



# Get it right

*The paramount importance of accuracy in LIMs.*

**THIS CASE  
DEMONSTRATES THE  
UTMOST IMPORTANCE  
OF ENSURING THE  
ACCURACY OF  
THE INFORMATION  
CONTAINED IN  
ALL LIMs.**

The contents of a land information memorandum (LIM) report in respect of land which subsequently suffered a slip was carefully considered in a recent High Court decision called *Henry & Ors v Auckland Council* [2014] NZHC 435.

In October 2006, Mr Henry and Ms Tan entered into a sale and purchase agreement for a property at 114A Clovelly Road, Bucklands Beach, Auckland. The agreement was conditional on Mr Henry and Ms Tan obtaining and being satisfied with a LIM report. The property had been part of a larger section until it was subdivided in 2004 to create two sections, 114 and 114A. Prior to the approval for the development being granted, the previous owner and the council had obtained various geotechnical reports.

The development proposal was approved and work began. After work had started, land movement and cracking was observed to the neighbouring property. The neighbour brought enforcement action stating the development work at 114 and 114A Clovelly was the cause.

Further geotechnical advice was obtained and reports were completed by engineers engaged by the neighbour, the council and the owner of 114 and 114A Clovelly.

Ultimately, the council and the council's engineer concluded the geotechnical issues at the property were resolved. It was also concluded at that time that the contents of any LIM reports issued in future should include information about the geotechnical issues contained in the geotechnical reports.

The wording of the notation to be included on any LIMs issued in the future was developed by the council in consultation with the geotechnical engineers involved and the council's solicitors. The wording was also agreed to by the solicitor acting for the owner of 114 and 114A Clovelly.

This wording was included in the LIM

report obtained by Mr Henry and Ms Tan. It referred to the deep piling and retention work installed at the site for the purpose of avoiding structural failure of the dwelling. It highlighted that geotechnical reports existed and were available for inspection.

Mr Henry and Ms Tan settled the purchase of the property in November 2006. In August 2008, a landslide occurred resulting in the house at 114A Clovelly being demolished.

Mr Henry and Ms Tan sued the council for negligence saying that the notation on the LIM was misleading and gave them a false assurance about the stability of the land.

The council defended the claim on various grounds including the following:

- The LIM notation was accurate.
- The council acted reasonably in obtaining geotechnical and legal advice when developing the LIM wording.
- Mr Henry and Ms Tan would have acted the same had the LIM been worded differently.
- The slip was an intervening cause of Mr Henry's and Ms Tan's loss and could not be attributed to the council.

The council succeeded in defending the claim. The council established that different wording in the LIM would not have had any impact on Mr Henry's and Ms Tan's actions. Further, the court found that the slip was an intervening cause which was not attributable to the council.

Importantly though, the court found that the council's LIM notation was negligent. The court held that the LIM notation failed to clearly and equivocally inform potential purchasers of the special feature of the land, namely the potential for slippage.

This case highlights the spotlight that will be shone upon the wording incorporated in council LIM reports and it demonstrates the utmost importance of ensuring the accuracy of the information contained in all LIMs. **LG**