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File number
E. Glenton 26/8.
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24 AUG 1987	
FILE NO.	P.2201200303
1987	P.2201200298
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GLENN THOMPSON
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24th AUGUST 1987

THE PRESIDENT, COUNCILLORS & RATEPAYERS, OF THE SHIRE OF KYNETON
THE CHAIRMAN AND COMMISSIONERS OF THE KYNETON WATER BOARD
THE RATEPAYERS OF THE KYNETON WATERWORKS DISTRICT,
SHIRE OFFICES
129 MOLLISON ST
KYNETON 3444

Dear Councillors, Commissioners & Ratepayers,

It is my duty to inform you that certain matters have come to my attention,

I point out that herein I merely set out in point form certain facts and I imply or infer nothing.

I have set the various points out in as near to chronological order as possible and have included matters which relate to both the Water Board and to the Council in this one document as the activities of these two bodies are interrelated in these matters and appear to be well co-ordinated.

Additionally due to the fact that both bodies share a single secretary I consider that the activities of each body were at all times known to the other body and the apparent co-ordination of events as set out below tends to confirm this assumption.

Where act section numbers are quoted without specifying the act the pertinent act is obvious from the context of the relevant paragraph and is in the case of paragraphs related to the Water Board, the Water Act 1958 and in the case of the council, the Local Government Act 1958.

I advise the Kyneton Water Board & Kyneton Council that I am in possession of all relevant documentation including documentation covering further aspects which are not referred to herein and further advise that all documentation is maintained in safety deposit.

I recommend that careful attention be paid to each paragraph.

The following points concern two subdivisions at Kyneton which are:-

(1) The subdivision of Crown Portion 129 & part crown portion 132 into eighteen residential and 6 industrial allotments referred to herein as the "Twilden Rd Subdivision".

(2) The subdivision of part crown portion 38 and part crown portion 41 into the development known as and referred to herein as "Woodleish Heights".

Both of these subdivisions were associated with Kenneth Raymond Buchanan J.P. who is ex President of the Shire of Whittlesea and current managing director of Club Resorts Limited a listed Public company.

FACTS:-

1. Woodleish Heights Subdivision was first completed during 1979 as 45 2 acre allotments.
2. By minute dated 5th September 1979 The Kyneton Water board agreed to supply water to the Twilden Rd subdivision subject to completion of the appropriate agreement.....
3. I am informed by the current Joint Shire & Water Board Secretary that the Twilden Rd Subdivision was put to the Water Board as an Industrial Subdivision but it later, by some sleight of hand became Residential.
4. I am also advised by Commissioner Len Gloster that the Twilden Rd Subdivision was put to the Water Board as an Industrial Subdivision.
5. The Twilden Rd subdivision was at the time outside of the Kyneton Urban District but within the Kyneton Waterworks District and therefore could only be supplied by agreement as allowed within sections 186 & 307AA(2) of the Water Act.
6. No water supply agreement for the Twilden Rd Subdivision was ever entered into.
7. Kyneton Council by minute dated 17th October 1979 approved an application by Parkvalley Pty Ltd to subdivide the Twilden Rd Property.

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8. The subdivision approved by Kyneton council consisted of 18 residential allotments and 6 industrial allotments.
9. A notice of requirement under section 569E(1) & (1A) of the local government act dated 20th February 1980 was served on K. R. Buchanan.
10. The terms of the notice of requirement specifically relate to paragraphs 569E(1)(a) & 569E(1A)(c) of the local government act.
11. The terms of the notice of requirement do not allow for or require any payment or security to be given to or received by the council or the water board.
12. The terms of the notice of requirement do not impose any time limit within which the required works were to be completed.
13. Council Sealed the Plans of subdivision of the Twilden Rd Subdivision in May of 1980 with requirements endorsed thereon as provided in subsection 569E(3).
14. September 1980 I purchased from Kenneth Buchanan the Industrial Portion of the Twilden Rd Subdivision.
15. At the request of Kenneth Buchanan I lodged a guarantee dated 16th October 1980 with a value of \$11,500.00 in favour of the Kyneton Water Board.
16. At the request of Kenneth Buchanan I lodged a guarantee dated 16th October 1980 with a value of \$25,000.00 in favour of Kyneton Council.
17. In the absence of a requirement of the form described in either paragraphs (b), (c) or (d) of subsection 569E(1) the Kyneton Council had no reason to accept and had no authority to accept the guarantee referred to in #16. (subsection 240AC does not apply).
18. In the absence of an agreement the Kyneton Water Board had no reason to accept and had no authority to accept the guarantee referred to in #15.
19. By minute dated 6th November 1980 Kyneton Water Board resolved to lift its requirement on the Twilden Rd Subdivision.

20. By minute dated 19th November 1980 Kyneton Council resolved to lift its requirement on the Twilden Rd Subdivision.

21. During December of 1980 I purchased 14 of the residential allotments on the Twilden Rd Subdivision.

22. Sometime in 1980 an employee of the firm of solicitors who from time to time acted in relation to the Twilden Rd Subdivision purchased one residential allotment on the Twilden Rd Subdivision from Kenneth Buchanan for approximately \$9,000.00 which represented approximately half the value of the lot once the "Works" were completed and as such became a profit sharer in the subdivision.

23. Sometime in 1980 the father of the abovementioned employee purchased one residential allotment on the Twilden Rd Subdivision on identical terms to those mentioned in #22.

24. Kenneth Buchanan retained the remaining two lots on the Twilden Rd subdivision.

25. Sometime in 1980 or 1981 the timing of which is irrelevant the Kyneton Council approved the resubdivision of the Woodleish Heights Subdivision into 131 allotments.

26. The permit for the 131 allotment development allowed for the construction of one, two and three bedroom residential dwellings and or recreational facilities which were known to include swimming pools on each and every allotment.

27. By minute dated 6th November 1980 the Kyneton Water Board resolved to advise the Kyneton Development Committee that it could supply 1,000,000 gallons annually in any reticulated area and that any anticipated consumption in excess of that figure would be subject to negotiation.

28. By letter dated 5th March 1981 Kenneth Buchanan requested a water supply of 1,000,000 gallons annually to service the Woodleish Heights subdivision.

29. 1,000,000 gallons annually divided by 131 allotments calculates to an average usage of 21 gallons per day per allotment including swimming pools.

30. Kyneton Water board did subsequently enter into a Water Supply agreement between itself and Woodleish Heights Resort Developments P/L dated 1st January 1982 for the supply of water to the whole of the Woodleish Heights Subdivision.

31. The agreement referred to in p30 is improper as it is between a private developer and the Water Board and totally abrogates the rights of the body corporate of the subdivision and the other owners of property within the subdivision.

32. The agreement referred to in p30 is unlawfull as it provides for the supply of water to crown portion 41 and at the time of making the agreement crown portion 41 was entirely outside the waterworks district of the Kyneton Water Board and the agreement therefore required the approval of the Governor in Council and this approval was neither sought nor obtained.

33. Subsequent to the making of the above agreement trenches were dug and pipes laid along a considerable length of Eddecombe Road in order to facilitate the supply of water to the Woodleish Heights Subdivision.

34. The laying of these pipes was unlawfull for three reasons, Firstly because they were laid pursuant to an unlawfull agreement and Secondly because the approval of the Minister as required by subsection 307AA(5) of the Water Act was neither sought nor obtained and Thirdly there was no lawfull authority to enter upon the relevant lands to carry out the works as the approval of the Governor In Council as provided in section 307(1) was neither sought nor obtained as it must be for any such works which are not within either an urban or rural district.

35. By Minute dated 7th April 1982 the Kyneton Water Board reviewed the guarantee referred to in p15 above and resolved to maintain the status quo.

36. In April/May of 1982 I became aware of certain serious matters related to the Woodleish Heights subdivision and certain demands were made of me by Buchanan and other associated parties.

37. At this critical time by letter dated 12th May 1982 in regard to the Twidell Rd Subdivision the Kyneton Council demanded that I lay the watermain and commence the roadworks immediately.

38. The letter dated 12th May 1982 stated as a reason for the demand "at least two of the lots have been sold and the owners have enquired of council when the works will be completed."

39. In respect of the stated reason for making the demand I refer to p22 and p23 and also to the fact that I have had statements from both owners who have denied the claim and specifically stated, in essence, that they had no cause to either enquire or complain.

40. The demand made upon myself in the letter of 12th May was both improper and unlawfull and the stated reason for the demand false. →

41. As the requirements on the Twilden Rd Subdivision had been lifted by council (refer p20) the council had no right or authority to make the demands referred to in p37.

42. At all times Kenneth Buchanan was known to be the applicant and subdivider of the Twilden Rd Property and the council made no demand on Buchanan. ||

43. By minute dated 2nd June 1982 the Kyneton Water Board resolved "That notice be given to the SUBDIVIDER that the main in the subdivision should be constructed forthwith,...", in regard to the Twilden Rd Subdivision.

44. By letter dated 4th June 1982 I was informed of the decision of the Water Board.

45. The water board failed to make any demand on the SUBDIVIDER, Kenneth Buchanan.

46. The demand on myself by the Water Board was improper and unlawful.

47. In relation to those matters alluded to in p36 November 1982 was a critical time & certain demands were made upon myself at this time by or at the request of Buchanan and associated parties.

48. At this critical time by minute dated 4th November 1982 the Kyneton Water Board resolved to call up the guarantee referred to in p15 and use the money so realised to construct the water mains on the Twilden Rd Subdivision.

49. At this critical time by minute dated 17th November 1982 the Kyneton Council resolved to call up the guarantee referred to in p16 and to use the money so realised to construct the roads on the Twilden Rd Subdivision.

50. By letter dated 19th November 1982 I was informed of the decision of the Water Board and by undated letter of similar date I was advised of the decision of the Kyneton Council to call up the respective guarantees.

51. The council subsequently made a demand under the guarantee provided by myself and the \$25,000.00 was forwarded by bank cheque to the Kyneton Council.

52. This demand was unlawful and the acceptance of the money by the Council was unlawful and the subsequent appropriation of the money to the cost of the roadworks carried out by the council was unlawful.

53. Having regard to the terms of the Notice of Requirement served on the subdivider subsections 569E(4) & 569E(6) were never applicable to the Twilden Rd Subdivision and in any event these subsections became redundant upon the lifting of the requirements by council.

54. As council had elected to lift its requirements (refer p20) subsection 569E(7A) of the local government act is relevant.

55. Council failed to observe any of the provisions of Division 10 of Part XIX of the local government act and in doing so is in breach of numerous sections and subsections of the local government act.

56. The Water Board made a demand on the guarantee provided by myself and the \$11,500.00 was forwarded by bank cheque to the Kyneton Water Board.

57. The money so demanded and accepted by the Water Board was subsequently applied by the board in the construction of unlawful works for the purpose of facilitating an unlawful water supply.

58. The Twilden Rd subdivision at the time of calling up the guarantees and the subsequent construction of the watermain was within the Kyneton Waterworks District but without the Kyneton Urban District.

59. There was no water supply agreement in existence and therefore no lawfull basis upon which water could be supplied to the Twilden Rd Subdivision.

60. The approval of the Governor in Council as provided in section 307(1) of the Water Act was neither sought nor obtained.

61. Notwithstanding the fact that no agreement existed The approval of the Minister as provided in subsection 307AA(5) was not obtained.

62. The works carried out by the Kyneton Water Board on the Twilden Rd Subdivision were carried out at greater expense than the \$11,500.00 it obtained from myself.

63. The Kyneton Water Board subsequently invoiced myself for this amount, namely \$3,708.00.

64. The attempt to claim this amount is unlawful.

65. Being based on unlawful works there is no proper claim.

66. If the works had been carried out under lawful conditions and pursuant to a legitimate agreement the claim would remain unlawful as the provisions of subsection 307AA(7) of the water act would apply.

67. The Kyneton Water Board subsequently threatened to issue a summons to recover this improper claim.

68. A default summons claiming the above amount was recently served on me.

69. In possible deference to the impropriety of the above claim the default summons claims the Kyneton Council to be the claimant and the amount claimed to be due to rates.

70. Both these aspects of the default summons are false.

71. The roadworks carried out by the council also cost more than that which was realised by calling up the guarantee and the council has demanded this excess; namely \$4394.61

72. This demand is also unlawful. (refer p53 - p55).

73. I derived no benefit from the construction of the roads or waterworks to the Twilden Rd subdivision as the financial pressures on me caused a forced sale at a substantial loss.

74. No demands were made on the other owners of the land or the developer Kenneth Buchanan who retained some lots.

75. In relation to the Woodleish Heights Subdivision I had purchased some lots on this subdivision in 1979 and found myself in the unfortunate situation of owning further land which was under the jurisdiction of Kyneton Council & Kyneton Water Board.

76. During 1983 Woodleish Heights Resort Developments P/L entered into four separate contracts to purchase my Woodleish Heights land from me and subsequently defaulted on all four contracts.

77. At this time Woodleish Heights Resort Developments P/L claimed to be able to deny water to my land.

78. Kyneton Water Board subsequently confirmed the ability of Woodleish Heights Resort Developments P/L to deny water to my land but refused to make available a copy of the agreement between it and Woodleish Heights Resort Developments P/L. Woodleish Heights denied water to my land.

79. Without a water supply to my land I was unable to reasonably sell my land elsewhere and therefore had no choice than to maintain my contracts with Woodleish Heights Resort Developments P/L rather than rescind as had been my intention.

80. I therefore issued Supreme Court Writs seeking specific performance of the contracts in supreme court action No 2360 of 1984.

81. During 1984 I continued to press the Kyneton Water Board for a copy of the agreement by which the water supply to my land had been denied and the Water Board failed to make a copy of the agreement available.

82. Due to the financial pressures on myself during this time combined with an inability to sell my land because of a lack of water supply I was unable to maintain my interest commitments to my mortgagees Australian Guarantee Corporation.

83. During the latter half of October 1984 my mortgagees elected to sell my Woodleish Heights Land at mortgagees auction.

84. Boards advertising the auction were placed on the land under instruction from Australian Guarantee Corporation.

85. By letter dated 25th October 1984 Mr Brian Murphy the managing director of Woodleish Heights Resort Developments P/L in his capacity of secretary of the Body Corporate of the Woodleish Heights Subdivision wrote to the estate agent which had been engaged by Australian Guarantee Corporation and informed him that "the rules of Body Corporate Cluster Plan No. 1134 do not allow the erection of advertising signs on or within the Cluster Subdivision," and went on to request the removal of the signs.

86. Brian Murphy in his capacity of Managing Director of Woodleish Heights Resort Developments P/L had been party to the erection of many advertising signs within the subdivision.

87. I am advised in writing that Australian Guarantee Corporation elected to maintain the signs in position with Police assistance if necessary.

88. I am advised in writing by Australian Guarantee that subsequent to the failed effort to have the auction signs removed they were advised that water was denied to the subject land and could not be obtained.

89. Australian Guarantee Corporation therefore cancelled the proposed auction which was scheduled for the 17th November 1984.

90. By plan sealed by Kyneton Water Board on the 8th of November 1984 the Kyneton Water Board sought to extend the boundaries of its Waterworks District to include crown portion 41 in the north.

91. This same plan also sought to extend the boundary of the Kyneton Urban District to include inter alia crown portions 38 & 41 in the north, both of which relate to the Woodleish Heights Subdivision and also crown portions 129 & 132 in the south both of which relate to the Tylde Rd Subdivision.

92. These belated alterations to boundaries do not in any way legitimise the various relevant points referred to above.

93. By letter dated 29th November 1984 Australian Guarantee Corporation wrote to the Kyneton Water Board asking the Board to advise on the availability of water to my land.

94. By letter dated 7th December 1984 Kyneton Water Board responded to Australian Guarantee and said inter alia "The matter, as you will be aware, is complicated because of both the Board's existing water and wastewater agreements with the management of Woodleish Heights and the Shire of Kyneton's requirements for the issue of building permits."

95. The letter from the Water Board dated 7th December in effect said nothing of relevance. In the light of evidence now available combined with the fact that the Board was quite capable of giving an explicit answer I consider the letter to be deliberately evasive.

96. The letter from the Water Board to Australian Guarantee Corporation failed to point out that the board had recently executed documentation the purpose of which was to increase the Kyneton Urban District to include the Woodleish Heights Subdivision.

97. The letter also failed to point out that upon gazettal of the approval of the Governor in Council of the Plan dated 8th November (refer p90) then I as owner and or Australian Guarantee as mortgagors in possession would have an absolute right to obtain a water supply to the land. (section 208 & others)

98. By subsequent letter dated 9th April 1985 Australian Guarantee required a formal communication conveying the Water Boards determination in relation to Australian Guarantees Corporations letter of 29th November 1984

99. By Plan sealed by Kyneton Water Board on the 1st of May 1985 Kyneton Water Board sought the excision of inter alia crown portions 38 & 41 from the Kyneton Urban District but leaving them within the Kyneton Waterworks District.

100. Two days later and six months after the initial query from Australian Guarantee the Kyneton Water Board responded to Australian Guarantee Corporation by letter dated 3rd May 1985 and said inter alia "I advise that the Board is not in a position to supply water to the allotments for which you are mortgagor in possession in C.A. 41"

101. The letter of 3rd May from the Kyneton Water Board failed to inform Australian Guarantee Corporation that the Plan dated 8th November (refer p90) had been approved by the Governor in Council on the 13th March 1985 and further that the Plan dated 1st May 1985 had not yet been approved by the Governor in Council.

102. The land therefore at the time of the Water Board writing its letter of 3rd May was within an urban district which was supplied and the letter of the Board dated 3rd May 1985 failed to convey the facts relating to the matter and is, in the least evasive.

103. At the time of writing the letter of 3rd May the Kyneton Water Board had not yet forwarded the documentation relating to the Plan dated 1st May 1985 to the department of Water Resources but did so under covering letter dated 6th May 1985.

104. According to a memo dated 7th May 1985 Australian Guarantee Corporation telephoned Mr David Parkinson of the Kyneton Water Board and informed him inter alia that the Boards letter of 3rd May 1985 was inadequate and cheeky, to which Parkinson agreed to send a proper letter.

105. By letter dated 7th May 1985 Kyneton Water Board assin responded to Australian Guarantee and said inter alia "Water has been supplied to Woodleish Heights Resort Developments P/L as an outside of the water areas agreement on the basis that all costs for the construction of the mains were paid for by that company. The Board therefore has no mechanism by which the allotments referred to may be supplied with water except with the agreement of Woodleish Heights Resort Developments P/L. You will be aware therefore that a Shire permit to build will not be issued unless the blocks are supplied with water."

106. Kyneton Water Board failed to point out that at the time of writing the letter of 7th May the land was not out of the water areas and that the Water Board had decided to deliberately remove the land from the urban district and place it out of areas and thereby purposely remove the right to a water supply which existed at that time.

107. Kyneton Water Board failed to advise Australian Guarantee that subsection 307AA(8) was relevant and the fact that Woodleish Heights Resort Developments P/L had paid for the construction of the main was irrelevant and that the pertinent statement in the Boards letter of 7th May 1985 was irrelevant and misleading.

108. The plan dated 1st May 1985 was subsequently approved by the Governor in Council on the 25th June 1985 under remarkable circumstances.

109. I refer the reader to the attached copy of an internal minute of the local authorities division of the department of water resources dated 7th of June 1985 wherein it is recommended that a draft order for decreasing the extent of the Kyneton Urban District be submitted to the Governor in Council for approval.

110. Point 2 on that internal minute is absolutely false. The Kyneton Water Board at the time of seeking the order was absolutely aware that the area to be excised was supplied and that supply was connected to approximately 30 separate allotments with buildings constructed thereon and including at least one recreational facility incorporating a heated indoor swimming pool and heated spa and a sauna and further at the time of seeking the order the Kyneton Water Board was absolutely aware that development on the Woodleish Heights Subdivision was proceeding and the board intended to facilitate the supply of water to any further allotments required by Woodleish Heights Resort Developments P/L.

111. During the entire period the Kyneton Water Board was involved in the various convolutions of the various districts the Water Board failed to make available to myself a copy of the Water Supply agreement between itself and Woodleish Heights Resort Developments P/L. The Board was aware that the agreement was required by myself for the purpose of the impending Supreme Court action which was to a large extent precipitated by the terms of the agreement.

112. The Board under cover of letter dated 12th September 1985 made a copy of the agreement available after my solicitor threatened to take legal action to force the Board to make a copy available.

113. My supreme court action No 2360 of 1984 was settled on the day that the copy of the agreement was received at the office of my solicitor which was too late to be considered.

114. The Supreme Court order made at settlement of my Supreme Court action against Woodleish Heights Resort Developments P/L required Woodleish Heights Resort Developments P/L to facilitate a water supply to my land.

115. Armed with the forced agreement of Woodleish Heights and the previous advice of Kyneton Water Board that water could only be made available to my land with the agreement of Woodleish Heights Resort Developments I planned the immediate sale of my land.

116. An auction of the land was organised and signs advertising the auction erected on the future road reserve beside Edsecombe road Kyneton directly beside the entry to the Cluster Subdivision. My sign was approximately 4 feet high.

117. Woodleish Heights had a large permanent hoarding type sign which stood 15 feet high and approximately 36 feet long on precisely the same future road reserve and the sign had been in place for at least 6 years. Additionally Woodleish Heights had a metal sign on legs chained to a street signpost on the corner of Edsecombe road and Calder highway and had it so chained for approximately 3 years. Neither sign had a permit.

118. After attempts by the management of Woodleish Heights to remove my sign were thwarted by Police intervention the Kyneton Council by letter dated 5th November 1985 directed my agent to remove the signs advertising my auction forthwith because a permit had not been granted for my sign.

119. Mr Max McDonald M. P., took an interest in this matter after I explained to him that limited part of the foregoing facts which were known to myself at the time and spoke to the Shire Engineer in relation to the signs and other related matters on the 11th November 1985.

120. The day after Mr McDonald took an interest in the matter the Kyneton Water Board Wrote to my agents and advised my agent inter alia that "Town water is not currently available to the lots" and "there is no guarantee that the Board will supply water or wastewater services to the blocks concerned."

121. Under identical circumstances to those which had confronted Australian Guarantee Corporation and referred to above, I was forced to cancel my sale. The circumstances being firstly failed attempts by interests associated with Woodleish Heights and or Council to remove my signs immediately followed by intervention by the Water Board.

122. After I was forced to cancel my sale Woodleish Heights Resort Developments P/L wrote to my agents by letter dated 21st November 1985 and offered to purchase my land at an unacceptable low price.

123. Mr Max McDonald raised some aspects of these matters in State Parliament on 21st November 1985 and departmental enquiries were subsequently conducted by the Department of Water Resources and the Department of Local Government.

124. These enquiries were based upon the limited information to hand at that time and discovered little more than that which was already known. I have subsequently conducted my own investigation and present the foregoing for attention.

125. In addition to the above there are numerous other points of interest which relate to the activities of both the Kyneton Water Board and Kyneton Council. To continue however would be tedious. While each additional point is significant in isolation and in some instances introduce new aspects and matters they do nothing more than assert the picture readily obtained from the foregoing.

126. Both Council & the Water Board have continuously claimed to have acted properly.

I draw particular attention to paragraphs 83 thru 110 and point out that this chain of events forms a complete sub group within the whole which will be of particular interest to Australian Guarantee Corporation and I advise both Council & the Water Board that I shall advise Australian Guarantee Corporation of the results of my enquiries insofar as they effect Australian Guarantee,

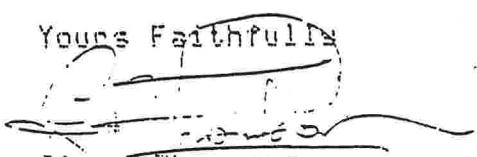
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It should be noted however that Australian Guarantee suffered no loss in this matter as it was I that ultimately bore all costs of the aborted sale and I have since paid Australian Guarantee out.

As a consequence of the matters referred to above my Family and I have suffered loss and damage. I now look to Council & the Water Board to acknowledge their responsibilities to myself and my family.

I require both Council & the Water board to advise me in writing of their attitude within 14 days of the date hereof.

Yours Faithfully


Glen Thompson,

C.C.
Mr Max McDonald, M. L. A.