

- d) If, in the case of Woodleigh Heights the primary mains comprising the reticulation system were in fact laid in 1979 then insofar as the Woodleigh Heights aspect is concerned the Defendants could seek summary dismissal on this point alone, but they do not.
- e) At the present time the Defendants rely upon the assertion that the issues could have or should have been or were previously pleaded or are out of time. They do not deny them.

**65) The Defendants admit to and rely upon the principle predicating fact in relation to Woodleigh Heights.**

- a) The principle predicating fact in relation to Woodleigh Heights is that the water mains comprising the reticulation system were not completed in 1979 but were in fact laid in 1982.
- b) These water mains comprised a component part of the private water supply and reticulation system and in the absence of that component part there was no private reticulated water supply present in 1979 as was required by law.
- c) I learned that the principle water main of the reticulation system were laid in 1982 and not 1979 when I was shown a reticulation plan during a break in proceedings in the Practice Court in 1999.
- d) The Defendants do not deny that I was shown the reticulation plan in those circumstances but instead appear to confirm or admit to the fact that it was shown to me in the Practice Court. This admission is set out in paragraph 85 of the Outline of Submissions of the First Defendant where it is said, *“It was this reticulation plan that Mr. Thompson asserts he reflected upon . . . .”*
- e) Then at paragraph 87 the First Defendant says, *“What Mr. Thompson fails to mention . . . . is that he was aware . . . . that the reticulated water supply had been laid in 1982 and not 1979”*.
- f) Then at paragraph 91 the First Defendant says *“. . . . Mr. Thompson was aware from at least August 1987 . . . . that the reticulated water supply was not present in 1979 but was in fact laid down in 1982”*.
- g) In paragraphs 87 and 91 the First Defendants assert that I was aware of the fact that the water supply was not present in 1979 but was in fact laid down in 1982, this assertion as to my knowledge of that fact includes an explicit assertion of and an admission as to that fact.
- h) An assertion as to knowledge of a fact includes an assertion as to that fact.
- i) In his written Reasons for Decision the Master accepted and relied upon this specific argument by the Defendants, so that the fact is, not only do they admit to and rely upon that fact and admission, they have also obtained and rely upon a judgment based substantially on that admission
- j) The Defendants therefore admit to and rely upon the principal predicating allegation of the present Amended Statement of Claim in relation to Woodleigh Heights.

k) Interestingly and obviously the thing now admitted by them was a complete defence to the previous Woodleigh Heights proceeding, but as mentioned elsewhere in this submission the Defendants ran sham defences and sham strike out applications which concealed rather than relied upon the fact now relied upon.

66) **That the Defendants do not deny the predication facts and in the case of Woodleigh Heights they admit to and rely upon the predication fact is prima facie evidence of those facts and prima facie evidence of concealment in that those facts have always been true and could have been used as complete defences to the previous proceedings but were not.**

67) **Concealment of the predication facts and cause of action -Tylden Rd.**

- a) Concealment of the predication facts includes concealment of the conspiracy to avoid the effect of s.9.
- b) Concealment of the predication facts occurred as a matter of palpable fact. In the final analysis, the cause of action in respect to Tylden Rd is reduced to the fact that the s.569E Notice which the First Defendant resolved to issue and serve was never either issued or served. The plan to which it was to relate was in fact abandoned and not further processed after 20<sup>th</sup> February 1980.
- c) To conceal this fact the First Defendant fabricated Notices of Requirement in relation to each of the plans in the series of residential plans and then sealed each of those plans with a s.569E(3)(a) endorsement thereon and then subsequently purported to lift or withdraw those requirements.
- d) The First and Second Defendants each purported to accept and hold my Bank Guarantees in purported pursuance of the requirement purportedly effected by the s.569E Notice which was allegedly served in relation to the single plan of 20<sup>th</sup> February 1980 showing all 18 allotments.
- e) In order to further conceal this fact and to fraudulently obtain a wrongful judgment in the Magistrates Court and in the subsequent Supreme Court appeal, the First Defendant perjured itself both orally and on Affidavit.
- f) The proceeding in the Magistrates Court was for the purpose of recovering from me \$3,708.00 being overrun in the costs of road construction. The Council alleged that I was responsible as I was the owner of the land for the purpose of s.569E of the Local Government Act 1958 and that the First Defendant had on or about 20<sup>th</sup> February 1980 served a s.569E Notice of Requirement pursuant to the First Defendants resolution of 20<sup>th</sup> February 1980.
- g) The evidence given by the First Defendant in the Magistrates Court is set out at paragraph 53c)ii) of my first Affidavit. It is self evident that the evidence as set out in that paragraph was essential