BEFORE THE LAND VALUATION TRIBUNAL **LVP-3/2015**

IN THE MATTER OF	an objection under s 32 of the Ratings Valuation Act 1998
BETWEEN	PETER DESPARD TWIGG Objector
AND	NAPIER CITY COUNCIL Respondent

ORDER OF LAND VALUATION TRIBUNAL

Before the Land Valuation Tribunal, on the objection of Peter Despard Twigg to the rating value in respect of the land described in the Schedule, it is ordered that the objection is dismissed.

Schedule

The property at 1/207 Lever Street, Ahuriri, Napier, a stratum estate in leasehold in Unit 307 and Accessory Unit 307A, 307B Deposited Plan 407642 (Identifier 426831 Hawke's Bay).

Dated at Wellington 14 MAR 2017

THE SEAL OF THE DISTRICT COURT NEW ZEALAND

Deputy Registrar

J. K. Vincent
Deputy Registrar
Wellington District Court

BEFORE THE LAND VALUATION TRIBUNAL **LVP-3/2015**
AT NAPIER

IN THE MATTER OF	an objection under s 32 of the Ratings Valuation Act 1998
BETWEEN	PETER DESPARD TWIGG
	Objector
AND	NAPIER CITY COUNCIL
	Respondent

Court:	Judge B P Dwyer - Chairperson Mr G S Morice - Member
Hearing:	Tuesday, 6 December 2016 at Napier
Appearances:	Mr P D Twigg representing himself Mr S Smith for the Council
Date of Decision:	14 March 2017
Date of Issue:	14 March 2017

DECISION OF THE TRIBUNAL

A: Objection dismissed

B: Costs reserved

REASONS

Introduction

[1] Peter Despard Twigg (Mr Twigg) objects pursuant to s 32 of the Ratings Valuation Act 1998 (RVA) to the rating value assessed for a property in which he has an interest at 1/207 Lever Street, Ahuriri, Napier (the Property).

[2] The capital value of the Property as at 1 September 2014 was initially assessed by QV Limited (QV) in the course of a three yearly general rating revaluation for Napier

City Council (the Council) as being $480,000, comprising land value $170,000 and improvements $310,000. Mr Twigg filed an objection to that valuation pursuant to s 32 RVA. In accordance with s 34 RVA the objection was initially reviewed by QV which retained the capital value of $480,000 but re-assessed land value as being $155,000 with the value of improvements being re-assessed at $325,000.

[3] Despite the reapportionment of values Mr Twigg has maintained his objection to the rating valuation.

[4] Mr Twigg accepts the capital valuation of $480,000. His objection is to the assessed land value of (now) $155,000. In his objection form he estimated the land value to be somewhere between $0 and $100,000. In his submission to the Tribunal, Mr Twigg applied a number of methodologies to assessment of the land value which led to outcomes ranging between minus $422,374.00 up to $86,163.48. He concluded:

> On the basis of the evidence produced the land value of this unit title where there are no improvements on the land sits at between uniform land value approach as adopted in the *Littlewood* decision $46,100.47 or the residual land basis $73,256.00.[1]

[5] Mr B H Pickett (QV's Manager in Napier) who gave valuation evidence for the Council, maintained that the appropriate land value for the Property was $155,000. That is the matter in dispute in this objection.

Background

[6] The Property comprises a two level apartment with two accessory car parks and locked storage. The apartment is situated on the third and fourth floor of a multiple apartment complex in the Williams & Kettle, No 5 Wool Store building at Ahuriri. Car parking is on the ground floor of the complex.

[7] The underlying title for the apartment complex is a leasehold estate pursuant to a 21 year lease renewable ad infinitum for successive 21 year terms. Title to the various apartments has been created by deposit of a unit title plan so that the legal description of the Property is a stratum estate in leasehold in Unit 307 and Accessory Unit 307A, 307B Deposited Plan 407642 (Identifier 426831 Hawke's Bay).

[8] The apartment complex was completed as a conversion of a warehouse type

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1 Twigg submission page 16, para 8.

building in December 2008. It was common ground between the parties that construction started at a time of economic optimism which was disrupted by the Global Financial Crisis (GFC) so that by the time construction was completed the Napier real estate market was constricting considerably. Mr Twigg advised that at the time of completion only three units had been sold with the remaining units subsequently being transferred by the mortgagee and sold on the open market over a period in excess of three years.

[9] We gleaned the following information from the evidence presented to us:

- The first rating value for the Property by QV appears to have been made for the 2009/2010 rating year and had a capital value of $780,000, including a land value of $275,000;
- The Property was purchased by the Twigg interests under an agreement for sale and purchase dated 20 August 2010 for $480,000 (apportioned - chattels $15,000 and nett sale price $465,000);
- QV valuation as at 1 September 2011 was $505,000, comprising land value $180,000 and improvements $325,000;
- As we noted previously, the amended QV valuation as at 1 September 2014 which is the subject of this objection is $480,000, comprising land value $155,000 and improvements $325,000.

The Legal Issues

[10] The RVA contains provisions as to the preparation and maintenance of District Valuation Rolls (s 7) and provides (s 9) for the revision by revaluation of every *rating unit* within a district at intervals of not more than three years. Section 5B(1) RVA provides that:

> For land for which there is a certificate of title, the land comprised in the certificate of title constitutes a rating unit.

[11] As we have noted previously there is a Certificate of Title for the Property (Identifier 426831, Hawkes Bay) so that it is a rating unit for the purposes of RVA. In determining the land value of the stratum estate which Mr Twigg owns in the rating unit, particular regard must be had to two definitions contained in s 2 RVA. They are:

- The definition of **land** which means:

  > All land, tenements and hereditaments, whether corporeal or incorporeal, in New Zealand, and all chattel or other interests in the land, and all trees growing or standing on the land.

- The definition of **land value** which means:

  In relation to any land, and subject to sections 20 and 21, means the sum that the owner's estate or interest in the land, if unencumbered by any mortgage or other charge, might be expected to realise at the time of valuation if –

  (a) offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose; and

  (b) no improvements had been made on the land.

[12] A number of issues arise out of these provisions:

- There was some debate in these proceedings as to the conceptual aspects of land in a unit title development. Mr Twigg's principal unit is on the third and fourth floors of the complex so is effectively suspended in the air supported by other development in the building. This situation is recognized in the Unit Titles Act 2010 (UTA) which provides that:

  Unit, in relation to any land, means a part of the land consisting of a space of any shape situated below, on, or above the surface of the land, or partly in one such situation and partly in another or others, all the dimensions of which are limited, and that is designed for separate ownership.

  In short, the UTA recognises that the space comprised in a unit is a part of the land of a unit title development even though it is situated above the surface of that land.

- Under RVA, land includes not only an interest in the land itself but also the tenements, hereditaments, chattel and other interests which go with the land:

- The value of the land has to be fixed as if no improvements have been made on it.

[13] It was Mr Twigg's contention that in valuing the land component of the rating unit, QV had erred by incorporating in the value of the land the benefit of various interests and rights which attach to the stratum estate. As we understand it, these include a right of use of common property (including accessways, lifts and stairs), provision of services such as electricity, water and drainage (some of which might be on common property and some of which might pass through other units) and a general right of support.

[14] Mr Twigg submitted that these were "improvements" which should not be included in the value of the land which, in accordance with the definition cited in para [11] (above), should be valued as if no improvements had been made on it. He

contended that although these improvements may have been situated on other land, (such as the common property) he became an owner of these improvements by virtue of acquiring membership of the body corporate for the unit development complex. On that basis, the value which any such rights and services contributed to the value of the land should be excluded from the land value of the property. It was Mr Twigg's case that his unit, less the improvements which he had identified, was effectively unserviced "fresh air",[2] the value of which was minimal. We make the following observations about that proposition.

[15] Firstly, it is clear from perusal of RVA that what is being valued in this case is the land value of the rating unit, not the value of land outside the rating unit.

[16] Secondly, land value on the rating unit is assessed on the basis that no improvements have been made "on the land" (our emphasis). The "land" referred to is the land contained in the rating unit, which is to be valued as if no improvements had been made on that particular land. It is true that in acquiring the stratum estate the Twigg interests also acquired membership of the body corporate which owns the common property of the development. However, acquisition by becoming a shareholder in the body corporate of some form of ownership interest in improvements on common property, does not make them improvements to the land forming part of the Twigg rating unit.

[17] Section 5 UTA defines common property (relevantly) as meaning "(a) all the land and associated fixtures that are part of the unit title development, but are not contained in a principal unit, accessory unit or future development unit". By definition the common property of a unit title complex is property which is outside any other principal, accessory or future development unit and therefore improvements on it cannot be improvements on the land of such other units.

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2 NOE, page 32.

[18] Thirdly, the definition of "improvements" contained in s 2 RVA relevantly provides that:

> **Improvements,** in relation to any land, means all work done or material used at any time on or for the benefit of the land by the expenditure of capital or labour, so far as the effect of the work done or material used is to increase the value of the land and its benefit is not exhausted at the time of valuation; but does not include –
>
> (a) work done or material used in –
>
> (i) the provision of roads or streets, or the provision of water, drainage or other amenities in connection with the subdivision[3] of the land for building purposes:

[19] Accordingly we find that:

- The improvements identified by Mr Twigg are not "improvements" as defined in RVA but are services (such as water or drainage) or other amenities (such as the provision of access and support) in connection with the unit plan subdivision for building purposes which are excluded from the definition of improvements;
- Even if they were improvements, they are not improvements situated on the land of the rating unit being valued as they are situated on the common property of the complex or (possibly) within other units through which services might run.

[20] For these reasons, we determine that the basic premise of Mr Twigg's objection is flawed and the objection ought be dismissed accordingly. However, for the sake of completeness, we go on to address the various issues of valuation merit raised in Mr Twigg's objection.

[21] Before doing so, we observe that s 38(2) RVA provides that "the onus of proof on any objection rests with the objector". In this case Mr Twigg offered no evidence in support of the various valuation propositions which he advanced to the Tribunal, just his own opinions. He did not claim any valuation expertise. The only valuation evidence before us was that of Mr Pickett, whose evidence was not accepted by Mr Twigg, but was not contradicted by any opposing valuation evidence. Mr Pickett did not resile from the views he expressed in his written evidence nor was any matter put to him which might lead us to the view that it was fundamentally flawed in any way. Nevertheless we

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[3] Subdivision includes the deposit of a Unit Plan - (s218(1) RMA). We consider that rights of access and use of common property obviously constitute "other amenities" for the purposes of the definition.

proceed to make an assessment of the valuation evidence before us.

The valuation merits

[22] QV's valuation evidence was an undated valuation report (the report) prepared by Rachel Walker (a QV valuer) and Mr Pickett, forming part of his brief. The report notes that the effective date of the valuation is 1 September 2014 and that it had been produced following inspection of the subject property on 11 September 2015.

[23] Section 2 of the report advises the valuation of the property was made in accordance with the requirements set out in the RVA and provides (inter alia) definitions for "land" and "land value" as covered in paragraph [11] of this Decision.

[24] Sections 5 to 10 of the report cover the description of the Property.

[25] Section 17 of the report is a summary of the valuation and discusses the direct comparison approach adopted followed by a check method. The direct comparison approach compared sales that are comparable to the Property and makes allowances for differences such as location, house size, quality, views, other buildings, layout, other improvements, building platform, land size, contour and special features. The sales evidence presented included three improved freehold apartments, four improved freehold apartments sold after the valuation date of 1 September 2014, five sales of improved properties within the surrounding suburbs and 12 sales considered to be a good comparison in establishing land values. From the direct sales approach QV arrived at a capital value of $480,000 based on a net rate of $3,178 per m^2 on an apartment area of 151m^2. As we have noted, Mr Twigg and QV agree on the capital value of $480,000.

[26] The land value has also been assessed using the direct comparison approach with the sales being analysed to a rate per metre squared. It is noted that, because the subject land area is undefined, it is not possible to apply the same approach to the subject Property. Therefore, QV had assessed what the subject Title provides and the land within the building envelope as defined in the UTA.

[27] Of the 12 land sales provided, QV was of the opinion that two 167m^2 sales at Hardinge Road that sold for $510,000 on 25 May 2014 and $450,000 on 18 September 2014, are the most comparable. These properties were inspected by the Tribunal. The

net rate for the land value of these two sales was $3,053 and $2,694 per m² respectively. QV assessed a range in land values using the direct comparison between $150,000-$230,000 being $993 - $1,523 net rate/m², significantly less than the two Hardinge Road sales. From this range QV has assessed a land value of $155,000 equating to $1,026/m², again, on the lower end of the range of sales provided.

[28] QV used the check method to review the relationship between land value and capital value, taking 10 freehold section sales that have subsequently sold after the establishment of dwellings and other improvements. Generally the time frame between the sales of vacant sites and improved sales is reasonably close. After the net sale prices of the improved sales are adjusted for chattels, the original vacant site value is compared to the net sale price resulting in a percentage land value. The range is from 33-49 per cent. The QV report identified that the Property's assessed land value of $155,000 represented 32 per cent of the capital value of $480,000 (for which there is no argument). Therefore the land value adopted is within the lower range of the cross-check analysis.

[29] We consider that QV's valuation of the Property as at 1 September 2014 complies with the RVA and is consistent with the UTA. The report addresses the physical aspects of the property, market conditions, comparable sales and case law. The valuation summary (Section 17 of the report) adopted the direct sales comparison approach and a percentage land value check method. We determine that the valuation is complete and in accordance with legislation. In essence, there is sufficient comparable evidence for a valuer to use his or her skill and judgement to assess the land value of the Property at the date of valuation on a freehold basis as required by the RVA. Furthermore the evidence established that QV adopted a conservative approach to assessing the land value and that the valuation prior to the objection of $170,000 could be supported from the sales evidence.

[30] Mr Twigg's evidence/submissions as presented lacked two fundamental pillars to his objection:

- Firstly that his views and position were unsupported by a registered valuation;
- Secondly, his lack of market evidence.

We note again that pursuant to s 38(2) RVA, the onus of proof on the objection rested with Mr Twigg.

[31] Mr Twigg's assessment of the land value at the date of valuation was $85,000 at the time of the objection, adjusted to $75,000 following discussions with QV. He based his objection to the valuation on five key areas, being:

- The land value assessments have not been completed in accordance with the RVA;
- QV has failed to recognize the reason for the fall in capital value of Napier apartments in its assessment of land values;
- QV has failed to take into account the value of future development units;
- QV has used valuation principles pre-GFC and Christchurch Earthquake now proven to be fundamentally flawed;
- Mistake in area.

We address these in turn.

[32] *The Land Value assessments have not been completed in accordance with the Ratings Valution Act 1998.* On pages 5 and 6 of Mr Twigg's objection, he quotes legal precedents and objection in evidence. He adopts an approach of deducting the value of improvements from capital value to get land value giving a negative land value of minus $422,374. His evidence/submission does not demonstrate that QV has not completed its valuation in accordance with the RVA. Our conclusion (para [29] above) is that QV has done so.

[33] *Quotable Value (QV) have failed to recognize the reason for the fall in Capital Value of Napier apartments in their assessment of Land Values.* There can be no argument that the market collapsed after the GFC which is reflected in the $780,000 capital value of September 2008 declining to $480,000 in September 2014. This represents a 38 per cent reduction. In this period, the land value (according to QV) dropped from $275,000 to $155,000, a 44 per cent reduction. Therefore the assessed land value dropped at a greater rate than the value of improvements. The question then arises, has the land value dropped enough, or should it be closer to Mr Twigg's final figure? Again, QV referred to the RVA and reviewed market evidence available to ascertain the land value, unlike Mr Twigg who did not table market evidence to support his figure.

[34] Another important factor in this regard which we note at this time is that QV is assessing the land value on the basis it is of freehold tenure, not leasehold. RVA

required QV to assess the land value on a freehold basis notwithstanding that the Property is actually leasehold.

[35] *QV have failed to take into account the value of future development units.* Discussion in this regard revolved around a sale within the Shed 5 complex in June 2011. Mr Twigg's analysis of this sale was convoluted by removing his assessment of the value of improvements from the capital value to derive the land value. This methodology was in error and we do not consider this calculation adds weight to Mr Twigg's objections.

[36] *QV have used valuation principles pre-Global Financial Crisis and Christchurch Earthquake and now proven to be fundamentally flawed.* It is correct that the RVA has not been updated since either the 2008 GFC or the Christchurch earthquakes. The methodology of valuation has not changed and QV has relied, as required, on market evidence.

[37] *Mistake in area.* We concur with QV's approach to the assessment of the building and living area.

[38] Mr Twigg, in his evidence/submission, used a number of calculations to suggest that the land value of $155,000 as assessed by QV is wrong. We find QV has been thorough in its methodology, assessment and conclusions. In fact we consider it has, if anything, erred on the side of conservatism based on the market evidence presented.

[39] Mr Twigg has not presented market evidence nor identified how his assessment of land value relates to a comparable sales approach. His assessment of value is not endorsed by an independent registered valuation supporting his view. We determine that there is no basis for us to overturn the QV assessment of $155,000.

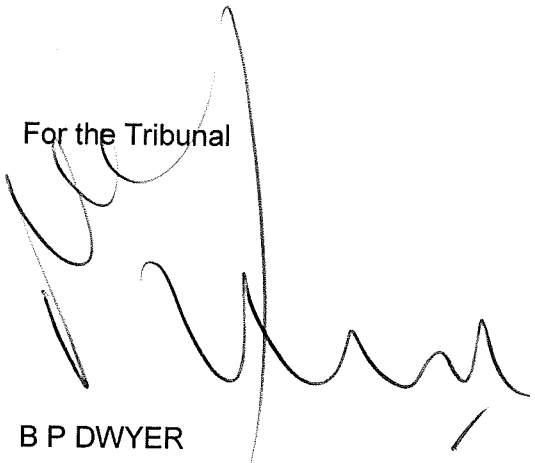
Outcome

[40] The objection is dismissed.

[41] The Tribunal's power to award costs in these proceedings is limited by the provisions of s 38(4)(a) and (b) RVA. Arguably, Mr Twigg's failure to provide any substantive evidence in support of his case raises the issue of whether or not the objection was "frivolous" in terms of s 38(4)(b).

[42] We leave it open to the Council to pursue this matter should it wish to do so by filing and serving any costs application within 10 working days of the date of this decision. Any reply from Mr Twigg to be filed and served within 10 working days of receipt by him of the Council documents.

For the Tribunal



B P DWYER
District Court Judge / Chairperson