

Appendix 17

1 a reference is made to the decision of Chief Justice Mann
2 in Trustees and Executors.

3 So Your Honour in that situation - in that case we'd
4 be saying that the same approach should be adopted here,
5 that you look at the relief sought in the previous
6 proceeding, the relief sought in this proceeding to see -
7 in ascertaining the subject matter, and the words used in
8 the release in this case arising out of or in any way
9 relating to the subject matter are the same - have the
10 same possible broad interpretation as "in respect of" had
11 in Lyon Trust Corporation.

12 HIS HONOUR: Thank you. Mr Garde please.

13 MR GARDE: Your Honour we will start by just taking Your Honour
14 back again to the amended further statement of claim in
15 the Woodleigh Heights proceedings, and invite Your Honour
16 to just spend a moment and I'll go through the pleading,
17 but before I do that there are two - there are two of
18 course, types of water supply that are under discussion
19 in this pleading.

20 There is the water supply that was provided on the
21 land, which was of course non-obtainable water - non-
22 drinkable water, and then there was the prospect of water
23 becoming available from the Kyneton Shire Water Works
24 trust. And one has to, in looking at the pleading and
25 therefore looking at what was known at the time, identify
26 the features of the two systems, one existing prior to
27 1982, and one which as we know potentially became
28 available as and from 1982.

29 And with that in mind what I would invite Your
30 Honour to do is just to look for a start at Paragraph 6,
31 and in Paragraph 6 on p.3 of the amended further

1 statement of claim of 17 March 1999, Your Honour will see
2 the application referred to. "By application dated
3 22 November 1978 the Buchanan's applied to the Council to
4 develop the Woodleigh Heights estate by subdividing it
5 pursuant to the provisions of the Cluster Titles Act
6 1974, such subdivision consisting of 45 allotments" and
7 so on "with substantial areas of common property and
8 provision for the installation of a privately owned and
9 operated water supply and reticulation system". Have I -
10 this is Your Honour, I'm looking at Tab 16.

11 HIS HONOUR: I've got it in front of me.

12 MR GARDE: I'm sorry Your Honour I - so that was the
13 application and Your Honour will see in the particulars
14 that it contained - the application contained the
15 following relevant documents, the application for the
16 permit of 10 November 1978 and the submission dated
17 3 November 1978 prepared by James A Harris & Associates.
18 And that then takes us to Paragraph 7.

19 HIS HONOUR: Does that submission make clear what the character
20 of this system was in terms of your distinction between
21 non-potable and potable?

22 MR GARDE: It does Your Honour, yes as Paragraph 7 itself
23 illuminates. So that - - -

24 HIS HONOUR: Read on then.

25 MR GARDE: No, no, some guidance to be provided shortly. I
26 just want to go through this, because in fact this
27 pleading is precise in what was there and what was not
28 there.

29 HIS HONOUR: I see.

30 MR GARDE: That's in essence what I'm seeking to do, and so
31 Your Honour will then see that the proposal for the

1 privately owned and operated water supply and

2 reticulation system - - -

3 HIS HONOUR: Yes, I see.

4 MR GARDE: - - - and one might anticipate in the world of

5 regulatory authorities a privately owned system was an

6 object of some discussion - consisted of, now these are

7 the elements of it Your Honour. A storage reservoir in

8 (a). Inevitably a high level header tank of 100,000

9 gallon capacity in (b). Then the rising main to get from

10 one to the other and then (d) a reticulation system

11 comprising main pipes from the tank through the estate.

12 So understandably enough that had to be done. Then there

13 had to be smaller pipes from the main pipe to the

14 individual allotments, which is equally understandable.

15 Then we come to (e). When we talk about household

16 drinking and bathroom water, in other words potable water

17 or water of the appropriate use by humans, and we've got

18 household drinking and bathroom water was to be supplied

19 by means of roof rainwater tanks which were to be

20 installed concurrently with the construction of houses.

21 So the drinking water was actually coming from the roof

22 rainwater tanks for household drinking and bathroom use.

23 Then (f) probably answers I think Your Honour's question.

24 HIS HONOUR: That's right.

25 MR GARDE: The reticulated water supply was for non domestic

26 uses only. So in other words the proposal stood on the

27 somewhat rickety foundations one might say, but

28 nonetheless was approved on this footing, of this system

29 being available for use other than use for human

30 consumption and tank systems being available for water

31 for human use.

1 HIS HONOUR: Yes.

2 MR GARDE: And then we go to p.5, "The proposed water supply
3 and reticulation was detailed in the submission and
4 engineering report by Garlick & Stewart", and that's set
5 out there which I won't read out. Then we have in eight
6 that the council issued the planning permit. Then we
7 have nine that it was a condition of the permit that the
8 estate be developed in accordance with the plans and
9 submissions comprising the application for cluster
10 subdivision including the construction and installation
11 by the Buchanans of the water supply and reticulation
12 system as set out in the submission.

13 HIS HONOUR: Yes.

14 MR GARDE: That of course picks up the reticulation system that
15 is discussed in seven which in turn picks up the approach
16 that it's to be a rainwater tank system that provides the
17 water for human consumption. So the water supply and
18 reticulation system as set out in the submission referred
19 to in nine is reality what I might call for stock,
20 gardening or other non-human use; that's what it's
21 referring to.

22 Then we have ten that the council allow and approve
23 the private water supply and reticulation system as set
24 out in the submission. Now pausing there that's actually
25 unsurprising because it doesn't involve the use of trust
26 water at this juncture. So it's civil engineering works
27 that the council would be expected to approve. Then it
28 says, "The council did not refer the plans of subdivision
29 to the trust pursuant to those provisions". Then the
30 cluster subdivision was registered. So in other words it
31 had nothing to do with the trust at this juncture.

1 Then we see in 11 as to the state of knowledge and
2 state of fact. At the time of registration of Cluster
3 Subdivision 1134 the following relevant works had been
4 carried out. Now one has to just refer these back
5 because we see the things that had been carried out. Now
6 one has to just refer these back because we see the
7 things that had been done and we see the things - and one
8 thing in particular that hadn't been done. So (a) is the
9 lake and that corresponds with (a). In (b) we've now got
10 the two 50,000 gallon concrete high level water tanks
11 were constructed in lieu of a single 100,000 gallon high
12 level tank. So there's a departure and you've got two
13 tanks rather than one.

14 Then we come to (c). We've got a rising main laid
15 between the lake and the high level tanks. Then we come
16 to (d) and (d) says, "Primary reticulation pipes had been
17 laid in the common property and connected to the concrete
18 high level tanks to convey non domestic water from the
19 tanks to the allotments as referred to in the
20 submission".

21 Now the significant matter about that if Your Honour
22 goes back to (b) is that - if I put it this way the big
23 pipes or at least some of them, whatever is meant by the
24 expression "primary reticulation pipes" which isn't
25 coincident with - the main pipes were there.
26 Conspicuously absent are the smaller pipes from the main
27 pipe to the individual allotments and there's no
28 reference to whether by this stage any houses had been
29 constructed with or without rainwater tanks and (e) the
30 high level contained water.

31 So that in Paragraph 11 you've got a careful

1 pleading of what was there and what was not there as at
2 the time of registration of Cluster Subdivision Plan
3 1134.

4 HIS HONOUR: Yes.

5 MR GARDE: So it was obviously known that for example smaller
6 pipes from the main pipe to the individual allotments
7 were not there and it was also obviously known that in
8 lieu of the 100,000 gallon tank there were two 50,000
9 gallon tanks. So in terms of the reticulation system on
10 this estate which was not intended to provide water for
11 human consumption the position is clear in our submission
12 in this pleading.

13 Now nobody is suggesting that at this point of time
14 there was or that there was intended to be any supply of
15 water from the Water Works Trust and obviously if one had
16 a supply of water from the Water Works Trust then you
17 would not need roof rainwater tanks. You would plainly
18 enough use the direct supply of fresh water from the
19 Water Works Trust. So in addition it would be expected
20 that if the trust was involved at this juncture or was
21 intended to be involved in the supply of fresh water.

22 Then the council would refer the plans of
23 subdivision to the Water Works Trust, which it did not
24 do. Then that takes us to 12, and 12 says, "By reason of
25 the matters referred to in Paragraphs 5 - 13, the
26 plaintiffs as holders of an equitable interest in the
27 land", which was the amendment, the previous pleading
28 being, "As beneficial owners of the land purchased by
29 them", "Had a right of access and entitlement to the
30 water supply and reticulation system within CSS1134".

31 Now that is the internal reticulation system, and I might

1 say the internal reticulation system is not at all
2 relevant to the problem that the plaintiffs say they
3 subsequently experienced, because the problem they
4 subsequently experienced related to the availability of
5 fresh water.

6 HIS HONOUR: Yes.

7 MR GARDE: The existence or non existence of small pipes in
8 terms of the estate's own system was of no consequence.
9 So everything so far is consistent with the state of
10 knowledge that in and around 1979, there was no main
11 supply from the Water Works Trust, but if one keeps
12 going, 12A then 12B, "Had a right to install roof
13 rainwater tanks to provide drinking and bathroom water",
14 so 12B confirms again that at the time of the approval of
15 the plan of (indistinct) subdivisional and indeed
16 subsequently, it was the contemplation that it would be -
17 that the property would be supplied with fresh water
18 through the rainwater tank system as distinct from the
19 supply of water from a main from the Water Works Trust.
20 Then we have in 15 that in or about November 1980, the
21 Buchanans made application to the counsel for a cluster
22 redevelopment of cluster Subdivision 1134, dividing each
23 allotment into three smaller allotments, that was
24 approved, and in 17, again it wasn't referred to the
25 Water Works Trust, and again one might have thought,
26 looking at that, that there was no need to refer it to
27 the Water Works Trust, which is again confirmed in
28 Paragraph 18, because 18 pleads there was no alteration
29 to the water supply or reticulation requirements within
30 cluster Subdivision 1134, pursuant to the new plan, which
31 is 2784, and the water supply, and reticulation

1 requirements remained identical to that described in a
2 submission and set out in Paragraph 8 above.

3 HIS HONOUR: Yes.

4 MR GARDE: So that was the position as pleaded following the
5 application now in November 1980. Then, Your Honour,
6 when - if we jump over the pleading of the deed of
7 absolute assignment and come to Paragraph 15, in
8 Paragraph 31A we now have, by April 1984, a company,
9 Woodleigh Heights Resort Developments Pty Ltd were
10 developing a time share resort on cluster Subdivision
11 1134, it had purchased must of the land, entered into
12 contracts of sale to purchase all of the land that had
13 defaulted upon those contracts, and then there's this
14 discussion about Woodleigh Heights Resort Development
15 would prevent the plaintiffs' land or the land from
16 having access to - - -

17 HIS HONOUR: I'm sorry, where we have jumped to?

18 MR GARDE: Sorry, I'm now at 31B, Your Honour, 31B on p.15.

19 HIS HONOUR: Yes.

20 MR GARDE: I left out all the stuff relating to the deed of
21 assignment, Your Honour.

22 HIS HONOUR: Yes.

23 MR GARDE: So in 31B, Woodleigh Heights Resort Development
24 advised the plaintiffs that if the plaintiffs attempted
25 to rescind the contracts and sell to anyone other than
26 Woodleigh Heights Resort Development, then it would
27 prevent the plaintiffs land, which - or the land from
28 having access to water, and thereby render the land
29 worthless, and Your Honour will have noted from the book
30 of pleadings that back on 23 October 1980, this is p.C11,
31 Mr Thompson, Mr and Mrs Thompson, but with the signature

1 of Mr Thompson, wrote to the secretary of the shire of
2 Kyneton, and said, "Dear sir, please find enclosed bank
3 guarantee for subdivision of KR and another initial
4 Buchanan at Tylden Road, Kyneton, this subdivision is now
5 a joint venture between ourselves and Buchanan, and
6 Mr Ken Buchanan is still managing the subdivision for the
7 partnership", but what subsequently happened was that
8 there was a dispute that broke out between the Buchanans
9 and the Thompsons as we apprehend the position with the
10 consequent result that the development company that was
11 controlled by the Buchanans denied any access to the
12 water which that company had procured through the supply
13 agreement to the Thompsons, so the consequence of that
14 was that although, as Your Honour has had discussed
15 earlier, an agreement was made on the first day of
16 January 1982 between the Water Works Trust and Woodleigh
17 Heights Resort Development for the supply of water
18 suitable for domestic purposes by the Water Works Trust,
19 which was the first supply of that water to this land,
20 that supply agreement was made with the development
21 company, and it was as a consequence up to the
22 development company as to whether or not other lot owners
23 gained access to the water that that company was now
24 receiving from the Water Works Trust.

25 HIS HONOUR: Yes.

26 MR GARDE: And Your Honour will have observed in looking at the
27 agreement of 1 January 1982, between the trust and
28 Woodley Heights Resort Development Pty Ltd, that it
29 provided in Clause 1, after referring to the Water Act
30 and the regulations under
31 the - - -

1 HIS HONOUR: Where do I find this in the documents?

2 MR GARDE: That is Mr Thompson's exhibit, GAT26.

3 HIS HONOUR: I have a set of exhibits that goes to GAT21.

4 MR GARDE: Yes. I'm sorry Your Honour, this is the affidavit
5 of 7 November 2005.

6 MR THOMPSON: Your Honour it's in the second book of my
7 exhibits. You should have two of them.

8 HIS HONOUR: Well, I don't.

9 MR GARDE: We'll see if we can - thank you for that. We'll
10 have one handed up Your Honour.

11 HIS HONOUR: Perhaps just wait a moment, we better find out
12 whether we do have that second - - -

13 MR GARDE: Yes.

14 HIS HONOUR: They're original exhibits - yes, so I look at
15 that?

16 MR GARDE: Yes. I invite Your Honour to look at that and if
17 Your Honour goes then to - the heading refers to the
18 Water Works Trust and Woodley Heights Resort Development
19 Pty Ltd and then Your Honour will see in Clause 1 that,
20 "The trust shall, so far as it is able to do so, subject
21 to the provisions hereof and the Water Act 1958 and the
22 regulations made thereunder", and so on, "Supply to the
23 consumer", the term consumer being defined to mean the
24 development company, "and the consumer shall take from
25 the trust water for domestic purposes on the said land as
26 and from 1 October 1981", and Your Honour will see that
27 in Paragraph 2, "The consumer shall at it's own expense
28 and to the satisfaction of the trust provide and install
29 all pipes and fittings which may be necessary for
30 obtaining such supply from the trust's pipeline at the
31 corner of Edgecombe Road and Dettmanns Lane". So to

1 pause there. It was the development company that
2 provided the pipes and fittings that took the supply from
3 the corner of Edgecombe Road and Dettmann's Lane which
4 was some distance from the estate, "and shall so long as
5 this agreement remains in force keep the pipes and
6 fittings within the said property in good order and
7 proper repair to the satisfaction of the trust".

8 So it had the obligation, that's the development
9 company had the obligation of looking after the pipes and
10 fittings. "Any authorised officer of the trust may at
11 any time or times inspect and examine all or any such
12 pipes or fittings and the pipeline installed along
13 Edgecombe Road will be taken over and maintained by the
14 trust on the first day of July 1982, subject to the
15 pipeline passing performance tests to the satisfaction of
16 the trust", so the trust was apparently concerned to
17 ensure that it was of sufficient quality.

18 Having regard to those matters Your Honour in the
19 evidence, I return to the proposition that was advanced
20 as we apprehended it earlier today as to whether the land
21 was properly serviced by an articulated water supply in
22 1979.

23 HIS HONOUR: Well, just before we do that, in the amended
24 statement of claim what's the substance of what then
25 follows?

26 MR GARDE: The substance of what then follows Your Honour is
27 that there are a series of allegations of
28 misrepresentation of different sorts and if I look at - I
29 mentioned 31B but if one continues on, we've got 32, "In
30 April 1984 the plaintiffs made enquiries of the council
31 and the board to ascertain whether the matters

1 communicated to the plaintiffs by the development company
2 were correct". Now those matters said to be
3 communicated, to go back to the particulars, in a
4 conversation between Mr Murphy, a director of the
5 development company and the first named plaintiff in or
6 about March and April of 1984 is particularised and the
7 development company advised first named plaintiff that
8 Woodleigh Heights Resort Development had a private water
9 supply agreement between itself and the trust for the
10 supply of water to all of the - plus the subdivision,
11 including the land. "Two, that under the water agreement
12 the development company controlled a supply of water
13 within the cluster subdivision including the supply of
14 water to the land and that under the water agreement, the
15 development company were in a position to render the land
16 valueless by denying the supply of water to it and
17 thereby preventing the issue of building permits in
18 respect of the plaintiff's land".

19 So following this dispute between the Buchanans and
20 Thompsons as we apprehended, those statements were made
21 back in March or April 1984, so it was alleged. In
22 Paragraph 32, the plaintiff then made enquiries of the
23 council and the board to ascertain whether the matters
24 communicated were correct

25 And there's a reference there to a telephone
26 conversation in April 1984. And then it's said in
27 response to the enquiries, the council and the board
28 represented to the plaintiffs that. And then it's said
29 that the plan of cluster subdivision was outside the
30 water trust area and in an area where under the
31 provisions of the Water Act 1958, water was supplied

1 under private agreement at the discretion of the trust so
2 there was no - it was not an area where the trust had the
3 capacity to service individual allotments. There was
4 under the provisions of the Act a legally valid water
5 agreement in existence between the board and the
6 development company and that under the water agreement,
7 the development company owned and operated the water
8 supply reticulation system within the cluster
9 subdivision. And it's said that it was represented that
10 the land was not entitled to the water supply or
11 reticulation system within CS1134 and could not obtain
12 access to the water supply and reticulation system
13 without the agreement and consent of the development
14 company. So in other words, unless you go and talk to
15 the development company and get their consent then you
16 can't access the system which is controlled by the
17 development company.

18 And then it's said the body corporate was not
19 entitled to the water supply or reticulation system
20 within CS1134 and it's said that the board would not
21 transfer the existing water agreement to the body
22 corporate except with the agreement of the development
23 company. And would not enter into a separate water
24 supply agreement with the body corporate of CS1134 except
25 with the agreement of the development company. And (g)
26 that unless the plaintiffs had access to a reticulated
27 water supply, the council would not issue building
28 permits to build upon the land. That's said to be the
29 first representation. And then one comes to the
30 existence of various mortgages. And default occurring in
31 the mortgages in August 1984. And then the auction of

1 17 November 1984 and then in 39(a) if I invite Your
2 Honour to jump over to p.21, that on or about 13 November
3 1984 the board represented to Hookers and to AGC that
4 water and sewerage were denied to the land and could not
5 be obtained. And if one interpolates here Your Honour,
6 the trust had in place a water agreement as Your Honour
7 has looked at which took the water supplied by the trust
8 to a location from which the development company and its
9 assets took responsibility for the ongoing supply of
10 water and the problem that gave rise to is that if there
11 was a disagreement between the development company and
12 individual lot owners then individual lot owners might
13 not gain that access.

14 And the board itself, according to this, stated that
15 it told Hookers and AGC that water and sewerage were
16 denied to the land and could not be obtained. Then on or
17 about 13 November 1984, Mr Porter repeated this
18 representation, representation was communicated. The
19 plaintiffs and AGC cancelled the auction, that's 40(b).

20 HIS HONOUR: Yes.

21 MR GARDE: And then there's a third representation in 42(a),
22 that the council responded to AGC's said letter in which
23 it represented that in accordance with previous planning
24 approvals, the issue of building permits was conditional
25 upon the development being serviced by reticulated
26 sewerage. And then in 44(a), the fourth representation
27 now, this is 1985, that the board was not in a position
28 to supply water to the plaintiff's land. And then in
29 Paragraph 45 we have the fifth representation

30 Which was to AGC, but water had been supplied to the
31 development company as an outside of the water area

1 agreement on the basis that all costs for construction of
2 the mains were paid for by that company, that company be
3 WHRD. The board therefore has no mechanism by which the
4 allotments referred to maybe supplied with water, except
5 with the agreement of WHRD. That AGC would be aware that
6 a shire permit to build within Crown Allotment 41 will
7 not be issued unless the blocks are supplied with water.
8 And that the development company either or all of, owns,
9 operates and controls the water mains, of which it had
10 apparently Your Honour, installed at its own expense. So
11 those circumstances amounted to the fifth representation.

12 Importantly, Your Honour, if I jump over briefly to
13 Paragraph 58A, Your Honour will observe that all this is
14 said to have transpired fraudulently. And so these are
15 representations said to be fraudulent representations, we
16 have the five different sets of fraudulent
17 representations. There's then a sixth representation
18 pleaded, but 58A is what I will describe as sufficiently
19 conventional pleading of fraud, knowing them to be false
20 and untrue or making them recklessly, not caring whether
21 they were true or false.

22 The particulars of that were that, "The defendants
23 had the subdivision application, the submission, the
24 approval documents, letters, fax, personal knowledge and
25 minutes, and minutes of meeting which evidenced and set
26 out the falsity and untruthfulness of the
27 representations". Then in 58B, the opinion method of
28 pleading fraud, that, "The defendants did not in fact
29 hold such opinion, or knew at the time of expressing such
30 opinion that it was incorrect". So that's of course
31 another allegation of fraud in the context of an opinion.

1 So that, Your Honour, was the pleading and if I go
2 back to Paragraphs 11 - - -

3 HIS HONOUR: And the claim as we've previously known, is for
4 the difference between the land as it would have been if
5 serviced and the price achieved.

6 MR GARDE: Yes, yes, Your Honour.

7 HIS HONOUR: And that as I recollect it is a similar basis to
8 the basis of damages now.

9 MR GARDE: Yes, Your Honour, and in Paragraph 67A at p.45, that
10 is set out. By reasons of the matters alleged here in
11 the plaintiffs have suffered loss and damage, particulars
12 of that are simple enough, that the land was sold for a
13 total price of \$135,000, and B, had the land been sold on
14 the basis that there was an entitlement to an approved
15 private water supplying reticulation system, it's sale
16 value would have been \$431,500 and the difference was
17 \$296,500.

18 HIS HONOUR: Yes.

19 MR GARDE: Now to pause there and say this, that in relation to
20 what was said to be the lack of knowledge or the fact it
21 was unknown, it was as I noted that whether the land
22 properly serviced had a articulated water supply in 1979.
23 Now one has to - and that's ambiguous in the sense that
24 you can be referring to water fit for human consumption
25 or you can be referring to water which was not considered
26 to be fit for human consumption. In 1979 the only
27 relevant articulated water supply was that which was not
28 fit for human consumption, and as to that, taking it in
29 that context, the position is very clear in our
30 submission, from - - -

31 HIS HONOUR: They knew exactly what the position was.

1 MR GARDE: Very precisely, and that's concisely pleaded. So
2 that it was well known that you had two 50,000 gallon
3 tanks rather than 100,000, and it was well known that you
4 didn't have four pipes going from the primary
5 reticulation pipes to the individual allotments. And
6 there's a subtle difference between the expression
7 comprising main pipes and primary reticulation pipes.
8 Whether they mean the same thing or whether there's a
9 subtle difference there, it's not entirely clear, but
10 it's very well known, and exactly known as to what the
11 position was. So there is nothing new there in our
12 respectful submission.

13 Then taking it the other way round, if this means
14 water supply for human consumption, this pleading makes
15 it very clear also that it was well known that there was
16 no water fit for human consumption supplied by the board
17 or then the trust, because the pleading refers to
18 household, drinking and bathroom water on a number of
19 occasions, again making it clear that there was no water
20 fit for human consumption supplied by the Water Works
21 Trust.

22 So as one goes through the pleading at the different
23 dates, the position is again clear in our submission,
24 leading up to the discussion in 1984 between Mr Murphy
25 and the first named plaintiff.

26 HIS HONOUR: Before we get to that, it shows that they knew the
27 1982 agreement was for the provision of potable water,
28 not for what was the subject of the 1979 requirement.

29 MR GARDE: That is so.

30 HIS HONOUR: And they knew that what was supplied pursuant to
31 the agreement was not supplied in fact in performance of

1 the 1979 requirement.

2 MR GARDE: That is so, that is so.

3 HIS HONOUR: So all four points are inconsistent with what
4 Mr Thompson's put to me today.

5 MR GARDE: That is so. So we accordingly submit Your Honour
6 that the position in 1979 - from 1979, in 1982 and from
7 1982 was clear and well known, but we also submit that in
8 any event, the terms of settlement and the release that's
9 granted, even if I was wrong in that - even if we were
10 wrong in that submission, nonetheless the words are used
11 in the terms of settlement are more than ample to pick up
12 the - to pick up the current form of claim arising out,
13 or in any way related to the subject matter of the
14 proceedings.

15 The previous claim if one looks at it in terms of
16 subject matter, the subject matter of the previous
17 proceedings must be taken to have embraced the
18 non-potable articulated water supply and it must be taken
19 to have embraced the potable water which was supplied
20 from 1982 by the Waterworks Trust. So both of those
21 topics are clearly embodied in our submission in the
22 Woodleigh Heights proceeding.

23 HIS HONOUR: Yes.

24 MR GARDE: That Your Honour is sufficient on that matter. The
25 second topic, the Tylden Road topic, the 569E notice
26 issue and the use of a sequence of two lot subdivisions
27 and so on. All that needs to be said about that in our
28 submission is that review as our learned friend,
29 Mr Delany has done of the material in the book of
30 pleadings documents, which itself extracts the relevant
31 notices, letters and resolutions, makes it very clear