5. By Terms Contract of Sale of Land dated 1.11.79 the Plaintiffs ~~purchased~~ *entered into a contract to purchase* certain land within the "Woodleigh Heights Estate", located at Edgecombe Road, Kyneton in the State of Victoria.

PARTICULARS

The relevant land consisted of Lots 1, 2, 7, 10, 12 and 27 on Plan of Cluster Subdivision CS1134 and being all of the land more particularly described in Certificates of Title Volume 9171 Folios 687, 688, 693, 696, 698 and 713 respectively ("the ~~Plaintiffs'~~ land").

6. The Woodleigh Heights Estate:

a) was, as at 1978, owned by Kenneth Raymond Buchanan and his wife Yvonne Rae Buchanan ("the Buchanans");

b) was within the municipal district of the KSC as designated pursuant to the provisions of the Local Government Act 1958;

c) was in 1978 part within and part without the Waterworks District of the KSWWT designated pursuant to the provisions of the Water Act 1958;

d) was in 1978 outside both the Urban District and the Rural District of the KSWWT as designated pursuant to the provisions of the Water Act 1958.

7. By Application dated 22 November 1978 the Buchanans applied to the KSC to develop the Woodleigh Heights Estate by subdividing it pursuant to the provisions of the Cluster Titles Act 1974, such subdivision consisting of 45 allotments averaging approximately 2 acres in size, together with substantial areas of common property and provision for the installation of a privately owned and operated water supply and

reticulation system forming part of the common property ("the Application for Cluster Subdivision").

PARTICULARS

The application for Cluster Subdivision consisted of the following relevant documents.

a) Application for Permit dated 10th November 1978.

b) Submission dated 3.11.78, prepared by James A. Harris & Associates Pty. Ltd. ("the Submission").

8. The proposal for the privately owned and operated water supply and reticulation system (as contained within the Submission), consisted of:

a) a storage reservoir with a surface area of 4½ acres and a capacity of 8,500,000 gallons;

b) a high level header tank of 100,000 gallon capacity;

c) rising main between the reservoir and high level tank;

d) a reticulation system comprising main pipes from the tank through the estate and smaller pipes from the main pipe to the individual allotments;

e) household drinking and bathroom water was to be supplied by means of roof rainwater tanks which were to be installed concurrently with the construction of houses.

f) the reticulated water supply was for non-domestic uses only.

PARTICULARS

The proposed water supply and reticulation system was detailed in the Submission in an engineering report by Garlick & Stewart dated 2.11.78. The Report consisted of a letter and plans entitled "Water Supply and Reticulation Layout Plan" and further described in the sections of the Submission entitled "Planning Objectives", "The Development" and "Summary".

9. On or about 15 November 1978 the KSC issued to the Buchanans Planning Permit No. 2191 ("PP2191") dated 15th November 1978 authorising them to develop the Woodleigh Heights Estate in accordance with the said Planning Permit.

10. It was a condition of PP2191 that the Woodleigh Heights Estate be developed in accordance with the Plans and Submissions comprising the Application for Cluster Subdivision, including the constructions and installation by the Buchanans of the water supply and reticulation system as set out in the Submission.

PARTICULARS

The Plaintiffs refer to provision 8 of PP2191 which states;

(a) "The development to be carried out in accordance with the plans and submission which formed part of this application"

11. KSC alone approved the Private Water Supply and reticulation system as set out in the submission. KSC did not refer the plans of subdivision to KSWWT pursuant to S11(1) of the Cluster Titles Act 1974 and S569B(2)(ac) of the Local Government Act 1958.

12. On 9 August 1979 the Cluster Subdivision was registered by the Registrar of Titles, as Plan of Cluster Subdivision No. CS1134 ("CS1134").

13. At the time of registration of CS1134 the following relevant works had been carried out in relation to the construction and installation of the water supply and reticulation system:

a) The lake referred to in the Submission had been constructed and was near full of water.

b) Two 50,000 gallon concrete high level water tanks had been constructed in lieu of the single 100,000 gallon high level tank referred to in the Submission.

c) The rising main had been laid between and connecting the lake and the high level tanks as referred to in the Submission.

d) Primary reticulation pipes had been laid in the common property and connected to the concrete high level tanks to convey non domestic water from the tanks to the allotments as referred to in the Submission.

e) The high level tanks contained water.

14. By reason of the matters referred to in paragraphs 5 - 13 above the Plaintiffs, as ~~beneficial owners of the land purchased by them~~ *holders of an equitable interest in the land*;

a) had a right of access and an entitlement to the water supply and reticulation system within CS1134.