22/8

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

LVP 316/81

973

IN THE MATTER of the Public Works Act 1928

AND

IN THE MATTER of an application by CROMWELL FARM MACHINERY LIMITED for compensation pursuant to the said Act

Motion on Appeal filed

BETWEEN CROMWELL FARM MACHINERY LIMITED

Claimant

A N D THE MINISTER OF WORKS AND DEVELOPMENT

Respondent

Appeal reported: [1986] 2 NZLR

Hearing: 27, 28, 29 February and 1 March 1984
Counsel's Memoranda received 9 May 1984

Counsel: N.S. Marquet for Claimant
K. Robinson and Alison Swan for Respondent

Judgment: 17 AUG 1984

JUDGMENT OF ROPER J. AND R.J. MACLACHLAN

This is a claim for compensation under the Public Works Act 1928 following the taking of the company's land, which was required for the redevelopment of Cromwell as a result of hydro dam construction on the Clutha River. Compensation is claimed under two heads. First for land taken, and secondly for losses suffered as the result of closure of the company's business, which, it is claimed, was forced upon it because of the unavailability of a suitable site in Cromwell for its relocation. The matter of land compensation has been settled by agreement and we are not

concerned with it, leaving for decision the questions whether the closure of the business was the company's own decision or was forced upon it by the Crown's actions; and, if the closure was a direct consequence of the Crown's exercise of its powers of acquisition, the assessment of the appropriate compensation.

The manager of and main shareholder in the company is Mr R.A. Stowell, who has been involved in the sale of new and secondhand farm machinery, and its servicing and repair, for many years. Of particular importance is his association with International Harvester Co. Ltd. In 1959 another company, with which Mr Stowell was associated, was granted a franchise by International Harvester to sell its products over a wide area in Otago Central. The growth of the business was such that the shareholders of the original company which held the franchise decided that the franchise area should be divided, and to that end Mr Stowell formed his own company, Cromwell Farm Machinery Limited, in 1962 and became the franchise holder for the Upper Clutha, Wakatipu, Alexandra and Clyde. The company went from strength to strength with increases in staff, turnover and premises, and by the 12th August 1976, the date of the proclamation taking the company's land for hydro purposes, it had substantial premises adjacent to the State Highway which carried all main traffic through Cromwell with plans for expansion, valuable franchises apart from International Harvester and a sales turnover of $800,000.

All was uncertainty following the issue of the proclamation. It was not known whether there would be a high or low dam, something in between, or several dams, the extent to which the land taken would be affected if at all, where the Clutha would be bridged or where the new State Highway would run in relation to the new proposed town centre. Mr Stowell even seemed to have doubts whether the hydro scheme would proceed at all. Because of these uncertainties there was no desire on the Crown's part that affected businesses should attempt to relocate elsewhere with any degree of urgency.

This was made clear to landowners in a letter of the 11th August 1976, and Mr McGill, who was then the Ministry of Works Project Property Officer at Cromwell said in evidence that even had a business desired to relocate there was no other land available. There was even a prospect, as referred to in a letter from Mr McGill to the company's solicitors of 14th February 1977, that the proclamation over the company's land might be revoked so that it could proceed with its planned expansion. It also stated that no alternative land was then available. That letter followed Mr Stowell's election to continue in business (although in truth he really had no option) and a request to the Ministry to be advised of what land would be available to him for relocation.

The next misfortune which befell the company was a fire on the night of the 25th/26th May 1977 which resulted in the almost total loss of premises, plant and stock. What happened thereafter assumed some importance in Counsel's submissions bearing on the question of closure. Mr Stowell was anxious to re-establish his business but there were two problems - the Crown could not provide an alternative site and would not permit use of the existing site on a permanent basis. However, the Crown approved Mr Stowell's plan to re-open for business on the original site, a temporary building to be erected at the Crown's cost, but not exceeding $14,000, and leased to the company. (In the result the Crown's contribution was to the order of $20-22,000 and the company made further additions at its own expense.) The Crown correspondence makes it clear that the temporary premises were to be the <u>minimum</u> necessary for the continuation of business. Mr Robinson cross-examined Mr Stowell at length to show that it was he who had determined, or had the ability to determine, the size of the temporary buildings. Mr Stowell denied this and his denial is supported by the Ministry's correspondence and Mr McGill's acceptance that Mr Stowell was told that only the minimum would be supplied, although in the result it is difficult to see that the smaller premises had any material

effect on the company's trading.

The company continued to trade after a break of three months while the temporary premises were erected but according to Mr Stowell the temporary premises were inadequate and business suffered.

On the 15th July 1977 the Cromwell Borough Council wrote to Mr Stowell advising that the basic elements of the new Town Plan had been settled and that it was in a position to proceed with the development of an industrial area. A prospectus was enclosed showing the land available. Mr Stowell applied for certain sections in the proposed industrial area and sent off his deposit cheque but cancelled it the next day. It is unnecessary to go into fine detail concerning the application for land in the industrial area. As we understand the position Mr Stowell was really seeking "land for land" and the Borough Council's scheme, which was not co-ordinated with the Ministry's plans for payment of compensation would have resulted in Mr Stowell being out of pocket on the deal, with the compensation he would receive not covering the cost of the land he would purchase from the Borough Council. Of more importance, and this was really the main issue in the case, the industrial area offered by the Borough was, in Mr Stowell's opinion, quite unsuitable for his type of business. He gave evidence that throughout New Zealand businesses of his type were established on or close to a main highway.

Mr Marquet stressed that retail sales of farm machinery, with a trade-in in most cases, were an essential part of the company's business, and that even taking into account its servicing of machinery it was not an "industrial" enterprise. Its original site had been no distance from the town centre and adjacent to the then existing State Highway. The proposed industrial site was virtually in a backwater, being well removed from both town centre and the realigned State Highway (No. 8), as the plan annexed hereto indicates.

(The industrial land which would have been available to the company was within the hatched area.) As we understand the position the location of the industrial area was fixed by the Borough at a time when it was planned to construct the State Highway in close proximity to it. When it was decided to bridge the Clutha at a different point the Highway was moved to the position on the attached plan. The Borough Council opted to leave the industrial area where originally proposed, although Mr J.A. Paul, District Planner with the Ministry recognised that businesses which relied on close proximity to the highway would be disadvantaged by the change in highway alignment.

On the question of suitability of the industrial area for the company's business evidence was given on behalf of the company by Mr G.H. Tulloch and Mr J.S. Johnstone. Mr Tulloch, who is based in Masterton, has had 30 years' experience in marketing farm machinery, with his company's turnover being to the order of five million dollars. In his opinion a site on or close to the main highway was essential and that from his own experience and widespread enquiries the prospects of success on a secondary road were very limited. He said:-

> "As to why it's important to be on the main road, you can't relate farm machinery to industry and it's a mixture between retailing and servicing, you have a lot of lines that are relatively slow moving, they are specialised farm uses and the cost of advertising to make the farming community aware that you have got them is prohibitive and through all farming districts there is a big flow of farmers from outside the district who are in the district for all sorts of reasons who pass and see this specialised equipment and make inquiries and often purchase it. These are big chunks of money tied up and if you can't move them it will cripple a farm machinery business. Farmers do come in because they happen to see something when passing, and some on holiday, passing through for all sorts of reasons."

He regarded the Borough's industrial zone as "a dead area" from a farm machinery viewpoint.

Mr Tulloch agreed in cross-examination that there was a planning tendency to keep farm machinery businesses off main roads if possible because of traffic problems but considered that suitable provision could still be made for them.

In short Mr Tulloch considered it essential that the site be such that the goods can be seen by the passing traffic. Mr Johnstone had traded in farm machinery from Invercargill for 26 years. He was in agreement with Mr Tulloch's views. He would not have established a farm machinery business himself on the site offered for the reason that the marketing potential of his products would be lost.

Contrary evidence was given by Mr E.W. Sadlier, who is the managing director of J.J. Gore Ltd, being one of the companies in which Mr Johnstone had an interest. In his opinion most sales of farm machinery came from advertising rather than from the interested passerby on a main highway. He agreed that in earlier times a main highway site may have been preferable but with traffic now travelling at speed in lanes he could see no advantage. He did not regard the site in question "a dead area", nor too far distant from the main traffic flow, and indeed thought it preferable to a main highway site.

In cross-examination Mr Sadlier agreed that his farm machinery business as a Massey Ferguson agent was only one section back from a main highway, with the car sales section of the business on the main highway; and that while in almost every case International Harvester dealers were on main highways this was not the case as far as Massey Ferguson dealers were concerned. He did not go so far as to say that a main highway site had no advantages, but thought a business could be located away from the main highway quite successfully.

There was a suggestion by Mr Robinson that Mr Stowell's refusal to entertain the industrial area site arose

more from pique than any real dissatisfaction with the site offered. Mr Stowell was, as we understand, a member of the Cromwell Borough Council at the relevant time and was in sharp conflict with the decision of a joint committee comprising representatives of the Ministry, Cromwell Borough and Vincent County Council concerning the siting of the industrial area. This is Mr Stowell's evidence in cross-examination:-

> "Are you aware that the question of the location of the industrial area was considered in detail by the joint committee that was supposed to be re-planning Cromwell? Yes. And it was the result of their deliberations wasn't it that it was finally accepted that the industrial area would go where it's shown on Ex.4? That is correct. People had no say. The people of the town had no say. The joint committee I am speaking of contained representatives from the Ministry of Works? Yes. Cromwell Borough Council? Yes. Vincent Borough Council? Yes. And none of those people represented the wishes of the people of Cromwell? That is correct. Were you one of the people who represented the wishes of the people of Cromwell? I would be on it but I withdrew at one time, it was not put up as part of the District Scheme so apart from those people that sat there no one really had any opportunity to approve or disapprove. In fact you were sharply at odds with the other members of the Council weren't you? That's correct. And wasn't one of the reasons for that that at least in their view you were seeking to obtain an advantage other businessmen wouldn't get? I would be the only business in the town marketing and retailing equipment that was affected at that time. Every other businessman of the type of business you were selling would have to locate in this industrial area? At that time there was no other business in the town doing the type of business we were doing. Not precisely the same but all other activities of an engineering or industrial kind? I consider there is a big difference between engineering and industrial use and a workshop also retailing equipment."

We are not satisfied that mere pique would have lead Mr Stowell to reach the conclusion he did. He is an experienced businessman, and furthermore he was well aware of the consequences closure would have on his staff. His view,

in short, was that he could not be called upon to accept an inferior site, where his business future was uncertain, when it called for a capital outlay to the order of $300,000 to erect suitable premises.

Mr Robinson made the point that the witnesses who had declared the site to be unsuitable were dealing in general terms and had not limited their consideration to the Cromwell scene. In our opinion the more general approach is appropriate. The evidence established on balance that a main highway site had real advantages, and that the company was justified in rejecting the alternative offered on the basis that to accept it could have resulted in the assumption of an unacceptable financial risk. It is no answer to the company's plea that the Borough would not allow relocation on or near a main highway. The company had a choice site on a main highway and that is what it lost as a result of the proclamation.

The company could have been relocated on a site acceptable to it just outside Cromwell and within the Vincent County. This was referred to as the McNulty Road site and was surplus land available to the Ministry. There were very considerable delays for which Mr Stowell was in no way to blame before the issue was resolved. The Ministry was prepared to transfer the land to the company so that the business could be re-established but the company's application for planning approval, which was opposed by the Cromwell Borough, was refused by the Vincent County. Had the Ministry actively supported the company's application the result, either at first instance or on an appeal might have been different.

There is no doubt that the company was under a legal duty to mitigate its loss but that does not mean that a claimant must adopt a course the probable result of which will be financial disaster.

We are satisfied on balance that Mr Stowell's

rejection of the alternative site was reasonable in all the circumstances leaving him no alternative but to close down, a suggestion to that effect being first made to the Ministry in June 1978.

Following his failure to acquire the McNulty Road site Mr Stowell's solicitors wrote to the Ministry on the 7th March 1980 offering it the business as a going concern. The Ministry replied on the 21st March declining the offer and denying responsibility for enforced closure.

On the 8th July 1980 the company gave notice to its customers that it would be closing down on the 5th August, and of an auction sale to be held on the 26th September. At about the time of closure the company began a crane hire business.

The next matter to decide is the time of assessment of the business loss claim. Mr Robinson submitted that the date of proclamation (12th August 1976) was the effective date, while Mr Marquet argued for the date of closure of the business.

S.62(1)(b) of the Public Works Act 1981 provides in short that the amount of compensation payable for land taken, injuriously affected or otherwise is to be assessed as the amount which the land if sold in the open market by a willing seller to a willing buyer on "the specified date" might be expected to realise. There is a proviso to s.62(1)(b) which reads:-

> "unless -
>
> (i) The assessment of compensation relates to any matter which is not directly based on the value of land and in respect of which a right to compensation is conferred under this or any other Act;"

The proclamation date is the specified date in the present

case. Although the company's claim for the loss of the business could hardly be said to relate to land taken in the strict sense Mr Robinson argued that what a claimant was really entitled to in these circumstances was the special value of the land to the claimant for his business purposes, so that in the final analysis what is being valued is the land. He relied on the following passage from the judgment of Lord Halsbury L.C. in Commissioner of Inland Revenue v. Glasgow and South-Western Railway Co. (1887) 12 A.C. 315 at 321:-

> "Now the language of the legislature is this - that what the jury have to ascertain is the value of the land. In treating of that value, the value under the circumstances to the person who is compelled to sell (because the statute compels him to do so) may be naturally and properly and justly taken into account; and when such phrases as 'damages for loss of business' or 'compensation for the goodwill' taken from the person are used in a loose and general sense, they are not inaccurate for the purpose of giving verbal expression to what everybody understands as a matter of business; but in strictness the thing which is to be ascertained is the price to be paid for the land - that land with all the potentialities of it, with all the actual use of it by the person who holds it, is to be considered by those who have to assess the compensation."

In Wellington City Corporation v. Berger Paints N.Z. Ltd [1975] 1 N.Z.L.R. 184 our Court of Appeal held that the then equivalent of the present proviso to s.62(1)(b) allowed claims for "disturbance" (now specifically provided for in s.66 which was first enacted in 1981). At page 205 Richmond J. said:-

> "In New Zealand there is no need to treat the entire award of compensation as the 'value of the land' for our s.42(1) speaks only of 'full compensation for the same'. It need not be regarded as the 'price' for the land. Rather it is an in globo sum which, again in Pearson L.J.'s words, is the equivalent of what the claimant has lost by reason of the compulsory acquisition. The very basis of much of Lord Halsbury's

reasoning in the Glasgow and South-Western Railway Co. case is not present in the New Zealand statute. In this country the task of the Court is as follows:

(1) To decide what element or elements of the claim are directly based on the value of land. That part of the claim must be assessed as required by the first part of rule (b) interpreted in the light of such authorities as the Vyricherla case, the Pastoral Finance case and the Whareroa 2E Block case.

(2) To decide what part of the claim is not directly based on the value of land but which is nevertheless loss which is directly consequent on the taking of the land and is not too remote. This loss will be assessed in accordance with the general principles governing the assessment of compensatory damages for financial loss."

The provision now contained in s.66 for compensation for "disturbance" is not specifically nor by inference tied to the "specified date" limitation in s.62, and as a matter of common sense and logic it is difficult to see how it could be. This passage from the judgment of Lord Denning M.R. in Munton v. Greater London Council & Another [1976] 2 All E.R. 815 at page 818 is in point:-

" The second point of law is whether, in order to be binding, there has to be one entire sum agreed that comprises not only the value of the property itself but also the compensation for disturbance. Under the 1845 Act the enquiry was only as to the 'value of the land', and it was held that in this sum there was to be included the compensation for disturbance. So that only one sum was to be awarded. That seems to be the effect of Inland Revenue Comrs v. Glasgow & South-Western Railway Co. (1857) 12 App Cas 315 and Horn v. Sunderland Corpn [1941] 1 All E.R. 480, [1941] 2 K.B. 26. But although only one sum is awarded, it is very proper, in assessing it, to divide it into two parts: (1) the land itself and (2) disturbance. Starting with the Acquisition of Land Act 1919 and repeated in the Land Compensation Act 1961, Parliament itself has

made a division between the two. In s.5, r(6), it says:

> 'The provisions of rule (2) [that is about the value of the land] shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.'

Since those Acts, the practice always had been for the compensation for disturbance to be assessed separately from the value of the land. That is as it should be. The value of the land can be assessed whilst the owner is still in occupation. The compensation for disturbance cannot properly be assessed until he goes out. It is only then that he can tell how much it has cost him to move, such as to get extra premises or to move his furniture. The practice is warranted by two cases in this court: Harvey v. Crawley Development Corpn [1957] 1 All E.R. 504, [1957] 1 Q.B. 485 and Minister of Transport v. Lee [1965] 2 All E.R. 986, [1966] 1 Q.B. 111.

In my opinion that is quite a proper view for the local authority to agree in the first place with the owner on the value of the house itself and to leave till later the compensation for disturbance. That can be assessed later when the local authority go into occupation and the house-owner moves."

We are therefore in agreement with Mr Marquet that the appropriate time to assess compensation for disturbance is when the damage has manifested itself. Established facts, where available, are to be preferred to prophecy.

We shall now consider each of the heads of claim and the first is -

The Costs of Closing Down the Business:

We understood Mr Robinson to agree that if the company was to be compensated for enforced closure then the following sums were properly payable under this head:-

1. The company's liability for redundancy pay - $2,763
2. Loss on improvements to temporary premises - $2,369
3. Costs incurred in unsuccessful attempts to procure alternative site - $5,608

The remaining claims under this head were challenged. The company has claimed the sum of $22,875 as the loss incurred on the sale of stock at the closing down sale. Mr L.J. Brown, a chartered accountant, whose firm had acted as the company's accountants since 1974, was of the opinion that the forced closure of the business with the auction sale that followed deprived the company of the opportunity to dispose of its stock to the best advantage, namely by normal day-to-day trading, or by disposal of the business as a going concern to a willing buyer. An analysis of the company's trading records showed that over the years it produced gross profits which varied as a percentage to sales only relatively slightly. Mr Brown pointed out that the company had adopted the normal accounting policy of valuing its stock at cost less an allowance for obsolescent or slow-moving stock with a write-down to estimated market value in any case where that might be lower than cost. However the company's financial statements for the year ended 30th June 1981 showed a gross loss of $22,875, and Mr Brown regarded this as the appropriate amount to be claimed for loss on stock.

Mr Brown's assessment was based on the trading history of the company but it appears to be supported by the valuations obtained prior to the auction as compared with the proceeds from the auction, and indeed on a valuation comparison basis an even higher award seems to be justified.

We therefore allow the claim for $22,875.

The next item was a claim for $1,426 as the loss on disposal of an hydraulic press crimper purchased new in 1978

for $5,786. Mr Stowell valued it at $4,300, with hydraulic parts at cost $3,376, giving a total value of $7,676. It was sold for $6,250. Mr Robinson made the point that the only valuation was that of an interested party. That is so, but of more importance is Mr Stowell's acceptance that $6,250 was the fair market value. It seems that his increased value contained an element of special value to him with the plant in place. We disallow that item. The next claim is for $19,443 being the cost of retaining staff from the 22nd May 1980 to the date of auction. The 22nd May date was selected by Mr Brown as it was the date on which the company lost the International Harvester franchise, it being unable to give that company a firm assurance that it could continue in business. At the Court's request Mr Brown did two further calculations with starting dates of 8th July and 5th August in lieu of 22nd May, which result in figures of $13,711 and $9,349. We are inclined to think that too much was made of this matter. It is important to remember that the company continued to trade until the 5th August and what was involved thereafter was the identification, cataloguing and display of stock, and probably dealing with potential customers after notice of the auction had been given. The auction was held on the 26th September.

In our opinion an award assessed on the commencing date of 5th August would be reasonable and we therefore allow the claim at $9,349.

The next item is for $7,144 being the cost of retaining management and staff <u>after</u> the auction for the purpose of collection of book debts and realisation of assets not sold at auction. Included in the claim is a charge for Mr Stowell's management services for seven months at a cost of $5,250 on the basis that 50% of his time would be spent on company business. There could hardly have been much in the way of management services required by that time and there is something in Mr Robinson's submission that a debt colllecting agency could have done the work much cheaper. We allow $2,894

under this head, being Mr Cook's assessment for the Crown.

$11,493 is next claimed being the cost of retaining the leased premises from 22nd May 1980 to April 1981. Again at the Court's request Mr Brown did calculations on the alternative starting dates of 8th July and 5th August. In our opinion this part of the claim is grossly overstated and we are at a loss to understand how it could have taken until April 1981 to wind matters up. It is also relevant to this issue that the company had entered the crane hire business and had sought an extension of its tenancy from the Crown to the end of March 1981. We allow $4,000.

Accounting fees associated with the close-down of the business and the preparation of the claim have been claimed at $5,824, being $2,074 already paid, plus $3,750 being an estimate of the costs involved in final preparation of the claim and the Court proceedings.

There was no challenge to Mr Brown's evidence on this issue and Mr Robinson has made no submissions upon it. We therefore allow the claim at $5,824. (It is a claim which appears to come within the case of London County Council v. Tobin [1959] 1 W.L.R. 354, but the further claim for $1,375 made by Mr Marquet in his submissions can more properly be dealt with in the costs of the hearing.)

The next item under the "closing down" claim is interest in the sum of $35,968 from the date of the auction (26th September 1980) to 28th February 1984 on the total of the claim under this head. It requires recalculation because of the deductions we have made and to bring it up to date. The claim for interest at 14% is based on the rate actually paid by the company and in our opinion that forms a proper basis for its determination, as does the starting date of 26 September 1980.

The following is a summary of our conclusions under the claim for costs of closing down:-

1.	Liability for redundancy pay:	$2,763
2.	Loss on improvements to premises:	2,369
3.	Relocation costs:	5,608
4.	Loss on stock:	22,875
5.	Retaining staff to auction date:	9,349
6.	Retaining staff after auction:	2,894
7.	Retaining premises:	4,000
8.	Accounting fees (of which only $2,074 will be interest bearing)	5,824
		$55,682

The second general head of claim is for -

Goodwill:

Mr G.A. Cook, the chartered accountant who was called by the Crown produced a calculation based on that applied in Eastaway & Others v. The Commonwealth (1950-51) 84 C.L.R. 328 which shows that the rate of return on the capital invested was too low to justify any award for loss of goodwill. Mr Brown was of the opinion that goodwill should be assessed on super profits, being profits over and above a salary to management and interest on shareholders' funds. He made the point that the company had had a long-established position in a central site on a main road, with good franchises and a long-established clientele since 1962. The company had a steady profit history. He assessed goodwill at $20,000 being approximately three years' super profits. Mr Brown considered that in addition there should be an adjustment to compensate for inflation from the time of closing to the present date. He made that adjustment by reference to the changes in the Consumer Price Index over the period plus 2% interest, being the mode of calculation adopted in the unreported case of Morrow v. Minister of Works and Development (C.A. 124/81;

Brown (1984)

Judgment 7 December 1983) giving a total claim under this head of $30,604.

We are of the opinion that it is not so much an arithmetical or academic ascertainment of a figure for goodwill with which the Court is concerned, but rather with the attitude of mind to be expected in a man interested in taking over as a going concern an established and reputable business which has valuable dealer franchises, a locally resident staff which might be expected to remain and an established clientele.

We think it appropriate to assess the goodwill as at the proclamation date and regard Mr Brown's assessment of $20,000 as a realistic one. As the company continued trading, so making use of its goodwill, there is no basis for an allowance for inflation or interest for the period prior to the 5th August 1980 when the company ceased normal trading. We do not regard an inflation allowance as appropriate in the circumstances but award interest at 14% per annum from 5th August 1980 on the sum of $20,000.

Loss of Profits Following the Fire:

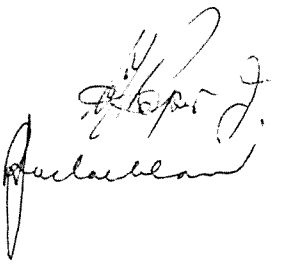
In our view the evidence does not support a claim under this head. Mr Stowell's complaint was that following the fire the buildings were inadequate for the company's needs, not for the selling of machinery and vehicles, but for the selling of parts and repair of vehicles and plant. In fact the staff increased over the period; and in 1980 the percentage increases in sale of parts oil and petrol, and labour had increased by 76% and 94% respectively over the 1976 figures. The average Consumers Price Index increase over the same period was 69%. The sale of parts more than kept pace with inflation and there was a significant increase in the return from labour charges over inflation. The profitability of the company was certainly affected by the low returns on the sale of machinery and vehicles but a significant downturn in sales had already occurred in the months preceding

the fire.

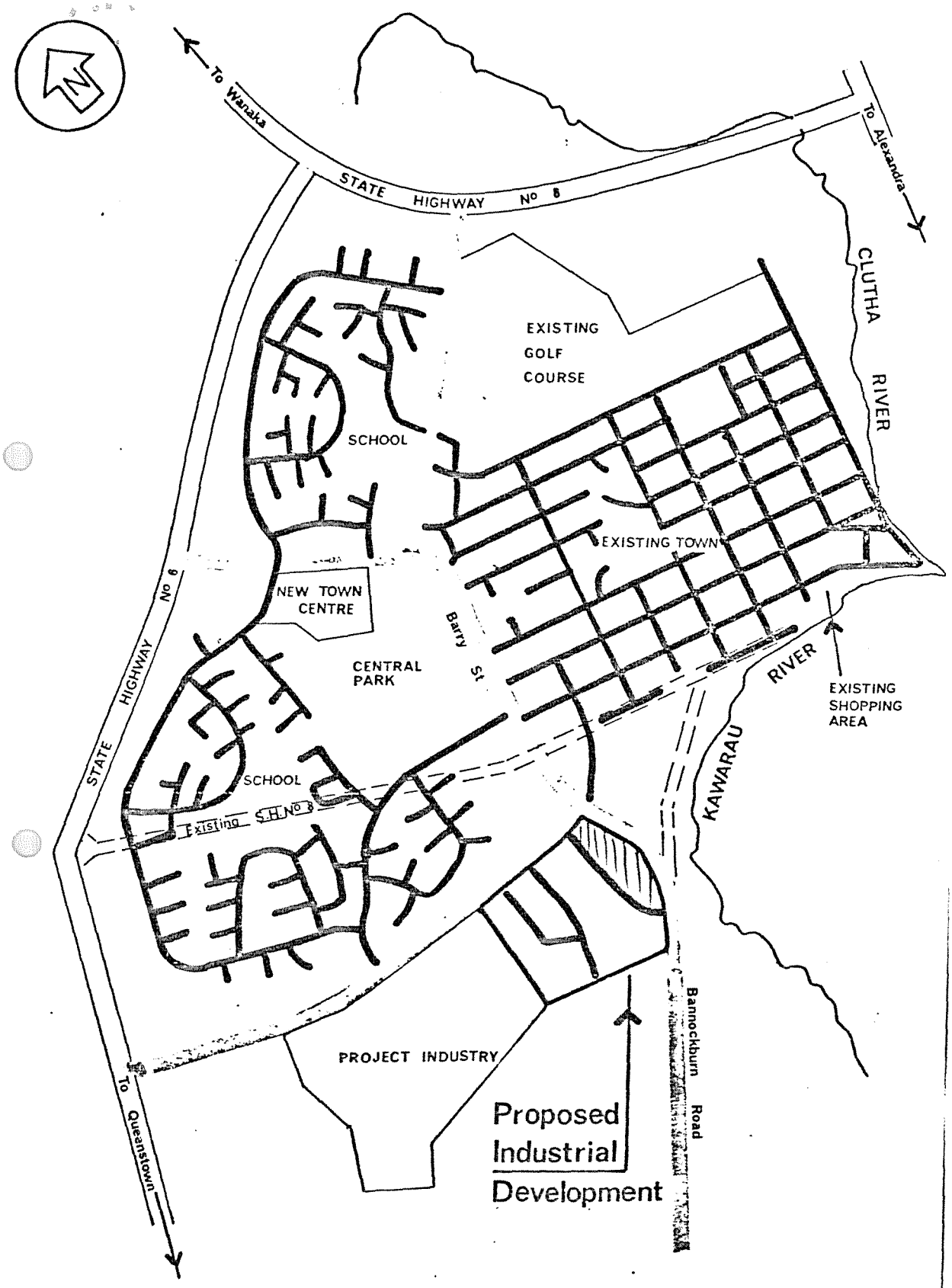
We therefore disallow the claim for loss of profits.

Costs:

We have no submissions from Mr Robinson on this issue and are not prepared to adopt Mr Marquet's. An allowance has already been made for the costs of attempting to relocate ($5,608) and accounting fees ($5,824). We therefore fix costs at $4,000 with disbursements and witnesses' expenses as fixed by the Registrar, and to include the additional accounting fees of $1,375 referred to in Mr Marquet's submissions.



Solicitors:
Ross Dowling Marquet & Griffin, Dunedin, for Claimant
Crown Law Office, Wellington, for Respondent



LOCALITY PLAN