

SCHEME OF OPERATION ESTABLISHED UNDER THE L.G.A., T.L.A. + S.L.A REGARDING :

① THE APPROVAL AND SEALING OF LAND SUBDIVISIONS
+

② THE BRINGING ABOUT OF THE CONSTRUCTION OF STREETS + ROAD
+ WATER SEWERAGE + DRAINAGE TO THE SUBJECT LAND.

1. WHERE A PERSON INTENDS TO SUBDIVIDE LAND INTO 2 OR MORE PARTS HE MUST GIVE COUNCIL NOTICE IN FORM OF 30th SCHEDULE (S.569(1))

2. AFTER RECEIVING 30th SCHEDULE NOTICE THE COUNCIL MAY REQUIRE THE OWNER OF THE LAND TO CARRY OUT OR HAVE CARRIED OUT - STREET, ROAD, LANE, PASSAGE WORK SHOWN ON THE PLAN.
(LOADED WITH THE 30th SCHEDULE NOTICE)
+
- WATER SUPPLY SEWERAGE + DRAINAGE (OR TO GIVE THE COUNCIL A WRITTEN STATEMENT THAT AN AGREEMENT HAS BEEN MADE WITH THE APPROP. STAT AUTHORITY)

(S.569 E (1) + (1A))

3. IF COUNCIL DOES MAKE A REQUIREMENT UNDER S.569 E (1) OR (1A) THEN IT MUST DO THE SPECIFIED THINGS SET OUT IN S.569 E (3), INCLUDING :

(a) ENDORSING THE REQUIREMENT ON THE PLAN OF SUBDIVISION BEFORE IT IS SEALED BY THE COUNCIL
(b) + (c) SERVICE UPON OWNER OF REQUIREMENT + WRITTEN SUMMARY RECORD TO BE RETAINED BY COUNCIL

(ca) COUNCIL HAS POWER TO WITHDRAW THE REQUIREMENT

4. S.569 E (11) - "ANY REQUIREMENT BY A COUNCIL UNDER THIS SECTION (i.e. S.569 E) SHALL BE OF NO EFFECT UNLESS SERVED ON THE OWNER BEFORE THE PLAN HAS BEEN SEALED BY THE COUNCIL"

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5. "SEALING" OF PLAN OF SUBDIVISION BY COUNCIL.

S. 569 B (4)(b) council shall cause plan of subdiv. to be sealed within 100 days of plan being submitted to the Council

OR
shall serve upon the person who submitted the plan, notice of the council's refusal to seal the plan (S. 569 B(7) - deals with refusal by Council to seal plan)

6. RE: WHAT OCCURS AFTER THE REQUIREMENT HAS BEEN COMPLIED WITH OR WITHDRAWN :-

↖ S. 569 E (3)(d) — The Council: ① shall cause to be lodged with the OFFICE OF TITLES A STATEMENT TO THAT EFFECT (ie EITHER COMPLIANCE OR WITHDRAWAL)
② + A minute of that statement shall thereupon be endorsed on the plan

7. APPROVAL OF PLAN OF SUBDIVISION BY THE REGISTRAR OF TITLES:

S. 97 T.L.A & S. 569 E (3)(e) L.G.A

* 2 MATTERS TO BE SATISFIED PRIOR TO APPROVAL BY THE REGISTRAR OF TITLES:

①- S. 569 E (3)(e) — Reg'rAR shall not approve plan until either a statement per S. 569 E(3)(d) OR a statement by Planning Appeals Board that the requirement has been satisfied

(3)

has been lodged with the Office of Titles

- (ii) S. 97^(2A) TLA - Registrar not to approve plan of subdivision unless he is satisfied that:
- (a) plan is in accord with plan sealed by the Council
 - (b) there has not been any contravention of S. 9. of the S. L. A. 1962.

8. THE PROHIBITION SET UP BY S. 9. OF S. L. A. 1962:

S. 9. - PROVIDES (in effect) THAT - WHERE A PERSON INTENDS TO SUBDIVIDE LAND INTO THREE OR MORE ALLOTMENTS - NO SUCH ALLOTMENTS SHALL BE SOLD UNLESS:

- ① THE LAND IS UNDER THE OPERATION OF THE T. L. A.
- ② THE PLAN OF SUBDIVISION HAS BEEN APPROVED BY THE REGISTRAR OF TITLES PURSUANT TO S. 97 OF THE T. L. A.

SUMMARY PROPOSITIONS AS TO THE OPERATION OF THE LEGISLATION

The provisions create a legislative scheme which ensures that if the Council chooses to require the owner (subdivider) to construct roads streets ~~water~~ connection drainage & sewerage to all allotments as part of the creation of the subdivision (as opposed to the implementing a, "private street scheme" under Division 10 of the PART 19 of the ACT ^{OR WATERWORKS - 310A W.A.} at same subsequent time) THEN the owner will NOT BE ABLE TO sell ANY OF THE ALLOTMENTS UNTIL THE PARTICULAR Requirement made under S.569E (which sets out a number of ~~different~~ alternative requirements) has been carried out, ~~the~~ (or otherwise).

In summary the legislative scheme ensures this by
 ① empowering the Council to make ~~an~~ a requirement

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B

for the carrying out of road street & other works
construction (S569E)

② BUT INSISTING ^{PROVIDING} THAT:

- (a) such requirement be endorsed on the plan of subdivision before it is sealed (S569E (3)(a))
- (b) ~~require~~ ~~such~~ notice of the requirement be served on the owner (S569E (3)(b))
- (c) ~~that~~ ANY requirement under S.569E "shall be of no effect unless served on the owner before the plan has been sealed (S569E (1))".
- (d) ~~for~~ the Council has the option to withdraw the requirement (S569E (3)(c))
→ BUT the Council has no power to amend or substitute the requirement endorsed on the plan (PER KAYE J. IN ~~AN~~ UNRESOLVED QUESTION OF THOMSON V. SH OF KYNEMAN 11. 7.88 Pg 9)
- If the Council does withdraw the requirement it can instead implement a private street construction scheme per DIVISION 10 of PART 19 of the Act.
- (e) In respect of a requirement made (& not withdrawn), once the requirement has been complied with (for example under S.569E (1)(a)(i) - the streets roads etc have been constructed by the subdivisor (owner)) the Council must notify the Registrar of Titles office of this by giving a statement to that effect

③ PRECONDITIONS TO REGISTRAR OF TITLES
approving the plan of subdivision

(a) The Registrar shall not approve the plan of sub. until a statement as per S.569E(3)(d) has been lodged in the office of titles (569E(3)(e)).

(b) The plan of sub. dv. lodged with the Registrar by the Owner must accord with the plan sealed by the Council (S.97(2A)(a) OF TLA)

(c) The Registrar must be satisfied that there has been no contravention of ~~the~~ S.9 of the S.L.A.

④ PROHIBITION OF ~~SALES~~ OF THE SELLING OF
ALLOTMENTS FROM THE ^{PLAN OF} SUBD. SET UP UNDER
S.9 OF THE S.L.A 1962

Where land is intended to be subdivided into 3 or more ~~lots~~ allotments "No person shall sell any such allotment unless

(a) the land is under the operation of the TLA

(b) the allotment is an allot. on a plan of subdivision which ~~sub~~ plan has been approved by the Registrar of Titles pursuant to S.97 of the TLA

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A

WHAT BECAME EVID. IN THIS CASE

What shall become evident in this case is the following:

1. That a Mr & Mrs B. were the owners of TYLLEN RD ~~SA~~ LAND which they wished to subdivide (18.9.79 - PLANNING PERMIT APPLIC
12.2.80 - 30th schedule notice lodged)
2. The Council made a requirement under S.569E^{(1)(b) & (1A)} that they carry out the construction of streets and roads to the land and to cause to be given to the Council a written statement from the Waterworks Trust that an agreement had been entered into between the Trust and the Owner for the ~~same~~ installation of water supply, sewerage and drainage. (21.5.80)
3. That Mr & Mrs B. - did not have the cash flow to carry out the said construction of roads & waterworks to the ~~plan~~ of subdivision.
— They were in a "catch 22 situation" whereby ^{on the one hand} they didn't have the money to perform the construction of roads & waterworks, but couldn't sell any of the allotments which may assist in financing such work because: (a) the plan of said couldn't be approved under S.97 of TLA until, ~~when also~~, the Council advised the Registrar of Titles that the requirement had been satisfied (or undertaken); &

(h) The B's could therefore NOT sell any of the allotments because under s.9 of the L.C.A. no allotments could be sold until the plan of subdivision had been approved by the Registrar of Titles

4 - The Council and B. entered into an arrangement (May 1980) designed to extricate Mr. B. from the financial plight he was in concerning the plan of sub. & the satisfying of the requirement

- the arrangement reached was quite illegal ~~under~~ in that it offended the provisions of the L.C.A.

- The events leading up to and including the arrangement reached were as follows:

(a)	<u>POINT 3</u>	Pg 3
(b)	" 4	" 4
(c)	" 5	" 5
(d)	" 6	" 5
(e)	" 7	" 6
(f)	" 8	" 7
(g)	" 9	" 8
(h)	" 10	" 8
(i)	" 11	" 9

5. RECAPPING ON THE SITUATION WHICH EXISTED AFTER THE IMPLEMENTATION OF THE ARRANGEMENT MADE BETWEEN THE COUNCIL & BUCHANAN:

(a) AS AT 28.11.80 THE PLAN OF SUBD. WAS APPROVED BY THE REGISTRAR OF TITLES AND B. WAS NOW FREE TO SELL THE ~~PER~~ ALLOTMENTS

(b) BUT AS TO THE REQUIREMENTS WHICH THE COUNCIL HAD TOLD THE REGISTRAR OF TITLES, HAD BEEN COMPLIED WITH — THE FACTS WERE THAT THE REQUIREMENT HAD NOT BEEN SATISFIED & THE LAND THE SUBJECT OF THE SUBD. DID NOT HAVE CONSTRUCTED STREETS OR ROADS & THERE WAS NO AGREEMENT ~~STRICT~~ IN EXISTENCE BETWEEN B. & THE WATERWORKS TRUST AS TO THE CARRYING OUT OF WATER SUPPLY SEWAGE OR DRAINAGE

(c) THE ORIGINAL REQUIREMENT HAD BEEN LIFTED (i.e. "WITHDRAWN" WITHIN MEANING OF S69 E (3) (a) OF THE L.G.A.) BY THE COUNCIL (BY LETTER DATED 19.11.80)

(d) THE REQUIREMENT HAD BEEN LIFTED (i.e. WITHDRAWN) & THEREFORE — ANY POWER ~~IN~~ THE COUNCIL TO HAVE THE ROAD STREET & WATERWORKS CONSTRUCTED PER DIVISION 9 OF THE L.G.A. HAD BEEN LOST

(e) HOWEVER WHAT THE COUNCIL DID HAVE WAS POSSESSION OF 2 BANK GUAR'S TOTALLING \$36500 SUPPLIED BY THE PCTS, (BY LETTERS TO BOTH COUNCIL & WATERWORKS TRUST — DATED 23.10.80).

6. CRITICAL QUESTION WHICH THEN ARISES IS - Did
The Def's
HAVE THE RIGHT TO CALL UP THE MONEYS
PURSUANT TO THE GUARANTEES SUPPLIED BY
THE PUTS ? - THE PUTS SAY NO. , FOR THE REASONS
SET OUT IN PARA 8 BELOW

7. WHAT OCCURED BETWEEN THE PERIOD 23.10.80 (DATE
WHEN PUTS SUPPLIED THE GUAR'S) & 12.5.82 (DATE WHEN
PUTS FIRST HEARD FROM THE COUNCIL THAT THE COUNCIL WAS
LOOKING TO THEM TO CARRY OUT THE STREET & ROAD
CONSTR. & THE SUPPLY OF WATER etc. TO THE LAND).

- (a) DURING THIS PERIOD PUTS HAD NO CONTACT AT ALL
FROM THE DEF'S
- (b) PUTS HAD VARIOUS DISCUSSIONS WITH B. , DURING
WHICH B. SAID HE WOULD BE CARRYING OUT THE WORKS
BUT STILL HAD CASH FLOW PROBLEMS.
- (c) THERE IS EVID. IN MINUTES OF 2nd DEF MEETINGS
THAT B. WAS COMMUNICATING WITH THE 2nd DEF
AS TO WHEN THE WORK WOULD BE CARRIED
OUT BY HIM
- (d) THERE APPEARS TO BE NO MINUTES OR LETTERS
OF COMMUNICATIONS BETWEEN THE 1st DEF & B AS
TO THE CARRYING OUT OF STREET & ROAD
CONSTR.

(NOTE: PUTS WILL GIVE AN EXPLANATION OF WHY DEF'S
ATTENTION TURNED TO THEM ALL OF A SUDDEN
IN MAY 82 - (REFER PG 21 OF MY NOTES OF EVID))

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 S 569E 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 (i.e. ON 21.5.80 THE COUNCIL JETTERED 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 SMOGS ROADS & HAVE WATER SEWAGE & DRAINAGE DONE

— NOW, PURSUANT TO THE "ARRANGEMENT" STRUCK BETWEEN THE COUNCIL & BUCHANAN, (& COMPLETELY UNKNOWN TO THOMPSONS) TO ASSIST B. WITH HIS FINANCIAL PLIGHT, THE COUNCIL SUBSEQUENTLY (19.11.80) RESOLVED TO LIFT THE REQUIREMENTS, AS BANK GUARANTEES HAD BEEN PROVIDED.

POINTS TO BE MADE:—

① THIS COURSE OF ACTION WAS NOT LEGALLY OPEN TO THE COUNCIL TO PURSUE UNDER DIVISION 9 OR ANY OTHER PROVISION OF THE ACT

② THOMPSON WAS NOT A PARTY TO THE ARRANGEMENT BETWEEN COUNCIL & BUCHANAN — THERE HAD BEEN NO COMMUNICATION AT ALL BETWEEN COUNCIL & T. EXCEPT FOR THOMPSON SIGNING A PREPARED LETTER BY B. TO THE COUNCIL ENCLOSED THE GUARANTEES.

— BUCHANAN HAD TOLD THOMPSON TO PROVIDE THE GUARANTEE BECAUSE THE COUNCIL HAD REQUESTED IN BE LOOED AS A BACK UP IN THE EVENT THAT HE B. DEFAULTED IN CARRYING OUT THE WORKS

③ WHAT IN FACT WAS BEING ATTEMPTED TO BE DONE HERE WAS:

Ⓐ TO OBTAIN THE GUARANTEES FROM T WHILST THE REQUIREMENT WAS IN PLACE, PUTTING THE PRIMARY OBLIGATION UPON B.

Ⓑ TO THEN RELEASE B. FROM THAT

PRIMARY OBLIGATION BY LIFTING THE REQUIREMENT
 + TELLING THE REGISTRAR THAT THE REQUIREMENT
 HAD BEEN COMPLIED WITH.

© THEN PLACING THOMPSONS IN THE SITUATION
 OF HAVING THE PRIMARY OBLIGATION TO
 PAY. — i.e. THE PRIMARY OBLIGEE - (B.) ESCAPES
 LIABILITY BY HAVING THE ~~GUAR~~ REQUIREMENT
 LIFTED + IN HIS PLACE T'S BECOME
 THE PRIMARY OBLIGEE (+ NO LONGER A
 GUARANTOR.

① THUS B:(i) ESCAPES ANY LIABILITY FOR
 STREET ROAD + WATERWORKS CONSTRUCTION
 +

(ii) IS FROED OF THE REQUIREMENT —
 GETS APPROVAL OF THE PLAN OF SUBDIVISION
 + IS FREE TO SELL THE PLOTMENTS

WHILST ON THE OTHER HAND — T'S BECOME
 LIABLE TO THE
 COUNCIL TO PAY FOR ALL OF THE ABOVE

NOT ONLY IS THE ABOVE CONTRARY TO
 ALL PRINCIPLES RELATING TO A GUARANTOR'S OBLIGATIONS
 WHERE A PRIMARY DEBTOR IS RELEASED FROM
 PAYMENT OBLIGATIONS BUT MORE IMPORTANTLY —
 SUCH A SCENARIO, IF GIVEN EFFECT TO, CONTRAVENES
 + DEFEATS THE WHOLE PURPOSE OF THE
 SCHEME OF THE LEGISLATION — NAMELY THAT
 THE SUBDIVIDER CANNOT SELL THE PLOTMENTS
 IN THE SUBDIVISION UNTIL HE HAS SATISFIED
 ANY ~~OR ALL~~ REQUIREMENT MADE UNDER
 DIVISION 9.

9. COUNCIL'S RIGHTS TO HAVE STREET ROADS WATERWORKS CONSTRUCTED, WERE NOT LOST ONCE IT LIFTED THE REQUIREMENT

ie THEY STILL HAD THEIR RIGHTS UNDER DIVISION 10 TO BRING ABOUT THE SAID WORKS

10. WHAT IN FACT OCCURRED — COUNCIL VIS A VIS THOMPSONS IN MAY & JUNE 1982

- After Receiving the letter of 12.5.82 T. Rang Council and spoke to Porter (Shine Sec + WATERWORKS Sec)

- T said "It was B's responsibility not ~~was~~ mine"

- P. said "No you've bought the land — it's now your responsibility"

(WHICH FLIES IN THE FACE OF THE WHOLE THRUST OF THE LEGISLATION)

11. COUNCIL'S REACTION TO B'S THREAT TO CANCEL HIS GUARANTEE'S (OCT - NOV. 82)

T. had further discussions with Poulsen and said he was intending to

cancel the guarantees.

Porter said "If you cancel the
guar's the Council could
sue me for it and
sell the land to
recover the money."

(~~Complete~~)