

IN THE HIGH COURT OF NEW ZEALAND
(ADMINISTRATIVE DIVISION)
WELLINGTON REGISTRY

M.348/81

268

IN THE MATTER of the Town and Country
Planning Act 1977

AND

IN THE MATTER of an Appeal under
Section 162 of the Act

BETWEEN B.G. FRANCIS,
W.J. FRANCIS and
D.M. FRANCIS

Appellants

A N D THE MINISTER OF WORKS
AND DEVELOPMENT

Respondent

Hearing: 12 March 1984
Counsel: G.H. Gould for Appellants
N.W. Williamson for Respondent
Judgment: 20/3/84

JUDGMENT OF ROPER J.

This is an application by the Appellants for costs on a case stated pursuant to s.162 of the Town and Country Planning Act 1977 which did not proceed to a hearing because the designation by the Minister of Works and Development of part of the Appellants' land as "Education (proposed primary school)", being the issue involved in the case stated has been removed by the Minister.

The Appellants are the owners of land on Worsleys Spur, which is in the General Development B zone of the Paparua County Council's district scheme, and since 1978 they have been endeavouring to obtain the Council's consent to its subdivision into residential sections. It seems that the Council has always approved the scheme of subdivision "in principle" but has refused final approval because of the Minister's designation of part of the land. The Appellants appealed to the Planning Tribunal against

the refusal of consent but the appeal failed and it was following that that the case was stated. In September 1981 the Appellants' solicitors were advised by the Ministry of Works and Development that the designation was to be uplifted, but a short time later they were told that the designation was to remain. On the 21st December 1981 the Appellants lodged an appeal against the Minister's refusal to uplift the designation or consent to the subdivision. That came before the Planning Tribunal on the 12th May 1982, but on the 6th May the Appellants had been informed that the designation had been removed. This is the letter from the Minister of Works and Development:-

"MINISTRY OF WORKS
AND DEVELOPMENT

6 May 1982

The Registrar,
No. 3 Planning Tribunal
P.O. Box 2069,
CHRISTCHURCH

IN THE MATTER OF AN APPEAL UNDER SECTION 124,
TOWN AND COUNTRY PLANNING ACT 1977 BETWEEN
B.G. AND W.J. FRANCIS, APPELLANT AND MINISTER
OF WORKS AND DEVELOPMENT, RESPONDENT

I wish to advise that the designation on the Appellant's land has now been removed and I shall not now be calling witnesses. I imagine Mr Gould, for the Appellant, will wish to make submissions on the question of costs which the chairman may wish to hear sitting alone, pursuant to Section 135 of the Town and Country Planning Act 1977. I have no objection to the remaining issues being determined by the chairman alone. Attached is a copy of the notice removing the designation.

B.C. Rowell
for District Commissioner of Works "

On the 12th May the appeal was withdrawn and the Appellants were awarded costs of \$950 and disbursements of \$425.50 by consent.

The Appellants have now made a claim against the Minister for compensation pursuant to s.76 of the Public

Works Act 1981, which includes an item of \$2,110 for "legal fees".

What the Appellants now seek is an order for costs to cover the case stated and the original appeal hearing before the Tribunal to which it relates. Mr Gould conceded that any award of costs now made would reduce the item for \$2,110 in the compensation claim.

Mr Williamson submitted that the award of \$950 covered all costs up to the 12th May 1982 and that the Ministry's consent to that award was made on that basis, so that all that remained was for costs to be fixed on the preparation of the case stated. There is a conflict here which I cannot resolve. I must agree that \$950 is a very large sum to award on the withdrawal of an appeal but there is nothing before me to indicate what it was supposed to cover beyond that.

In the circumstances I am only prepared to award costs on the withdrawal of the case stated leaving it to the Appellants to justify any further award on their claim for compensation pursuant to s.76.

The Appellants are therefore awarded costs of \$350 and disbursements (if any) as fixed by the Registrar.



Solicitors:

Meares Williams, Christchurch, for Appellants
Crown Solicitor, Christchurch, for Respondent