



# On council's duty of care

*PIMs, LIMs and historical records.*

**THE COURT SAID COUNCILS WERE REQUIRED TO DISCLOSE INFORMATION IN THEIR RECORDS, EVEN THEIR HISTORIC RECORDS.**

**D**oes the council owe a duty of care when issuing a project information memorandum (PIM)? Is the council required to disclose information from historical records? These questions were answered in a very recent decision of the High Court: *Monticello Holdings Ltd v Selwyn District Council* [2015] NZHC 1674.

At the centre of the case was an allegation by a developer that the council was negligent in failing to disclose the existence of a former town dump on land it had purchased to develop into a residential subdivision.

In 2005 the developer purchased a parcel of land in Leeston. The sale and purchase agreement contained a land information memorandum (LIM) condition and a clean LIM was obtained.

In 2007 the developer entered into an agreement to purchase the neighbouring land (the Cooper land). The developer did not obtain a LIM for the Cooper land. Between 1926 and 1965 the Cooper land was owned by the council's predecessors who used part of the land for the town rubbish dump.

Later the developer submitted a resource consent application to subdivide the Cooper land into two lots. One of the lots was to be amalgamated with the parcel purchased in 2005. The amalgamated land is referred to as "the land". The other lot was retained by Mrs Cooper.

The developer then applied for and was granted resource consent to subdivide the land into residential lots. The consent included a condition that any hazardous sites found would be remedied by the developer.

In 2008 Mrs Cooper obtained a PIM for some sewer works. It made no reference to any hazardous material.

The developer subsequently discovered the old town dump on the former Cooper land.

A year later the developer applied for (and was granted) another resource consent.

The consent included a condition that the contaminated land be remediated. The cost of remediating the land was estimated to be more than \$800,000.

The developer alleged that the council owed a duty of care to (a) record contamination on PIMs; (b) record contamination on LIMs; and (c) not issue resource consents for land the council knows, or ought to know, is contaminated.

The court found that:

- The council owes a duty of care on the issue of a PIM but its responsibility does not extend to third parties. The only person entitled to obtain the PIM in question was the neighbour, Mrs Cooper, and it was solely for the sewer works and not the broader subdivision.
- The council cannot be liable in relation to a LIM because no LIM was obtained by the developer for the Cooper land.
- The council did not owe a duty of care to the developer to furnish it with information when it issued the resource consent. The council was entitled to rely upon the information before it.

The other interesting issue was the state of the council's knowledge about the town dump. The court was not impressed with the council's argument that just because the predecessor councils knew about the dump, that did not mean it did. The court said councils were required to disclose information in their records, even their historic records.

It is interesting to speculate on what the court would have done if Mrs Cooper had obtained a PIM to build on the town dump and shared that information with the developer. In that situation it is likely the developer could have relied upon the PIM.

If the developer had applied for a LIM for the Cooper land and it did not disclose the former town dump it is likely the council would have been in serious trouble. **LG**