respondents did not object or even intimate that the filing of the Notice of Appeal was out of time.

i) By letter dated 7 May 2007 Mr Steven Mark Edward, solicitor for the Second Respondent, wrote to me and included with that letter were two purported Authenticated Orders of this Court.

j) The first of these purported Authenticated Orders represented that on 29th November 2006 Justice Osborne ordered:

   i) "*The appeal **should** be dismissed and there be judgment for the Defendants.*"

   ii) "*The further hearing of this matter with respect to costs is adjourned to 7 December 2006 at 9.30 am.*"

k) The second of these purported Authenticated Orders represented that on 7th December 2006 Justice Osborn ordered:

   i) "The *Plaintiffs pay the Defendants' costs of the appeal on an indemnity basis.*"

l) In reliance upon these purported Authenticated orders, the letter from Mr Steven Mark Edward stated "*We note that your present appeal has been filed out of time in relation to the orders made on 29 November 2006*", despite the fact that no objection had been made at the time of filing.

m) On 28th May 2007 a directions hearing in the appeal was held before Master Cain. At that hearing Mr Steven Mark Edward and his counsel maintained and submitted that the Notice of Appeal was filed out of time at least in respect to the substantive orders. Mr Edward and his counsel both declared memories of the substantive orders having been made on 29th November 2006. I submitted that the purported Authenticated Orders were wrong, and to the effect that the memories of Mr Edward and his counsel were convenient and plainly not based in fact. The Master saw that the purported Authenticated Orders were in fact wrong and he indicated that the Court could fix it internally under the slip rule. He adjourned proceedings

and advised that the Court would communicate with me in relation to the Authenticated Orders.

n) Subsequently I received from the Court a new purported Authenticated Order without covering letter. This new Authenticated Order purports to be a *"Correction of orders made on 29 November 2006 and 7 December 2006"* and purports to set out Orders made by Justice Osborn on 31 May 2007. Under the heading "Other Matters" this purported Authenticated Order states, inter alia, "*On 7 December 2006 after argument, the Court made final orders*" and "*Authenticated orders prepared after the hearing on 29 November 2006 and 7 December 2006 are by this order corrected under the slip rule.*"

o) This new purported Authenticated Order represents that on 31 May 2007 Justice Osborn ordered:

   i) "The appeal is dismissed".

   ii) "There is judgment for the defendants".

   iii) "The plaintiffs pay the defendants costs of the proceeding including the costs of the appeal on an indemnity basis".

p) In other words, according to the new Authenticated Order, **the present Notice of Appeal was filed some five months before the orders were purportedly made.**

q) **In summary the relevant considerations in respect to this sequence of events are:**

   i) Justice Osborn handed down his Reasons for Judgment on 29th November 2006.

   ii) Justice Osborn's Reasons for Judgment are manifestly wrong and he manifestly acted outside his authority and effectively acted as advocate for the Respondents.

   iii) The final line of Justice Osborn's Reasons for Judgment states "*In all the circumstances **the appeal from the Master should be dismissed**".*

   iv) No substantive Orders were made on 29th November 2006.

v) In the mistaken belief that the substantive orders had been made I wrote the document entitled "Plaintiffs' Costs Submission." This document clearly sets out, in part, the wrongness of Justice Osborn's Reasons for Judgment and also evinces that I was of the mistaken belief that the substantive orders disposing of the matter had been made on 29th November 2006.

vi) On 7th December I handed Justice Osborne my "Plaintiffs' Costs Submission" and after reading it, in full knowledge that no substantive orders had been made on 29th November 2006 or at all and after having the things set out in my submission made known to him, he made his orders of 7th December 2006. These orders were as set out above and as now set out in the Authenticated Orders of 31st May 2007 as authenticated on 4th June 2007.

vii) On 21st December 2006, within time from 7th December 2006, I filed my Notice of Appeal.

viii) The matters and things set out in my Notice of Appeal are most serious and includes allegations to the effect that that Justice Osborn made his orders of 7th December 2006 in knowledge of matters and things which did or should have given rise to a belief by him that his Reasons for Judgment were wrong and his orders ought not have been made.

ix) By letter dated 7 May 2007 I received what purported to be Authenticated Orders but which in fact completely misrepresented the facts and the orders made. Notably Mr Steven Mark Edward sought to rely upon these purported Authenticated Orders notwithstanding that he could not hold a belief as to their correctness.

r) On the face of it, these purported Authenticated Orders appear to have been fabricated and the effect of that fabrication was to nullify or make wrong my allegation that Justice Osborn's Orders were made in knowledge of the matters and things set out in my "Plaintiffs' Costs Submission".

s) They appear to have been fabricated because they contain what I say to be complimentary mistakes or omissions such that, on the face of it, they could not have occurred by accident or slip. The errors of the Authenticated Order of 29th November 2006 are dependant upon the errors of the Authenticated Orders of 7th December 2006 and vice versa. On the face of it these errors or fabrications as the case may be were not made independently, they were made concurrently so that each error, fabrication, slip (as the case may be) provided verisimilitude to the corresponding or complimentary error, fabrication, slip of the other. The first error, fabrication, slip was one of addition, the second was one of complementary omission.

t) One does not make complimentary slips of this kind by accident.

u) The alleged slip of the 29th November 2006 in which the order states "*The appeal **should** be dismissed and there by judgment for the Defendants*" is not a slip. On the face of it, it was carefully contrived to be in accord with what was said on that day. The last line of the Reasons for Judgment states "*In all the circumstances **the appeal from the Master should be dismissed**"* i.e. part of the text of the purported order was lifted directly from the written Reasons for Judgment and thereby provided verisimilitude.

v) I say that no court officer or person of reason could or would construe such a statement to be an order of the court. That something "should" occur is simply not an order.

w) On the face of it, the purported Authenticated Order of 7th December 2006 has been **contrived to provide verisimilitude** to the false Authenticated Order of 29th November 2006 and it does so **by deliberate omission** of orders in fact made on that day.

x) Justice Osborn was plainly aware of what orders he made on each of the days.

25) The purported Authenticated Orders of 29th November 2006, 7th December 2006 and 31st May 2007 are matters for grave concern. That Mr Steven Mark Edward, an officer of this court, sought to rely upon what he knew full well to be wrong Authenticated Orders is also cause for grave concern. That he advised Master Cain to the effect that he remembered the orders being

made is a further manifestation of **the dishonest conduct of Mr Steven Mark Edward** which I set out in my "Plaintiffs' Appeal Submission Part 2".

26) The matters and things set out above in respect to **the conduct of Justice Osborn** are all matters for grave concern. They **strike at the heart of rule of law and administration of justice.**

27) The Matters and things set out above in respect to the conduct of Justice Osborn are but a small part of a complete analysis of his Reasons for Judgment and conduct of the proceeding.

28) The Judgment of Justice Osborn **will be reviewed by the present appeal.**

The present Applications by the solicitors and barristers for the Respondents.

29) The present application for security for costs, ostensibly made by the Respondents is in fact an application made by the solicitors and barristers for the Respondents.

30) The solicitors and barristers for the Respondents are, or ought be, as aware of the matters and things set out in this submission as I am. They are also aware of most serious matters and things additional to those set out above which will be aired at appeal.

31) They have an obvious vested interest in preventing the present appeal from ever being heard.

32) That vested interest is at least twofold.

a) Because I am unrepresented they are required by the Rules to set out the issues and facts of the appeal. In other words, in the present circumstances, they are required by the Rules to expose their own deception and misrepresentations and in the present circumstances it is I who will be ensuring that they do in fact set out all of the true issues and facts.

b) According to the present supporting Affidavits by the solicitors for the Respondents they say they have thus far incurred about $500,000 in costs and that there will be a further $130,000 incurred at the impending appeal. In the event that the present appeal is successful then the solicitors and barristers will have to either wear these costs or explain the reasons why the

Respondents should pay costs which I believe will be shown to have been wrongly or carelessly incurred.

33) Both Respondents swear that they are of the belief that the Appellants are impecunious.

34) In the event that they are successful in the present applications and the Appellants are unable to provide security for costs as asserted by them, then the appeal will not see light of day and the vested interests of the solicitors and barristers will be protected.

Reply to the present affidavits and outlines of submissions

35) In view of the matters and things already set out in this document I see little point in responding to each and every item of the various affidavits and outlines of submissions however I make the blanket statement that the affidavits and submissions of the solicitors and barristers for the Respondents are as deceptive as those submitted before Master Efthim and Justice Osborn. I however make the following responses:

a) **That the appeal is an abuse of process and vexatious and has no prospect of success.**

   i) I refer to the matters set out in this document.

b) **That the appellants reside outside Victoria.**

   i) Procedures exist for interstate applications.

c) **Re-litigating settled or previous proceedings.**

   i) This assertion is dependant upon an assertion that the present causes of action were brought or could have been brought at the time of the previous proceedings. Such assertions are false:

      (1) The previous Tylden Rd proceeding alleged exactly as set out above in relation to the Reasons for Judgment of Justice Osborne. This allegation was:

1. *On 20 February 1980 the Council had served a requirement pursuant to s.569E(1) and (1A) in respect of* ***the construction of road works and*** *the obtaining of a statement from the Water Board that an agreement had been entered into to* ***make provision for water supply*****.....**" (therefore)

2. "..... *the firstnamed defendant was not entitled to retain and/or call up the first bank guarantee either pursuant to s.569E, or at all*" (because)

3. " *the Firstnamed defendant did not serve or caused to be served on the subdivider any, or any* ***proper*** *or sufficient 'requirements' within the meaning of section 569E(3)(b)*" (for that purpose).

(2) The present proceeding alleges as in paragraphs T5 and T12 which is that the said Notice of Requirement was not served and the others were fabricated.

(3) These two things are manifestly mutually exclusive, they cannot be co-pleaded.

(4) These things were concealed by the perjury and false admissions detailed above.

(5) These things were specifically <u>not</u> pleaded and could <u>not be</u> pleaded earlier.

(6) Neither Anshun, res-judicata or accord and satisfaction apply.

ii) **Ipso facto, this allegation is false.**

d) **The present claims are statute barred.**

i) They were concealed by perjury, false affidavits, false admissions, and by the very conduct of the previous proceedings. This concealment was fraudulent, known to be wrong, done for the purpose of concealing the present right of action. All of the attributes of fraudulent concealment necessary for s.27 relief are present.

e) **Costs orders not satisfied.**

i) **The Second Respondent's costs orders of Justice Beach.**

(1) The Respondents did not get these costs taxed, nor did they ever render an account and nor did they request payment until after they had made their application for summary judgment of the present proceeding. That is, seven years after the orders were made, Mr Steven Mark Edward attended to having the costs of the Second Respondents taxed. I acknowledge the order and the taxation but refer to my letter of 27th February 2006 which is present exhibit SME.31.

ii) **The current costs of the First Respondent.**

(1) I have never received an account or request for payment in relation to either the orders of Justice Beach or Master Efthim or Justice Osborn.

(2) The current costs are subject to the present appeal.

iii) **The Second Respondent's current costs.**

(1) I am aware that an appeal does not act as a stay.

(2) Mr Steven Mark Edward, has, with undue haste, attended to taxation of his (client's) costs in full knowledge that an appeal was on foot and I say in full knowledge of the matters and things set out in this submission.

(3) I say that the methods employed by Mr Steven Mark Edward are intended to intimidate, and in the circumstances which are known to him, wrong and unethical.

(4) I say that the orders for costs obtained by him were obtained at least in part due to his specific and deliberate untruths and false affidavits as set out at paragraph 1)o) on page 17 of my "Plaintiffs' Appeal Submissions Part 2".

(5) I fully believe that the present appeal will be upheld.

(6) I say Mr Steven Mark Edward cannot hold a reasoned belief that the present appeal has no prospect of success.

iv) **Act of Bankruptcy according to Steven Mark Edward and Major General Garde.**

(1) Mr Steven Mark Edward sent a sheriff to what he knows to be a vacant block of land owned by the Appellants and which he states to be subject to the encumbrances referred to in paragraph 11 of his affidavit of 6th July 2007. The sheriff found nothing other than an encumbered vacant block of land.

(2) This action by Mr Steven Mark Edward was contrived to secure a technical act of bankruptcy. This is the act of a person intent upon securing a permanent stay of the present appeal by any available means, including sending sheriffs on pointless expeditions.

(3) Major General Garde refers to this in his document entitled "Outline of Submissions of the Second Respondent and the Major General is also aware that the land is vacant and encumbered.

v) **Failed, resiled to perform earlier Terms of Settlement.**

(1) I did not fail to perform or resile from the previous Terms of Settlement. They were obtained in what I say to be deceptive circumstances and I in fact repudiated the Terms of Settlement and intended to apply to have them set aside. The Respondents then failed to pay the settlement money by the due date thereby defaulting on the Terms of Settlement, I therefore considered the matter at an end and issued Notice of Trial. These facts are set out in the Reasons for Judgment of Justice Beach. (exhibit SME-27).

(2) The present assertions by the Respondents are false.

(3) I now know that the Terms of Settlement were in fact obtained in fraud in that the Respondents concealed the present cause of action at the time that the Terms of Settlement were signed.

vi) **Insufficient assets.**

vii) In accord with the position held by me, I will not make any submissions as to my present financial position other than saying that previous submissions made by me in this regard do not purport to and cannot be construed to represent my present financial position.

viii) **ASIC Search and $83,000 loan to company.**

(1) Paragraph 18 of the Outline of Submissions of the Second Respondent is deceptive.

(2) The Offer Information Statement referred to does **not** say or imply that I **provided** an $83,000 loan in the year to 31 December 2005.

(3) The loan referred to is an ongoing loan and was provided years earlier and is not recoverable by me except as determined by the company to repay it.

ix) **Earlier agreement to provide security for costs in the sum of $100,000.**

(1) Before the judgment of Justice Osborn I had faith in our legal system and the administration of justice. The judgment and conduct of Justice Osborn however shook my belief system to the core such that I became somewhat bewildered as to how to right this wrong in the face of the endemic deception practiced by non judicial officers of this court.

(2) At the time of making the offer to provide security for costs I was still paralyzed of mind and needed time to both regain composure and, as I intended then, to engage and properly brief senior counsel. I therefore made the offer to provide security on condition that they agree to a delay in proceedings until at least 15th June 2007.

(3) This delay in proceedings was by agreement between the parties. Consent orders were signed and forwarded to the Court by the solicitors for the Second Respondent. By letter dated 10 April 2007 Master Lansdowne advised that the Court did not make

the orders and that proceedings had been adjourned to a directions hearing on 28th May 2007.

(4) After agreeing to provide security for costs on the conditions set out above I learned of the Authenticated Orders containing complimentary errors as referred to in this submission and I have now had time to regain my composure of mind and ultimate confidence in this Court.

(5) Having regained my composure I am of the firm mind that I am entitled by right to the present appeal whether or not I can provide security for costs.

(6) Having regard to the foregoing I now will not provide security for costs unless ordered by the Court.

Public Interest.

36) There are at least two issues of public concern.

a) **Community trust and confidence in the administration of Justice and rule of law.**

i) It is manifest:

(1) that the Judgments of both Master Efthim and Justice Osborn were not made on either the facts or the issues.

(2) that the purported Authenticated Orders of 29th November 2006 and 7th December 2006 do not reflect the Orders made in fact and it is manifest that they contain complimentary "slips".

(3) that the solicitors and barristers for the Respondents have misled the court and the Judgment of Mater Efthim was, at least in part, grounded in that deception.

b) These are serious issues which go to the heart of administration of justice and rule of law.

c) **The public interest in these issues outweighs any alleged entitlement that the Respondents claim to have for security for their costs.**

37) For the 25 years in which these matters have affected the Appellants I have never compromised myself. Each time I have come before the Courts, I have told the absolute truth. Because of this, I can stand up fearlessly and say the things that I have set out in this document. These things are, and are intended to be, a serious indictment of the system as it is practiced and a serious indictment on some officers of this court both judicial and non judicial. In addition, because I have never compromised myself, the truth and the facts, although complex, can be set out as in this document and they are unassailable. Although my faith in the judicial system has been severely tested, I maintain my ultimate confidence in the court and the truth.

38) **I respectfully submit that it would be wrong and a further injustice if this Court were to now require the Appellants to provide security for the costs of the Respondents in the appeal.**

39) **I respectfully request that the Court orders that the Appellants costs of and incidental to opposing the present application be paid by the Respondents and in particular by the solicitors and barristers for the Respondents.**

Glenn Thompson

First Appellant.