IN THE LAND VALUATION TRIBUNAL
HELD AT AUCKLAND

LVP 25/01

IN THE MATTER **of the Public Works Act 1981 and the Resource Management Act 1991**

AND IN THE MATTER **of an application under Section 84 of the Public Works Act 1981**

BETWEEN **ANTHONY JOHN GAVIGAN**

Claimant

AND **AUCKLAND CITY COUNCIL**

Respondent

Tribunal Chair: His Honour Judge J D Hole

Members: R M McGough, Esq
K G Stevenson, Esq

Date of Hearing: 26 – 29 August 2002

Date of Decision: 17 October 2002

Counsel: Patricia Mills for claimant
M L S Cooper, QC and S T Woodfield for respondent

DECISION OF THE TRIBUNAL

Introduction

[1] On 26 February 2001 by consent the Environment Court ordered that the Council acquire Mr Gavigan's leasehold interest in respect of premises situated at the corner of Fanshawe and Daldy Streets, Auckland.

[2] As a result, Mr Gavigan has lodged a claim for compensation. If the specified date is 17 September 1997 then the compensation he seeks is $324,000. However, if the specified date is 26 February 2001 he seeks $405,000. In addition he seeks interest and costs.

[3] The Council contends that the specified date is 26 February 2001 and that Mr Gavigan is entitled to $26,400 plus interests and costs. If, however, the specified date is 17 September 1997 (as contended for by Mr Gavigan) then the sum payable to him is $60,265 plus interest and costs.

Analysis of claim

[4] In her closing submissions, counsel for the claimant stated that if the specified date were held to be 17 September 1997 then Mr Gavigan's claim comes entirely within s 60(1)(a) Public Works Act, 1981. She says that the sum of $266,000 is an

> "... assessment of what the value of the interest in land was at that date, discounted for various factors such as time value for money and the value that Mr Gavigan has enjoyed from the effective date of acquisition to the date of transfer of the legal title - 26 February 2001".

This differs from the claim set out in her opening which was as follows:

> "If the compensation is to be assessed at 17 September 1997, the capital value of the leasehold interest was $266,000 that is adjusted for the use and losses that Mr Gavigan had as follows:
>
> | | |
> |---|---|
> | Loss/disturbance (Southern Spars/Gillespie) | $66,000 |
> | Loss/disturbance (Catlow/Starline Variation) | $55,000 |
> | Loss/disturbance (giving vacant possession) | $43,000 |

Loss of terminating leasehold interest	$21,000
Loss on bar chattels	$ 1,000
Loss of business profits	$14,000
Loss/disturbance to business profits	$17,000
Interest to 8 March 2002 at 11% per annum	$107.000
Total loss (excluding costs)	$324,000"

[5] This leaves the Tribunal somewhat confused as to the nature of Mr Gavigan's claims as at 17 September 1997. However, for reasons which will become apparent in the course of this decision, this does not matter.

[6] In her closing submissions, counsel advised that if the specified date were 26 February 2001 then the claims of Mr Gavigan are based on s 60(1)(a) Public Works Act 1981 for the value of the lease; s 60(1)(c) for the loss/disturbance claims; and s 68 for the business loss claim. The claims are set out as follows:

Loss/disturbance (Southern Spars/Gillespie)	$101,000
Loss/disturbance (Catlow/Starline Variation)	$ 84,000
Loss/disturbance (giving vacant possession)	$ 68,000
Loss of terminating leasehold interest	$42,000
Loss on bar chattels	$11,000
Loss of business profits	$26,000
Loss/disturbance to business profits	$32,000
Interest to 8 March 2002 at 11% per annum	$41,000
Total loss (excluding costs)	$405,000

Facts

[7] Because of the nature of the various heads of claim, it is necessary to record those facts which affect Mr Gavigan and his interest in the building from 1997 to 26 February 2002. Throughout this period Mr Gavigan was the lessee of premises situated at the corner of Fanshawe and Daldy Streets, Auckland under a Deed of

Lease dated 7 December 1989. The extended 6-year term of that lease was scheduled to expire on 31 October 2001.

[8] The premises consist of a part two level and part single storey warehouse and office building. There is an extensive frontage to Daldy Street and there are additional frontages both to Fanshawe and Gaunt Streets. The original leased premises were described as two separate buildings, namely the northern building with a predominantly high stud containing factory, and some semi-retail ground floor space together with some office accommodation totalling 1,211.40m²; and the southern building again comprising warehouse plus retail and offices on the ground floor and first floor offices. The total area of both buildings is 1,825.50m².

[9] The freehold title is described in Certificate of Title Vol. 36C Folio 282 and comprises a total area of 2,166m². The freehold is held by Viaduct Holdings Limited. It granted a renewed ground lease to Samson Corporation Limited for a term of 20 years from 1 January 1996. This ground lease was assigned to Starline Holdings Limited and Auckland Law Centres Limited on or about 12 February 1999. There was a further assignment of it to Catlow Developments Limited which was registered on 17 April 2000. There was a further assignment on 16 August 2000 to Princewood Investments Limited which is a subsidiary of Trans Tasman Properties Limited.

[10] Mr Gavigan was a sub-lessee of Samson Corporation Limited under a Deed of Lease dated 7 December 1989. This sub-lease was subsequently varied, effective from July 1999, under an agreement with the then head lessee, Catlow Developments Limited. The effect of this variation was that a substantial part of the premises was surrendered by Mr Gavigan who then retained a sublease of 568.70m² principally in the southern building.

[11] Mr Gavigan leased his interest in the building over the years to various tenants. The major tenant for most of the period of the lease was Southern Spars Limited, Terry Gillespie Limited and Sail Loft Limited. The other tenants included Kauri Consulting Limited which ran the Kauri Bar on the corner of Daldy and Fanshawe Streets, Australasian Memory, QM Properties and West Harbour Marine.

[12] In 1992, in conjunction with Samson Corporation Limited Mr Gavigan started to re-develop the building. Little or no work was undertaken pursuant to those plans after 1994.

[13] Between March 1997 and July 1998 there were various negotiations between Mr Gavigan and his major tenant Southern Spars Limited and associated companies. At that stage there was a proposal that Southern Spars Limited and associated companies (including North Sails Limited) would re-develop quite a large portion of the premises so that Southern Spars Limited could continue to make masts for yachts and Northern Sails Limited could undertake a sail making operation in the same premises. If this joint venture were to succeed it was essential that Southern Spars Limited and its associated companies obtain security of tenure and this involved their current lease being extended for a further term of at least 3 years. In the course of the negotiations concerning the extension of term of lease various proposals were discussed by the parties. One of these involved the sale of Mr Gavigan's interest in his lease to Southern Spars Limited and associated companies with Mr Gavigan taking a lease back for the Kauri Bar premises. The negotiations between Southern Spars Limited and its associated companies on the one hand and Mr Gavigan on the other were long and tortuous. To gain some idea of the frustrating nature of the negotiations the documents contained in exhibit Z are revealing.

[14] In order that Southern Spars Limited and North Sails Limited could re-develop the premises which they proposed to occupy, it was necessary for them to obtain a resource consent from the Council. The application for the resource consent was filed on 18 June 1997. On 19 September 1997 it was withdrawn.

[15] Also on 19 September 1997 the Transport Planning Division of the Council lodged with the Council a notice of requirement for the designation of a building line restriction for road widening purposes. This affected the Fanshawe Street frontage of the property. On 8 October 1997 a copy of the notice of requirement was sent to Mr Gavigan and on 9 October 1997 the requirement was publicly notified. No submissions were made against the requirement by Viaduct Harbour Holdings Limited, Samson Corporation Limited, Mr Gavigan or anyone else involved in the premises. In late 1997 the proposal that Mr Gavigan sell his interest in the lease (excluding the Kauri Bar premises) to Southern Spars Limited collapsed. The main reason for this seems to have been that North Sails Limited no longer wished to continue with the proposal. However, in March 1998 a new proposal was discussed between Southern Spars Limited and Mr Gavigan and this time there was some suggestion that Mr Gavigan should assign his interest in the lease (less the Kauri Bar premises) to Southern Spars Limited for $60,000 plus GST. Again, this proposal never really got off the ground despite extensive negotiations.

[16] Unfortunately for Mr Gavigan premises at Pakenham Street (which were much more suitable for Southern Spars' purposes) became available in June 1998. While Southern Spars Limited continued to negotiate with Mr Gavigan, at the same time it was negotiating to occupy the Pakenham Street premises. Ultimately, Southern Spars Limited withdrew all offers which it had made in respect of Mr Gavigan's interest in the property.

[17] As a result of the requirement, in September 1998 the Council instructed Robertson Young & Telfer (Registered Valuers) to assess indicative compensation figures in respect of the property and others affected by the requirement. This was done for the Council's budgetary considerations only. It was not a formal valuation of the property and certainly not an attempt at valuing Mr Gavigan's interest in the property.

[18] On 30 December 1998 Mr Gavigan re-entered the Kauri Bar premises and terminated the lease. He granted a new lease to Kauri Consulting Limited in which he was a 50% shareholder. On 1 June 1999 Kauri Consulting Limited was placed into receivership. The Receiver recorded in his initial report that Kauri Consulting Limited had been in difficulty well prior to the date of the receivership: there had been a subsequent injection of debenture funds: trading had been well below the level required to make the business profitable. Further, there had been ongoing disagreements with the landlord (Mr Gavigan) all of which did not assist turnover.

[19] Ultimately, after various attempts at selling the business of the Kauri Bar, two staff members, Gina Doherty and Allison Clegg, entered into a form of licence arrangement with Mr Gavigan whereby they were to occupy the Kauri Bar premises on a weekly basis at a weekly licence fee of $2,000. This transaction did not proceed as they were unable to obtain a temporary liquor licence. This may have been because their tenure of the premises was inadequate.

[20] On 29 February 2000 Mr Gavigan and the Council entered into negotiations whereunder Mr Gavigan sought to persuade the Council to purchase his interest in the lease. Like other negotiations involving Mr Gavigan and recorded in this decision their progress was frustrating. On 2 June 2000 Mr Gavigan made an unconditional offer to sell his interest in the lease to the Council for $250,000 plus GST. The Council did not either accept or reject the offer but indicated that it would require the premises to be valued by its own valuer, Mr Peter Young. Mr Young endeavoured to obtain from Mr Gavigan various details in order that he could

undertake his valuation. Details were not provided. In these circumstances the negotiations with the Council, inevitably, led nowhere.

[21] Throughout these negotiations, of course, the lease held by Mr Gavigan was moving inexorably towards its termination date of 31 October 2001. With the collapse of the Kauri Bar business it was imperative for Mr Gavigan to negotiate a sale of his leasehold interest in the premises as quickly as possible. Ultimately, recognising that the Council was not favourably impressed with his proposals to date, he made an application under s 185 of the Resource Management Act 1991 to the Environment Court seeking an order that the Council acquire his interest in the lease. On 26 February 2001, by consent, an appropriate order was made.

Specified Date

[22] In order to access the compensation payable to Mr Gavigan the specified date must be determined. This is defined in s 62(2) Public Works Act 1981. For the purposes of this decision the relevant portions of the section read:

> "(2) In this section, the term specified date means –
>
> .....
>
> (b) Where compensation is claimed under section 80 of this Act and the minister or the local authority has (before the issue of the proclamation) notified the Tribunal what land he or it proposes to take –
>
> (i) the date of that notification; or
>
> (ii) the date of the first entry upon the land for construction purposes; or
>
> (iii) the date on which the land is first injuriously affected by the work; or
>
> (iv) the date of any agreement made under section 80(1)(c) of this Act or any date specified in such an agreement – whichever is the earliest;
>
> (c) In the case of any other claim in respect of land of the claimant which has been or is proposed to be taken for any work, the date on which the land became by proclamation or declaration vested in the Crown or in the local authority, as the case may be, or the date on which the land was first entered upon for the purpose of the construction or the carrying out of the work, whichever is the earliest."

[23] The Council contends that the specified date is 26 February 2001. That was the date of the Environment Court order and it is on that date that Mr Gavigan's leasehold interest became vested in the Council. It is also the date on which the land was first entered for the purpose of the construction or the carrying out of the work.

[24] For Mr Gavigan, his counsel ultimately contended for four alternative dates. She preferred 17 September 1997 as the date upon which the Council was notified of the requirement. Alternatively, she says that 17 September 1997 was the date on

which the land was first injuriously affected by the work. She also submitted, as an alternative, that 1 July 1999 was appropriate as that was the date when Mr Gavigan had satisfied the pre-requisites to obtaining an order under s 185 of the Resource Management Act 1991 to require the Council to take his interest in the land. Also it is the date that he assigned his interest in most of the lease to Catlow Developments Limited. The last date contended for on behalf of Mr Gavigan is 1 July 2000: this was the date when the Council allocated funds in its budget for compensation in respect of the property and others affected by the requirement: it is submitted that there was an agreement between the parties that the Council would purchase Mr Gavigan's interest in the land once the budget had been allocated.

[25] The first submission in favour of 17 September 1997 seems to be as follows. The acquisition of Mr Gavigan's interest in the lease came about as a result of the Environment Court's order made under s 185 of the Resource Management Act 1991. This section gave Mr Gavigan the right to apply to the Environment Court for an order obliging the Council to acquire his leasehold interest under the Public Works Act 1981, provided certain conditions were met. As Mr Gavigan satisfied the prerequisites to the making of such an order the order was made accordingly. Once the order was made then under s 185(5) of the Resource Management Act Mr Gavigan was deemed to have entered into an agreement with the Council for the purposes of s 17 of the Public Works Act 1981. Section 185(7) provides that the amount of compensation payable must be assessed "as if the designation or requirement had not been created." It was submitted that this subsection requires compensation to be assessed before the date of the designation or requirement. Further, there is nothing in s 62(2) which specifically refers to a situation where compensation is being assessed after a s 185 order. In these circumstances the only legislative provision of which the Court can take notice is s 185(7) as interpreted by Mr Gavigan and his counsel.

[26] The Tribunal does not accept this submission. There is nothing in s 185 of the Resource Management Act referring to a specified date for the assessment of compensation. Indeed, s 185(5) specifically incorporates the provisions of the Public Works Act 1981 in this exercise by stating that the two parties are deemed to have entered into an agreement for the purposes of s 17 of the Public Works Act 1981. The wording of s 185(7) is specific in that it is the interest ordered to be taken which is to be assessed as if the designation or requirement had not been created. The section goes no further than this. It does not make any reference to a specified date. It does not need to do so because s 185(5) has brought the transaction under the

Public Works Act 1981 for the purposes of assessment of compensation. The direction given in s 185(7) is similar to s 62(1)(c) of the Public Works Act 1981 which refers to increases or reductions in the value of land caused by the work or the prospect of work. These cannot be taken into account. "Work" and "the prospect of work" are different concepts from designations and requirements. Section 185(7) is there to make it clear that, in the case of Mr Gavigan's interest, when assessing the compensation the fact that the land is affected by a requirement or designation is not a factor which should influence the result. The requirement or designation must be ignored.

[27] The next argument advanced for Mr Gavigan is that 17 September 1997 was the date on which the land was first injuriously affected by the work. Thus, s 62(b)(iii) Public Works Act 1981 applies. This submission cannot be upheld. The prerequisite for the operation of s 62(2)(b) is that the compensation is being claimed under s 80 of the Act. Section 80 of the Public Works Act 1981 relates to the accelerated hearing of compensation claims where there has been no taking of the land. As the land has become vested in the Council, s 80 does not apply. Therefore s 62(b) cannot apply.

[28] 1 July 1999 is the date that all the prerequisites to the making of an order under s 185 of the Resource Management Act 19991 had been satisfied. In these circumstances, it is claimed that once an owner has satisfied these prerequisites it is incumbent upon the Council to take the land and the provisions of s 185 are akin to enforcement proceedings or specific performance. The first reason that this argument must fail is that before there can be an order under s 185(1) there must be an application. In this case there was no application until 2 November 2000. The application is just as much a prerequisite to the making of an order as to the other matters set forth in s 185(1). If an applicant sought to have a specified date close to the date when all the other prerequisites had been satisfied then there is no reason that such an applicant should not make an application then. This did not occur in this case and it follows that Mr Gavigan effectively elected for a date other than 20 July 1999. In any event, if the Tribunal were to hold in favour of this argument, it would involve going outside the specific provisions of s 62(2) of the Public Works Act 1981 to determine a specified date as if the statutory definition did not exist. Obviously, the Tribunal cannot do this.

[29] The final date contended for is 1 July 2000. It is suggested that there is evidence that Mr Gavigan and officers of the Council entered into an agreement that

the Council would purchase Mr Gavigan's interest in the land when budget was allocated, viz 1 July 2000. There is no evidence of any such agreement. An agreement involves the meeting of minds. Whilst there were various meetings, there was certainly no consensus about anything achieved at them.

[30] The Tribunal is satisfied that the correct specified date is 26 February 2001. The facts of this case clearly come within the provisions of s 62(2)(c) of the Public Works Act 1981. 26 February 2001 is the date on which Mr Gavigan's interest in the lease became vested in the Council. Whilst this was not achieved by way of a proclamation or declaration, proclamations and declarations are merely conveyancing devices. In this case, the conveyancing device was a deed of assignment of lease. It achieved exactly the same thing as a proclamation or declaration: viz. the vesting of the leasehold estate in the Council. The section contains a hiatus in this respect: by virtue of s 5 of the Interpretation Act 1999 it is permissible to satisfy this hiatus by recognising that the purpose of the section involves the vesting of the interest in the Council.

[31] There is a further reason that this situation comes within the provision of s 62(2)(c). 26 February 2001 is the date on which the land was first entered for the purposes of the carrying out of the work. The leasehold interest of Mr Gavigan was being acquired by the Council for the purposes of the Council being able to undertake the road widening proposal. At Mr Gavigan's request, the Council took over his obligations under the lease on that date.

Heads of claim as at 26 February 2001

(a) Facts

[32] The first claim is for $101,000 being loss/disturbance (Southern Spars/Gillespie). This relates to the negotiations referred to in paragraphs 13 to 15. In order for this claim to have any factual validity it must be established that any loss sustained by Mr Gavigan came about as a result of the imposition of the requirement. There is absolutely no evidence to support this proposition. Indeed, there is much evidence which indicates that the negotiations between Mr Gavigan and Southern Spars (and its associated companies) collapsed as a direct result of the frustrating and tortuous negotiations which are evidenced by exhibit Z. In addition, the decision of Northern Sails Limited to pull out of any deal exacerbated the situation. Finally, the

fact that the Pakenham Street property became available proved to be the straw which broke the camel's back. This claim cannot possibly succeed.

[33] The next claim is for $84,000 being loss/disturbance (Catlow/Starline Variation). This relates to the assignment of most of the leasehold interest by Mr Gavigan to Catlow Developments Limited. It is recognised by Mr Gavigan and his counsel that if the first claim for $101,000 failed then for the same reasons the claim in respect of the Catlow Developments Limited transaction would also fail. They are quite correct. There is no evidence that the imposition of the requirement had anything to do with the assignment to Catlow Developments Limited. Indeed, it is plain that a particularly compelling reason (in addition to those affecting the Southern Spars Limited transaction) was the close proximity of the termination date of Mr Gavigan's lease.

[34] The claim for $68,000 being "loss/disturbance (giving vacant possession)" is difficult to understand. Certainly, Mr Gavigan took steps to terminate some of the sub-tenancies with a view to being able to give vacant possession of the premises to the Council. No explanation has been given for this. Certainly it was not a Council requirement and is unlikely to have been.

[35] The next item of claim is that for $26,000 being loss of business profits. This seems to relate to the Kauri Bar. Mr Gavigan did not operate the business of the Kauri Bar: this was operated by Kauri Consultants Limited. Mr Gavigan has no claim in this regard. This comment applies also to the claim for $32,000 being loss/disturbance to business profits. It is possible that one or both of these claims relate to the possibility of Mr Gavigan persuading somebody to recommence the Kauri Bar business. Perhaps he might have been able to achieve additional rental from a turn-key operation. The difficulty he faces is that the Kauri Bar had ceased operating before 26 February 2001. The business no longer existed: however the fit-out did. The reality is that no business operated in the Kauri Bar after May 2000 and this tends to confirm Mr Mahoney's assessment of the potential rather than that suggested by Mr Gavigan's witness, Mr Jeffrey.

[36] From the foregoing it will be seen that the only items of claim of any substance are the $42,000 claimed in respect of the acquisition by the Council of Mr Gavigan's leasehold interest and the $11,000 claimed for loss on bar chattels. The Council recognises both of these claims in principle: the amounts claimed are disputed.

[37] In respect of the bar chattels, Mr Quinlan, the valuer for Mr Gavigan, assessed a value of $11,000 based on an "in situ" valuation for Council of $14,950 less the net proceeds of $4,100 received when Mr Gavigan removed and sold them. The "in situ" value of the chattels can only be given weight if accompanied by a potential to re-let the premises as a bar at the relevant date. Having decided that such potential was remote we adopt Mr Mahoney's assessment of $1,590 being the "ex situ" value of $5,690 assessed by the same chattels valuer for Council, less the net sale proceeds of $4,100.

[38] There remains the difference between the values as to the value of the leasehold interest acquired by Council. Both valuers assessed market rentals at the relevant date, deducting therefrom the actual rental payable by Mr Gavigan. The present value of the difference was then taken for the unexpired term of the lease. Mr Quinlan's estimated rental value was $103,661 p.a. compared to Mr Mahoney's of $77,523 p.a.

[39] It is convenient to commence with the Kauri Bar which accounted for the major part of the difference. Mr Quinlan adopted the rent paid by the receiver between June 1999 and May 2000 which was $42,148 p.a. or $267.28/m². Mr Mahoney's assessment was $25,230 p.a. or $160/m² being the "asking" rental from late 2001 (the premises remaining vacant at the time of hearing). Mr Quinlan's assessment cannot be upheld. At $42,148 p.a. the business had failed, not operated since May 2000 and the licence had lapsed. In any case, to achieve that rental would require the premises to be fitted out as a bar. That cannot be so as Mr Gavigan had not only sold that fitout but made a recognised claim for the loss in value to it. To hold otherwise would be double counting. We adopt Mr Mahoney's $160/m² and in so doing note that in his consideration of the value of the chattels, Mr Quinlan adopted a rental value of $152.50/m² as bare space.

[40] From the evidence the following assessments are made for the balance area:

First floor $135/m²	-	Mr Quinlan $160, Mr Mahoney $135 (Leased $135 January 2002)
Lunch Bar $135/m²	-	Mr Quinlan $152.50, Mr Mahoney $135 (Vacant since May 2000)
Back Bar $100/m²	-	Mr Quinlan $100, Mr Mahoney $90 (Leased $115.98 gross June 2001)
Signage $4,133pa	-	Agreed

While the Tribunal notes Mr Mahoney's comment that the tenure capable of being offered by Mr Gavigan was of shorter duration than the subsequent lettings, those arrangements were for relatively short terms and included a six-month termination provision. It also accepts Mr Mahoney's comment that the adoption of these rental levels makes no allowance for possible vacancies and leasing costs, thus representing full compensation.

[41] The margin available to Mr Gavigan is:

Maximum achievable income from sub-leasing if:

Fully occupied	$79,526 p.a.
Less rent actually payable	$40,000 p.a.
Margin	$39,526 p.a.

[42] Mr Quinlan adopted a 13% discount rate to arrive at the present value of that margin and Mr Mahoney 10%. While Mr Mahoney's lower discount rate results in a marginally higher final sum, we again give Mr Gavigan the benefit of doubt in the absence of any market evidence as to the appropriate rate. $3,293.83/m² per calendar month discounted at 10% for the unexpired term of the lease provides the sum of $26,095.

(b) Law

[43] From the foregoing it will be seen that Mr Gavigan's claim against the Council fails on the facts in respect of all of his claims except for the value of the leasehold interest acquired by the Council and the value of some bar chattels. However most of his claims are legally untenable.

[44] The claim for $101,000 relates to the failure of the negotiations between Mr Gavigan and Southern Spars Limited. This part of the claim does not come within s 60(1)(a) of the Act. As to s 60(1)(b) it plainly does not arise "from the acquisition or taking of any other land of the owner". Indeed, this seems to be conceded on behalf of Mr Gavigan.

[45] The claim seems to be made under s 60(1)(c) whereby it is alleged that Mr Gavigan's interest in the lease suffered damage from the exercise of a power relating to a public work which is contained in the Resource Management Act. Generally,

"damage" refers to physical damage. However, it has been recognised in such cases as ***Colin Geddes Limited v The Wellington Regional Council*** (unreported); McGechan J; CP 129/94 and CP 211/94 15 May 1996 that "physical damage" can be displaced by context. However, each case must be determined on its own facts. What is of particular importance in this case is that it is the requirement which gives rise to the claim: a requirement is a regulatory matter constituting a kind of control not giving rights to compensation under the Public Works Act. In particular, see ***Luoni v Minister of Works and Development*** [1989] 1 NZLR 62 which was a case involving the imposition of a limited access road requirement. In that case the statutory powers alleged to have caused the "damage" were much closer to "expropriation" type powers than a mere requirement or designation for road widening purposes.

[46] The claim cannot come within s 68(1) of the Act. That section commences

> "The owner of any land taken or acquired under this Act for a public work who has a business located on that land shall be entitled to compensation for .....".

Mr Gavigan's only business interest on the land involved the receipt of rents: that is provided for when assessing compensation in respect of the acquisition of the lease. He is not entitled to the same funds twice.

[47] The same reasoning as is set out in paragraphs 44 to 46 applies to the claim for the $84,000 in respect of the assignment of the lease to Catlow Developments Limited.

[48] The claim for $68,000 being loss/disturbance (giving vacant possession) does not seem to be a claim which is authorised by any of the provisions of the Public Works Act.

Conclusion

[49] All claims for compensation except those in respect of the acquisition of the lease and bar chattels fail. In respect of the bar chattels compensation is assessed at $1,590. Compensation for the lease is assessed at $26,095. In total compensation payable to Mr Gavigan amounts to $27,685. In addition Mr Gavigan is entitled to interest from 26 February 2001 to the date of this award.

[50] With effect from 1 August 2002, the maximum rate of interest able to be awarded in proceedings for the recovery of debts or damages in the District Court is 7.5%, pursuant to the District Courts (Prescribed Rate of Interest) Order 2002. In the High Court, the same rate applies, pursuant to the Revocation of Judicature (Interest on Debts and Damages) Order 2002. Neither order contained any transitional provisions, probably in recognition of the fact that the previously prescribed rate of 11% in the case of both Courts had been high for some time. While this Tribunal's jurisdiction to award interest is couched in broad terms (section 94 of the Public Works Act empowers an award of interest at "such rate" as the Tribunal "thinks fit"), there is no justification for going beyond the limits which apply to both the High and District Courts. Accordingly, Mr Gavigan may have interest on $27,685 at 7.5% p.a. from 26 February 2001 to the date of this award.

[51] Costs are reserved. If they cannot be agreed then the Council is to submit its memorandum in respect thereof within 14 days of the date of this decision. Mr Gavigan has 14 days thereafter to respond. The Council has 7 days thereafter to reply.

Judge J D Hole (Chairman)