IN THE LAND VALUATION TRIBUNAL
HELD AT AUCKLAND

LVP No 014/04

IN THE MATTER of the Land Valuation Proceedings Act 1948 and Section 40 Public Works Act 1981

BETWEEN **JOHN HALLIDAY HALL**

Applicant

AND **THE CHIEF EXECUTIVE OF LAND INFORMATION NEW ZEALAND**

Respondent

TRIBUNAL

Chair: His Honour Judge J D Hole

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

Date of Hearing: 19, 20, 22, 23 September 2005

Date of Decision: 29 November 2005

Appearances: Mr P Dale for Applicant
Mr M T Parker for Respondent

DECISION OF THE TRIBUNAL

Introduction

1. The purpose of this hearing is to fix the price for land being sold to the applicant pursuant to s 40 Public Works Act 1981. The s 40 agreement entered into between the Crown and the applicant provided that the price to be paid for the land is "the current market value at May 2000 set by valuation". If the parties were unable to agree on price then it was to be fixed by this Tribunal.

2. In determining a value for the land, the Tribunal is obliged to ascertain how, in an arm's length transaction as at May 2000, a willing vendor and a willing purchaser would reach a price. It is assumed that the transaction would occur after proper marketing and that both vendor and purchaser would act knowledgeably, prudently and without compulsion. It is recognised that the parties' and their experts' knowledge of the land and the market must be limited as described by Archer J in ***Poverty Bay Catchment Board v Forge*** [1956] NZLR 811 at 812-813:

> *"Valuers who are now required to value Mr Forge's land as at February 22, 1954, have the benefit of later information concerning this rising trend in values, which was not available to buyers or sellers of land at the specified date. A valuer now valuing the property is entitled to have regard to all relevant facts within his knowledge, including information as to sales subsequent to the specified date for valuation, but should use that information only for the purpose of determining the market value of the land at that date. It follows that though a valuer is entitled to make use of the facts disclosed by subsequent sales, he is not entitled to assume that such information was available to buyers or sellers at the specified date".*

This comment also applies to the other expert witnesses.

3. The applicant considers that the price which it should pay for the land is $2,190,000.00 (excluding GST). The Crown's value is $4,350,000.00 (excluding GST).

4. To undertake this assessment, an examination into the highest and best use of the land is required. In addition, the Tribunal is required to consider the most appropriate valuation method or methods.

The Land

5. The land comprises 56.1199 hectares and is currently contained in two certificates of title, 425/77 and 425/78. The first contains 23.2959 hectares and comprises Lots 2, 11 and 13 on DP 310813. The second contains 32.8240 hectares and comprises Lots 3 and 12, DP 310813 and Lot 4, DP 105978.

6. The land is part of a 250-odd hectare block. That block was known as the Hall Farm and was situated on the western outskirts of Orewa. It was acquired by the Crown for motorway purposes and is now bisected by the new motorway extension to State Highway 1, currently under construction.

7. The 56 hectare parcel of land which is the subject of this inquiry lies to the east of the motorway and is no longer required for a public work.

8. The 250 hectare block was zoned Special 11 (Hall farm development) zone in the operative 1993 Rodney District Transitional Plan on 8 August 1996 following a hearing of the planning tribunal. That zoning allows for development of the 250-odd hectare block into a maximum of 200 private lots with owners also sharing ownership of the common areas under a farm park concept.

Highest and Best Use of Land as at May 2000

9. The applicant says that as at May 2000 the highest and best use of the land would have been for a development in accordance with the Rodney District Council's Special 11 (Hall Farm development) zone. A concept subdivisional plan prepared by Beca Carter Hollings & Ferner Limited (Plan 2) providing for 57 residential lots (with the balance of the land being held by the owners of those lots in common) was employed as an example of what could be achieved with the land. This formed the basis of a hypothetical subdivision analysis.

10. The reasons that the applicant reached this conclusion were as follows:

(a) The Special 11 (Hall Farm development) zone was not changed as a result of the motorway designation affecting most of the original block. All the planners who gave evidence recognised that the effect of the motorway designation on the zone meant that it was impossible to undertake a subdivision strictly in accordance with the zone's rules. However, it was likely that the consent of the Rodney District Council would be forthcoming to an application for resource consent in respect of those aspects of a subdivision which were non complying activities.

(b) The fact that the land was included in the Orewa West Draft Preferred Structure Plan of February 2000 (which was prepared as a result of the Auckland Regional Council in 1999 including the land within its metropolitan urban limit (MUL)) did not mean that, as at May 2000, any application for resource consent or a zoning change for a residential development (such as that for 227 residential sections shown in Plan 3 or for 252 residential sections shown in Plan 6) was likely to succeed. Mr Warren, the planner for the applicant, recognised that ultimately such residential development might be permissible, but probably not for about nine or 10 years.

(c) All the geotechnical engineers recognised the unstable nature of the land. If a large residential subdivision were proposed, the cost of the earthworks required varied from $10,000.00 per section to $25,000.00. These figures were calculated by the engineers from their knowledge of the locality, aerial photographs, and a walk over the land. Neither Dr Toan nor Mr Melville-Smith could be confident of what was required from such a cursory examination: they both agreed upon the necessity for a more comprehensive investigation involving the digging of bore holes and subsequent analysis. Mr Melville-Smith considered that further investigation would probably result in both engineers reaching a

common view on stability issues and what was necessary for their remedy. However, the Tribunal recognises that the likelihood of such an investigation occurring before a vendor and a purchaser reached an agreement on price was remote.

(d) As at May 2000, the residential property market was flat, which Mr Colcord, the applicant's valuer, thought would deter developers interested in the market for undeveloped blocks of residential land. On the other hand, there was a discernible trend towards the development of lifestyle-type subdivisions.

(e) Mr Colcord's experience of developers (and both parties recognised that the most likely purchaser would be a developer) was that they are traditionally risk averse and will "invariable take the option which will result in the greatest profit in the shortest time possible".

11. The Crown considered that, as at May 2000, the highest and best use of the land was that it be retained undeveloped in the short term so that ultimately it could be used for a residential subdivision involving between 227 and 252 residential lots (as indicated on the Beca concept plans). It reached this conclusion because:

(a) Whilst it accepted that the land's operative zoning was Special 11 (Hall farm development) zone, it considered that a potential purchaser would take a more positive view than that taken by the applicant's witnesses as to the land's potential for residential purposes in the medium term. The 1999 inclusion of the land in the MUL and the February 2000 publication of the Orewa West Draft Preferred Structure Plan (including the land) could be taken as strategic indicators of a change of attitude on the part of the Rodney District Council's planners.

(b) A farm park type development on the boundary of the Orewa urban area and close to the motorway might not have the sort of appeal to lifestyle developers as land further away from such intrusive influences.

(c) As at May 2000, no-one in the area had developed a Farm Park and consequently it was an unknown concept as far as the market was concerned.

(d) Two planners for the Crown, Messrs Julian and Bradbourne, and Mr Hartley (called by the applicant), all thought that if any proposal for a partial subdivision of the land were put before the Rodney District Council for resource consent in May 2000, it should have provided for how the land could be fully developed residentially in the future. Unless this was done, they thought that the Rodney District Council would be reluctant to grant a resource consent for, say, a farm park type development. To grant a consent in these circumstances would conflict with the strategic developments already predicated by the MUL and the Orewa West Draft Preferred Structure Plan. In this respect, they differed from the more legalistic approach adopted by Mr Warren.

(e) The inclusion of common land in a farm park type subdivision would provide a real disincentive to most developers: from a practical point of view the most that could be achieved from the land in the foreseeable future was a 57 lot residential development with no potential for further development. Mr Roberts, the Crown's principal valuer witness (supported in this respect by Mr Gamby), thought it unlikely that a potential purchaser would wish to be hamstrung by such a restriction involving non subdivisible common land.

(f) The Crown recognised the geotechnical difficulties associated with the ultimate development of the land. However it considered that the engineering evidence indicated that they were no worse than occurred in

other blocks of land in the vicinity and would not prevent ultimate residential development.

(g) Mr Roberts accepted that the market for block sales of residential land was flat in May 2000. However, he did not suggest that there was no market. His analysis of block sales (Exhibit 10) supports his position.

(h) Mr Roberts and Mr Gamby (who had conducted a peer review of the valuation evidence for the Crown) disagreed with Mr Colcord's assessment of the "risk averse" developer. Examples were provided of where developers had acquired land in the Silverdale district (for example Wainui Road) with the expectation of land banking it until it was possible, some time in the future, to realise its residential subdivisible potential. As Mr Gamby put it at paragraph 107 (et seq) of his evidence in chief:

> *"Developers buy land in anticipation of future development options. At the date of purchase they do not necessarily have a clear understanding of how those options will unfold and will frequently hold land for years exploring and negotiating with the local authority to obtain the most profitable outcome. ... I would expect a prospective purchaser to explore many options but probably hold the whole of the land until subdivision opportunities became clearer. This is entirely in accordance with many long-term developers of land such as Neil Construction, Green Holdings, Green & McCahill Ltd, Landco Ltd and Fulton Hogan.*

12. After a careful consideration of both viewpoints, the Tribunal concludes that the highest and best use of the land is for future residential development; and that its development as a farm park in May 2000 was unlikely. In this regard, it generally agrees with the arguments presented by the Crown as set out in paragraph 11. It is clear that the designation of the motorway had had a profound effect on the land as it effectively caused the future residential development at Orewa to be pushed westwards: the motorway provided an obvious barrier between the urban Orewa land and the undeveloped rural land to its west. This effect manifested itself in 1999 with an extension of the MUL and the subsequent Orewa West Draft Preferred Structure Plan. These both now included the subject block. Whilst these documents were simply of a strategic nature, no prudent and reasonable purchaser would have ignored

their significance. As at May 2000, the farm park concept was untried; and the market for it was inevitably limited. It is difficult to understand how a developer of the land would restrict himself to that sort of niche development when the long term future of the land indicated a more lucrative return. At the relevant time, despite the flat market, there were developers acquiring blocks of land in the area for residential purposes. It was inevitable that anyone acquiring this land would have to compete in that market – even if a farm park subdivision was being contemplated. Even if the reasonable and prudent purchaser did not appreciate this, the willing vendor could not be expected to have closed his eyes to it.

Valuation Methodology

13. Having concluded that the highest and best use of the land was for a farm park type development, Mr Colcord looked to comparative sales of land where its highest and best use was for lifestyle purposes. As, (for the reasons set out in paragraph 12), the Tribunal does not accept the fundamental basis of his analysis, it follows that it cannot accept his valuation based on sales evidence arising from lifestyle properties. Likewise, where he purports to undertake a check valuation using both a hypothetical subdivision analysis and a discounted cash flow analysis, as his realisation figures are based on sales of lifestyle sections, with associated common land, those checks lack validity. For completeness, Mr Roberts also undertook a valuation analysis based on a Special 11 (Hall Farm Development) zone. Again, for exactly the same reasons, the Tribunal considers such a valuation unhelpful.

14. Mr Roberts embarked on a valuation on the basis as if the land were zoned in accordance with the Orewa West Draft Preferred Structure Plan. Given the Tribunal's finding as to the highest and best use of the land, this was logical.

15. Because each valuer had a different opinion as to the highest and best use of the land and as a result used different comparative sales, there was a large disparity in their respective conclusions:

Comparative Sales Approach:	Roberts	$4,500,000
	Colcord	$2,188,000
Hypothetical Subdivision for 227 lot subdivision:		
	Roberts	$4,860,000
	Colcord	($1,314,982)
Discounted Cash Flow Value for 227 lot subdivision:		
	Roberts	$4,200,000
Colcord - before deferment		$ 931,000
And when deferred for nine years		$ 429,000
Discounted Cash Flow Value for 252 lots:		
	Roberts	$4,400,000

There was no corresponding Colcord valuation.

16. Mr Roberts preferred his comparable sales and discounted cash flow valuations which show a range of $4,200,000 to $4,500,000 and concluded that the current value of the land as at May 2000 was $4,350,000 excluding GST.

17. Mr Colcord ignored his valuations using the hypothetical subdivision and discounted cash flow methods, and based on his comparative sales evidence reached a value for the land as at May 2000 of $2,190,000.

18. At paragraphs 34 to 42 of his evidence, Mr Gamby provided a very useful analysis of the various valuation methods. He said:

> *"34. Where there are sales in the general location, as there are here, with differences in development time frame or deferment until "ripe" for subdivision this must be the start point of any valuation exercise. This is particularly important where there are sales indicating a range in values both below and the above the likely anticipated or most probable value for the subject property. Both valuers have used this approach and I concur with their method of application and that adjustments are required to the sales evidence.*
>
> *35. By comparison, where land is in large parcels and is not ready for intensive subdivision, the Hyposub method is difficult to apply without significant adjustments for time value of money decisions that are absent from the method. The Hyposub is a static exercise. To overcome its deficiencies for land with future subdivision potential, valuers, developers*

and financiers utilise time value of money adjustments, normally by deferring either the total exercise at the end of the Hyposub calculation or in stages exercise in an attempt to better reflect the present value of money under TVM principles.

36. *The Hyposub method can be used in conjunction with the comparable sales approach where a single stage or minor subdivision is proposed and the balance of the land is to be held for future development. Any complex subdivision exercise exposes the deficiencies of the method and DCF is the only alternative option.*

37. *As Mr Colcord correctly states at 13.4, the components of the discounted cash flow approach are not dissimilar to those of the hypothetical subdivision approach, the major differences being inputs over time and the discounting of the cash flows at an appropriate discount rate(s) in order to produce a market value.*

38. *One key assumption of the Hyposub, the profit and risk allowance can only be derived from sales of dissimilar properties or heuristically by experience. This is a controversial area that often leads to disagreement between experts.*

39. *Another key assumption, being the timing of cash flows, is entirely absent from the Hyposub exercise and is replaced with two components, the first being an interest component on outlays applied statically without regard to time, and the second being a discount or deferral process until the commencement of the subdivision.*

40. *The other four key assumptions are common to both the Hyposub and DCF methods. Any deficiency in one of these four key assumptions affects both exercises. These assumptions are:*

- *Sale price of the completed sections – the gross realisation.*
- *How long it will take to sell the sections – the sell timeframe.*
- *The costs of undertaking the subdivision including both planning and development.*
- *The timing for the planning and development process – the plan and develop timeframe.*

Discounted Cash Flow

41. *DCF has become the accepted method that explicitly identifies all variables and allocates the timing of cash flows over the hold, develop and sell periods. It is logically incorrect to prefer the Hyposub to DCF, as the implicit assumptions of the Hyposub are made explicit in the DCF exercise with the added advantage of TVM principles.*

42. *However, it is generally recognised that for a single stage small subdivision, the Hyposub exercise will adequately correlate with the market and no greater accuracy may be obtained by a more detailed exercise".*

19. The Tribunal has no difficulty in agreeing with this evidence. An analysis of both the hypothetical subdivision valuations and the discounted cash flow

approaches satisfies the Tribunal that in this case they are inappropriate as primary valuation methods. Each method is dependent on the various indeterminate and debatable inputs and a variation in any one input can make a very significant difference to the result. More importantly, in this case, the timing of any realisation from a development is so distant and inevitably uncertain that there is great scope for a wide variation in the various inputs. Whilst, as previously mentioned, the indicators apparent in May 2000 point to residential subdivision of the land in the future, nevertheless the planning process is a very fluid one which not only involves affirmative or negative answers but also a myriad of conditional ones.

20. The Tribunal was referred to useful comments made by Mr Alan Galbraith QC in an Arbitrator's Award dated 6 December 2002 (The Long Bay Award). There, the arbitrator accepted that the hypothetical subdivision and discounted cash flow valuation methods were the most appropriate and that the comparable sales method is not a justification "for struggling to fit round pegs into square holes". The Tribunal well understands the reasoning behind Mr Galbraith's decision. However, in that case there was a lack of comparable sales and significant agreement on most of the relevant inputs inherent in his preferred methods. Neither of those factors applies in this case. Furthermore, the timing of realisation from any development was not as distant and uncertain as is the case here.

21. Mr Gamby's evidence on this topic and the opinion of the Tribunal accords with the statements of Thomas J when delivering the judgment of the Court of Appeal in ***Boat Park Limited v Hutchinson*** [1999] 2 NZLR 74.83. His comments recognise that no one valuation method is generally conclusive and that a valuation can often be achieved through a mix of methods. He noted, however, that the sales comparison approach is the preferred approach if the sales evidence is available. He acknowledged that the hypothetical subdivision approach can be of assistance where the land has potential for subdivision; but that approach requires the valuer to make a

number of assumptions and estimates "many or most of which defy infallibility" and that an error in any premise or step can have a cumulative or multiplying effect and seriously impair the result. It is, therefore, more useful as a check than as the primary valuation method. (In principle, Mr Galbraith agreed).

22. In ***Boat Park*** the discounted cash flow approach was not mentioned whereas in this case there was evidence supporting it. However, as indicated previously, like the hypothetical subdivision approach, it suffers from the multitude of assumptions and estimates necessary for its implementation. It can provide a check: but generally it is more appropriate to the valuation of a business or real property with predictable cash flows.

Comparative Sales Evidence

23. Both Mr Roberts and Mr Colcord had some sales evidence of blocks of residential land in common including critical sales at Leigh Road and Wainui Road. Apart from a sale of Mr Colcord's at 147 Whangaparaoa Road, they all were within the area encompassed in the Silverdale North Structure Plan. This plan, like the Orewa West Draft Preferred Structure Plan, also envisaged future residential development. This plan was released in 1996 and the preferred draft in July 1997. Thus it can be said that the trend to residential development of the Silverdale North area was about three years ahead of the Orewa West area.

24. The difference in approach to the sales evidence by each valuer largely comes about from their differing opinions as to the highest and best use of the subject land. Mr Colcord concluded his analysis by stating that it was unreasonable to compare the hectare rates without making significant adjustments to account for the following matters:

    - time delays in the inclusion of the Orewa West Draft Preferred Structure Plan in the Rodney District Plan;

- the time incurred in providing bulk services;
- the abnormal costs of development of the land for residential sections;
- the impact of the motorway; and
- that the anticipated value of the lots is only just in excess of the cost of producing them.

He did not produce an analysis similar to that undertaken by Mr Roberts (Ex10).

25. Mr Roberts was not so deterred; although in respect of his preferred sales at Wainui Road his total adjustments varied from 45 percent to 51 percent. The Tribunal considers that there is an argument available to the effect that some of these adjustments are a little high and Mr Roberts agreed in respect of the adjustments for size. Mr Roberts' adjusted per hectare rate was $80,000.

26. Exhibit 10 outlines Mr Roberts' adjustments to the block land sales as they apply to this property. The rural blocks confirm a range of $46,778 per hectare to $54,580 per hectare and are only of interest in that they provide a bottom line for any valuation conclusion. Those sales were all of rural blocks with a similar potential as provided for in the Hall Farm zone. For reasons already outlined the Tribunal has rejected a valuation based solely on that premise which takes no account of the future residential potential.

27. The land sales within the MUL confirm a relatively wide range from a low of $64,000 per hectare to $275,000 per hectare. Most were in the Silverdale North Structure Plan and Stage 1 of that plan included the 22 hectare and 28 hectare sales on Leigh and Jelas Roads. Those sales occurred in 1997/98 and confirmed a range from $128,000 per hectare to just under $160,000 per hectare. Three sales on Wainui Road between May 2000 and February 2001 relate to land sold to the Dannemora Group. Although two of those are after the operative date, they confirm a range of $140,000 per hectare to $168,500

per hectare; with the highest price being for a 5.1 hectare block sold in May 2000.

28. Mr Roberts adjusted his sales evidence to allow for time, block size and the likely delay in obtaining zoning approvals on the subject block when compared to the Silverdale North area. On the most comparable evidence those adjustments were in the range of 36 to 51 percent, which resulted in a range of $68,600 to $94,000 per hectare. Based on that analysis Mr Roberts adopted an overall rate of $80,000 per hectare on the subject property inclusive of the varying contours and bush gullies.

29. Where Mr Roberts' comparative sales approach falters is in his application of the $80,000 per hectare to the whole of the land. Under cross examination, he said that he (in common with the other valuers who gave evidence) did not analyse the sales evidence lands in terms of useable land, gullies, bush and streams, but simply looked at the area of the land and applied a hectare rate. The Tribunal considers that to achieve an accurate assessment of the land's market value, its various disparate components must be recognised. As a former respected member of this Tribunal, Mr R M McGough was known to observe to his students:

"Valuation is the process of breaking down market transactions to simple common denominators and from a comparison of those denominators, with appropriate adjustments, applying that information to the property under valuation".

30. Mr Roberts' $80,000 per hectare is derived from land sales where, in most cases, almost all of the land can be used for residential purposes. That is not the case in respect of this land. It is quite apparent that some of the land is so geologically unstable that it would never be used. Further, some of the land is in vegetation and, accordingly, the consent for its use for residential purposes may not be forthcoming. The surveyor, Mr Chapman, was able to estimate the various areas and his estimates were used by Mr Roberts when he agreed with the division of the land on the following basis:

Area A	19.1 ha	development land with limited constraints
Area B	10.9 ha	development land with moderate and variable constraints
Area C	9.1 ha	land that is marginally stable and considered to be subject to further instability
Balance	17.0 ha	land with limited future residential potential due to slope, instability and/or bush and gullies

31. Plainly the area not to be developed has some value: if nothing else, its presence enhances the value of the remainder. Mr Roberts postulated, without giving the matter much thought, that it was worth about 50 percent of the value of the residue capable of development. Significantly, this rate equates with Mr Colcord's per hectare rate derived from his comparative sales analysis of block sales of land outside the MUL. Later, he thought that the vegetated land might only be worth about $20,000 per hectare; whereas Mr Colcord placed a rate equal to 75 percent of $40,000 on this land – viz. $30,000.

32. The evidence of both Dr Toan and Mr Melville-Smith confirm that land in the Silverdale North catchment was geologically similar to Area C land on the subject property. Furthermore, the Silverdale North sales had very limited areas of protected bush/gullies (if any). Accordingly, the Tribunal has applied the analysed rate of $80,000 per hectare to the Area C land. It has also applied the same hectare rate to the Area B land notwithstanding Mr Roberts' suggestion that the Area A and B lands could attract an extra margin of 15 percent. The reason for this is that Area B land has moderate to variable constraints on development and, as at May 2000, it would have been difficult, if not impossible, to know the extent of those constraints. Accordingly, the Tribunal, recognising that the applicant is entitled to the benefit of any doubt that may exist, has concluded that it is appropriate to apply a global approach to the lands which are capable of development but subject to significant constraints. Thus Areas B and C have been amalgamated for the valuation exercise.

33. Based on Mr Roberts' final comments under re-examination, the Tribunal has applied varying rates to the balance land as follows:

Area A	19.1000 ha	@	$92,000 per hectare	$1,757,200
Areas B & C	20.0000 ha	@	$80,000 per hectare	$1,600,000
Residual Land	17.0199 ha	@	$25,000 per hectare	$ 425,497
	56.1199 ha			$3,782,697
			Rounded to say	$3,780,000

This equates to $67,500 per hectare overall which is in excess of the rural block land sales. It confirms a value of $3,780,000 which is very close to Mr Gamby's assessment of $3,650,000 based on a hypothetical subdivision calculation. (Mr Gamby stressed that his assessment was not a valuation: which it was not).

34. This analysis can be compared with a valuation undertaken by Mr Roberts dated 2 September 2002. Most of that valuation can be ignored as it relied on a Cato Bolam planning report (recommending some 150 odd residential sections) which was superceded by the Beca report (which indicated potential for between 227 and 252 residential sections). The Tribunal is satisfied that had a prospective purchaser approached Beca in May 2000 the same information that was supplied to the hearing could have been available. The Beca report laid the foundations for the evidence given by the witnesses from that company who gave evidence at the hearing. Finally, the Tribunal notes that it is common for valuations to alter from time to time as more accurate source material becomes available.

35. The importance of Mr Roberts' September 2002 valuation arises from its treatment of the urban block sales evidence. Using the same sales as in his evidence in chief, Mr Roberts concluded a hectare rate of $60,000. This is to be compared against the $80,000 per hectare employed in his evidence. After making an allowance for small areas of the land affected by encumbrances and covenants, he valued the land using this method in the sum

of $3,250,000. In reaching his hectare rate of $60,000, he did not record an analysis such as that comprising Exhibit 10. Whilst he was questioned concerning the discrepancy in the two hectare rates, it was difficult to ascertain how the difference had occurred. Probably it was because he placed so much emphasis on his discounted cash flow and hypothetical subdivision valuations that his hectare rate had to justify them. In respect of the 2002 valuation, he admitted as much at line 23, notes of evidence, page 228.

36. For reasons outlined earlier in this decision, the Tribunal has put to one side the valuation conclusions of both parties based on a hypothetical subdivision and discounted cash flow. It has concluded that Mr Colcord's assessment based on the comparable sales approach of $2,188,000 is not sustainable as it is based on an analysis of rural sales and makes no allowance for the potential higher uses on this land. The block sales approach has been adopted. However the Tribunal has placed more emphasis on the quality of the land in relation to the sales evidence than was done by the various witnesses as to valuation. Thus it considers that Mr Roberts erred in applying a global rate of $80,000 per hectare; particularly on land which had limited or no future potential for residential development.

37. In reaching a market value of $3,780,000 (excluding GST), the Tribunal has recognised that this land adjoins what will become a busy motorway, is south facing and will be developed well after the Silverdale North area.

Limitation to "Current market value"?

38. In his closing submissions, counsel for the applicant submitted that the "current market value" to be determined by the Tribunal was limited to the Crown's rejected original offer of $3,250,000. He argued that this is because of his interpretation of s 40 Public Works Act 1981, a requirement to comply with good faith obligations, and that the Crown is estopped from demanding a price for the land which exceeds the original offer.

39. From the point of view of fairness and natural justice, the Tribunal has some sympathy to the suggested cap proposal. However, in terms of s 40(2A), the Tribunal's function is to determine the price where the parties are unable to agree upon one. In terms of s 40(2), the price is "the current market value of the land". This expression is recognised in the s 40 agreement entered into between the parties. Counsel for the applicant endeavoured to persuade the Tribunal that the requirement in s 40 (2A) to ascertain the land's "current market value" should be qualified by the following phrase: "but at any event at a price no higher than the current market value of the land as determined by the offeror at the date of the offer back to the offeree". He says this would import the purpose of the legislation into the text.

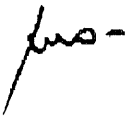
40. The Tribunal is not satisfied that the applicant's proposal does express the section's purpose. If it were intended that the expression "current market value" should be limited in this way, one might have expected that that limitation be included in the text of the section. As it stands, the expression "current market value" is quite unequivocal and does not require any purposive interpretation – even if an alternative purpose could be ascertained. Finally, as Professor John Burrows stated in his article *"Statutory Interpretation New Style"* 2005 NZLJ 156, statutory interpretation should not become statutory reconstruction: s 5(1) Interpretation Act 1999 applies and the whole point of interpretation is to find out what a text means. This is not achieved by inventing a purpose which is not necessarily readily apparent from the legislation.

41. The Tribunal, in determining the current market value, is not required to interpret the contractual provisions entered into between the parties. It does not have the jurisdiction to do so. In determining the current market value, the Tribunal is not estopped from deciding that it is limited to the Crown's original offer; nor does the principle of acting in good faith apply to it. Both these concepts may affect the parties to the agreement: but not the Tribunal.

Conclusion

42. The Tribunal, in determining the price in accordance with the current market value of the land as at May 2000, has considered the evidence of the various experts. Some of that evidence has been accepted totally; other evidence has been rejected. Much of the evidence has been accepted in part. And from that evidence which has been accepted, the Tribunal, without going on an independent frolic of its own, has undertaken its own analysis to reach the current market value for the land as at May 2000. That current market value is $3,780,000 (excluding GST).

43. Costs are reserved. Counsel are invited to submit memoranda in respect thereof within 14 days.



Judge J D Hole (Chairman)