

**BEFORE THE LAND VALUATION TRIBUNAL
AT CHRISTCHURCH**

**I TE TARAIPŪNARA WĀRIU WHENUA
KI ŌTAUTAHI**

Decision No. [2024] NZLVT 11

IN THE MATTER

an application for determination of
compensation under s79(2) and s84 of
the Public Works Act 1981

BETWEEN

HAMILTON CITY COUNCIL

(ENV-2022-AKL-245)

Applicant

AND

MURRAY NELSON SHAW AND
MARGARET EVELYN SHAW

Respondents

Tribunal: District Court Judge P A Steven (Chairperson)
V Winiata (Member)

Hearing: at Hamilton on 20 September 2023

Appearances: L Muldowney, K E Cornegé and A Roznawska for
Hamilton City Council
M and M Shaw supported by J Marton and R Ward as
McKenzie Friends

Last Case Event: 26 October 2023

Date of Decision: 15 March 2024

Date of Issue: 15 March 2024

DECISION OF THE LAND VALUATION TRIBUNAL

A: The Tribunal finds that the SGHU valuation should be applied in this
instance in determining compensation payable.

HAMILTON CITY COUNCIL v SHAW



B: The compensation payable is \$835,000 including GST (if any).

REASONS

Background

[1] This is a decision on an application by the Hamilton City Council ('Council'), seeking that the Land Valuation Tribunal ('Tribunal') determine the amount of compensation payable in respect of the land taken by proclamation under the Public Works Act 1981 ('PWA'). The application was made under s79(2) of the PWA.¹

[2] The decision follows a hearing before the Tribunal in Hamilton on 20 September 2023. Further evidence sought by the Tribunal and final submissions were received on 26 October 2023.

Background facts

[3] The Council had served a notice of intention to take the land under s23 of the PWA on the respondents on 19 November 2019. The respondents filed an objection to the taking of the land which was later dismissed by the Environment Court in a report dated 10 November 2021.² By way of proclamation effective 4 January 2022, the land has vested in the Council.

[4] The affected property comprises a rural-residential holding of 9.7120 ha within the Peacocke development area to the southern peripheral of Hamilton City (the taken land). The taken land comprises an area of 1.9163 ha as shown on Record of Title 1134798.

[5] On 19 April 2022, the Council had given notice to the respondents under

¹ Having been filed as an originating application pursuant to r 7 Land Valuation Tribunals Rules 1977.

² *Shaw v Hamilton City Council* [2021] NZEnvC 175.

s79(1) of the PWA that, if no claim for compensation in respect of the taken land was made within the requisite period, it intended to make the application to the Tribunal to determine what amount of compensation shall be paid to the respondents.

[6] At the time of the hearing no claim had been lodged, although the Council had been provided with a valuation report obtained by the respondents. The Council made several attempts to engage with the respondents in relation to compensation and other outstanding matters. Those attempts were unsuccessful.

[7] The Council's application requested that the Tribunal determine that \$835,000 (incl GST) is the compensation payable by it to the respondents for the partial acquisition of the taken land.

[8] The application was made in reliance on the affidavits of:

- (a) David Ivan Urlich; a registered valuer and director of SGHU Valuations ('SGHU'). His affidavit contained valuation assessment for compensation updated as at the specified date. That included consideration of betterment and injurious affection as part of the 'after' valuation;
- (b) Stephen George Bigwood; a planning manager at Bloxam, Burnett & Olliver ('BBO'). Mr Bigwood addressed the planning assumptions underpinning the SGHU valuation, including how planning changes have developed alongside the prospect of the works; and
- (c) Andrew Richard Parsons; the General Manager Infrastructure and Assets of the Council. Mr Parsons filed an original and updated affidavit addressing the breakdown in communication with the respondents regarding access and accommodation works to the balance property and the current status of the project. By the time of the hearing the SGHU valuation had been updated, taking into account the lack of vehicle access to the dwelling on the balance land

following the take and increasing the compensation payable to the respondents.

The hearing

[9] The respondents appeared at the hearing in person, assisted by a McKenzie Friend, Mr Marton. Although the respondents had provided a valuation report to the Council, the author did not appear at the hearing.

[10] Evidence was given at the hearing, including from the Council, by Mr Jeremy Gibbons. He is the Regional Leader (Waikato) for BBO. His evidence provided his assessment of the most reasonable alternative placement for a driveway to provide access to the dwelling on the respondents' balance land, and the costings of providing that access.

Works requiring the taking of the land

[11] The land was taken for roading and infrastructure as part of the Council's Southern Links Project. This is a joint project with New Zealand Transport Agency – Waka Kotahi – to provide the roading and essential infrastructure to enable urban development in the Peacocke area of Hamilton which is integrated with the future state highway network on the southern side of Hamilton City.

[12] The Peacocke area south of Hamilton City has been identified as suitable for urban development since 1989. In 2007 the Peacocke Structure Plan ('PSP') was introduced into the proposed district plan when variation 14 was notified. It provided for staging of an area of growth reflecting an infrastructure program and the 2006-2016 long-term plan.

[13] The PSP identified 50 ha of Stage 1 land on the southern side of Dixon Road capable of being serviced by existing public infrastructure, whereas Stage 2 provided for future residential development once necessary infrastructure was available.

[14] Under the operative district plan ('ODP') for Hamilton City the PSP Stage 1 area is zoned general residential and Stage 2 is zoned as a special character zone. The respondents' land is partly in Stage 1 and partly in Stage 2, although the taken land is solely within Stage 2.

[15] The Council opened its case on the basis that the works for which the land was taken provide a central infrastructure facilitating the opening of Peacocke area, including parts of the subject property.

[16] The prospect of the work has driven zoning uplift across a substantial area of land within Peacocke Stage 2 and since government funding was obtained by the Council in 2018, there is a very high likelihood of the works been completed.

[17] The taken land was required for the East – West Minor Arterial which is to be a two-lane road with a width of 40 m. Around 23 m of the width is the carriageway and 17 m is for landscaping, embankments, and walking / cycling facilities.

[18] The taken land has a total area of 1.9163 ha being the correct titled area. An area of 1.9174 ha has been used as identified on the plans within the valuers' reports. However, the difference is negligible and has minimal (if any) impact on the values assessed.

[19] The plans show sub-areas labelled R9a and R9b. The area labelled R9b is mostly in Stage 2, although a sliver of this land is in Stage 1. Area R9a is wholly in Stage 2.

[20] The provisions within the ODP for Stage 1 and Stage 2 differ:

- (a) Stage 1 land (comprising approximately 5.07 ha) is zoned Residential;
and
- (b) Stage 2 land (comprising approximately 4.64 ha being part hill area and part gully) is within the Peacocke Character Area.

[21] Improvements located on the taken land include part of the driveway to the dwellings and some mature plantings and pasture on that area identified as R9b.

The valuations

[22] Both the Council and the respondents obtained reports from registered valuers:

- (a) Mr David Urlich – Registered Valuer with SGHU for the Council;
and
- (b) Mr Jeff Alexander – Registered Valuer with Silverton Alexander,
representing the respondents.

[23] The valuations involved (but were not limited to) valuation methodology, comparable sales, appropriate adjustments used and allowed, the applicable planning regime, the application of the PWA and the resulting end valuation figures.

[24] The SGHU valuation is effective as at 4 January 2022. The valuation contained therein was further amended to include an allowance for the loss of the driveway and a sliver of land to be within the Stage 1 land as opposed to the Stage 2 land.

[25] The Silverton Alexander valuation is effective as at 5 August 2019 with an addendum added dated 28 February 2020.

[26] There is a significant difference between the two valuers' assessments. The main contributing factor to the variation in values is the planning advice each of the valuers have relied upon.

[27] Both valuers have applied accepted methodology and approaches and analysis in determining their respective compensation assessments.

The Council's valuation

[28] Mr Urlich provided three affidavits attaching valuations by SGHU:

- (a) the first dated 19 September 2022;
- (b) the second dated 6 September 2023; and
- (c) the most recent dated 29 September 2023.

[29] The valuations rely on planning advice from BBO.

Affidavit dated 19 September 2022: Valuation 1

[30] SGHU's first valuation assessed the compensation payable to be \$455,000 including GST. This valuation is dated 26 August 2022 with the valuation effective as at 4 January 2022.

[31] This figure reflects the difference between the 'before' value of the subject property and the 'after' value of the land, excluding the taken land.

[32] Relying on the BBO planning advice and considering the characteristics of the land and available services, Mr Urlich based his assessment on valuing the land in Stage 1 as a development block able to be subdivided into residential sections and the Stage 2 land as a lifestyle type use.

[33] SGHU assessed the acquired land in Stage 1 using both the Residual Method (the Hypothetical Subdivision Approach) and the Market Approach using comparable block land sales as a comparison.

[34] For the Stage 2 land SGHU used the Market Approach. The advice relied on identified constraints (policy and physical) to develop this land which limits its potential for subdivision, except for an area within Stage 2 which is considered developable comprising an area of 3066 m². This is the sub-area described as B9a. The value of area B9a is based upon its subdivision potential.

[35] That valuation refers to an extensive range of sales evidence covering development block land, vacant residential sections, vacant lifestyle blocks and improved lifestyle blocks. However, a reconciliation of the sales evidence referred to was not entirely clear to the Tribunal.

[36] In giving oral evidence at the hearing, Mr Ulrich confirmed that the concluding adopted values were based on his judgement as to the comparability of the subject property to his sales evidence. This explanation is accepted.

Stage 1 land (Area B9b)

[37] SGHU applies the two approaches in determining the ‘before’ and ‘after’ values, the Residual Method (the Hypothetical Subdivision Approach) and the Market Approach (comparable sales) for Stage 1 land.

Comparable development block land sales

[38] The development block land sales in table 8.1 are all 2019 to 2021 sales ranging in land area from 1828 m² to 10.0080 ha. The analysed \$/m² rates range from \$95/m² to \$1144/m². The reason for such a wide range is explained within the report and is attributable to location, size, and yields. We accept that reasoning.

[39] The developable land within the subject property is 3.3840 ha. The taken land is identified as comprising 1.9174 ha. The better sales comparisons around the size of the taken land and total developable land reflect \$/m² rates between \$145/m² to \$179/m², \$234/m² and \$405/m².

[40] The rates adopted by SGHU for a ‘before’ value and ‘after’ value for developable land within the subject property, which includes the land acquired is \$275/m² and \$270/m² respectively.

[41] These rates are consistent with the comparable evidence given the size of the land acquired which is developable. SGHU applies a much-reduced rate for

the gully, which is accepted by the Tribunal.

Residual Method – Vacant Residential Land sales

[42] The vacant residential land sales in the SGHU report are in the nearby Aurora Estate / Glenview area and are generally within the range of \$500,000 to \$520,000 and between 400 m² to 451 m² in size.

[43] In the wider Hamilton City area the sections sale prices are generally within the range of \$400,000 to \$500,000 with a few exceptions and section sizes generally between 300 m² to 600 m².

[44] The potential section values and sizes are included. The average section size for the 43 lots in Stage 1 land is 546 m² with an average developed and titled section value of \$558,000 (rounded) on a before basis and slightly less at \$554,000 on an after basis.

[45] The ‘after’ value for the potential three sections in the Stage 2 land is \$670,000 which represents an approximate 20% over the values of the smaller sections in the Stage 1 land. The Stage 2 potential section sizes are between 824 m² to 1,201 m².

[46] SGHU’s Residual Method is also set out in detail. This includes an analysis and interpretation of the market sales evidence in addition to the planning and engineering advice received in preparing the Hypothetical Subdivision analysis.

[47] For the Stage 1 land SGHU values are:

- (a) before valuation: \$10.7M
- (b) after valuation: \$10.5M

Stage 2 land (Area R9a, R9b, B9a pt B9b and B9c)

[48] For the ‘before’ scenario of the Stage 2 land, SGHU applies the Market Approach (comparable sales) based on the advice from BBO that Stage 2 land has limited development potential. The land is therefore valued as a lifestyle block.

[49] For the ‘after’ scenario, SGHU applies both the Residual Method (the Hypothetical Subdivision Approach) and the Market Approach (comparable sales) for Stage 2 land as a portion of the land after the works will be able to be developed into three lots.

Comparable lifestyle block land sales

[50] The before scenario for Stage 2 comprises an area of 4.64 ha.

[51] The vacant lifestyle block land sales shown in table 8.3 of the SGHU report are all 2021 and 2022 sales ranging in land area 5293 m² to 19.3295 ha. The sale prices of the blocks range from \$730,000 to \$2.8M. Of the available lifestyle block sales it would appear the sales in Marychurch Rd and Hoeka Rd, both being around 4.6 ha, would be the most comparable. These two sales sold for \$1.3M and \$1.571M, respectively.

[52] SGHU adopts a land value for the Stage 2 at a figure of \$2.04M which is greater than the two most closely related sales on land size. We accept there are other variables to be considered other than size. Mr Urlich has provided an overview of comparisons for a few of the sales in his report,³ however there is no detailed reconciliation of the sales line by line in relation to the Stage 2 land.

[53] SGHU applies another level of analysis to determine the land value for Stage 2 land based on it being a lifestyle block. He separates out the house site

³ Valuation Report for Compensation Purposes, dated 4 January 2022, by Mr D Urlich (‘Mr Urlich’s report’) at page 43.

which contains the bulk of the value in relation land size and then the land outside the house site at a residual rate.

[54] The house site is based on 5000 m² with a value of \$1.0M. The residual land, a mix of flat land and gully, are assessed at rates much less which is understandable.

[55] We consider the value adopted for Stage 2 land on the before scenario as a lifestyle block is considered on the generous side of values when compared to the sales in table 8.3 of the SGHU report.

[56] For the 'after' scenario where part of the land in the Stage 2 (B9a area) may support a three lot subdivision, and given the size of the three lots, the first two sales in table 8.3 would be the better comparables. These two sales sold for \$730,000 and \$850,000. Mr Ulrich also refers to the sales of the smaller section sales used for Stage 1 as a comparison acknowledging the inverse relationship between land size and analysed rate \$/m².

[57] The 'after' scenario for Stage 2 comprises an area of 2.7246 ha. This is segregated into a house site of 5000 m², gully area of 1.9180 ha and the level land identified as B9a of 3066 m² which is considered developable land for a 3-lot subdivision.

[58] For the developable land of 3066 m² the Market Approach (comparable sales) and the Residual Method (the Hypothetical Subdivision Approach) has been used.

[59] Under the Residual Method (the Hypothetical Subdivision Approach) the gross realisation sum for the three lots is stated as \$2.0M. As for the Stage 1 hypothetical subdivision model, the Stage 2 model includes other consultants, town planning and engineering cost advice, plus a reduced profit and risk allowance and a discount factor for deferment of the possibility to develop post the valuation date.

[60] Under the Market approach the value of the 3066 m² lot is assessed to be \$1.379M or \$450/m². After adjusting for deferment and injurious affection given its proximity to the proposed works the adjusted value under the market approach is \$1.2M.

[61] Acknowledging both approaches are generally accepted and relevant in assessing value, SGHU acknowledges there being a degree of uncertainty surrounding the quantum of budgeted costs and contingency allowances supplied by BBO.⁴

[62] The value of area B9a within Stage 2 of the subject property has been assessed as \$1.1M.

[63] Therefore, the concluded combined value of Stage 2 on the ‘after’ scenario is:⁵

House site	5000 m ²	\$ 800,000	
Gully land	1.9180 ha	\$ 96,000	
<u>Area B9a</u>	<u>3066 m²</u>	<u>\$ 1,100,000</u>	
Total ‘After’ value of Stage 2 Land		\$ 2,000,000	(rounded)

Improvements values

[64] There are improvements on the subject property comprising the main dwelling, ancillary dwelling, other buildings, and other improvements plus chattels which are not on the land acquired. Without going into detail on the individual improvements, SGHU provides an added value of each of these improvements. The figures applied are accepted by the Tribunal for the purpose of his valuation.

[65] We note that SGHU has applied an injurious affection discount which in

⁴ Mr Urlich’s report, at page 47.

⁵ Mr Urlich’s report, at page 48.

turn decreases the ‘after’ value and increases the amount of compensation payable. The injurious affection discount reflects the improvements being located close to the proposed works. Injurious affection applied to the other buildings, other improvements and the chattels is considered liberal but accepted.

[66] In conclusion, the amount of compensation payable as assessed by SGHU in the first valuation is \$455,000, represented as:

Before Market Value (GST inclusive)	\$	13.875M
<u>After Market Value (GST inclusive)</u>	<u>\$</u>	<u>13.420M</u>
Total Compensation Assessed	\$	455,000

Affidavit dated 6 September 2023: Valuation 2

[67] A second updated report was completed by SGHU dated 9 August 2023 to allow for compensation to reinstate the driveway off Hall Rd to the main and secondary dwelling. A plan by BBO details the location of the ‘new’ driveway to access both dwellings.

[68] SGHU has also relied on costings provided by BBO for the formation of the driveway which amounts to \$313,835 (including GST). SGHU make a further 20% increase to the costing to allow for project management risk.

[69] Ideally a project would be completed on time and to budget to fulfil its goal. However, the Tribunal considers that given the history of challenges working with the respondents it would seem fair and appropriate in this instance to make a further allowance in anticipation of the issues that may arise between the Council and the respondents.

[70] With the actual project cost covering the preliminaries, planning, infrastructural and contingency of \$313,835 plus an additional 20% risk management allowance of \$62,767, the compensation sum for the reinstated driveway came to \$376,602 or \$380,000 (rounded).

[71] Thus, the compensation figure after the second valuation increased from \$455,000 to \$835,000 (including GST).

Affidavit dated 29 September 2023: Valuation 3

[72] A third updated report was completed by SGHU dated 29 August 2023.

[73] The purpose of the third updated report was to allow for a sliver of the respondents' property that was being acquired. The sliver of land was identified as being part of Stage 1 of the PSP and not Stage 2 of the PSP as originally advised and acted upon by SGHU.

[74] The existence of that sliver of Stage 1 land became apparent at the hearing although the total area of the sliver was not apparent. The Tribunal directed further statements of evidence from Messrs Bigwood and Urlich as to the valuation and planning and valuation implications (if any).

[75] As to that, Mr Urlich relied upon Mr Bigwood's conclusions that:

- (a) the sliver was in Stage 1 area under the ODP and is in the Peacocke Precinct (formerly Stage 2) under Plan Change 5 ('PC5'). Within the Peacocke Precinct the sliver is in a Natural Open Space zone;
- (b) at the date of the valuation, any resource consent application for a subdivision would be required to be assessed under both the ODP and PC5;
- (c) the sliver contains ecological values that would have engaged the objectives and policies within the Natural Environments Chapter of the ODP. Therefore, it is unlikely that the sliver could provide an additional three lots increasing the subdivision size from 43 lots to 46 within; and
- (d) similarly, under PC5 the possibility of the sliver land obtaining consent for subdivision was less likely because of the known bat habitat within the sliver area.

[76] The potential subdivision of the land, of the which the sliver is part of, remained unchanged in the updated valuation.

[77] To conclude, the SGHU assessment of compensation remains at \$835,000 including GST.

The respondents' valuation – Mr Jeff Alexander of Silverton Alexander

[78] It was unfortunate Mr Alexander was not present at the hearing as an expert witness to address his valuation report. His report was submitted as an exhibit included amongst the Council's evidence, although it had previously been made available to the Council and SGHU.

[79] The Silverton Alexander valuation report is effective as at 5 August 2019 with an addendum dated 28 February 2020.

[80] The report contains two valuation assessments, one on the basis the Council acquire the entire property and the other for the designated land to be acquired. The report also includes the impact on adjoining properties owned by the respondents.

[81] The addendum provides assessments under four separate scenarios excluding the impact on value of the adjoining property owned by the respondents.

[82] Scenario 1 assesses the value for the entire Lot 515 (9.7120 ha) which establishes a 'before' value for the land from which the designated land is acquired.

[83] In Scenario 2 of the addendum the compensation payable has been assessed based on partial acquisition (1.9174 ha) of Lot 515 and is assessed as being the difference between the 'before' value under scenario 1 and the 'after' value of Lot 515.

[84] The 'after' value for Lot 515 has been assessed identifying two different

areas identified as Area D and Area H as shown in the addendum.

[85] Area D is valued at \$5.6M + GST (if any). This is based on a 40 lot potential subdivision.

[86] Area H is valued in the addendum and has been assessed at \$170K. The land has been valued as block land as added value to a larger block and gully land. The assessment of Area H does not consider any subdivision potential of the land.

[87] To compare and measure the two valuations on a parallel footing we have focused on the compensation assessment for the partial land acquisition being the designated land by Silverton Alexander as in scenario 2.

[88] The compensation assessed by Silverton Alexander for the designated land comprising 1.1974 ha under scenario 2 in the addendum is \$3.97M + GST (if any).

[89] We note that the Silverton Alexander report details three titles which are owned by the respondents. Only one of these titles is designated. That is the property at 143 Hall Road (Lot 515) comprising an area of 9.7120 ha as shown on Record of Title Identifier 726332.

[90] Silverton Alexander has based its valuation for the subject property on the reliance of planning advice from Mitchell Daysh. That advice is that the eastern portion of 143 Hall Road would be zoned to enable subdivision to rural residential densities (5000 m²) as an interim measure before development at urban densities.

[91] The Silverton Alexander report includes a plan depicting the areas of land referred to be Mitchell Daysh. These are included in the compensation assessment. These are Area A and Area B of 143 Hall Road (Lot 515).

[92] On his 'before' value basis, the assessment is based on all of Area A being considered ripe for a 50-lot residential subdivision, whereas Area B is considered ripe for a 11-lot rural residential subdivision.

[93] For Area A the hypothetical subdivision model shows 51 lots which conflicts with the yield to be 50 lots. The difference of one lot is the drainage lot to which a value has been assigned.

[94] For the smaller lots within Area A, the report notes that lots have been selling in the Stage 1 area of Peacocke in recent times for between \$340K to \$365K and 421 m² to 534 m².

[95] That sales evidence is set out in the report, although there is no clear reconciliation of that evidence back to the subject property. For gross realisable values of the smaller lots, the report used \$360K to \$370K per site which as at the top end / slightly above the comparable sales range.

[96] The larger rural residential lots in Area A have been assessed at \$395K / lot which reflects their larger size and gully aspect.

[97] The added value of the gully land has been assessed at \$6.50/m² for an area of 2.7 ha.

[98] Silverton Alexander allowed for the cost elements in the model to calculate the development potential associated with the land.

[99] Under the Hypothetical Subdivision analysis, the Current Market Value for Area A is assessed at \$7.65M plus GST (if any) = or \$166/m² over developable 4.5 ha (excluding the gully).

[100] In comparing the analysed value of \$166/m² the report draws evidence from two comparable blocks sales, one at 71 Dixon Rd which analysed out to \$145/m² and one at 126 Horsham Downs Rd which analysed out to \$250/m².

[101] In the first report, the 'before' value for Area B included land outside Lot 515 which is the title from which the designated land has been taken. That was readdressed in the addendum. The area is shown as Area G in that addendum. In

the original valuation for Area B which included land outside Lot 515. That was based on an 11-lot subdivision. Although scenario 2 for Area G as a 'before' value has a reduced to a 5 lot yield, the evidence used for both was the same.

[102] The lot values for Area G are between \$550K to \$625K, which line up with the comparable vacant sales evidence used by Silverton Alexander around the Matangi / Windmill Road areas which were typically under \$600K.

[103] As for the other hypothetical subdivision models used the report has applied the elements of costs. In comparing the models between Areas A and G ('before'-values) we note the profit and risk allowance has been reduced from 25% to 17.5% and the subdivision costs from \$82,000 / lot to \$52,000 / lot (rounded) respectively. This is understandable given Area A is for 50 lots and Area G for 5 lots.

[104] For the 'before' value for Area A this remained unchanged as in the initial report at \$7.650M. However, Area G which was not assessed in the initial report, has been assessed at a revised assessment under the Hypothetical Subdivision method on 5 lot rural residential subdivision.⁶ The revised value for Area G being \$2.090M + GST (if any) includes an allowance for improvements on Area G.

[105] Therefore, the 'before' value for Lot 515 is assessed at \$9.740M + GST (if any).

[106] For the 'after' value of Lot 515 Mr Alexander has started with the value for Area D (being the land to the northern and southern parts of Lot 515) as assessed in his original report being \$5.6M + GST (if any).⁷

[107] Area H (being the land to the eastern part of Lot 515) was not assessed in his original valuation. The valuation for Area H has been based off a scheme plan

⁶ As shown in the Silverton Alexander Valuation Addendum, dated 28 February 2020, at page 3.

⁷ As shown in the Silverton Alexander Valuation Addendum, dated 28 February 2020.

consistent with the report from Mitchell Daysh.

[108] With Area H which is to the south of the designation / land taken the prospect of subdivision is considered less a certainty in comparison to the ‘before’ value. The reasons for that being the shape of the 3066 m² flat land and its wide frontage to a major road at the completion of the works. The ‘after’ value for Area H has been taken at the same rate as that used in Mr Alexander’s initial valuation, that being \$40/m².

[109] Similarly, for the gully land to the north of the designation, Mr Alexander has been consistent with the rate used in his initial valuation, that being \$6.50/m².

[110] The ‘after’ value for Area H is assessed at \$170,000 + GST (if any).

[111] In conclusion, the amount of compensation payable as assessed by Silverton Alexander in Mr Alexander’s first valuation and updated addendum for the land taken from Lot 515 shown as Scenario 2 is \$3.97M + GST (if any), represented as follows:

Before Value (GST exclusive)	\$	9.740M
<u>After Value (GST exclusive)</u>	\$	<u>5.770M</u>
Total Compensation Assessed	\$	3.970M

Significant difference between the valuers’ assessments

[112] The Council’s valuer assesses compensation payable to be \$835,000 including GST (if any) after adjustments from the original valuation compensation assessment of \$455,000. The adjustments allowed for reinstating the driveway to the dwellings and considers the impact of a sliver of land that should have been part of Stage 1.

[113] The respondents’ valuer assesses compensation under scenario-2 of their valuation addendum dated 18 February 2020 being the partial acquisition of the

land payable to be \$3.97M plus GST (if any).

Main reason for differences between the valuers' assessments

[114] The main reason for the significant difference between the respective parties' valuations is the planning advice the valuers have relied on.

[115] The subdivision potential of the land 'before' and 'after' has a considerable influence on the values so assessed by the two valuers.

Before values

[116] SGHU has assessed a value based on the land to the western side of Lot 515 being suitable for a 43-lot subdivision and the land to the eastern side not being suitable for subdivision.

[117] Silverton Alexander has assessed a value based on the land to the western side of Lot 515 being suitable for a 50-lot subdivision and the land to the eastern side being suitable for subdivision.

After values

[118] The SGHU valuer has assessed a value based on the land to the western side of Lot 515 being suitable for a 43-lot subdivision and the land to the eastern side partly being suitable for subdivision.

[119] Silverton Alexander has assessed a value based on the land to the western side of Lot 515 being suitable for a 50-lot subdivision and the land to the eastern side being suitable for subdivision.

Which of the two valuations should be relied on for the purpose of this case?***The Valuers***

[120] Both valuers are Hamilton based registered valuers, well respected, qualified, experienced and competent for the purpose of valuing for the assessment of compensation.

The Valuation reports

[121] Both valuation reports have merit given the guidelines and assumptions relied on from external consultants forming the basis of their assessment.

[122] Both valuation reports have been completed in accordance with International Valuation Standards and Australia and New Zealand Valuation and Property Standards particularly those for Compensation and Compulsory Acquisition.

[123] The valuers have applied accepted approaches in their methodology in determining the values in using both the Hypothetical Subdivision Approach or Residual Method and the Market Approach using comparable land sales as a comparison.

[124] Both valuers have applied a before and after method in determining the partial acquisition of the land acquired.

[125] The 'before' valuation is the value of the total property, as unaffected by the land acquired, which is then compared to the value of the remaining property after the acquisition known as the 'after' value.

[126] The difference between the 'before' and 'after' valuations assists in determining the compensation payable. The effects of injurious affection (disturbance) were considered in the valuation assessments on the retained land

ignoring the works. No betterment (enhancement) value was assessed.

Effective date of the valuations

[127] SGHU has valued the affected land as at 4 January 2022 which is the date of the proclamation taking the land under the PWA.

[128] Silverton Alexander valued the affected land as at 5 August 2019.

[129] The correct date for a valuation is the date of the proclamation being, 4 January 2022.

The Planning Advice

[130] The planning advice underpins the valuations and militates heavily on the amount of compensation payable so determined. We find the planning advice from BBO to be more appropriate as the strongest match in line with the ODP provisions.

[131] Mr Bigwood responded to the assessment prepared by Mitchell Daysh in his affidavit filed in support of the application. That evidence focused on the Mitchell Daysh assumptions that an area of land comprising 1.2097 ha on the western side of the gully that was taken by proclamation would have been within Stage 1 had it not been covered by the designation.

[132] Absent the prospect of the works, Mitchell Daysh consider that the subject site would be zoned for residential development providing for 5000 m² lots from around the year 1990.

[133] Mr Bigwood sets out the reasons for relying on the BBO planning advice in preference to that of Mitchell Daysh which in summary are that:

- (a) the geographical position of the land is not the only consideration.

Natural characteristics (such as being prone to flooding) and constraints to servicing the land are more compelling. Additionally, given the development of the land and the gully land adjoining, it is conceivable that the land may have been identified by Council for other uses such as for a reserve or stormwater management area but for the designation;

- (b) it is purely speculative to say that the land would have certainly been Stage 1 residential land but for the designation. The ODP included this land within Stage 2 which in Mr Bigwood's opinion is the best and only indication of the intent for the future use of the land reliably available to any valuation.

[134] Mr Bigwood also responds to the Mitchell Daysh hypothetical scheme plan of five 5000 m² lots of the land in Stage 2 on the southern / eastern side of the gully upon which Silverton Alexander have based its valuation / compensation assessment. That was based on land being rezoned as an interim measure before development to urban densities.

[135] However, Mr Bigwood states that there is no factual basis to support that proposition. The Tribunal agrees.

[136] This scenario conflicts with the current and previous districts plans which provide for just one additional 5000 m² lot to be created on the subject land. This was explained as deliberate protective measure to protect the wider area from fragmentation given the Peacocke area was identified as far back as 1989 for future growth of Hamilton City. This protective approach was established prior to the designation and continued thereafter.

[137] For the assessment of compensation in this case we accept the planning advice of BBO in preference to that of Mitchell Daysh.

Why the SGHU valuation is considered applicable and appropriate for determining the sum of compensation in this case

[138] The effective date of the valuation is the date of the proclamation, being 4 January 2022.

[139] The SGHU valuation applies the correct planning advice in determining the compensation.

[140] The valuation provides extensive land sale comparables and detailed hypothetical subdivision models.

[141] The compensation sum assessed is the 'Full Compensation' sum which is not only the market value of the land taken, but also the value of the land to the respondents which will fairly and adequately compensate them for their loss to include:

- (a) the value of the land taken;
- (b) the net loss in value of the severed or remaining land;
- (c) injurious affection or disturbance losses; and
- (d) no betterment sum has been allowed which would reduce the compensation payable.

Other matters

[142] At the hearing the respondents requested the opportunity to present submissions in writing following the conclusion of the hearing, and after receipt of the updated valuation report addressing the Stage 1 sliver, the presence of which had only emerged during the course of the hearing.

[143] The Council took no objection to that despite observing the unorthodox nature of the approach sought to be taken by the respondents, provided that it could file reply submissions. The Tribunal granted the respondents that

indulgence. Submissions were duly received, followed by the Council's reply.

[144] One of the matters raised by the respondents included allegations that the Council was responsible for spreading alligator weed over hundreds of kilometres around the Waikato and Bay of Plenty, *inter alia*.

[145] All allegations were refuted in the Council's reply. Of relevance, the Council noted there was no evidence relating to the presence (or not) of alligator weed on the respondents' land.

[146] Counsel made the further point that any deductions under s71 PWA whether related to alligator weed or otherwise are to be determined at a later date. The Tribunal accepts that submission and proceeds on that basis.

[147] In their submissions, the respondents had also addressed the level of compensation based on the Council's proposed driveway design which was based on a chip seal finish. The respondents contended that the driveway should be finished with hot mix and an additional sum of \$1 million was sought for that. No evidence was provided to support that additional claim.

[148] In the reply, the Council pointed to the attempts made by the Council to address access and accommodation issues over the years, none of which were responded to. These many attempts were explained in the evidence of Mr Parsons which the Tribunal acknowledges and accepts.

[149] The Council designed the driveway without input from the respondents. However, counsel advises that a change to a hot mix surface can likely be accommodated within the substantial contingency allowances within the cost estimate from Mr Gibbons and SGHU valuation. The Tribunal accepts that submission.


[150] Accordingly, the Tribunal declines to make the adjustment to the cost of the alternative driveway access sought by the respondents.

[151] Finally, the Tribunal notes that many other matters were raised by the respondents in the submissions, including attempts to re-litigate the decision to take the land. These submissions were addressed by the Council's reply. The majority of matters raised by the respondents lack merit or are irrelevant to the question we are to decide. We accept the Council's reply to the same.

Conclusion

[152] The Tribunal finds that the SGHU valuation should be applied in this instance in determining compensation payable.

[153] We therefore determine the compensation payable being \$835,000 including GST (if any).



P A Steven
Chairperson of the Land Valuation Tribunal



V Winiata
Land Valuation Tribunal Member

