

fraud had been perpetrated against me (as I had alleged in the 1995 proceedings) I could not say or demonstrate what that fraud was or who was responsible for it.

- b) On the one hand, I thought I had proof of the matters set out in the 1995 Supreme Court proceedings that at law a reticulated water supply was required to be present in 1979. On the other hand I had been shown a reticulation plan in the Practice Court which showed that the primary water main was laid in 1982.
- c) I could not reconcile the competing propositions referred to in (b) above. Accordingly, I felt unable, after settlement of the 1995 proceedings, to prove any wrongdoing on behalf of either the Council or Water Board.

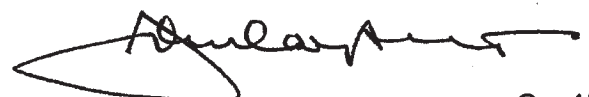
51) In relation to Buchanan I had formed the opinion that he was a dishonest person. I learned from my lawyer, Mr. Danny Ginsburgh that Buchanan had somehow managed to manipulate the plans of subdivision to avoid the provisions of s9 of the Sale of Land Act thereby enabling him to sell allotments and raise capital for the provision of roads and water which he ordinarily had an obligation to provide, or make provision for, prior to sale. I had no reason to suspect that the Council was in any way involved in Buchanan's wrongdoing.

52) In relation to the Council and Water Board I had no knowledge of anything save that which had been previously set out in the previous proceedings together with knowledge that the water main had been laid in 1982 as represented by the Counsel and lawyers for the defendants.

My state of knowledge in August 2000:-

53) In relation to Tylden Rd.

- a) For the purpose of preparing a defence and counterclaim against the Council in respect to a rates claim which the Council had brought against me I again began reviewing all of the documents available to me. I re-examined the contents of the large black folder referred to in paragraph 26 of this affidavit.
- b) Upon examining the documents within the black folder it became apparent that there were two versions of the plans for the industrial allotments of the Tylden Rd subdivision. Namely complete versions and clipped versions. I recognised the clipped versions as being the same as those which had been submitted into evidence by Wilson in the 1987 Magistrates Court proceeding and in the subsequent Supreme Court Appeal. I also noticed that the clipped versions had been clipped in copying in such a manner as to remove or omit the identifying number which was present on the complete version. Now produced and shown to me and marked with the letters "GAT-7" is a bundle of plans comprising the complete versions of those plans. Now produced and shown to me and marked with the letters "GAT-8" is a bundle of plans comprising the clipped versions of those plans.
- c) I then noticed that the black folder also contained copies of the residential series of the Tylden Road plans of subdivision and that these plans had also been clipped and I recognised these



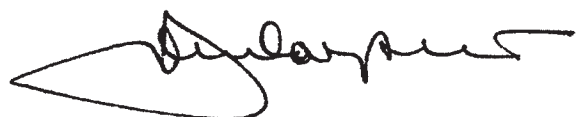
clipped plans to also be identical to those which had been admitted into evidence in the Magistrates Court and the Supreme Court Appeal. I then reflected on the Magistrates Court proceedings which I depose to in paragraph 23 of this affidavit. Now produced and shown to me and marked with the letters "GAT-9" is a bundle of plans comprising the clipped versions of those plans.

i) In the Magistrates Court, a bundle of documents was tendered which contained, inter alia, the following documents:-

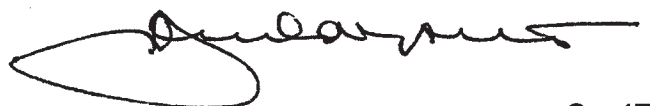
- (1) A large plan showing all of the residential allotments and the complete road. Now produced and shown to me and marked with the letters "GAT-10" is a copy of the large plan.
- (2) The three plans comprising the Industrial series of plans none of which show all allotments and all of which had been clipped in the manner described above. (see exhibit GAT-8)
- (3) The seven plans comprising the Residential series of plans, none of which show all of the allotments and none of which show the complete road and all of which had been clipped in the manner described above. (see exhibit GAT-9)
- (4) Council minutes for 20th February 1980 containing at item 8 a minute of resolution that the Council serve Notice of Requirement on the subdivider in relation to the subdivision referred to in items 8(a) and 8(b) of the Engineers Report of 20th February 1980. Now produced and shown to me and marked with the letters "GAT-11" is a copy of Council minutes of 20th February 1980.
- (5) Engineers report of 20th February 1980 containing:-
 - (a) at item 8(a) a reference to a 16 lot plan of subdivision owned by Buchanan. (note the reference to 16 is a typographical error and should be 18). Now produced and shown to me and marked with the letters "GAT-12" is a copy of the Engineers Report of 20th February 1980..
 - (b) at item 8(b) a reference to a 6 lot plan of subdivision (industrial) owned by Buchanan.
- (6) Copy of a Notice of Requirement dated 20th February 1980 and bearing the plan reference number 79305/G and a statement that the plan referred to was lodged with the Council on 12th February 1980 and a statement that the Notice of Requirement related to the road shown on the plan. Now produced and shown to me and marked with the letters "GAT-13" is a copy of the Notice of Requirement referred to..

ii) With reference to the bundle of documents and in particular the documents identified above Graeme Wilson gave evidence inter alia, :-

- (1) That the Council had approved a planning permit for the Tylden Rd subdivision permitting 18 residential allotments and 6 industrial allotments.



- (2) that the large plan and the series of plans were all filed with the Council on 12th February 1980.
- (3) That the Council considered the large plan on 20th February 1980 and resolved to issue and serve on the developer a notice of requirement in relation to the roads shown on the plan and for the provision of water.
- (4) That pursuant to the resolution of Council the Council did serve on the developer the Notice of Requirement dated 20th February 1980
- (5) That the large plan was processed in seven parts, those parts being sealed by Council on 21st May 1980 with a road-making endorsement placed thereon.
- d) Upon further examination and close reading of the documents it became apparent that the Notice of Requirement which had been admitted into evidence in the Magistrates Court and in the Supreme Court Appeal and which was discovered in the County Court proceeding contained the reference number 79305/G which was sequentially similar to the numbers disclosed on the non clipped versions of the Industrial Plans.
- e) From this I was able to deduce that the Notice of Requirement tendered in evidence in fact related to one of the residential series of plans and not to the large Plan referred to in paragraph 53,c),i),(1) of this affidavit and which large plan showed the whole of the residential allotments and the whole of the road to be constructed.
- f) As a result of perusing the documents in the black folder referred to in paragraph 26 of this affidavit and reviewing the documents tendered in the Magistrates Court and the evidence given by Wilson in that Court I came to a number of conclusions. Those conclusions were:-
- i) As the residential series of plans were filed with the Council on or after the 4th March 1980 the Notice of Requirement given in evidence had been falsely dated 20th February 1980. Now produced and shown to me and marked with the letters "GAT-14" is a copy of the Notice to the effect of the Thirtieth Schedule of the Local Government Act dated 4th March 1980.
 - ii) The plan of subdivision considered by the Council on 20th February 1980 had been abandoned by both the Council and Buchanan and not further processed. The seven plans comprising the residential series of plans were processed in substitution.
 - iii) That the Notice of Requirement had in fact been fabricated and that Wilson's evidence in the Magistrates Court could not be correct.
- g) At the time of Wilson giving his evidence the Council was fully aware of or recklessly indifferent to the existence of the following facts:-
- i) That the large plan in evidence was not a plan of subdivision and was not the plan considered by the Council on 20th February 1980.
 - ii) That the plans considered by the Council on 20th February 1980 had been abandoned by both the Council and Buchanan and not processed any further since 20th February 1980. The three



plans comprising the Industrial series of plans and the seven plans comprising the residential series of plans were unlawfully processed in substitution for the plans considered by the Council on 20th February 1980.

- iii) That the Notice of requirement dated 20th February 1980 and given in evidence relates to the plan bearing the identifying number 79305/G and not to the plan considered by the Council on 20th February 1980.
- iv) That the plan of subdivision bearing the number 79305/G is in fact only a two lot plan of subdivision, that plan being one of the series of residential and which contains Lot G. and Lot 8.
- v) That the Industrial series of plans and the Residential series of plans bear the identifying number sequence 79305/B to 79305/K inclusive.
- vi) That the plan bearing the identifying number 79305/G showed only a very small portion of the road.
- vii) That the plans comprising the Industrial series of plans and the Residential series of plans were lodged with the Council on or after 4th March 1980 and not on 12th February 1980
- viii) That the copies of the plans given in evidence and comprising the Industrial series of plans and the Residential series of plans had all been clipped in copying so as to omit the abovementioned identifying numbers as described above.
- ix) That the clipped copies of the Residential series of plans prevented the Court and myself from becoming aware of the true fact that the Notice of Requirement did not relate to a plan showing creating 18 residential lots and 6 industrial lots and showing the complete road.
- x) That each of the plans comprising the Industrial series of plans and the Residential series of plans each constitute a separate and distinct subdivision each requiring a separate Planning Permit before being lawfully approved.
- xi) That there never was any application for a planning permit nor was any planning permit issued permitting any one of the subdivisions created by each of the plans comprising the Industrial series of plans and the Residential series of plans.
- h) Upon reaching the above conclusions it became apparent to me for the first time:-
 - i) that the Council had acted maliciously or recklessly by sealing the residential plans contrary to its lawful obligation to refuse to do so.
 - ii) that Wilson's evidence given to the Magistrates Court had the effect of concealing the Council's true conduct from the Court and myself.
- i) I further concluded that at the time of sealing the series of residential plans the Council was not only fully aware that no services existed but it was also fully aware that there was no lawful means of providing or compelling the provisions of those services.

54) My state of knowledge in relation to Woodleigh Heights in August 2000.

