

Abbatangelo family beat Whittlesea Council in court

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A COSTLY David and Goliath legal battle ended with a local farming family winning a half-acre block of land after Whittlesea Council spent up to \$2 million pursuing the case.

The council had padlocked a gate to the property, ordered the family's horse removed and erected a fence before Monday's decision.

The Abbatangelo family bought their farm at Bridge Inn Rd, Mernda, in 1958 and in 2004 claimed title to a separate, small parcel of abutting land under "adverse possession" rights, which grant ownership to someone who has retained possession unchallenged for at least 15 years.

The land was originally gifted to Whittlesea council in 1908 by local resident Catherine Poole.

The council was to build a shire hall on the lot but it never eventuated and the land remained largely unused until the 1950s when the Abbatangelo family, whose farm surrounded the disputed block, began to use it for grazing.

After losing the first round of the dispute in the Supreme Court, the council took the case to the Court of Appeal.

But Justices David Ashley, Robert Redlich and Emilios Kyrou dismissed its appeal.

Alfred Abbatangelo, his brothers and mother celebrated, saying it was a victory for common sense. The land sat idle for 100 years before the family put it to some use, Mr Abbatangelo said.

"It has cost the ratepayers of Whittlesea in excess of \$1.5 million," he said, adding his family had spent more than \$500,000 in legal fees and the council had been ordered to pay the costs of both sides.

He said he and his three brothers, Joseph, Robert and Richard, played on the land throughout their childhood as the family's small collection of horses and cows grazed on the plot.

"We all grew up on that land," the 52-year-old said. Mr Abbatangelo said the council played hard ball as soon as they lodged their application for ownership by adverse possession in 2004, after the State Government announced its intention to ban all future adverse possession claims against local councils.

Upon learning the family wanted official title to the land, the council wrote to the Abbatangelo family, ordering them to remove their horse from the land and saying they would "vigorously" fight the adverse possession claim.

A month later the council erected a fence on the boundary and installed a chain and padlock on the gate. The angry Abbatangelo matriarch, Laurice, now 77, quickly tore down the fence.

Whittlesea council's chief executive officer David Turnbull would not comment yesterday, other than to say: "The council is disappointed with the outcome of the appeal and will now take time to review its options."

In a tactic that would mirror the comedy film *The Castle*, Mr Turnbull would not say whether those options included taking the case to the High Court