ii) providing for the construction or installation of such works as may be specified in the agreement to serve the land.

b) This subsection does not provide for agreements with anyone but the owner of the land.

c) The works permitted are to serve the land, not provide piping or reticulation within the land.

d) Subsection 307AA(8) provides:-

i) Any works constructed or installed pursuant to an agreement shall be deemed to have been constructed by and shall vest in the Second Defendant.

e) The operation of ss.307AA(8) effectively and specifically precludes a Water Supply Agreement from providing for the construction of any works which cannot vest in the Second Defendant or in other words it precludes any works on private property.

50) The Shire of Kyneton Interim Development Order

a) Clause 2b of the Shire of Kyneton Interim Development Order provides.

i) No person shall subdivide land except in accordance with the provisions of a permit issued by the First Defendant. [2]

51) **The Woodleigh Heights Planning Permit.**

a) Planning Permit 2191 was issued by the First Defendant in 1978. [3]

b) condition 8 of that permit required "*The Development to be carried out in accordance with the plans and submissions which formed part of the application*"

c) condition 6 of that planning permit required "*The Corporate Body shall be responsible for all private facilities including water, ... … .. "*

52) Reticulated water supplies.

a) A reticulated water supply is a supply of water to the boundary of a parcel of land via a network of pipes.

b) A reticulated water supply system has three component parts:-

i) A water source

ii) A network of pipes comprising the reticulation system.

iii) Water flowing within the network of pipes from the water source to the supply point(s).

c) In the absence of any one or more of the component parts there is no reticulated water supply.

[2] See GAT-27
[3] See GAT-5

53) A further critical understanding is the correct understanding and concepts of the private reticulated water supply and system in question in relation to the Woodleigh Heights subdivision as distinct from a reticulated water supply and system provided by the Second Defendant.

54) **A reticulated water supply vis-à-vis an approved Reticulated Water Supply**

i) An approved Reticulated Water Supply is a reticulated water supply which has the status of Reticulated Water Supply for the purpose of the then Shire of Kyneton Planning Scheme.

ii) Knowledge of a reticulated water supply does not constitute or include knowledge of an approved Reticulated Water Supply

iii) Knowledge of or belief in the private water supply and reticulation system which was apparently present in 1979 does not include knowledge of or belief in an approved Reticulated Water Supply.

iv) A reticulated water supply provided by the Second Defendant is an approved Reticulated Water Supply.

v) A precondition to the grant of building permits on the Woodleigh Heights allotments was that the allotments be serviced by an approved Reticulated Water Supply.

b) **The Woodleigh Heights private water supply and reticulation system.**

i) The Woodleigh Heights subdivision was in an area where under the Shire of Kyneton Planning Scheme subdivision into allotments less than 6 acres in area was prohibited unless the proposed allotments were serviced by an approved Reticulated Water Supply.

ii) The area where the Woodleigh Heights subdivision was located was not serviced by a reticulated water supply provided by the Second Defendant and so subdivision into allotments of less than 6 acres was effectively prohibited.

iii) To overcome this problem the subdivider, Kenneth Raymond Buchanan proposed a completely private and self contained water supply and reticulation system.

iv) This private water supply and reticulation system is detailed in the **submission dated 3/11/78** and referred to in the particulars to paragraph W2 of the present Amended Statement of Claim.[4]

v) As detailed in the submission this private water supply and reticulation system consisted of a lake with a surface area of approximately 6 acres, a rising main, a 100,000 gallon header tank and a system of pipes comprising the reticulation system.

[4] See GAT-5B at GAT-5 and in particular the Engineering Report of that submission.

vi) Although unusual, being a country boy the concept of private or community based water supplies and electricity systems was well known to me and I had personal knowledge off such things in small rural communities.

vii) In 1979 at the time of purchase I was aware that the water supply was a private system, the lake and the water tanks were present as highly visible palpable facts and were also depicted on the glossy brochure[5] and marked "water" and because neither I nor any ordinary person would have an expectation that allotment holders were expected to visit the tanks with their teapots and toilet buckets I had a more than reasonable basis for a belief that a reticulation system was also present but installed underground and therefore not visible and not depicted on the glossy brochure.

viii) The private water supply and reticulation system defined in the submission constituted an approved Reticulated Water Supply for the purpose of the Shire of Kyneton Planning Scheme.

ix) The operation of the Shire of Kyneton Interim Development Order required compliance with Planning Permit 2191 and accordingly pursuant to condition 8 of that permit the private water supply and reticulation system was required by law to be competed in 1979 at the time that the plans were sealed and condition 6 of that permit required it to be under the control of the Body Corporate.

x) The private water supply and reticulation system as defined in the submission was entirely contained within the common property and was common property.

xi) As the Plaintiffs now know the principle water main comprising the reticulation system were not completed in 1979 as required by law but were instead laid in 1982. As a consequence, as alleged in paragraph W10 of the present Amended Statement of Claim there was no reticulated water supply present when the plans were sealed in 1979.

c) A reticulated water supply provided by the Second Defendant.

i) The Woodleigh Heights subdivision was completely outside the Kyneton Waterworks Urban District and part within and part without the Kyneton Waterworks District. The Second Defendant had power to provide water to land within its district by agreement under s.307AA(2) but could only do so with the approval of the Governor in Council in respect to land outside its Waterworks District.

ii) The reticulation system of the Second Defendant is entirely contained within public lands and generally along public road or within easements over private lands.

[5] See GAT-1

iii) The water source for a reticulated water supply provided by the Second Defendant is from a reservoir operated by it.

iv) Water provided by the Second Defendant is provided at a water meter adjacent to the boundary of a parcel of land. The reticulation system and the water upstream from the water meter is the property of the Second Defendant. The water and reticulation system immediately downstream from the water meter is the property of the consumer.

v) A reticulated water supply lawfully provided by the Second Defendant is an approved Reticulated Water Supply.

d) The principal distinctions between the Private reticulated water supply and a reticulated water supply provided by the Second Defendant.

i) The private reticulated water supply system referred to in paragraph W2 of the present Amended Statement of Claim is entirely contained within the common property of cluster subdivision CS1134 and is the property of the Body Corporate of CS1134 and cannot and does not include any component which is not within the common property and not the property of the Body Corporate.

ii) The reticulated water supply system of the Second Defendant is entirely contained within public lands or easements over private lands and is the property of the Second Defendant and does not and cannot include any component which is not the property of the Second Defendant.

iii) A reticulated water supply provided by the Second Defendant may provide a source of water either in lieu of or to augment the water source of the private system but not vice versa.

iv) The supply points of the private system were each individual parcel of land being an allotment

v) A reticulated water supply provided by the Second Defendant cannot be provided to the individual parcels of land, being the allotments of the cluster subdivision, without a separate Water Supply Agreement pursuant to s.307AA(2) with each individual owner of each individual allotment

vi) A reticulated water supply provided by the Second Defendant cannot be provided to the individual allotments except in breach of condition 6 of the planning permit which required the Body Corporate to be responsible for all private facilities including water.

vii) Evidence of or knowledge of the reticulated water supply provided by the Second Defendant does not and cannot provide evidence of, or knowledge of, a first instance of any component part of the private reticulated water supply and system.