

**BEFORE THE AUCKLAND
LAND VALUATION TRIBUNAL**

LVP 009/05

IN THE MATTER OF The Rating Valuations Act 1998
AND
IN THE MATTER OF an objection pursuant to Section
32 of the Act
BETWEEN **JOHN MICHAEL LOVELOCK**
Objector
AND **WAITAKERE CITY COUNCIL**
Respondent

Before the Auckland Land Valuation Tribunal:

Chair: His Honour Judge J D Hole

Members: J W Charters Esq
P J Mahoney Esq

Appearances: Objector in person.
Ms Gallagher (Quotable Value) for Respondent.

Date of Hearing: 11 May 2006

Date of Decision: 7 August 2006

DECISION OF THE TRIBUNAL

Introduction

1. In its revaluation as at 1 September 2004, the Council assessed the objector's property at 34 Ferntree Terrace, Hobsonville as follows:

Capital Value:	\$1,025,000
Land Value:	\$ 510,000
Improvements:	\$ 515,000

The Objection

2. The objector objects to the land value. The reasons for the objection are stated thus: "*QV Ltd were unaware that the property had been tagged by Council as a contaminated soil site and consequently did not make an appropriate valuation adjustment.*"
3. At the hearing this was explained: *When instructing its valuer (Quotable Value) in respect of the 1 September 2004 revaluation, the Council failed to advise it that the site might suffer from soil contamination and that any LIM report issued in respect of the property would be noted accordingly. As a result, no adjustment was made to the land value to reflect a possible reduction in value as the property might be more difficult to sell than if there was no such notation on the LIM report.*

Facts

4. The following facts are not disputed:
 - In February 2002 the Auckland Regional Council and Auckland Health Board advised the Council about difficulties arising from land contaminated with certain trace chemicals arising from horticultural activities.

- Council investigated these with reference to the lands within its territory.
- As a result of a meeting held on 20 August 2003, Council decided to note LIM reports of possibly affected properties to the effect:
 - that soil therein might be contaminated although there was no evidence either way; and
 - that Council might require soil testing in the event of new activities being undertaken on the affected properties or their subdivision.
- LIM reports of affected properties (including that of the objector) were noted accordingly in September 2004. Ms Sanders the registered valuer, who gave evidence for the Council, thought this started to occur about 4 weeks after the revaluation date.
- When instructing Quotable Value to undertake the revaluation as at 1 September 2004, the Council did not inform Quotable Value that any LIM report issued by the Council in respect of the objector's property would have the soil contamination notation.
- The Council did not tell the objector that his property was so affected.

Land Information Memoranda

5. Land Information Memoranda (LIMs) can be obtained upon request from a territorial authority pursuant to section 44A Local Government Official Information and Meetings Act 1987. Whilst the disclosure therein of the possibility of soil erosion contamination is not a mandatory requirement, there is nothing in the section to prevent such information from being contained in a LIM.
6. There seems to be no statutory admonition requiring the territorial authority to disclose to the registered proprietor of land in respect of which a LIM report might issue of any detrimental fact affecting that land. Thus, as here, it is possible for a territorial authority to remain silent on an issue, which it

will reveal to a third party, which may affect the land's value or, indeed the health and safety of the occupants of the property.

7. Because there is no statutory requirement that a territorial authority disclose such information to the registered proprietor, does not mean that it should not do so. Indeed, clause 4 of the Ministry for the Environment web site concerning the release of site information contemplates this: (<http://www.mfe.govt.nz/publications/hazardous/contaminated-land-mgmt-guidelines-no4/html/appendices.html>). It contains draft letters for use by territorial authorities' to inform landowners of possible detrimental information affecting the land which is to be disclosed in LIM reports. One of the draft letters recognises that a landowner may wish to have some input into the process or object to it. Clause 4 recognises that a landowner in such circumstances could have a "legitimate expectation as to fair treatment" in respect of the process: *Begley v Bay of Plenty Regional Council* (M151/92, 5 September 1995, Morris J ; *Parris v Director General of Fisheries*, 1 December 1989, McGechan J, HC Wellington.

LIMs and Land Value

8. All parties agreed that if there are two identical pieces of land except one can have a LIM report which contains a notation of possible soil contamination and the other does not, the value of the former property will be less than that of the latter. The reason for this is that the hypothetical buyer would prefer the latter property; the former would be more difficult to sell.
9. In this case, the actual notation to the LIM report occurred, it seems, at the latest, four weeks after the revaluation date. The possible contamination notification on any LIM report affecting the land would not have appeared on the revaluation date. However, it seems likely that the Council had decided

by the revaluation date to make the notations very soon after the revaluation date. Thus before the revaluation date, the Council was in possession of information which had the potential of adversely affecting land values. For reasons not explained to the Tribunal, it did not inform its valuers. Thus the revaluation was carried out without the valuers being aware of information which might affect their determinations.

10. This situation is similar to that pertaining to "extraordinary events" mentioned in the Rating Valuations Rules. In the event of an extraordinary event occurring the Council is required to inform the Valuer General accordingly. An adverse notation to a LIM report does not come within the definition of an extraordinary event: but both occurrences have the potential to affect land values.

11. In these circumstances, the Council should have informed the valuers before the revaluation. It follows that the revaluation of the objector's property was carried out without the valuer being aware of all information in the possession of the Council which had the potential of reducing the land value. Whether or not that information would have reduced the land value is not the point.

Market Value

12. The valuer who gave evidence for the Council stated that she was unaware of any market evidence showing that properties with a possible soil contaminated notation on their LIM reports were selling at a lesser price than other properties. However, it was clear that she had not made specific investigations in this regard. She did accept the proposition contained in paragraph 8.

September 2004

13. The Tribunal notes that:

- As the result of a meeting in August 2003, the Council had decided to note the LIM reports as to possible soil contamination;
- the Council knew the notation of the LIM reports had the potential to detrimentally affect the land values of the properties affected;
- the LIM reports were not noted as to possible soil contamination until shortly after the revaluation date of 1 September 2004.
- a principal reason for undertaking the revaluation was to provide an updated base for the Council to levy rates.

14. Judicial authorities such as *Wellington City Council v Woolworths New Zealand No 2* [1996] 2 NZLR 537, *McKenzie District Council v Electricity Corporation of New Zealand* [1992] 3 NZLR 41, and , importantly, *Waitakere City Council v Lovelock* [1997] 2 NZLR 385 have discussed the fiduciary relationship which exists between a territorial authority and its ratepayers. It is not for this Tribunal to comment on these matters further.

15. The Council knew that the issues discussed in this decision would be canvassed at the hearing of this objection. Notice of them is contained in the Objection. They are referred to in a letter from the objector to Quotable Value dated 14 September 2005. Whilst the Tribunal is not privy to what went on at a meeting between the objector and Quotable Value held before October 2005, it is inconceivable that they were not raised then. In the circumstances, it was surprising to the Tribunal that the Council chose to be represented at the hearing by a valuer employed by Quotable Value and that no-one from the Council gave evidence. This is not a case, such as was

described in *Re Erebus Royal Commission* [1993] 1 NZLR 662, where the Council has been deprived of an opportunity to rebut the inferences drawn by the Tribunal from the facts presented.

Failure to adduce valuation evidence.

16. Section 38(2) Rating Valuations Act 1998, which states the "*onus of proof on any objection rests with the objector*", applies. To succeed with his objection, the objector had to establish all facets of it. In particular, he had to show not only that the valuation relied on by the Council might be wrong but also indicate an appropriate alternative land value. He did refer to properties affected by the leaky homes syndrome and suggested that an allowance of 13 per centum should be made. However, the leaky homes problems affect improvements and have nothing to do with land value. The issues raised by this case are quite different from his analogy. The Tribunal considers that his attempts at providing land value evidence fall well short of the requirements imposed on him by section 38 (2)

Conclusion.

17. The reasoning behind the objection cannot be faulted. The Council withheld information from its valuer to the effect that it was about to adversely note any Lim report applicable to the property. That information had the potential of being relevant to the determination of land value. However, adequate valuation evidence was necessary. It was not forthcoming.

18. Accordingly the Tribunal has no choice but to dismiss the objection. It is dismissed.

Judge J D Hole
(Chairman)