IN THE LAND VALUATION TRIBUNAL LVP 69/03
HELD AT AUCKLAND

IN THE MATTER of a claim for compensation under s 40(2) of the Public Works Act 1981

BETWEEN **CHIEF EXECUTIVE, LAND INFORMATION NEW ZEALAND**

Applicant

AND **ETHEL LUKE, MARY JENNIFER MEDLAND, NANCYE MOIR NISBETT AND ALAN RAYMOND CLARK**
Respondents

Before the Auckland Land Valuation Tribunal

Chair: His Honour Judge J D Hole

Members: J W Charters, Esq
K G Stevenson, Esq

Date of hearing: 14-17 August 2006

Counsel: H S Hancock for Applicant
J G Miles QC and A J Le Dwedekind for Respondents

Date of Decision: December 2006

DECISION OF TRIBUNAL

Introduction

[1] The Tribunal has been asked to determine an application under s 40(2)(A) of the Public Works Act 1981 in respect of the price to be paid by the respondents for land ("the land") which they have agreed to purchase following the making of an offer by the applicant (hereinafter referred to as "the Crown") under s 40(2) of the Public Works Act. The land is no longer required for a public work.

[~~1~~][2] The offer was made on 3 June 2003 which is the effective date for the determination of the current market value of the land.

[~~1~~][3] The land comprises part of the Hobsonville Air Force Base. The base is being progressively disestablished. Some of the land has already been declared surplus to New Zealand Defence Force's requirements and disposed of.

[~~1~~][4] The land is described as Lot 1, DP 317419 and part of Lot 2 DP 206311, and is part of Certificate of Title 134C/261. It has an area of 12.1572 hectares.

[~~1~~][5] Hobsonville Aerodrome is on land south of the Upper Harbour Drive at the northern end of the Hobsonville peninsula. It is approximately six kilometres east of the end of the northwestern motorway and approximately 22 kilometres from central Auckland. The general locality has undergone fairly significant change over the past 10 to 15 years, with widespread residential development and the completion of the Westgate Shopping Centre. Further residential development with consequential roading construction is envisaged in the near future.

[~~1~~][6] The Air Base peninsula is surrounded on three sides by the upper reaches of the Waitemata Harbour. It has about three kilometres of coastline. This includes an accessible deepwater channel adjoining the northern coastline of the land.

[~~1~~][7] The land is generally level, although there are some steep embankments down to the coastal edge. It comprises the eastern part of the former runway.

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Whilst the entire air base has been developed for Air Force purposes, the only building on the land is a large house close to the coastal edge of it.

~~[1]~~[8] Immediately to the north of the land is a four hectare property occupied by Sovereign Yachts. It contains two large sheds in which vessels are built. These have included super yachts having a length of about 150 feet. It is a relatively substantial enterprise.

~~[1]~~[9] In the opinion of the Crown, the land had a market value as at 3 June 2003 of $6,450,000 exclusive of GST. The respondents contend that its value as at 3 June 2003 was $3,000,000 (exclusive of GST).

~~[1]~~[10] The reason that such a gap exists between the two valuations is that each party to these proceedings has a different perception of the land's highest and best use and the likely time period between the effective date and the land being available for development.

Valuation Basis

[11] Section 40(2) of the Public Works Act 1981 provides that land offered back to the person from whom the land was acquired (or their descendants) must be at the current market value of the land as determined by a valuation carried out by a registered valuer. Section 40(2)(A) of the Act states that where the parties cannot agree on the price (as here) they may agree that it be determined by the Land Valuation Tribunal. Hence this proceeding.

Market Value

[12] There is no dispute as to the definition of market value. The definition in *International Valuation Standards*, 7th Ed (incorporated in the *Valuation Standards of the New Zealand Institute of Valuers*) is:

> *"market value is the estimated amount for which a property should exchange on the date of the valuation between a willing buyer and a willing seller in an arms-length transaction after*

proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion".

[13] The phrase "… *wherein the parties had each acted knowledgeably and prudently*" is defined in the Standards as:

> *"[it] presumes that both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the property, its actual and potential uses, and the state of the market as at the date of valuation.*

[14] In **Boat Park Limited & Ors v Hutchinson & Anor** (unreported, CA 6/98, 2/11/98) Thomas J pointed out at p 14 that the market value is arrived at by assessing "what price the property would sell for on the open market under the normal conditions applicable in the market… Fundamental to this task is the willing seller/willing buyer principle". At p 15 he pointed out that valuers select the most reliable method of valuing the property in question but then check that value by reference to other methods. No method is regarded as conclusive.

Issues

[15] The three issues requiring determination are:

(i) What was the highest and best use of the land as at 3 June 2003?

~~(i)~~(ii) What is the likely time period between 3 June 2003 and the land being available for the development?

~~(i)~~(iii) How can the valuation differences be resolved?

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Highest And Best Use

[16] It is well recognised that, in undertaking the valuation exercise, the valuer must value the land in accordance with its *"highest and best use"*. The interpretation of this expression has been thrown into sharp relief by this proceeding. The expression is defined in the *Valuation Standards 1995 Revision* adopted by the New Zealand Institute of Valuers at 6.4 as "*the most probable use of a property*

which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued". Thus it follows, as para 6.5 of the *Standards* states, that a use which is not legally permissible or physically possible cannot be considered a "highest and best use".

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~~[16]~~[17] This definition was confirmed by R L Jeffries in *Urban Valuation in New Zealand* (Volume 1, 2nd Ed, 1991).

~~[16]~~[18] In his book "*Property Valuation and Analysis*", R T M Whipple thought that the expression "*highest and best use*" should be discarded in favour of the expression "*most probable use*". At p 141 he noted how the definition of the term "*highest and best use*" had undergone a radical change. He pointed out that originally the expression was intended to emphasise the maximisation of the owner's wealth by defining the most profitable use of the land. That definition has been discarded by introducing into the equation criteria such as probable and legal alternative uses, financial feasibility and other matters which result in highest land value. Thus, the sole criterion of individual profit maximisation has been widened to include community requirements expressed either in law or as an output of the political process. At p 144, he concluded:

> *"Thus, in the space of two decades, the concept of highest and best use has undergone a great deal of revision. From the undimensional and unreal construction of wealth maximisation, it has been broadened to include the additional dimensions of legal and political restraints, market strengths and preferences, conformability with community objectives and, almost as a residual, the ability to generate revenue sufficient to service the requirements of those who supply investment monies to the enterprise. In determining how land may be used, one needs to study all these dimensions and recognise the impossibility of accurately forecasting the equilibrium position, all competing demands will be satisfied. The process, despite the best research, is fraught with uncertainty and this is recognised by adopting the term and definition given above of 'most probable use'."*

[19] Whilst the Tribunal does not wish to become involved in the semantics of a name, nevertheless the trends in the development of the concept are undeniable.

The Task of the Tribunal

[20] In this case the Tribunal has to assess how, in June 2003, a prudent and reasonably well informed purchaser and a willing but not over anxious seller would consider the land's highest and best use. To undertake this task, the inquirer (who is referred to as "the developer" – for that is what he would be) would look at the land itself. Undoubtedly he would conclude, as did the valuer, Mr Iain Gribble, for example, that the land is a wonderful site with great residential potential. However, the process would not stop there. The developer would then consider what constraints existed affecting the land's development. He would consider such matters as the marketplace, legal and political constraints, and community objectives. He would note that the land was zoned Countryside Living and was outside the Metropolitan Urban Limit ("MUL") as defined by the Auckland Regional Council ("ARC").

Planning Evidence

[21] The town planning expert for the Crown was Ms A J Rickard. She, and the engineer, Mr M A Fraser, were together instructed in 2003 to "*prepare a report and draft scheme plan outlining the probable "highest and best" use for the subject site in order to assist the land valuation process*". Her role was to provide planning and resource management inputs into the process.

[~~21~~][22] Her evidence, and the report upon which it was based, was superficial. She did not attempt to define the concept of "highest and best use of land" and it would seem that she did not fully understand what was required. She correctly concluded that the land was suitable for "urban development". She thought that this could include residential, commercial, industrial and marine cluster type uses. Further, she thought that any of these urban uses could be undertaken within three years of the effective date.

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~~[21]~~[23] The problem with Ms Rickard's analysis was that she did not go far enough in her investigations. She surmised (but without checking with the ARC) that the MUL was of little significance as she thought it could easily be moved to include the land. She did not understand the process involved in the relocation of the MUL and it is clear that her assumption, in this regard, was incorrect. (The other planning evidence establishes quite clearly that an individual landowner cannot apply to the ARC for such a change. A territorial authority may make a request for a change. However, the change itself must be initiated by the ARC). Given that the MUL is designed to prevent the expansion of urban development with all the attendant servicing problems which that process encompasses, it is not surprising that usually the ARC is very reluctant to initiate a change to relocate the MUL. Notwithstanding this, however, Ms Rickard was correct in her assumption that, in time, the ARC would be prepared to relocate the MUL to include the land.

~~[21]~~[24] To conclude that the highest and best use of the land was for "urban development' was painting too broad a brush. Ms Rickard was clearly influenced by the fact that a significant portion of the entire air base property would be used for residential development as a result of its purchase by Housing New Zealand. Inquiries of the Waitakere City Council ("WCC") would have revealed that, since at least 2001, there had been a strong commitment on the part of the WCC to have the land (and a significant portion of the air base) zoned for a marine cluster type industrial development. To some extent this was frustrated by the Housing New Zealand purchase (over which the WCC had no effective control). Nevertheless, in 2001 the WCC had entered into an option to acquire the land should it not be developed as a marine cluster type development. Various reports had been written setting out quite clearly the intentions of the WCC.

~~[21]~~[25] Furthermore, the 2001 Northern and Western Sector Agreement prepared under the Regional Growth Strategy had included the Hobsonville air base land as part of the Northern Strategic Growth Area. The air base land was placed in the first phase of development of the Northern Strategic Growth Area. This had led to the development of concept plans for the land involving a Mayoral Task Force.

The possibility of a marine cluster type development was being seriously considered. All this was well known as at June 2003 and would have been carefully considered by the developer.

~~[21]~~[26] However, Ms Rickard is correct in concluding that no zoning change had been initiated to put the intentions of the WCC into effect. The reason for this was that no zoning change could be implemented for the urbanisation of the land until the ARC had made a commitment to relocate the MUL. Thus, the aims of the WCC (expressed both at a political and at an officer level) were being frustrated by the ARC.

~~[21]~~[27] The WCC had expressed a very clear preference for the land being developed as a marine cluster in conjunction with the adjoining Sovereign Yachts land. Mr Lloyd, of Sovereign Yachts, had plainly influenced the WCC politicians and officers. He was very much in favour of such a development as it complemented his business. It must be remembered that, in 2003, the Americas' Cup euphoria was rampant and the thought that a large scale super yacht building enterprise might be feasible was very much alive.

~~[21]~~[28] The proposals of the WCC were not merely generated by a desire for a "trophy-type" development. It is clear from the evidence of both Mr W A Mead (a town planner called by the respondents) and Mr F S Henderson, who is the manager of the strategic projects group of the WCC, that the WCC's proposals were generated by a real concern for the provision of employment opportunities within the boundaries of the WCC and the northwestern sector generally.

~~[21]~~[29] Mr Henderson pointed out that approximately 60 percent of the citizens of the WCC leave the city to obtain employment and most of them travel on the motorway through central Auckland to parts south for this purpose. The impact of such movements on the motorway system alone are very significant and are of concern not only to the WCC but also the ARC. Another significant driver for the WCC's proposals is the fact that the land is adjacent deep water: it would appear there are no other similar sites within a reasonable proximity of Auckland.

The Approach of the Developer

[30] A developer standing on the land in 2003 needed to be aware of these political and planning matters. More importantly, such a developer would have been aware of the drivers behind the WCC's policies. He would have appreciated that none of the policies had been transformed into legislation or zoning changes. He would have been aware that WCC intended to make sure that some form of marine cluster type development would eventuate.

~~[30]~~[31] Notwithstanding all of this, however, the Tribunal considers that the developer is unlikely to have been totally seduced by the marine cluster concept. He would have recognised that this would have imposed a restrictive boutique-type zoning on the land which might not be sufficient to meet the wider market expectations. He would have been conscious of the overall need to provide employment opportunities within the boundaries of the WCC and northwestern sector. He is unlikely to have been totally convinced by WCC officials (such as Mr Henderson) who seemed to think that a marine cluster type zoning should be tried first: if, after a number of years, it was found unmarketable then an alternative zoning could be imposed. Such an approach would not have satisfied the economic and employment driven considerations which plainly were of great importance to the WCC and its political masters. Thus, as at June 2003, the Tribunal considers that the "risk averse" developer would have concluded that, in all likelihood:

- The MUL would be relocated to include the land within three to five years;
- The WCC would have initiated a scheme plan change to provide for the rezoning of the land within the same period;
- That scheme change would have envisaged some sort of industrial development with a particular emphasis on marine type activities;

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- The likely zone would have permitted the subdivision of the land into lots of varying sizes to enable such activities as boat construction and associated activities. In this regard, as Mr Mead pointed out, it would have been almost impossible for the conditions attaching to the zone to have prevented non marine type industrial uses.

[32] It will be apparent that the Tribunal concludes that Ms Rickard's inclusion of residential uses within her "urban development" concept was misconceived. Mr Henderson was so appalled by the suggestion that the land could be used for residential purposes that he concluded that the WCC and other local authorities would place every impediment possible in the way of such a use succeeding. He thought that if ever such a use were to be permitted in the future it would take somewhere between 20 and 30 years for development to occur. Whilst the Tribunal recognises the concerns of Mr Henderson, it does not totally agree with them. Nevertheless, it is very clear from all the evidence that there would have been enormous opposition from all the local authorities to the land being zoned for residential uses within the foreseeable future. Thus, the Tribunal does not accept Ms Rickard's generalised analysis and prefers the evidence of Mr Mead.

[~~32~~][33] It was unfortunate that the evidence of Ms Rickard and her report was so generalised in nature. The two valuers for the Crown, Messrs E B Smithies and Gribble, had no choice but to prepare valuations upon the scenario which she, as the expert, propounded. Thus, they concluded that they should value the land (as a first option) as if it was likely that a residential use of the land was possible. Further, based on Ms Rickard's conclusions, they thought that a residential development could be undertaken within three or four years of the effective date.

[~~32~~][34] One cannot help but have considerable sympathy for both valuers. A visit to the land indicates that it is perfect for a residential subdivision. However, because Ms Rickard failed to inform the valuers of all the constraints applicable to a residential development, their valuations were inevitably flawed.

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Timing

[35] Because of the Tribunal's conclusion that a residential development was not feasible (and thus a residential use does not constitute the highest and best use for the land) there is no necessity to discuss issues affecting a residential type subdivision.

~~[35]~~[36] In his valuation for a marine industrial precinct zoning, Mr Smithies initially thought that no deferment for town planning issues was necessary. Under cross examination, however, he agreed that three to four years might be appropriate. He was not prepared to go as far as five years.

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~~[35]~~[37] Mr Mead thought that the deferment period would take three years at an absolute minimum provided there were no major objections to the relocation of the MUL. However, he thought that, even with the support of all the local authorities, a time frame of five years was more realistic.

~~[35]~~[38] In this regard, the Tribunal generally prefers the evidence of Mr Mead and is satisfied that a deferral period of three to five years is appropriate.

Valuation

[39] As previously indicated, the Tribunal has concluded that the developer as at June 2003 would consider that the most probable "highest and best use" would be as a future industrial subdivision but with a strong emphasis on the marine industry. The starting point, therefore, was to consider value on a hypothetical subdivision basis adopting the proposed 32 lot subdivision outlined in the evidence.

The Hypothetical Subdivision Approach

[40] The Tribunal accepts the evidence of Mr Fraser that that plan provided flexibility on lot size and layout to suit a variety of marine activities and associated uses. Fortunately the engineers agreed on most of the subdivision costs. When they

disagreed, the approach that spread some of those costs over the wider area rather than just the subject 12 hectare block is preferred. There was evidence that in the short term existing services could be used. This increases the likelihood that the costs would be spread. The affected civil construction costs are those related to sanitary sewer and stormwater sewers. The assessments of the balance of the engineering costs were similar.

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~~[40]~~[41] Taking these factors into account, civil construction costs (after adjustment) of $103,100 per site have been adopted. Associated construction costs which include fees, power etc, amount to $23,400 per site. The allowance for external infrastructure items is $15,000 per site. This gives a total subdivision cost of $141,500 per site.

~~[40]~~[42] The hypothetical subdivision budgets provided by Messrs Smithies and Clark have been reworked adopting those costs. The most significant difference was that Mr Smithies adopted a starting point of $150 per square metre for the saleable sites, whereas Mr Clark adopted $185 per square metre. That results in a different gross realisation of $3,439,000.

~~[40]~~[43] Other differences were in the profit and risk allowance. Mr Smithies adopted 20 percent and Mr Clark initially 25 percent, but on further reflection, adopted 30 percent. The Tribunal has adopted a 25 percent profit and risk margin.

~~[40]~~[44] The only other significant difference between the valuers was the sale and development period upon which interest allowances were calculated. Mr Clark adopted 2.25 years and Mr Smithies 3 years. The latter period is preferred.

~~[40]~~[45] The calculations adopting this approach confirm a final value of between $4.5 million and $6.64 million before deferral. That wide range is essentially a reflection of the starting point, which was between $150 and $185 per square metre in respect of the saleable sites. No information was provided which supported either rate. These values, when deferred for a three to five year period, confirm a value range of $25 to $43 per square metre.

Comparative Sales Evidence Approach

[46] The Tribunal then considered the sales evidence on industrial/business zoned land that was available to a developer at the operative date. There were no sales from the immediate vicinity and therefore evidence ranged from blocks in McLeod Road, Whangaparaoa, and three sales in South Auckland. Mr Clark had adjusted those for various factors including servicing, zoning, contour, location and the physical characteristics of each block. He then made further adjustments for time and deferral.

[~~46~~][47] In June 2002 a 34.87 hectare block at 76 Montgomerie Road sold for $12 million plus, apparently, an additional allowance of $500,000. That equates to an overall price of $35.84 per square metre. That sale was then adjusted for the fact that it was already zoned for business purposes, was inside the MUL and was a much larger property.

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[~~46~~][48] In his adjustments Mr Clark considered the Montgomerie Road area to be a superior locality and therefore adjusted for that purpose. However, Mr Smithies confirmed that section values in the Montgomerie Road area at that time were in the range of $120 to $140 per square metre. By comparison, the range adopted by the valuers on the subject site was $150 to $185 per square metre with even higher rates of $200 per square metre adopted by Mr Clark on the assumption of a marine cluster. Mr Henderson confirmed a shortage of industrial land in the Waitakere/North Shore locations and that appears to be reflected in the higher section prices adopted by both valuers. Adopting a positive adjustment for location, the analysis of that sale confirms a rate of $42 per square metre before deferment.

[~~46~~][49] Stage 2 of the Airpark subdivision sold in June 2003 for $16,500,000 and based on the net useable area of 48 hectares equates at $34.37 per square metre. That is a larger block than the subject with the advantage of an existing industrial zone and provision of services. However it has inferior contour and subsoil conditions and, on analysis, indicates a rate of $36 per square metre before deferment.

~~[46]~~[50] The third sale in South Auckland was at 147 Wiri Station Road. That is a block of 10.497 hectares that sold in October 2002 for $3,450,000 or $32.86 per square metre. That block is of similar size to the subject, has the advantage of zoning and services but has inferior shape and access. Adjusting for those factors confirms a rate of $35 per square metre before deferment.

~~[46]~~[51] Two other industrial sales were provided in McLeod Road, Te Atatu, and at Whangaparaoa. There was no further analysis of that data but we were advised they confirmed overall rates of $32 to $48 per square metre.

~~[46]~~[52] The sales on industrial sites therefore confirm a range of $32 to $48 per square metre with those in South Auckland indicating $35 to $42 per square metre before deferment.

~~[46]~~[53] If a starting point of $38 per square metre for industrial land is adopted and deferred for three to five years at a discount rate of 8 percent, that indicates a value range on the subject block of $26 to $30 per square metre.

~~[46]~~[54] The Tribunal compared that result with the per square metre rates derived from lifestyle block sales in the immediate locality. Sales of 4 hectare blocks both before and immediately after the date on Clark Road confirm a range of $30 to $40 per square metre. Although they need some adjustment for size all are outside the MUL, have a Countryside Living zone and the timing of future rezoning is much less certain than the subject.

~~[46]~~[55] Both valuers confirmed that, as at June 2003, the market was rising and it was therefore useful to consider sales after the date to confirm that trend. There was sales evidence on sites north of the Westgate Shopping Centre on Hobsonville Road for blocks which were outside the MUL and currently zoned for rural use. Those sales indicated a range of $31 to $62 per square metre, which is well above the sales of similar zoned land around Clark Road and suggested added value for perceived potential for commercial or business use. Nevertheless, all were

after the date and would not have been known to the developer as at June 2003 and are therefore only helpful to confirm a continued upward trend.

Valuation Summary

[56] A summary of these conclusions is shown as follows:

Industrial sales overall	\$32 - \$48 m^2
Industrial sales South Auckland	\$35 - \$42 m^2
Adopting \$38 m^2 for industrial land and deferring for three to five years	\$26 - \$30 m^2
Hypothetical subdivision assuming future industrial subdivision and deferring for three to five years	\$25 - \$43 m^2
Lifestyle blocks Clark Road	\$30 - \$40 m^2
Lifestyle blocks time adjusted	\$35 - \$36 m^2

[57] The Tribunal accepts the evidence of all valuers that, given a proposed zoning for marine/industrial purposes, this is a very difficult exercise. There are no truly comparable sales, with much of the sales evidence in the immediate area having a potential residential use. The hypothetical subdivision approach confirms a very wide range in results; and calculations based on a DCF suffer from similar shortcomings.

Conclusion

[58] However, given the range of results from both the hypothetical subdivision and a direct comparison with the sales that were available, the Tribunal has concluded that, on the open market, the willing vendor and purchaser would reach a price calculated at approximately \$33 per square metre. This is slightly in excess of \$4,000,000 exclusive of GST. Thus, \$4,000,000 is assessed as the land's market value as at 3 June 2003.

~~[58]~~[59] For completeness, it is interesting to observe that if the land were ultimately developed as a residential site, and if Mr Smithies' starting point of $8,740,000 is used but deferred for eight years, the result is $4,721,951. If Mr Clark's starting point is used, the figure would be slightly less. The reason that the eight year deferral period has been used for this calculation is that the Tribunal accepts that the land would initially be zoned for an industrial use with an emphasis on marine activities. It is only after this use might have proved unsuccessful that there could be any possibility of support from the local authorities for a residential type subdivision. Such support certainly would not be forthcoming in less than eight years: Mr Henderson thought 20 to 30 years (and then only over his dead body!). Thus, such an outcome is highly unlikely and would have been thought so by the developer.

Judge J D Hole (Chairman)

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