

8. REASONS WHY PLTS SAY THAT THE DEF'S HAD NO LEGAL RIGHT OR ENTITLEMENT TO CALL UP THE MONEYS COMPRISING THE 2 BANK GUAR'S :-

- (A) - THERE WAS NO REQUIREMENT UNDER S569E ON THE LAND, ENTITLING THE COUNCIL TO CALL FOR HOR CALL UPON THE GUARANTEE - COUNCIL, BEING A CREATURE OF STATUTE HAS ONLY THE POWERS CONFERRED UPON IT BY STATUTE & NO OTHERS
- IN THIS INSTANCE THE ONLY REQUIREMENT THAT HAD EVER BEEN MADE (20.2.1980) WAS A REQUIREMENT WITHIN THE MEANING OF S.569 E (1) (a) (i) & (1A). SUCH REQUIREMENT DID NOT INVOLVE THE CALLING FOR OR GIVING OF ANY GUARANTEE. THEREFORE THERE WAS NO LEGAL BASIS AT ALL FOR THE GUARANTEE.

(FURTHER SUBMISSIONS PROCEED ON BASIS THAT THE ABOVE IS INCORRECT)

(B)

- THE GUARANTEES PROVIDED BY THE PLTS WERE PROVIDED AT A TIME (23.10.80) WHEN THE COUNCIL DID HAVE A REQUIREMENT ENDORSED ON THE PLANS OF SUBDIVISION (ie ON 21.5.80 THE COUNCIL PASSED THE PLANS WITH A REQUIREMENT ENDORSED THEREON)
- THUS AT THE TIME THE GUARANTEES WERE PROVIDED THERE WAS A "PRIMARY OBLIGATION" IN FORCE UPON BUCHANAN TO CONSTRUCT THE STREETS ROADS & HAVE WATER SEWAGE & DRAINAGE DONE