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NEW ZEALAND INSTITUTE OF VALUERS

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Contributions with a biographical note of the author should be typewritten and sent to the Editor, P.O. Box 27146 Wellington, who reserves the right to accept, decline or modify material. Views expressed by the Editors and contributors are not necessarily endorsed by the New Zealand Institute of Valuers. Copies of manuscript should be retained by the author as they cannot be returned. Deadline - 2 months prior. Business letters, subscriptions and advice of changed address should be set to the General Secretary, The New Zealand Valuer 1986 ©. The mode of citation of this volume of The New Zealand Valuers' Journal is - [1986] N.Z. Val. (page).

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Contents

Who Were "The Valuers" A 21st Century View

Well, they were those people ... you know ... don't you? Come on, explain just who ... define them accurately if you can? OK ... let me see now, ... here's a go ...

Defn:

> "An exclusive Association of some 2,000 souls, more or less, including novices, domiciled in two South Pacific islands (LAT. 33°-53°S, LONG. 167°--178°E.) dedicated to the monopoly of appraising parcels of the earth's crust and manmade constructions thereon in accordance with their perceived needs of the residents of Aotearoa, as ascertained during the IVth Decade of the 20th Century, but disappearing about the year 2000".

What happened to them?

Well that's a sad story . . . if you have a little patience I'll tell you.

"The Valuers" was a logo coined by this Association in the 1980s in advertising which emphasised their independence and specialised narrow experience. They had been in existence for about 50 years prior to that, calling themselves an Institute which had been protected by an Act of Parliament which also "registered" them as being able to offer appraising (or valuation) services to the public of the day. This service was virtually solely related to land and buildings.

During the latter part of the 1980s rapid changes came about in the political, economic and social fabric of the country which created a challenge to meet new levels of competition for their traditional services primarily from other professionals accountants, property managers, real estate consultants, investment analysts and others. In addition there was the increased demand for appraisals of businesses, shares, plant and machinery, chattels, securities, fine art and other forms of investment which really should have been acknowledged as in "The Valuers" sphere of endeavour.

The political climate was one of ushering in wide sweeping economic restructuring with the breaking down of monopolies, removal of protectionism, the privatisation of traditional Government activity, increased consumer rights, the explosion of private capital creation and multiple financial services, share market activity, property development and investment together with the decline of the rural based industries.

"The Valuers" saw their traditional hold on their marketplace being eroded, but failed to see the solutions to their continued survival in diversifying to meet the multi-disciplinary demands in the emerging markets. Many, unfortunately, were still so busy coping with servicing their traditional clientele that they failed to prepare for or adjust to the changes taking place around them and which eventually overtook them.

As "valuers" they had tunnel vision - and refused to recognise any other than land and building valuers as being worthy of their association and designations. For many years prior to that they had their own internal education programmes, but when these became a burden for them and that function was taken over by the Universities - their specialist "valuation" discipline was lost in the wider area of property management and consultancy and to the domain of the investment analysts. The new breed of graduates who were potential recruits and novices for their market niche were more widely qualified and attracted to other dynamic associations who encompassed the whole range of property and investment skills. Land and building appraisals became a side-line to the new breed of professionals who sought a multi-disciplined working environment and professional cadre to belong to.

Thus the property management and real estate people banded together and largely provided that environment which later encompassed also the land surveyors and quantity surveyors under an enlarged umbrella organisation.

"The Valuers" however, kept on promoting even harder their singular purpose, advertising campaigns designed to convince people that they needed their particular brand of appraisal and refusing to amalgamate with other property people with whom they saw such a marriage as being down grading, repugnant and riding rough-shod over their sacred ground! Eventually they were isolated. Their numbers at first levelled off then declined as new recruits were unattracted to their narrow discipline. The more progressive left their ranks and joined the emerging multi-disciplined cadres and the remainder lost heart and enthusiasm, servicing the declining volume of business from clients who were loyal to them.

Other important factors included the privatisation of Government valuation and property administrative services into the land corporations who employed those from the multi-disciplined investment management cadres either as consultants or on their staff. This swept a large number of their ranks away in the 1990s. The creation of a computerised land database (LINZ) in the late 1980s provided other professionals and the public with a fast and accurate property database, together with computer based price projections which undermined the valuers' tools of trade and some of their market and mortgage security valuation day to day services. In addition the effect of the Commerce Act of 1985 and the Commerce Commission was also profound declaring many of their codes of ethics and practice, method of registration and structure as being restrictive of open competition and not a fair trade practice. They never recovered from these body blows and by the mid-1990s the residue membership realised their plight with some who were close to retirement choosing that option while others lingered on in small firms of ones and twos. The balance who had taken the precaution of earlier also joining one of the other property related professional groups in the 1970s and 1980s, simply changed allegiances, finding it was more appropriate to undertake their valuations when necessary as an adjunct to the wider business of investment and property generally.

Had "The Valuers 7, when they had the opportunity in the mid-1980s, widened their scope, bringing in *all* valuers in allied areas of skill and endeavour, together with opening up their organisation into a multi-disciplinary one - they just might have been an effective catalyst for the amalgamation of kindred property and investment related professions in the 1990s, instead of failing to adjust to the competition.

P.S. Editorial Note: This scenario was contributed by Rodney L. Jefferies in the hope that it will be proved wrong.

The annual meeting of 1989 will mark the fiftieth anniversary of the formation of the New Zealand Institute of Valuers. Throughout those fifty years there has been little change to the structure of the Institute, and yet the environment in which we all work has undergone rapid and what could even be described as revolutionary changes to the market place and business world. As recently as 1980 would anyone have forecast a business world which demanded the abolition of scale fees, encouragement of professionals advertising their services and special skills, and a public who believed that the professional was not only challengeable but was culpable for any loss sustained by virtue of the inadequacies of their advice. Many of these changes have been led by central government and the professional bodies while conforming have generally been slow to react much preferring the retention of the status quo. Your Institute has been no better, nor worse than any other of the professional bodies. We have moved quickly to abolish a regime of scale fees. We have moved more slowly to amend our code of ethics to allow freedom of advertising. We and central government have moved even slower in our review of The Valuer's Act, an act that was put in place in 1948 and is now very much dated. A review of the Act was commenced three years ago and I would suggest that even that review will contain very much which is irrelevant under today's expectations of the profession. There is much about the structure of the profession which is cumbersome and out of context with a free market. I question the need for a continuation of the Registration Board as a separate entity to the Institute. The protection of the public interest which was a paramount consideration in the formation of the board could equally as well be handled by the Institute in the areas of education and in admittance to practice. There is in our present environment demand for a disciplinary body that is and is seen to be removed from the profession itself comprising lay persons, a solicitor and Institute appointees. We as an Institute should also consider an end to the compulsory membership provisions. In return for your Institute being masters of the profession's destiny the Institute must be prepared to attract and retain members by virtue of the benefits that the Institute conveys to its members. I believe your Institute can stand on its own feet and to the benefit of all its members. The future of the profession should be directed by the membership through their elected representatives on Council of the Institute.

Graeme Horsley

Pan Pacific Congress (1988) - New Zealand

The Pan Pacific Conference will be held in the Christchurch Town Hall commencing on Sunday on 20th March 1988 through to Friday the 25th March 1988.

The Conference programme is currently being finalised and should contain a wide range of subjects of interest to all members both practising and in the public sector.

The rules of the Pan Pacific Congress have been altered to enable speakers from outside the profession and the Committee is working towards obtaining speakers of note from the contributing countries and beyond.

LETTERS TO THE EDITOR

Sir

RE: METRICATION

The writer of this letter has today written to the Metrication Board expressing concern over the delay which is taking place amongst my compatriots in converting Valuation reports from square feet to square metres and rates per square foot to rates per square metre. I would suggest that it is time that our industry fell into line with the rest of New Zealand and expressed our reports in a form which is compatible with the future.

Yours faithfully

GRAEME BERRYMAN A.N.Z.I.V.

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Set up in 1980 at the University of Auckland to facilitate interdisciplinary (mainly Accountancy, Architecture, Property Administration and Town Planning) research, the Urban Research Unit has been closely involved in housing policy analysis, urban problem solving, management information systems and the use of demographic data in project formulation.

The Unit is available to undertake contract research in related fields, drawing on the pool of wide ranging skills which exists within the University.

Organisations interested in the work of the Unit or in making use of its interdisciplinary. research resources should contact:

Dr Martin Putterill
Director
Urban Research Unit
Auckland University
Private Bag
AUCKLAND

Mock Arbitration

Editor's Note:

The umpire is in total control of the proceedings. Although some arbitrations are held in a very formal atmosphere with the parties represented by Counsel the vast majority are held on an informal basis. On many occassions the parties do not wish to appear or make submissions, and only the three "Valuer" appointed arbitrators and umpire attend.

This arbitration was conducted in a relatively informal manner; the lessor's arbitrator first making his submission, and the lessee's arbitrator having the right to question him or make statements. The lessor (present at the hearing) was then invited to make submissions. Submissions were not made under oath.

The procedure was then reversed for the lessee's arguments to be presented and a further question period followed.

The arbitrators were then invited to sum up in reverse order, lessee then lessor and the hearing was then at an end.

The degree of interjection staged by the partitipants would not be tolerated by an umpire; nor would he tolerate any other tactic designed to confuse or disrupt the proceedings. The advocacy stance and aggressive approach staged by the arbitrators is not untypical where the parties to the arbitration are present but they have no place in properly presented submissions by valuer arbitrators.

The umpire would visit the property and the relevant evidence presented by the arbitrators before making his award; he would probably append an explanation or annex to the award explaining his decision.

- John Hudson's. Introduction

The Speakers in the mock arbitration were:

John Wall - Commentator - In private practice in Wellington as a partner of Gellatley, Robertson & Co. He is principally involved in commercial and industrial valuation work. John has a Diploma in Urban Valuation, is a Fellow of the New Zealand Institute of Valuers, is a fellow of the Chartered Institute of Arbitrators and a Member of the Property Management Institute.

Peter Young - Umpire - Is in private practice in Auckland as a partner in the firm of Mahoney, Young & Gamby. Peter is principally involved in commercial and industrial valuation work and holds a Diploma of Urban Valuation, and a BCom. He is a Fellow of the New Zealand Institute of Valuers and is a Member of the Property Management Institute.

Peter Mahoney - Arbitrator - Is also in private practice in Auckland as a Partner in the firm of Mahoney, Young & Gamby and is also involved principally in commercial and industrial valuation work. Peter has a Diploma in Urban Valuation, is a Fellow of the New Zealand Institute of Valuers and a Member of the Property Management Institute.

Rod Jefferies Arbitrator Is in private practice in Auckland as a Partner in the firm of Barratt-Boyes, Jefferies, Laing & Partners. Rod is also principally involved in commercial and industrial valuation work, has a Diploma in Urban Valuation, has a Bachelor of Commerce and Administration Degree, is a Fellow of the New Zealand Institute of Valuers, and a Member of the Property Management Institute.

John Wall Peter Young Rod Jefferies

MOCK ARBITRATION COMMENT

Introduction

In this mock arbitration the umpire, Sir Peter Young, is going to outline the arbitration procedure to you so I shall open with some general remarks on arbitration.

Most learned umpires have grey or white hair - Sir Peter is the exception.

Other parties comprise:

Peter J. Mahoney for the Lessor
R. L. Jefferies for the Lessee

In accordance with the procedure that I would recommend at arbitration, the arbitrators have given both the Lessor and the Lessee the opportunity to be in attendance at the arbitration and/or give evidence. Mr G. J. Horsley of the Horsley Charitable Trust who owns the land is in attendance as is Mr Graham Foster of Foster's Fertiliser Company Limited, the Lessee of the land.

Most valuers are familiar with the remedies that are available to settle differences in valuations in the Court system which comprises the Small Claims Court, which is not normally used for valuation matters, Land Valuation Tribunals, established in various districts throughout New Zealand, the High Court (Administration Division) and the Court of Appeal, with these latter two situated within the main cities of New Zealand.

Courts of Law have their clear and established functions where valuers are called upon to give expert evidence, which all too often is constrained by the law. Arbitrations in respect of valuation matters are dealt with in a considerable number of instances entirely by valuers acting in the capacity of arbitrators, witnesses and umpires.

This arbitration procedure where arbitrators and the umpire are all valuers has distinct advantages in that all parties are aware

of the procedure, the law associated with valuation, and the range of aspects that must be covered in order that the umpire can arrive at an impartial and correct decision.

Arbitrations are a method of settling a dispute between two parties who mutually agree to submit it to a third person, in whom both have confidence, and who undertake to abide by the decision of that person.

In more formal language, an arbitration is the submission of a dispute between two parties for a decision of a third party of their own choice.

The third party is appointed by mutual agreement in writing and strictly in accordance with the terms that give the arbitrators the power to make such an appointment.

Arbitrations can range in formality from the less formal arbitration where only three parties comprising the two arbitrators and umpire are present, to the more formal arbitrations whereby legal counsel is employed and witnesses are called with the latter situation similar to a court proceeding.

In general terms arbitrations are quicker, less expensive to the client, and more confidential than court action, and the result is equally as binding.

But what about this particular arbitration?

When I first read the programme showing the parties to the ground rental arbitration, I though this cannot be correct, Peter Mahoney is a Lessee's valuer, and Rodney Jefferies is a Lessor's valuer.

What I had automatically done was a similar process that is in the minds of most of our clients. I had labelled each valuer according to the type of client he has acted for in the past.

Our clients tend to go even further in the selection of a valuer, particularly for ground rentals. They engage the valuer who they consider will achieve the best result for them whether they be the Lessor or the Lessee.

So, like it or not, with ground rentals, you as valuers have been labelled, no matter how impartial you consider you are.

This employment of valuers who traditionally act for one party or the other is why there are at times such variations in the level of ground rental offered by the Lessor and generally initially rejected by the Lessee.

It is the reason why valuers have a variety of past arbitrations to study, and also the reason why ground rental arbitrations are so prolific.

In spite of these comments, be they a little cynical, I believe that if two opposing valuers or arbitrators have a genuine mutual desire to arrive at a result without arbitration, they will.

However, there must be one other essential ingredient and that is a similar desire on the part of the Lessor and the Lessee that their arbitrators should settle the ground rental.

From these comments it should be clear to you that I am here as a valuer, and not really from the Society of Arbitrators, although I am a Fellow of the Chartered Institute of Arbitrators.

Turning now to the arbitration process you are going to witness, the first step that must be taken is that the parties to the arbitration are required to establish the capacity in which they are acting, either from the document under which they derive their position or of a submission to arbitration.

1. Are the valuers required to act as expert valuers or advocates, or both.
2. Is the umpire in fact an umpire to arrive at his award strictly from the evidence submitted to him, and be constrained by the parameters of that evidence, that is a result not lower than the lowest figure and not higher than the highest figure?
3. Or is he an umpire who is required to act as an expert being guided by the evidence presented by the parties, but not necessarily constrained by it.
4. Is the third person appointed as a third valuer.

A further situation is the appointment of a Sole Arbitrator.

While some arbitrations are conducted on the basis of written submissions only to the umpire, this situation is somewhat unusual and I would caution you that such a procedure can only be adopted with the agreement of all parties. In my opinion it is generally unsuitable for valuation disputes where each arbitrator normally avails himself of the arbitration procedure, to ask his opposite arbitrator quite searching questions in respect of his valuation, and the umpire also has the opportunity of questioning and clarifying any points within the submissions, either written or oral by the arbitrators.

It is preferable that all submissions by the arbitrators are produced in writing with the questions and summing up by the arbitrators taken down in brief form by the umpire. In a more formal arbitration setting proceedings are recorded in one form or another, to produce a transcript that can be referred to by the umpire when he is deliberating his decision.

Following the arbitration hearing, the umpire deliberates the submissions and questioning presented to him and issues his award in writing with this award providing a clear answer to the reason for the arbitration. Such awards must be concise, certain, covering only what is required and no more, and final, although in some arbitrations, generally other than valuation matters, an interim award can be made.

Obviously the award must be capable of being carried out. Once the award has been made, the powers of the umpire immediately cease. As the lawyers put it, the umpire is functus officio, and the office of umpire has ceased. Even if the umpire realises he has made a serious mistake, in the calculations perhaps, or in law, he has no power to correct it. Only the court has power to remit the award to him for the purpose of correction.

Awards cannot be challenged at law except where there is a "mistake on the face of it': That is if it is wrong in law, or there is a mistake in expressing what was intended.

Because the arbitrators and umpires no longer exist once an award has been issued, any challenge to that award must be through the court system, whereby it can be set aside or remitted back to the arbitrator or umpire for reconsideration.

Be that as it may, there is one factor that all umpires must be aware of, and that is the setting aside of their award. They must be particularly careful in following the law relating to awards, and in no case exceed their authority as the setting aside of an award can be a time consuming and expensive process to all parties involved.

These few brief comments in respect of this ground rental arbitration I trust are of assistance to you, and in this particular arbitration, because of the changing roles for the mock arbitration, the opinions that you have heard are not necessarily held by the arbitrators, and the points that have been scored by either party, have been deliberately arranged for educational purposes as have some of the unusual clauses within the hypothetical lease to highlight either the correctness or fallacies that have been presented in the past.

John Wall

Ground Rentals - The lessor and lessee viewpoint in establishing market rentals.

The following is a summary of the terms and conditions assumed for the purposes of the mock arbitration to be presented at the 10.30 a.m.-12.30 p.m. session on Monday 14th April 1986.

The arbitration proceedings and hearing arise because the lessor and lessee have failed to reach agreement as to the rental for a block of industrial land situated in John Banks Drive, Marginstown, an industrial suburb of Whangarei. The land is owned by the Horsley Charitable Trust and is leased to Fosters Fertilizer Company Limited under a 21 year lease granted in terms of the Public Bodies Leases Act. The lease commenced on 1st April 1923 and the lessee enjoys rights of renewal in perpetuity, the rent being reviewed at the date of lease renewal.

The lessee has exercised its right of renewal for a term of 21 years from 1st April 1986 and the ground rent is to be fixed by agreement or arbitration.

The lease contract specifies that when the rent is reviewed it is to be fixed at the "fair annual ground rent". The contract further specifies that if the lessor and lessee fail to reach agreement as to the fair annual ground rent, the dispute is to be settled by arbitration, each party appointing an arbitrator. If the arbitrators fail to agree, then the matter is to be determined by an Umpire appointed by the arbitrators.

In the present case, the lessor and lessee have failed to agree as to an annual rent, the arbitrators have likewise failed to agree and the Umpire, having been notified of the arbitrators' failure to reach agreement, has called for a hearing of submissions and evidence to take place on Monday 14th April 1986 at 10.30 a.m.

The authority of the arbitrators and Umpire arises solely from the wording of the lease contract, the appropriate portions of which have been accepted as being a submission to arbitration - i.e. an agreement by the disputing parties to submit the difference to arbitration.

The wording of the lease contract is identical to that applying to all other leasehold land situated within the Margintown and wider Whangarei area, with the following two exceptions:

(i) This particular lease contract requires the lessor to pay all land tax levied or leviable on the property.

(ii) The lessee has no rights to subdivide the land without the consent of the lessor. In this particular lease the contract does not contain words to the effect that such approval shall not be arbitrarily or unreasonably withheld. These words do appear on all other ground lease contracts within Margintown and the wider Whangarei area.

In the present case, Mr P. J. Mahoney undertook an original valuation on behalf of the lessor and advised the lessor as to the appropriate rental level. Mr R. L. Jefferies similarly undertook a valuation on instruction from the lessee, and advised the lessee of the appropriate rental figure. These two valuers have now been appointed as arbitrators respectively by the lessor and lessee. No objection has been raised by any interested party against the persons who were originally appointed as valuers now being appointed as arbitrators. This practice is now accepted as being appropriate in settling rental disputes for all classes of urban and rural property.

Having heard the submissions of the parties, I would visit the property in question and examine all relevant evidence submitted, determine the ground rental based on the evidence and bring down an award.

In an annex to the award I would outline the reasons for my decision and cover the various arguments put forward by the arbitrators.

Peter Young

Mock Arbitration - Industrial Ground Lease Renewal

Lessor: Horsley Charitable Trust

Lessee: Fosters Fertilizer Limited

LESSOR'S CASE:

Land

The site in question comprises a standard rectangular lot containing 4,000 s.m. in area with 20 metres of frontage to John Banks Drive by a depth of 200 metres.

At a preliminary meeting with the Lessee's Valuer/Arbitrator, Mr R. L. Jefferies, I advised an assessment of the freehold land value at $160,000 based on $5,000 per metre frontage.

The basis of land value was established by reference to two other rental fixations in the Whangarei area as follows:

John Banks Drive - 1,000 s.m. site located some 200 metres to the east of the subject property. This site was assessed as at 31st March 1985 at $90,000 based on $4,500 per metre frontage. A rental value was determined at $7,200 per annum based on 8.0% of land value and equivalent to $7.20 p.s.m. per annum.

An earlier negotiated lease renewal in Norman Kirk Drive for 3,000 s.m. of land on the opposite side of Whangarei City was undertaken effective as at 1st September 1983 at a rental of $9,000 per annum. This rental was based on a land value of $120,000 $3,000 per metre frontage and with a rental factor of 7.5 % = $3.00 p.s.m. per annum.

Lease Details:

The subject land is currently held under a 21 year perpetually renewable lease with the current 21 year review term being effective from 1st April 1986.

The lease agreement provides that the Lessee shall pay a fair market rental but in fixing such rental the Valuers/Arbitrators shall disregard the value of any improvements effected by the Lessee.

The lease also makes the following provision:

That subdivision of the land shall not be permitted without the Lessor's specific consent. (Whilst most ground leases often include such a provision, the leases also normally state that such lessor's consent shall not be unreasonably or arbitrarily withheld.) In the present circumstances it is submitted that such consent would normally be granted and therefore the lack of subdivision as of right is not a major detriment under this lease and should therefore not affect any rental so determined.

The lease also requires that the Lessor shall pay all land tax on both the Lessee's and Lessor's interest. This is in noticeable contrast to the majority of other ground leases in Margin Town where in most instances the lessees pay their own share of land tax so assessed.

The land tax levy as at 31st March 1986 is $3,000 and accordingly to ensure that the Lessee pays a fair market rental in line with other ground leases (where there is an obligation to pay the land tax as levied by the Crown) the sum of $3,000 should be included as a component part of the annual rental payable to the Lessor.

Meeting of Arbitrators

The Lessor's notice to the Lessee in terms of the Public Bodies Leases Act was dated on October 10th, 1985, (i.e. not earlier than six months nor later than three months prior to the rent review date), with advice as to the annual rental of $16,000 per annum.

Under correspondence dated 15th November 1985 the Lessee advised of its rejection of this indicated rental and suggested that its Valuer be appointed as Arbitrator to meet with the Lessor's Valuer.

The Lessor (Horsley Charitable Trust) duly appointed me to act as its Arbitrator and a meeting was held with the Lessee's Valuer/Arbitrator on December 16th, 1985.

During the course of discussions, I advised my assessment of a market rental at $16,000 per annum equivalent to $4.00 p.s.m.

It is also acknowledged that the value had been established on the basis of:

Land value 20 metres at $5,000 per metre frontage	= $100,000
Plus depth 60%	= $160,000
Rental factor, 10.0%	= $16,000 p.a.

The Lessee's Valuer/Arbitrator, Mr R. L. Jefferies, advised his assessment of the land value at $160,000 but contended that the rental rate should be in the range of 7.0-7.5 % representing a maximum rental value of $11,200 per annum.

As the two Valuers/Arbitrators were unable to reach agreement on this question of the annual rental payable under the terms of the lease, the matter has therefore been referred to you as the previously agreed umpire.

SUBMISSIONS TO UMPIRE

As the Lessee under correspondence dated 15th November, 1985, rejected the initial advice as to the lease rental indicated by the Lessor at $16,000 per annum, it is my submission that this rental assessed some six months prior to the subject review date is no longer available to the Lessee for acceptance.

Further, it is my submission that market evidence, economic indicators and general market conditions justify a re-assessment of the rental value to be fixed effective from 1st April 1986.

To this effect I have re-assessed the rental value of this site of 4,000 s.m. for the 21 year term commencing 1st April 1986 to TWENTY FOUR THOUSAND DOLLARS ($24,000) equivalent to $6.00 p.s.m. plus allowance for land tax payable by the lessor.

The assessed rental value has been calculated as follows:

Land Value

20 metres frontage x $5,000 per metre frontage = $100,000

Depth $\frac{(3d)}{(d+2s)}$ 200% = $200,000

The revised land value at $200,000 reflects the greater value of the rear land and acknowledges that the standard industrial depth table ($\frac{(depth \times 2)}{depth+std}$) places too low a value on these larger, deep industrial sites.

The Lessee's own use of the site with office premises and warehouse at the rear, a car sales yard sub-leased off the front portion, confirms that the standard industrial depth table places too low a value on the rear land.

This is also confirmed on a notional subdivision of the land as follows:

Total landholding 20 in x 200 in = 4,000 s. in.

Take front site 15.00 *in* x 100.00 in		
15 metres frontage at $5,000 p.m.f.	=$75,000	
Depth 100 metres (150%)		=$112,500
The rear land 5 in x 100 in ingress plus rear site 20 in x 100 in		
20 metres at $5,000 p.m.f.		
Depth 150%	_ $150,000	
Less for rear lot 25.0%	$37,500	
		$112,500
Value of Land Subdivided:		$225,000
Less cost of subdivision, etc.		$25,000
Nett land value		$205,000

Rental Rate

In my initial assessment of the rental value for this property I adopted a rental factor of 10.0% which at that time was my projection as to the likely rental rate which would apply as at 1st April 1986.

However, subsequent economic factors have shown this to be a conservative projection.

In the past at major arbitration hearings, learned umpires have recognised the linkage between ground rental rates and interest rates on other monetary investments particularly first mortgage rates, Government securities, etc.

It is submitted that to maintain the previously established relationship between ground rental rates and monetary interest rates, a ground rental for a 21 year review term fixed effective from 1986 should be based at at least 12.0% and this is clearly illustrated by the following table (graph).

	Ground Rental	1st Mortgage (Exc. Govt.)	Long Term Govt. Securities
1976	7.0%	10.0%	8.5%
1978	7.5%	11.0%	9.5%
1980/81	7.5%	14.0%	*12.5%*
1983/84* (Arb)	8.0%(10/83)	11.0-13.0%*	10.0-14.0%
1985 (Arb)	8.5% (8/85)	17.0%	17.5%
1986	12.0%	21.0%	19.5%

It is my submission that the Lessor is unduly penalised by having the rental rate fixed for 21 years whereas in most other investments, yields/investment returns increase at more regular intervals i.e. three-yearly to a maximum of five-yearly, and in the case of mortgage interest rates are reviewable at even more regular intervals.

To redress this imbalance which has now arisen in the relationship between ground rental rates and first mortgage interest rates - grossly distorted by the Government intervention during the years 1982-84 - a fair ground rental rate should be based on 12.0%, being a 50.0% increase over the 1981 level which corresponds with the same increase in first mortgage and long term Government securities rates.

Rental Assessment

Having regard to all the above factors I submit that a fair market rental for the subject lease for the 21 year review term commencing April 1st, 1986, is TWENTY SEVEN THOUSAND DOLLARS ($27,000) per annum, calculated as follows:

Land Value $200,000 x rental rate 12.0 % _	$24,000
Plus land tax payable by Lessor	$3,000
	$27,000 per annum

The assessed rental of $27,000 per annum, is equivalent to $6.75 p.s.m. including land tax or $6.00 p.s.m. excluding land tax. This compares with the most recently agreed rental in March 1985 at $7.20 p.s.m. for a smaller site in the same locality.

Any rental assessed less than the $27,000 per annum will be placing the Lessor at a significant disadvantage over the ensuing 21 year period where with inflation his annual rental will depreciate quite significantly.

Peter Mahoney
Lessor's Arbitrator

Lessor: Horsley Charitable Trust

Lessee: Fosters Fertilizer Limited

ARGUMENT FOR THE LESSEE:

Land value has been established on the basis of $5,000/m of frontage and in discussions previously with the lessor's arbitrator a land value of $160,000 was agreed. The lessor's arbitrator is now trying to resile from this because of the use of the land and some "theory" only about back land being worth more based upon experience outside the locality.

There is no local evidence that the normal industrial depth table does not adequately allow for back land in Margintown. Further, any subdivisibility of the land cannot be taken into account because of the express provision in the lease preventing subdivision.

The lessee has only been able to use the excess land by subleasing it on a year to year basis to a car sales yard and this really only recovers the existing ground rent and rates.

The real difference between the lessor and the lessee relates to the interest rate claimed in respect of the "fair annual ground rent" expressed as a percentage of the land value.

The lessor's notice to the Lessee in terms of the Public Bodies Leases Act dated in September 1985 was on the basis of 10% which was rejected as being totally unreasonable by the lessee in view of the recent fixations nearby at only 8%, effective from March 1985. Rents have not increased in the last twelve months, particularly factory rentals, which are static in the area and difficult to lease - particularly as a result of the downturn in the rural economy which has a great impact on the demand for land in Margintown. There is no justification for raising the ground rent purely because short term interest rates in the economy have temporarily risen because of the Government's influence in raising loans at high interest rates to finance its excessive and unreasonable public debt.

The "nexus" previously referred to by learned umpires and ar-

bitrators linking ground rental percentage rates to first mortgage rates and Government stock rates is now totally broken down as being unreasonable and unfair. The only true comparison is between ground rents - which is what the lease and the law requires the umpire to fix, as a fair ground rent - in terms of the lease (refer to DIC case and Wilson's case) requires the improvements to be disregarded and for the terms and conditions of the lease to be taken into account. The site can only be used for industrial purposes, the current demand for industrial land and industrial uses in Margintown is poor, there have been no increases in factory rents in the last twelve months and there is no justification for "upping" the ground rent in such a unilateral and "high-handed" manner.

It is submitted that this whole concept of a "nexus" or direct relationship between interest rates and ground rents is false, not based upon sound economic sense or judgement, unfair, and has become a "rule of thumb" adopted by lessor's valuers and arbitrators' as a means of raising ground rents. It is unrelated to factory or commercial rents generally and to the "fair return" expected on property investment. It has been given credence only because some learned umpires who are not valuers have in the past been swayed by the eloquent evidence of such lessors' arbitrators and their non-property related or qualified "economists". With due respect to the legal qualifications of learned umpires who have had such erudite awards published in the past, the result of applying such a "nexus" under current interest rate conditions clearly shows that such logic would demand a "doubling" of ground rents since July 1984. Interest rates have doubled in that time simply as a result of the short term effect on interest rates of "Rogernomics" (Now fast becoming a swear word in the Board rooms of N.Z!) During this period returns on property investment have fallen slightly or at the most stabilised at minimum levels of between 8.5 % 9 % on a net lease basis. Rents from properties have not doubled and the capital values of industrial and commercial property both in Margintown and any comparable parts of the North Island have remained relatively static.

The only fair and honest way for an arbitrator or an umpire to decide the issue of a "fair ground rent" is to look what a fair return would be in relationship to rentals from this type of property. The returns from current investments on a net lease basis in commercial and industrial property both in Margintown, nearby Whangarei and in Auckland and other parts of the North Island is at a minimum of 8 % up to 9 % hovering generally around the 8.5 % basis. Net leases being defined as where the lessee pays all outgoings, and therefore most comparable to a ground lease except for the "improvements" content.

The normal ratio of improvements value to land value in this type of property would be 2:1 and the investor in the property would expect to recover his investment in the improvements over the life of the improvements and this would normally be at the rate of 1.5 % 2 % of the improvements value per annum.

Therefore a fair return on the land content is derived as follows: 8.5 $\%_{=2/3}$ (L.V. % + 1.5 %) $^{+/3}$ L.V. %

Therefore:

25.5%=(2x L.V.%+1.5%)+LV.%
=(2xL.V.%+3.0%)+L.V.%

Therefore:

22.5 % = 3 x L.V. %

Therefore:

L.V.%=7.5%

Therefore the fair annual rental of land when related to the land value should be no more than 7.5 %, which was the ruling acceptable rate during the period 1978 to 1980, prior to the relatively recent upward burst of interest rates (not property returns) apart from July 1983 to July 1984 controlled period under the National Government. In respect of this particular lease it contains an unusual term whereby the lessee is precluded from subdividing the land without the lessor's specific consent. The normal situation would be that the lessee was unable to subdivide the land without the lessor's consent which could not be unreasonably or arbitrarily withheld.

In this case the lessee has no right whatsoever to subdivide the land and the lessor could for any reason whatsoever withhold such consent.

Therefore it is fair and reasonable for a specific allowance to be made in the terms of this lease for this restrictive covenant particularly in view of the size and depth of the land which would otherwise be very suitable for cross-leasing or subdividing either under the subdivisional code of the local authority or by means of unit titles to allow a combined development on the site. Because this is precluded by the terms of the lease I submit that a fair reduction in the ground rental of 0.5 % of the land value is appropriate. The precedent for such an allowance has been established by Mr John Henry the learned umpire in the AFFCO arbitration award relating to land in Penrose, Auckland. In the latter case this related to a very large piece of land where there was considerable subdivisional potential for which consent had to be obtained from the landlord but not in such restrictive terms and conditions as apply in this current lease, and in fact the land was subsequently subdivided by the lessee and consent given. In that case where the umpire was starting from a base rate of 7 % a 0.25 % deduction was made for this factor.

The lessor's arbitrator is now claiming an additional rental in respect of land tax to be paid by the lessor.

This is wrong both at law, in terms of the lease, and in terms of fairness.

The normal situation where a ground lease is for the land tax to fall where it lies in terms of the apportionment of the current Government Roll Land Value (which is $150,000 as at 1/7/84) or at the full land tax rate of 2 % p.a. maximum of $3,000 per annum.

Normally at the date of renewal of the lease the whole of the land tax liability would fall on the lessor as there would be no lessee's interest assessed upon which a lessee would pay land tax. In most cases the Lessor being, a local authority, public body, or in this case a Charitable Trust, is exempt from paying land tax in practice. It is normally not an issue.

In most cases the lessee's interest in a property of such a level of land value would in any case be below the exemption level and no land tax would be paid by the lessee in any case.

At the most the lessor (if liable) would normally pay a full land tax on land value where the date of lease renewal coincided with the date of the Government Valuation and thereafter would only pay land tax on the lessor's interest which would be something less than the full land value.

In addition, the specific terms and conditions of this lease provide that the full burden of land tax is payable by the lessor; this was a specific term and condition of the lease negotiated between the lessee and the lessor at the commencement of this lease and the benefit obtained by the lesser terms and conditions of this lease. For the arbitrators or the umpire to fix a rent which included an additional allowance for land tax would negate the terms and conditions of the lease itself and be legally wrong. I give notice that the lessee intends, if the umpire should so agree with the lessor's arbitraror in this regard, that they will take steps to have the award set aside on legal grounds by the High Court.

I therefore submit that the fair annual ground rental in terms of this lease at the relevant date should be the amount of 7.5 % reduced on account of lack of subdivisibility to 7.0% based on the land value of $160,000 or an annual rent of $11,200 per annum (ELEVEN THOUSAND TWO HUNDRED DOLLARS).

This represents a rental of $2.80 m2 of land area per annum and is fair and reasonable in relationship to the nearby recent renewal as at March 1985 where the ground rental was $7.20/m2 per annum for a site of the same frontage but only one quarter of the depth. It is also the same m2 per annum rate as the other comparable ground rental in Norman Kirk Drive as at September 1983 for a site of half the depth in a much poorer location.

I therefore submit that the fair annual rental should be $11,200 per annum.

Rod Jefferies

Stress: Its Management and Value

by George Shouksmith

Professor George Shouksmith is Head of the Department of Psychology at Massey University, a position he took up in 1970. Professor Shouksmith holds the MA degree (Summa cum Laude) in psychology from the University of Edinburgh and the PhD degree from Queen's University, Belfast. He is a Fellow of both British and New Zealand Psychological Socieities and has held positions in both these professional organizations, including being a past president of the New Zealand Society. At Massey, Professor Shouksmith has built up a Department which emphasises applied teaching and research and it is in these areas, particularly in vocational and organizational psychology that his own interests lie. His publications and research in applied psychology have been recognised by his listing in "Who's Who in the World"

Before coming to Massey, Professor Shouksmith held positions in Queen's University, Belfast, the University of Edinburgh and the University of Canterbury in New Zealand. He has been a Visiting Professor in California State University in the USA and at Mount Allison University and the University of New Brunswick in Canada.

Editor's Note:
The following article has been developed from a breakfast session paper delivered to the New Zealand Institute of Valuers Annual Seminar at Whangarei April 1986. Stress is evident in all occupations. Valuers need to be aware of it to no less an extent than any other professional group. The handling of stress correctly can improve a Valuer's efficiency and accuracy.

Stress is an "in-word" at the moment. From those overseas, we hear of urban stress and the problems of living in large cities. Shocking incidences of the impact and build-up of long term stresses among city dwellers emerge, like the case of the elderly couple unable to cope with the noise, the pollution, the constant threat of mugging, the financial struggles, who carried through a mutual suicide pact. At home, problems in the farming industry have led to increases in the stresses of rural life. Land of one's own far from being the utopia of everyman's dreams has become a millstone around his neck. Throughout our society being in certain jobs or occupations produces stress for employees, by the very nature of the job itself.

Research into Prison Officers' work carried out for the Department of Justice (1982) has revealed that not only the prisoners, but the Prison Officers also feel stress from being locked up all day in an institution, being pressurised by a job where they have to be both "warder" and "rehabilitation counsellor", where there is a constant threat of attack. Teachers feel similar pressures and other front-line occupations like those of the Police and Ambulance Officers produce their own stresses.

The task one performs, however, is not the only thing which produces occupational or work related stress. Poor interpersonal relationships with either clients or staff, conflict over the role performed - in the valuer's job, for example, the potential conflict of allegiance between buyer and seller - and feelings of ambiguity about one's role in the work situation can all produce occupational stress. And in New Zealand there appears to be enough stress in society and the community itself, to leave us all, whatever our occupation, affected by stress.

In my book, "Stress and Life in New Zealand" (1985) I contrast the New Zealand my wife and I found when we first arrived in this country in the mid-fifties, with New Zealand thirty years on as it is today. Our New Zealand of the fifties was still there in the 1960s when Austin Mitchell called it "The half-gallon, quarter-acre, pavlova paradise'.

It was a simple world in those days. There was plenty of space in our cities and we all had, if not a quarter-acre at least 28 perches on which to build a house, in a country with one of the largest percentages of home ownership in the world. Socialising and entertaining were constructed around the simple, yet well established formula of "gentlemen a bottle, ladies a plate" - and only those new chums from overseas arrived rather tentatively clutching an empty plate. If hotel bars did shut at six one could always collect a "half-g" on the way home and what's more breathalisers were unheard of. Not only was there an easy going way of life, but there was a positive quality to living in New Zealand, based on a feeling of wholeness.

Yet some writers already saw the writing on the wall. David Ausubel (1960) observed that below the surface: "interpersonal relations seem strained, tense, "touchy" and marked by a peculiar lack of graciousness'. He also observed that "people do not work together easily and co-operatively - or defer to each other graciously as the occasion demands". Harry Morton (1969), a Canadian living in New Zealand at the time foresaw the tensions which had already destroyed mutual trust in the USA, growing here as we in New Zealand sought "quality of goods rather than quality of life".

"Do it now and pay later" - advice once used to admonish young girls only, is now given as encouragement to young and old, male and female alike. Now the only time a gentleman takes a bottle is when he takes his wife to the latest BYO restaurant - and if its a girlfriend he's taking then he makes sure it's a licensed restaurant. In these days of "women's lib, many ladies would prefer to pick up the bill, rather than produce a plate. Flats and home units share sections of 26 perches or less and urban crowding in the larger cities at least, has produced feelings for many of being hemmed in or thwarted in their desires for an open life style. Family life has suffered now that the Plunket Nurse is no longer the arbiter of how we should bring up the kids. Indeed many of them have become "street kids" roaming around the cities day and night - sad, *yet* potentially dangerous drop-outs from our stressed way of life. Maori activists stir up racial tension and Polynesian immigration in Auckland adds to it. The shortage of jobs and increasing unemployment have added strain to an already increasingly stressful industrial scene where many who want to work can't find a job, whilst others safely in a job choose to go on strike.

Strain and stress are present across the many facets of our society affecting groups and individuals in different occupations, affecting the unemployed, affecting our families and family life, affecting young adolescents and children, the citizens of tomorrow. We all need to learn about stress, so that we can alleviate it and, since we can't avoid it, we need to learn how to manage it, even how to gain value from it when we can.

THE NATURE OF STRESS

To control stress, even to get value from it, you must first understand it. The problem here is that the term "stress" itself as used in everyday language is a conglomerate one, covering three different factors.

Firstly, there are the *stressors* or things that cause stress. These may be environmental events, or interpersonal conflicts, which trigger off the problem. Secondly, there is *stress* itself, the psychological feelings of unease, strain, anxiety, and so on, the internal psychophysical feelings which are the nucleus of the concept. Then finally, there are *stress reactions* the responses to stress, which can be, and if uncontrolled usually are, disruptive and maladaptive.

Let's look at each of these in turn.

Stressors

The things which affect us adversely and cause stress, can come from within or from external factors in the environment around us. Most stress seems to be caused when the two sets of factors are in conflict, our inner inclinations and the external demands made on our time or efforts. Psychologically, we refer to external stimuli combinations causing bodily stress as *environmental stress situations* and the individual, internally mediated (or controlled) stressors as *personal stress factors.*

Environmental stressors themselves are of two types. The environment can affect us directly, sometimes without the pollutant being visible. as in the case of radiation fallout from a nuclear disaster. Less traumatic are the other pollutants, smoke from a chimney or carbon monoxide funes from motor vehicles. Other aspects of the environmental affect the body more subtly, seeming to cause it inner stress. The noise and vibration from constant motor traffic outside one's window appear to reduce one's working efficiency. Wind can affect a person's reactions and feelings, even animals react, often adversely, to wind conditions. I recall the problems of catching and harnessing my daughter's horse, always more difficult in windy conditions. Those working in Antarctica have noted another reducer of efficiency when temperatures are lowered below the point at which the average human being can operate effectively. All these can act directly as stressors, but research has also shown that any aspect of the environment, the world in which we live, can act as a stressor if the person affected by it *perceives* it or appraises it as being a stressor. Some hate being in crowds, for example, demanding a high degree of privacy, others find it highly stressful to be alone. Many everyday situations though not stressful on their own, when they operate together can produce conflict as to what course of action we should take. As we noticed earlier this conflict is increased when an external demand made upon us is at odds with an inner prompting. Unresolved conflict provides a major source of stress.

Many life-events, of themselves, appear to be stressful for the person in that situation. Obviously the death of a loved one or the loss of job can be seen to be stressful, but Holmes and Rahe (1967) have shown many other events and happenings, even of a lesser nature, to be stressors. In their list of life-events which act as stressors, Divorce, Marital Separation, Serving a jail term, are other major and obvious stressors. Still seen as reasonably severely stressful are less obvious life-events like taking on a mortgage, a son or daughter leaving home or changing one's home. Holmes and Rahe also show that not only negative happenings are stressful, but events which are regarded as positive happenings in one's life can also be the cause of stress. getting married, being promoted at work, or gaining some outstanding personal achievement can all add to life's stressors. Most of us cope readily with these events because they are spread out over our life. Holmes and Rahe point out, however, that when a number of these occur within a short time, say a year, that is when one feels the pressure of life, and stress occurs.

Earlier, I commented that certain jobs or occupations seem to carry stress with them. Just as many life-events and many aspects of the environment act as stressors, so in some occupations there are aspects of the job and facets of the job-content which act as specific occupaton related or job stressors. Some of these are determined by the specific nature of the task to be performed, as with the nurse who has to cope with a patient dying of cancer, the policeman who has to front up to an armed criminal, or the veterinarian telling the lonely pensioner that her elderly, much beloved cat has to be put down. Alongside these *specific task stressors*, however, are a group of characteristics, shared by many of those organisations we recognise as being stressful. These we can identify as potential work-related stressors, which are common to a number of jobs. Your job, for example, may not be inherently stressful in terms of the specific tasks you have to accomplish. The conditions under which you have to perform these tasks, however, may be such that you still suffer occupational stress. And from time to time a particular set of circumstances, outside the job-occupant's control, can make him or her feel stressed.

Some of the most important of these general work related stressors are listed below:

1. Role Ambiguity

   Jobs that are clear cut, where a specific and limited range of tasks have to be performed in clearly defined ways, pose no stress in terms of this factor. However, ambiguity can exist in any job if there are aspects about which you are unclear, where you are not sure what to do or how to do it. Role ambiguity emerges at these times when you are not sure what your job role is, or should be, or where you are uncertain either about the range and extent of the tasks you have to perform or about how you should perform them. Role ambiguity can be produced through inadequate training or through lack of clarity in the job description or specification. Other jobs are inherently ambiguous, their task-structure being difficult or impossible to define, and in these, it is difficult to avoid developing stress.

2. Role Conflict

   When two or more aspects of a job call for incompatible responses, then role conflict will ensue. Many teachers, for example, feel role conflict because one of their motivations for joining the teaching profession was a desire to encourage a love of learning in others, but they have to balance this with the need to be a disciplinarian. The Prison Officer attempting to carry out both his custodial and remedial duties offers another example of role conflict.

3. Task Loads

   Irrespective of what the tasks are, and we have seen that some may be stressful by their very nature, any set of job tasks can become stressful if they require too much, or too little, of the job incumbent. *Task overload* occurs when events happen too quickly or when too much information has to be processed or where the physical or mental effort in the job becomes too great. People's capacity to work at speed or to deal with amounts of work varies greatly and what for one is a pleasant, relaxed occupation can greatly overtax another. Similarly people differ in their ability to deal with having little or nothing to do and at the other end of the scale *task underload* can be just as great a stressor for some people.

   When the task load varies rapidly stresses also emerge; one of the largest of all stressors seems to be when after a long period of underload, an individual is expected to respond to overload conditions.

4. Problems of Interpersonal Relations

   Not only the job you have to do, but the people you have to do it with can also be a source of stress. A poor supervisor

who never gives clear instructions, who is always ready with criticism, but never praises, quickly produces stress in his workers. Those supervised can be just as stressful for the supervisor if they are disloyal, disruptive or badly trained. Colleagues by their attitudes and behaviour can help to reduce the stress or add to it as the case may be.

5. Job Conditions

Just as the quality of interpersonal relations with those who share the job with you are important in determining the level of occupational stress, so are the conditions under which the job is performed. Obviously the same physical stressors which produce stress in the general environment. But not only noise, pollution, physical space pressures and other direct environmental stressors operate in the work scene, general conditions of the job itself can also be major producers of stress. The self-employed person who is concerned about a rapidly dropping profit margin in his business, the employee who fears he is soon to be made redundant and the older worker worrying that his pension will not be adequate to keep him and his spouse in retirement, are all exhibiting signs of stress dependent on the conditions under which they pursue their job or career.

PERSONAL STRESSORS

These are the stressors which come from within the individual, which react with environmental pressures, determining when and if stress occurs. Like the environmental stressors, the personal stressors also fall under a number of headings, or can be grouped into different factors.

1. Genetic and Biochemical Problems

Some people are born with a tendency towards high blood pressure and high blood pressure is synonymous with hypertension. Tenseness is the core bodily condition of stress. So, for some people there is an in-built tendency to stress. Other built-in triggers can occur through changed bodily states resulting from a number of biochemical factors. Changes in the normal functioning of the adrenal gland so that it over-produces and causes a constant state of over-arousal, for example, is just one of these internal, bodily causes of stress.

2. Temporary Physiological States

We are all familiar with the experience of "having got out of bed the wrong side" and how it then affects our behaviour and reactions to others. Colds and 'flu's can reduce our normal reactivity and ability to cope, so that when we are suffering from them, we react adversely to external factors, situations or people, and stress results. Even the temporary `hangover' can have a lasting effect as stressor, if one hits a stress situation when one is suffering from it!

3. Personality Types

Some individuals, through their development and life-long learning, have over-reactive personalities which provide internal stressors. The individual who has no tolerance when frustrated, those who are over anxious to please and those who over-react to every life situation, all have internal components which make them more susceptible to stress generally. In addition some personalities appear to be stress-prone, responding to their inner states by feeling stressed. Murray Friedman (1969), for example, studied groups of business men who had suffered coronary collapses - an extreme stress reaction - and compared them with others who remained healthy, whilst working under the same everyday pressures of business life. Those likely to have a heart attack, the coronary prone group, all shared, he found, a set of common characteristics. He referred to these individuals as Type A personalities and suggested that for these people it is their own personality which is the major stressor. Type A personalities are recognised in people who display all or most of the following characteristics:

1. They are entirely competitive people.
2. They have a very high drive "to succeed"; that is, they are high on achievement motivation.
3. They are impatient.
4. They are restless people who find it hard to stop, stand or sit still.
5. They are "hyper-alert, always quick to perceive and understand what is going on around them.
6. They have a sense of being pressured by time and a need to get things done quickly.
7. They have a sense of being pressured by commitments.

When Friedman carried out his research, he found that very few females had Type A personalities, the vast majority of whom were males. One can speculate, however, that this is not so much due to a sex-linked factor being present, but more to the fact that over the years our Western society has fostered these characteristics only in males. As more and more females join the ranks of business managers and executives, it will be interesting to see whether they too develop Type A personalities. If this does not occur and the syndrome remains sex-linked, it will provide an additional piece of evidence revealing the myth of male superiority!

Stress and Stress Reactions

Psychologists borrowed the term stress from the engineers, for whom it represented the tension which existed in a system. So *stress* for psychologists, as I have written elsewhere is defined as "The bodily state of tension which results from these stressors";
that is the external and internal stressors reviewed above. Subjectively, we recognise stress from the uncomfortable, "up-tight" feelings we have inside us, a jumpiness and jitteriness which we can't explain. Stress is tension in our bodily systems, so we fail to relax our muscles and as a consequence often feel muscle pains. In lay language we speak about "nervous tension" which amounts to the same thing; more technically Hans Selye (1974) defines stress as "the individual's psychophysical response, mediated largely by the autonomic nervous system and endocrine glands to any demand made on the individual".

For much of the time, the majority among us learn to cope with the work and environmental pressures which impinge upon us and learn to adjust and accommodate to both inner and external demands, so that although we are pressurised by them, we can accept the consequent stress and adjust to it also. From time to time, however, for some people, the stress becomes so acute, builds up to such a level, that it causes severe reactions in the person concerned. These behavioural and bodily responses to stress which has gone beyond our tolerance levels we call *stress reactions.* The first signs that stress is getting out of hand in a person can be any one, or more than one of a series of minor stress reactions. These include changes in pulse and respiration rates and increases in blood pressure, these latter particularly being seen in those with genetic tendencies. An unfortunate consequence here, is a circular feedback in the high BP causing more stress, which in turn can further raiuse blood pressure and so on. Other immediate stress reactions are changes in pupiliary size and in saliva secretion, increased sweating and often uncontrollable trembling, without any obvious cause.

All these are annoying and, with the exception of circular hypertension (increased BP), can generally be coped with by the person involved, but when stress is prolonged, the danger is that major stress reactions may occur. Among the most common of these are the following:

1. Psychological Reactions

These are inappropriate and maladaptive reactions to situations, behaviour which is self-defeating, which doesn't help a person to reach his or her goals, perhaps not grossly incapacitating, but more emotional and anxious behaviour which lacks rational planning. At the very centre of these reactions lies anxiety, fears and worries which are non-specific and often unrecognised. The person shows extreme nervousness and the anxiety is often accompanied by breathlessness, palpitations and unexpected tremors. These psychological reactions often lead to listlessness, tiredness and a loss of efficiency.

2. Psycho-somatic Illnesses

The tension and energy which builds up under stress conditions has to be dissipated to avoid harm to the body. When the stress is not released quickly damage to body tissue or organic functioning can occur. These bodily, medical, or somatic disorders are precipitated by psychological tensions and stress and so are known as psychosomatic disorders. In many individuals, particularly those who have some organic weakness, persistent and prolonged exposure to psychological stressors and chronic and acute stress may lead to bodily agents which are no less severe than those caused by hereditary defects or infections, viruses or bacteria. The gastrointestinal system is frequently prone to such psychosomatic disorders and many cases of peptic ulcers or colitis (an inflammation of the large intestine, frequently accompanied by cramps and diahorrea) have no traceable physiological cause. The cause must be assumed to be stress. Sometimes the stress serves more to aggravate a potential or existing set of symptoms as in the case of the asthmatic whose episodic attacks of wheezing, gasping and panting grow much more severe in stressful times.

3. Stress Related Breakdown

Finally, when stress is not relieved in any way the results can be extremely traumatic. When the Type A personality is placed in situations of extreme environmental or occupational stress for prolonged periods, the result can be cardiac arrest or a minor, but not the less incapacitating, heart attack or spasm. The hypertensive under the same conditions may well suffer a cerebro vascular attack or stroke. In these extreme stress reactions, the body reacts violently to the tension and stress, it gives in completely and the organism collapses.

Stress then results from the interaction of a number of variables and the way in which they build up in their effect on the individual. Finally the internal feelings of unease, the tension and the strain, become too much and a stress reaction occurs. With some people, they respond immediately to the slightest stress. Others, don't even notice the stress and then when it builds up to explosion point the stress reaction can often be worse, leading to a coronary, stroke or, complete nervous breakdown.

MANAGING AND ALLEVIATING STRESS

Stress depends on the interaction of sets of internal and external factors. When the internal factors balance the external or vice-versa, there is no stress. It is when these two sets of forces are imbalanced that they combine as stressors to produce stress. This "model" of how stress operates is called the "person-environment fit" model (1970) which is described by McGrath. In McGrath's formulation, stress was seen to occur when there is an imbalance between environmental demands and the capability of the individual to cope with these. The more comprehensive explanation offered here is that it is a two-way process. Stress can also occur when internal demands are not met because of the inadequacy of the environment in which the individual is situated. Furthermore, minor environmental and person stressors, which separately would cause little tension or stress, can be seen to operate conjointly forming major stressors.

The converse of this position also holds: factors within the individual or particular environmental situations or circumstances can alleviate the effect, even of major stressors. They may also moderate the resultant stress. By knowing what these alleviators and moderators are we can, therefore, learn to manage stress.

Coping Strategies

A number of factors can be used to reduce or lessen the impact of environmental or inner demands. These personal adjustment factors which operate chiefly by lessening the impact of stressors we refer to by the general term coping strategies. The impact of

stressors is reduced by developing more effective coping strategies, as follows:

1. Increased *knowledge and skills* in order to be able to deal with a wider range of environmental pressures and demands.
2. Developing a stronger *self-concept,* so that through being sure of oneself, you don't need to waste time and effort defending your own position. Those with weak self-concepts, or those who have a poor knowledge or opinion of themselves are easily thrown by events and happenings which appear to threaten them or by people who seem to slight them. Having a strong self-concept, knowing your own strengths and limitations, enables you to avoid situations where you will be pressurised or be forewarned about unavoidable stresses.
3. Improve *Time Management.* Many of us have our time wasted by others, or allow interruptions and disruptions to distract us from dealing with problems. Some people have made time wasting into a fine art, adopting techniques and behaviours which mean they can avoid facing up to problems or to real work. Managing your time effectively, allows you much longer periods to deal with problems which when you are pressurised for time could readily become stressors.
4. *Life-goal Management* also needs to be considered in the same serious way. Many of us set outselves unrealistic life goals from time to time, which as we fail to reach them become additional stressors themselves. Hence, we need to sit down, think about and review our goals in life on a regular basis. We need to consider our present position, skills and knowledge and assess how realistic these goals are for us. More difficult, but equally important, is to tease out any hidden or unrecognised goals we are striving to reach, but perhaps without even admitting them to ourselves.
5. Improving *problem solving* and *decision making* skills. Prevaricating is often worse then making an incorrect decision. Making a correct decision quickly is best of all. Learning how to isolate key issues in a problem and how to re-construct logical sequences of events helps us to understand problem situations. Using those reconstructions to predict future events helps us to choose the most rewarding course of action. The alternative of taking emotionally directed decisions based on inadequate analyses of a problem only leads to more stress.
6. Many people are able to *desensitise* themselves to potentially stressing situations, indeed for some it is the only way of avoiding continuous stress. The nurse in an oncology ward dealing each and every day with cancer patients who are dying and about whom she can do nothing, has to desensitise herself to the tragedy of the situation. The ambulance officer who has to scrape up human remains after a serious road accident, has to learn to desensitise his reactions to the carnage and waste of human life.
7. When all else fails, use *humour.* Joking and laughing may not reduce the severity of the stressors but they may temporarily alleviate their effect, so that with the respite given you can introduce other coping strategies.

Stress Moderators

Sometimes, whatever you do to reduce the impact of a stressor, you fail to succeed and to some extent begin to feel stress and be stressed. As we have seen, this may well lead to serious stress reactions. To lessen the risk of these occurring and to reduce their impact when they do, we use methods and techniques which attempt to moderate the stress itself.

1. *Social support* - The research at Massey University (1983) into family stress showed clearly that where a husband was stressed at work, this stress could often be reduced if his wife and family gave sympathetic support for him in his problems. The same appeared to be true for working wives. In those jobs where colleagues are friendly and working groups closely integrated, stress is also less. The importance of social support as a stress moderator is undoubted.
2. Use of *active leisure* - If the source of stress comes from one's occupation, it is often possible to compensate for job-problems by adopting an active leisure programme. Leisure activities probably need to be active to prevent one's mind wandering back on to work problems; activity for its own sake, however, is not sufficient. The compensatory activity must reflect your interests and concerns and serve to satisfy some internal demands or needs.
3. *Medication* - Some stress reactions, for example high blood pressure, are probably most readily controlled, especially in the acute phases, by medication.
4. *Psychological intervention* - Where the stress reactions take the form of anxiety reactions or emotional maladjustment or non-specific hypertension, one or more psychological techniques may be used to alleviate stress. Most common among these today is the simple technique of behavioural relaxation, where the stress sufferer is taught to relax his or her muscles progressively. Once the muscular tension is reduced, the psychological tension appears to follow.

It must be remembered that medication and psychological ' techniques like relaxation therapy, moderate the stress reactions only and alleviate stress feeling, but do not attack the causes of stress. More intensive therapies may be required if the causes of stress are internal, before longterm reductions in stress levels can be achieved. As long as the causal problem remains, stress will return. Similarly, where the stressors are external, only environmental engineering, the changing or manipulation of the physical environment, or of environmental systems, to a less stressful state will reduce the long-term stress. If stressors come from the external scene and environmental engineering is not possible, then the only solution is for the individual to move out of the environment or job situation which is causing stress.

THE VALUE OF STRESS

Not all stress is negative, and we need to be aware of those aspects of stress which can be used positively.

The sports person has long used stress in a positive way. Television viewers of Commonwealth and Olympic games are already familiar with the sight of weight lifters puffing and panting as they psych. themselves up, deliberately stressing themselves so that they perform better. Some writers on stress like Hans Selye (1974) make a distinction between distress which is harmful and destructive, and stress which is desirable and may even be life enhancing. We all need to be aroused to action, otherwise we would become like vegetables. Those who remain active in retirement live longer and are better adjusted in retirement. Minor job stresses can for most of us provide an interesting challenge, which we find one of the rewarding aspects of our job. In these cases stress has value.

Value in the psychological, as opposed to the economics sense, is concerned with quality of something which causes it to be viewed as desirable or even necessary, by an individual or group. So the question is how can we find value in stress? Are there any aspects of stress which can be said to have value in this psychological sense? Is stress seen as desirable for and by some people, or even necessary for their continued existence?

Psychological value is an individual thing and will vary from person to person. When a team from the Department of Psychology at Massey University was investigating stress in Prison Officers, it found that the constant pressure of being in a close community, not only locked in during working hours, but also living next door to one another in the prison village, produced a great deal of stress in many officers. Others, however, so enjoyed the community life, that they extended it into their leisure hours. Two families for example, both bought caravans and chose to spend their annual holidays on adjacent camp sites. During discussions on retirement, the wife of an airline pilot rather ruefully told how her husband so enjoyed the discipline of check lists used on the flight deck that he was now trying to introduce them into her kitchen. The task of doing things just right and following set procedures, so stressful for some pilots, suited this airline Captain's personality well and so had real value for him. The problem for him would be in retirement, for as his wife said: "He will have

to change his ways; he's already started treating me like his first officer - and I'm not having that for the next 20 years:'

These are specific examples, but for many more people living under stress it appears to be a motivator, which when it is taken away leaves them problems. Without stress to make us feel anxious about something, we fail to react and move into the danger of inactivity. This is why inactivity, task *underload* is just as much an occupational stressor as task *overload.* So stress can have value in arousing us - the trick is to channel the arousal properties of stress and above all to control them, to keep them within limits.

Different individuals have different levels of preferred activity, however, and what is positive arousal for one person is negatively stressful for another. These individual differences extend also into the kinds of arousal environmental demands make on us. Some enjoy high mental effort whilst others find it stressful. For others, major physical efforts, like running, playing a heavy game of soccer or netball, would cause major stress, while a colleague might well find it merely invigorating. One has to identify two things to find value in stress. These are firstly, the areas of demand which for you are challenges and not stressors and secondly, the optimum level of demand within those areas which for you are arousing and pleasant, but not stressful.

Stress is not something you can ignore; you cannot climb into a hole and hope it will go away. It is possible to manage stress, however, and on certain occasions and in certain situations to control it so that you derive value from it.

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RECENT ACADEMIC APPOINTMENTS

The following have become responsible for teaching a range of subjects to Bachelor of Property Administration (BPA) students at the University of Auckland

Deborah Levy, BLE, ARICS, obtained her land economy degree at the University of Aberdeen (with Commendation) in 1981. Subsequently she worked in the investment department of Scotland's largest life assurance company based in Edinburgh. Deborah is a chartered surveyor (valuation and estate management) with nearly five years experience of investment appraisal, development project management and property management in Scotland and England, specialising in commercial and industrial property investment.

Graeme Robertson, BArch ANZIA, MNZIOB, graduated at Auckland University. He has recently spent some five years at Lincoln College teaching building construction to valuation and property management students. Prior to and during this time he has also worked with the Ministry of Works and Development and as a private practice architect in Christchurch. Graeme's special interests include the preservation of historic buildings (on which he has completed a course at York University) and energy conservation. He was a founder member of the NZ Institute of Building.

Dr Kevin Johnston, BArch, BCom, MArch, DipBldg, PhD, gained his first three degrees from Auckland University and the diploma from ATI. His doctorate is from the University of British Columbia where he studied real estate finance and investment analysis, social economics and econometrics. Kevin has worked in Canada and the USA in the field of property appraisal, housing economics and real estate development and, in Auckland, is involved in resource development consultancy and project management.

John Duthie, BTP, MNZPI, a senior planner with the Auckland City Council is part-time lecturer in the subject "land use planning".

Elizabeth Carruthers, DipVal, ANZIV, registered valuer, is part-time tutor in "residential construction". She is senior valuer (training) with the Valuation Department's Auckland office.

Grant Coupland, DipArch, FNZIA, is part-time tutoring in "commercial construction". He is an architect in private practice.

Forestry. Why Be Afraid of It? It's Only Tall Grass.

by Dr Anton D. Meister

Anton was born in Holland and emigrated to New Zealand in 1963. He studied at Lincoln College obtaining his Master in Ag.Science then lecturing for one year at Lincoln. He then studied at Iowa State University where he obtained his Doctorate. In 1976 Anton return to New Zealand and Massey University where he is currently Reader in Natural Resource Economics.

His work as his title implies involves land use studies and conlficts, economic feasibility studies of large projects and social and environmental impacts of these projects. Anton travels widely throughout New Zealand and is familiar with many of the large development projects within New Zealand.

This will complete Anton's "hat-trick" with the Institute, having spoken at two previous seminars. His papers are always of interest, as he has a refreshing, thought provoking approach to his subject.

The period between 1960 and 1985 has witnessed an unprecedented growth in exotic forestry planing in New Zealand. With silvicultural practices aimed at felling these trees at around 25-30 years, this has brought the prospect of a massive increase in the volume of felled timber in the period 1995-2005. This large increase in wood volume will call for major changes to the marketing of timber. At the same time, this development has led (and will continue to do so) to major changes in land use and regional employment patterns all through the country.

Like other major developments, forestry also has its advocates and opponents. Some perceive the change as being too great and they question the wisdom of the forestry planting boom. Others oppose forestry because of the impact it has on the rural community and farm ownership, or because of other costs imposed on society but which are not carried by the forestry companies. At the same time, however, there are people who see forestry as one of the few bright lights among some pretty sombre clouds hanging over New Zealand agriculture and the whole economy. They perceive an increasing scarcity of wood world-wide and they see New Zealand ideally situated to satisfy the increase in world demand. To them New Zealand should no longer be the land of the 70 million sheep but the land of the 70 plus million trees (even the long white cloud may have to turn green).

This diversity of opinion can be found at the local level (Farmers and/or County Councils v Forestry) the regional level (United Councils v Forestry) and national level (Treasury v Forestry). It has led to conflicting opinions about how to deal with forestry: stop it, encourage it, constrain it, praise it or damn it! It is this conflict and the outworkings of it that is the real subject matter before us. Should we let the invisible hand plant the very visible trees under out current "more market" philosophy, or should we shackle the invisible hand in the name of equity, justice or the public interest?

Sometimes when you are right in the middle of a forest you can't see the wood for the trees. It appear that some people embroiled in the forestry/agricultural conflict seem to suffer from this situation. Others, however, know very well where they stand, or saying this differently, they know on which side their tree is buttered. To understand the different viewpoints a little better, I would like you to place yourself (sequentially) in the shoes of three respected members of our society, and then consider the statement "forestry is just tall grass."

Points of View

First of all, you are to become farmer Joe Bloggs, the proud owner of a sheep station in the centre of Northland and an upstanding citizen. You have farmed this property now for 23 years and before you, your father and grandfather farmed the same property. By the sweat of their cumulative brows, they wrestled the land from scrub and gorse (which by the way was brought in from the motherland by your great, great, great grandfather) and up'til 19 months ago you have been able to make a good living off the property. Besides being a good farmer, you also got involved in the community, been chairman of the school committee, an active member of Federated Farmers and fathered 9 children to support the local school. `Rogernomics' however, hasn't treated you too kindly. Costs have inflated and returns have declined. Your lamb isn't worth very much, your ewe even less (dead or alive) and the wool cheque is only just holding the ragged edges of your existence together. The future doesn't look very rosy either. Inflation is still high and some experts in Wellington predict that the value of the dollar will increase further, while other (equally qualified experts) predict that it will fall. The Minister of Finance says that you must weather the storm because this time the Government is not going to bail you out, the meatworkers aren't too interested in you either, they want their 15 %, and the rest of the world doesn't know about your plight (they hardly know that New Zealand exists) and they don't seem to want any more lamb either. Yes there is only one thing you can say, it is "Help" together with a big "help" from Mrs Bloggs and 9 little ones from all the other Bloggs'.

All in all it is not a pretty picture. But rugged individual that you are, you grind your teeth and start to look for other income earning enterprises. You find deer, goat, kiwifruit . . . trees. The answer to the question "how feasible are they as alternatives?" comes quickly, the first two are too expensive (you can't afford to borrow at 23 %) the third not possible and the fourth . . . well you aren't too sure about that one, after all you are a farmer, not a tree grower. And on top of that, the Government keeps on changing the tax laws so that you really don't know what is what anymore, which makes working out the profitability of enterprises a nightmare. So the opportunities aren't very great.

But lo and behold, who visits you one day just by accident? One of the purchasing officers of the local forestry company. "Just

out for a stroll" he said "just to see how things are in the world of farming". You and he have a long talk and you learn a lot about the value of your farm (in case you would be willing to sell it to the company), and you learn a lot about things called joint ventures.

I won't tell the rest of the people here what you did. You know that yourself. But I know that some Joes have sold out, to start again somewhere else, some retired and some found new jobs in town. Other Joes stayed on their farms and went into joint ventures, planted some trees out of their own income or did neither and are still farming the same way, living on hope as expressed by that famous New Zealand statement `She'll be right one day, she'll be right".

The Joes that wanted to sell out or intended to go into forestry didn't always have a smooth sailing. To discuss the reasons for that, it is time now for you to take a deep breath, raise yourself to a new level of consciousness and become ... Mr County Councillor.

Like Joe you were born and bred in the district. You even farmed here and with your own hands you wrestled some of the land from the folly of Joe's great, great, great grandfather. The region is dear to your heart and you like to see it remain the way it is. You are very aware of the intrusion of forestry into your county. It has greatly upset you to think that the land you wrestled from the bush is now going back under trees. But you've always considered yourself open minded and you realized that there is a place for forestry on some of the marginal land and where erosion is a problem. In this you are encouraged by a 1984 report from the MAF on the profitability of farming and forestry on land classes III to VI when discounted at the Public Sector Discount rate of 10% (Arthur-Worsop and Allan 1984). In light of this you decide that woodlots and agroforestry are fine, but to allow forestry over most of the county raises in your mind visions of Kaingaroa, timber towns, rural depopulation and the `raped daughter syndrome. No, this should not happen and you are determined to write the district scheme accordingly. Your efforts on behalf of the county result in that some Joes are no longer able to sell their farms because of the ordinances which forbid forestry (or production forestry) on their land. Hopes for joint ventures have also gone out of the window because the company can't interest enough farmers in the specific area to join to make it worthwhile. Joe (make him Joe 23) is very unhappy because for him there seem to be no silver lining round his cloud. You however, are happy in the knowledge that your actions have saved the rural community from demise. You are also very grateful to Federated Farmers who so strongly supported you at the Planning Tribunal hearing dealing with the objections to the review of the scheme.

Now I am going to ask you to make an even greater leap (of faith or courage, whatever) . . . right into the shoes of the Minister of Finance. Can't you see yourself, standing in his shoes and shouting from a soapbox? "What this country need is more entrepreneurs, more people willing to try new things, willing to diversify their enterprises, not to be in the dumps but to bite the bullet" (that, I think you borrowed that from someone else!), and you ask "why should we do this? . . . because there are better times ahead!" (To this some would like to respond with the refrain of an old Seeker song, yes "far, far, away" or with the words of Keynes who once said "yes, but in the long run we are all dead".)

But you are undaunted, it is back on your soapbox: "I have; you say "created the proper environment for you, where market prices give true signals again, where we have freed ourselves from the shackles of subsidies and exchange rate and import control, and where the fresh wind of competition is blowing again': All good stuff, right out of the text book. "But"' but you say, "we will still have to live with the errors of the past. Adjustments will be painful, we all will suffer ("some more than others" some in the audience mumble), land prices must come down from their inlfated levels (did you people here have anything to do with that?), new enterprises must be found such as deer, goat, horticulture and forestry to restore income to the rural area. I promise you that things will come right, we are moving in the right direction (or, like others have said before, there is light at the end of the tunnel)':

Well satisfied with your speech you descend from your soapbox, slightly perturbed that the thunderous applause is not forthcoming. Back in your office, one of your Treasury officials reminds you that one shouldn't be too dogmatic about the point of moving in the right direction, because economic theory tells us that we cannot be sure about that, if not all sectors in the economy are completely freed up. He also adds that Mr Minister should perhaps be a little less enthusiastic about forestry in light of the latest reports by Treasury that showed that many plantings would return less than 10% on the capital invested.

Well there y- •'ve got it in a nutshell. Forestry at three levels, local, regional a ional. At all levels we find enthusiasm and opposition, zealuua, advocates and doubting Thomas's. The picture is far from clear and it appears that the answer to the question posed in the title of my paper is far from simple. But who does these days expect simple answers to real world questions? It appears that some groups these days do think that simple answers exist. "Cut the budget deficit, lower the interest rates and force our exchange rate to a realistic level"; they say. We know that such policies may help, but we also know that doing any of those things will cause pain and the beneficiaries from such policies will often not be the ones that have to bear the pain. It is this difficult situation of choice making in a situation where some gain and some lose that we call economic policy. Forestry development with its problems and conflicts at all levels fits right into this.

The conflicts, facts or fiction

How real are these conflicts? Are they all related? To answer that, let us return to Joe Bloggs. Although I dealt light heartedly with Joe's problems, they are nevertheless very real, this is well relfected in the current protest of farmers nationwide. Especially farmers in hill country areas have very few alternatives. Forestry may represent one alternative, but it is by no means the `kiwi fruit' for the hill country farmer. Woodlots, joint ventures, agro-forestry etc. are all options that should be given serious consideration. Many farmers still feel hesitant about forestry as I found out in two studies, the first one completed in 1982 and the second still on-going. And although the latter study isn't finished as yet, the following is a quote from some preliminary survey findings where a student of mine reports:

> "There is a general lack of enthusiasm for planting trees for timber production. In only two cases (out of 57) was production the prime reason and those two farmers were the only ones I would describe as being very interested and enthusiastic about forestry. Speeding up financial returns (through a joint venture with a forestry company) and demonstrations of forestry being able to provide an adequate return would still leave the majority of farmers unenthusiastic. Most reasons for not planting exotics for timber production were non-financial. What was clear in the discussion I had with farmers is that the majority saw a conflict of interest between growing trees for timber production and pastoral farming. Woodlots were favoured over agroforestry for a number of reasons. Doubts were expressed over pasture loss with agroforestry, over stock management amongst the trees and about the amount of work involved. Additionally, agroforestry appears to be much of an unknown for those thinking about planting exotics" (David Smith, preliminary results.)

It appears that some farmers do not want to know about forestry, neither do they want to find out. Forestry as I said is not a panacea for our ills, far from it, but it does offer opportunities to some to get out of farming or for others to diversify (with financial help through joint ventures, or out of own income). If it is going to be profitable we don't know for sure, at current prices it is very attractive, but will those prices last for 20-25 years. We don't know, but neither do we know if sheep and beef are going to be profitable then.

With regard to regional level conflicts, one of the truths I learned in introductory economics, was that what may be good

for the individual may not be good for society as a whole and this truth is what must be in the mind of many a county councillor.

It is now already quite some time ago that I stood in front of Judge Turner in Taumarunui. The Planning Tribunal was sitting to hear objections to the proposed review of the district scheme. The council's argument was that to make all forestry a predominant use over all the County, might lead to major changes in social patterns and land use. And although the Council was not against change they wanted to control it so that it would take place in an orderly fashion. Because of the great uncertainty at that time regarding forestry companies' plans, the future of timber exports, and the impact on the rural community, I thought that the Council's argument to be reasonable and I supported their use of a conditional use procedure. Today things have changed. Much more information is available. We have a slightly better picture of the world timber supply situation, we understand the social impacts of forestry better and agriculture is in a much more desperate situation and in greater need of alternative land use options. These days there is no justification any more for conditional use ordinances for forestry in district schemes. Councils and Federated Farmers must stop hiding behind those types of ordinances all in the name of saving the rural community. In some cases, they will find, if they do their homework, that to save the rural community they should allow (perhaps even welcome) forestry. Forestry should be seen as complementary to Agriculture not competitive. In some areas we just need to learn that the land that we have broken in (probably with LDEL money) should not and cannot be farmed and trees are the only thing that should grow there (the floods and the rains of the last years have shown that again very clearly).

I am encouraged to see that Federated Farmers did not pursue to the Tribunal level their objections here in Northland, I hope the reason was a better understanding of the role of forestry rather than the sure knowledge that they would lose out in a court case.

I am not, however, advocating a complete free reign for forestry. Although some Councils justly could be criticised for how they handled forestry in their district schemes, the forestry companies aren't sugar and spice and all things nice either. One of the greatest complaints I have heard from Councillors is that some of the companies do not communicate.

Last year I toured Northland and visited most County Councils to find out about their attitude towards forestry and to inquire about perceived problems. The roading issue is one of those. We had already from previous research found that some local authorities perceived forestry roading as a major concern and that the need to upgrade roads would place a major burden on their rate payers (Fowlers and Meister 1983). The rating system, as it stands, provides inadequate funds for them to act in anticipation of the roading demands of logging in their territories. Their response to this and other perceived problems has been, in some cases, to restrict forestry through their district scheme and other measures. With a colleague of mine I am currently involved in a case study to find out if in a particular county this problem could become a real one, and what the incidence of the roading costs is going to be. There are no results as yet but I can tell you that the greatest constraint in this research is lack of detailed data regarding costs at the county level and lack of scientific data relating vehicle density, weight, road damage and a maintenance cost.

Another problem raised in this connection is the "rating effect" (something you valuers know all about). The effect refers to the fact that the rateable value of land (under forestry) is at its lowest in the years immediately prior to harvest, while this is exactly the time when counties may incur extra costs in upgrading their roads to accommodate logging traffic. Where the "rating effect" exists it could compound the roading problem.

At the regional level therefore there are genuine reasons for concern when major changes from forestry to agriculture take place. Also from a national point of view there are reasons for concern. Treasury is telling us that the rate of return on forestry isn't as high as we were made to believe (that is a nice way of saying it is low). People in the Forest Service are concerned about the massive increase in planting that we have had in the last decade without much planning for marketing and processing (the true New Zealand style, `just produce boys we'll always be able to sell it"). We don't really know if the markets will be there.

But it's not only marketing that makes people concerned about forestry. The FEG's have led to a massive destruction of native bush and forest land; the processing of future timber output will require massive amounts of water and power; the demand for land will lead to more and more changes in land use and social patterns, . . . all these will affect the objectives we hold as a society, such as environmental quality, distribution of income, equal opportunities, regional development etc. Can we be sure that these objectives and these values will be looked after?

Change will occur and not all change is bad. Decisions have to be made. If we don't allow change to occur events will over take us and the consequences of that may be very undesirable.

Conclusion

What I have tried to do in this paper is to paint a picture of forestry, the changes that it introduces, and the conflicts that it seems to create at different levels of decision making. I did all that without answering the question "should we be afraid of this change?"; with the logical implication that if the answer is affirmative then we have to do something, stop it, control or whatever?

Forestry, in my opinion, is just another crop

Forestry, in my opinion, is just another crop, tall grass if you like. It should be evaluated as an alternative land use in terms of its economic, social, and environmental contributions. Agriculture as such has no `merit' right to land just because it happens to be there now. Time and changing circumstances require that we encourage and allow new enterprises on our land. These new enterprises should be evaluated in terms of all the costs and benefits they incur, just as we should re-evaluate old or existing enterprises.

What we are all most interested in is in how to allocate our resources in an optimal way - optimal in terms of the objectives we hold as a society. The Government of today has placed its faith in the workings of the market system, and has brought about enormous changes by freeing up some sectors of the economy. The consequences of these changes are being felt today - we all are more than aware of that.

How then does forestry fit into all this? Should we also let the market have free play here? My answer to that is a firm "NO". As I have tried to show above, there are costs (external costs we call them as economists) that seem to fall outside the decision making framework of companies. They are real costs to the farmer, the region and the nation. Somehow these costs have to be paid. I am very concerned about the incidence of them, just as farmers today are very concerned about the incidence of the cost of Government policy. This concern, however, does not call immediately for full control by local and central government of forestry development (we've had too much of that in the past with strict ordinances, FEG's, and Government ownership of wood). In some situations all it calls for is some communication between companies and councils i.e. some people involvement, and where justified some financial compensation and help. Some companies are doing this, others are still learning. The change in attitudes among County Councils on the East Cape shows that there both companies and councils have learned. The negative ordinances (some of which were the most complicated ones I have ever seen (Meister 1985)) are disappearing, forestry is welcomed as the benefits in terms of soil conservation, rural revival and job opportunities are being recognised. It has taken time for this change to come about. In the mind of some, it has taken far too long. However, if we believe in participation and democracy then this may be one of the penalties that we have to pay.

Here in Northland I see similar changes in attitude developing. Today we know a lot more about forestry and its impacts. Experience has shown that there are benefits to be gained from some land use changes to forestry. Mark well that I say some, not *all*. I'm not standing here as an advocate of forestry, but rather I stand here as an advocate of wise resource use. I don't want to see the whole of Northland blanketed in trees, there are other options. For that reason I am, with my students, doing research into alternative afforestation patterns; into the financial implications to farmers of moving into forestry; and into the issue of roading and regional impacts. Information is needed on all these aspects of forestry development, not on economic returns only. Figures can be manipulated and costs and prices are time bound. It would be interesting to redo that MAF study I mentioned earlier but now using $14 for a lamb and not $35 or $0-$6 for a cull ewe and not $33. Would forestry still only beat sheep and beef farming on the just marginal country? The point is that we cannot make decision on economic data only, sure such data are important but good decisions can only be made within a framework of multiple objectives and hence require much more information.

Forestry companies will have to accept that the changes they are causing can be so large that some management of them is needed. Not all change has to occur overnight, and where the change is large and the social consequences significant, social and equity considerations call for transitional provisions for those caught in the middle and for whom the chances to adapt are minimal, a truth the Government is slowly (and painfully) learning today. Yes, we should aim for a freer economy and a more efficient one but not by forgetting the other objectives we hold dear. Giving the market system and its freedom sovereignty, will not help to achieve those other objectives.

I therefore believe in freedom within constraints i.e. managed change. The constraints can be made wider and wider the more involved we are in the process of change and the more we know about its consequences. It is here that you as a society of professionals fit in. You have your fingers on the pulse of what is happening in the rural area. You understand the effects of changes in land use on land values and on use potentials. Your knowledge and expertise is wanted. Perhaps it is not always asked for, don't let that worry you, give it in any case. Too many mistakes have been made in the past, in terms of resource management, because we saw problems that weren't there or because of problems we overlooked because we didn't know what was going on. I'm not asking you to solve all our economic problems (we'll leave that to others, who I don't know) but help us to understand better those things with which you are familiar.

So, don't you too say "help" when change in the form of forestry comes your way. Go out, observe it, tell us about it, and try it by planting some tall grass on your own properties. Show people that there is no reason to be afraid of it if we are involved and informed and if we manage the changes sensibly in light of local and societal objectives.

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If's Time for a New Look at the Income Approach

by R. V. Hargreaves A.N.Z.I.V.

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Bob has been a regular contributor to The Valuer'on the subject of new technology over the past two years, keeping valuers informed on the type of hardware available and suitable applications.

The income approach is a hot topic for rural valuers to consider at the moment and this article is relevant to current needs.

During 1986 at least one lending institution instructed their rural valuers to incorporate the income approach in future valuation reports. This type of instruction is likely to create some difficulties for rural valuers as since the repeal of the Land Sales legislation in the early 1950s the income or productive approach has become a neglected part of rural valuation practice. The income approach has been seen by many rural valuers as time consuming, sensitive to variables that are difficult to measure, and not simulating buyer behaviour.

Farmers have often been quoted as saying the price of farm land bears little relationship to its productive capacity. This view is also held by well known property pundit Mr Bob Jones [1] who as early as 1977 wrote that:

> "In terms of monetary yields farmland in this country is grossly overpriced by all the normal investment measuring rods."

Rural valuers are well aware that current cash earnings form one only component of the farm land price equation. Expectation about future changes in farm values must also be included. Up until 1981 deferred earnings (capital appreciation) when combined with current cash earnings provided a return to farm land investment that Leathers & Gough z report was at least equivalent of other forms of productive investment. For the 20 year period

the real rate of return to farming averaged 8%.

1960-1980 the real rate of return to farming averaged 8 %. Of this 3.4% was annual cash earnings and 4.6% real capital appreciation. The Valuation Department' farm price index showed an annual compound rate of increase in farm land values of 18.16% for the period 1970-1982.

With the benefit of hindsight it is now possible to see that Mr Jones was correct and the price increases in farm land values were not based on sustainable current cash earnings. Increases in the price of farm land appear to have been largely fuelled by optimistic expectations about future capital appreciation. These expectations were based on past trends in rural land prices and a variety of agricultural subsidies that seemed to ensure future stability to farm incomes. In addition, rural land was seen as an excellent hedge against inflation.

The change of government in 1984 followed by a move to a 'more market' economic policy has resulted in significant downward pressure on farm land prices. Subsidies and taxation incentives for agriculture have been largely removed and net farm incomes, for hill country farmers in particular, fell significantly in 1985/86. In the past the price of farm land has usually held up during periods of income downturn since farmers who are thinking of selling but not under any financial pressure, keep their properties off the market until the outlook improves. What makes the current downturn unique is that there is a significant percentage of farmers and growers who are under financial pressure to sell since they are now technically insolvent. In most cases this has been caused by a combination of falling land values, a high level of debt, high interest rates and reduced gross incomes.

The paucity of buyers in the rural real estate market during 1985 and 1986 tends to indicate that asking prices will have to be further reduced before farming is viable for potential purchasers. At the time of writing sales evidence is sketchy but indications are that by late 1985 North Island hill country sale prices had dropped back 50% on the early 1984 level. Sales quoted are basically forced sales but indications for the hill country at least are that forced sales are likely to dominate the market for quite some time. Other classes of farm and horticultural land are also experiencing strong downward pressure on land values.

When formulating an offer price, a potential buyer is likely to be very cautious about counting on future capital gain. Recent sales evidence indicates that a number of the current vendors are likely to end up selling for less than what they paid for the land. What,this means then is that purchasers will need to use normal business guidelines and be much more concerned with financial viability than they have been in the past. A prudent farm purchaser is likely to do an investment analysis exercise that is reasonably similar to a productive valuation. If buyers and lending institutions are now placing a greater emphasis on viability then it seems logical that valuers should once again examine the relevance of the income approach.

There have been major developments in income approach methodology since rural valuers last seriously used the approach. These refinements include methods such as Mortgage Equity Capitalisation, Discounted Cash Flows, Internal Rates of Return, and the Bid Price model. These methods were first developed by overseas researchers working in the areas of finance and investment analysis. In New Zealand the valuation application of these methods has largely been centered on income producing urban property.

What follows is a brief review of the traditional gross income approaches to the valuation of farm land and some thoughts on the possibility of using a gross margin approach. The traditional net income approach is then discussed and the paper concludes with an explanation of the bid price method.

A. Stock Unit: It is common for valuers to analyse sales of sheep and cattle farms on the basis of the price paid per stock unit, capital value, land value, and sometimes land without

buildings value. Most people operating in the market consider the price paid per stock unit, capital value. The price paid per stock unit is particularly useful for hill country. Like most quick and easy check methods there are judgement factors that have to be exercised since the number of stock units that can be run will partly relate to the managerial ability of the farmer. Thus an excellent manager may be able to successfully run 14 stock units/ha on hill country whereas a below average manager might be struggling to run 10 stock units on the same farm. It is also important to realise that performance per stock unit may vary widely. For example two farms stocked at 12 stock units, farm A has 120% lambing, farm B 90% lambing. The price paid per stock unit will also logically vary due to differences in the value of the improvements, locational factors and the amount of potential (where undeveloped or partially developed land exists).

B. *Output:* The price paid per kg of milkfat is a very useful method for dairy farms and is a figure often quoted in real estate advertisements. This method is a type of gross income multiplier and eliminates the output per stock unit variable. Within dairy farms the effects of buying in feed versus grazing off need to be considered.

Preliminary research work by Comely 4 into horticultural valuations for kiwi and pip fruit orchards suggests that price paid per export tray or carton are useful check methods.

C. *Gross Margin:* The gross margin approach is a farm management tool used to compare the profitability of various farming enterprises. To calculate the gross margin on a particular crop or livestock enterprise the analyst determines the gross income and deducts the direct costs associated with the enterprise. For example on a prime lamb property revenue will be derived from lambs, wool, and cull ewe sales. The direct costs will be replacement ewes, rams, shearing and crutching, and animal health.

The gross margin approach offers some potential benefits over the two previously mentioned approaches in that it forces the valuer to consider what the most probable mix of enterprise would be on the subject farm under average efficient management. Further, when analysing sales data, the total income from all enterprises can be related to the selling price of the comparable sales. For example let's suppose we have a 250 ha hill country store sheep and cattle property running 3200 stock units that has just sold for $224,000. On a stock unit basis the sheep to cattle ratio is 3:1 and this is considered typical for this class of land. The gross margin per stock unit is sheep $20 and cattle $26. Gross margin total income from the farm is therefore $68,800 which gives us a multiplier of 3.2558 and a capitalisation rate of 30.714%.

This approach has several advantages over the stock unit and price per kg of milkfat approach. Firstly, it converts output to dollars which gives a common benchmark that can be used between different types of farm on the same basic soil type. For example, on the terrace clay loam soils of the Manawatu it is quite common to find dairying, fat lamb, mixed cropping and bull beef carried out. On the income side the usual units of comparison don't work.

Secondly, the gross margin approach takes account of the direct costs of producing the output and thus corrects for farms with similar output but different production costs, as might occur between high fertility and medium fertility cropping farms.

The gross margin approach suffers from some disadvantages. The indirect costs of production are not reflected in gross margins and thus care is needed when comparing say bull beef with dairying since the labour requirements are likely to be higher for dairying. Also gross margins fluctuate from year to year.

In summary gross margins are a commonly used tool in farm management analysis and information on gross margins is readily available from the Ministry of Agriculture and Fisheries. Now that farm purchasers are placing increased emphasis on viability the gross margin multiplier approach warrants further investigation and comment by rural valuers.

D. *The Traditional Income Approach:* The traditional income approach to valuation used by rural valuers during the Land Sales era is described by Cooke and Frizzell.I A budget is compiled to ascertain the net income which is then capitalised at an accepted capitalisation rate. The productive value is adjusted for both standard improvements and locality factors to arrive at the most probable selling price.

The budget concepts used in the income approach differ in a number of important respects from the standard farm management cash forecast budget. The subject property is considered in a status quo position using the concept of average efficient management. The budget concept is to reward all the factors of production, except the real estate, according to their marginal value product. This means for example that management has to show as if an outside manager were employed and is not the actual cash drawings of an owner operator. Similarly the total value of the hypothetical stock and plant has to be rewarded at the going interest rate. The surplus that accrues to land is equal to the marginal value product of the real estate component of the production system.

There are a number of other hypothetical constructs used in the productive approach. The most important of these is the notion of the hypothetical improvements. This means the typical improvements that would be considered normal for the subject farm. If the actual improvements are different then the productive valuation has to be adjusted for the difference.

The problem with the hypothetical constructs in the productive valuation is that they are very difficult to define and it is questionable if this method simulates investor calculus.

E. *Bid Price (Investment Approach):* The bid price method was developed in the USA by Lee and Rask. 6 It is an investment analysis technique that can be used to determine the maximum amount that a purchaser can afford to bid for a farm. The bid price is the sum of the net returns to land plus the land's capital value. The bid price model was first reported in Agricultural Economics literature in North America about ten years ago. At first glance the mathematical equation that explains the bid price model appears to be too complex for use in a commercial valuation context. However, Klemme and Schoney 7 have broken the large equation down to a series of small equations that are much more readily understood. The steps in the bid price model are as follows:

BID PRICE=PRODUCTIVE VALUE + INVESTMENT VALUE

Productive Value

Step 1. Calculate the after tax net returns per hectare for land.
Step 2. Specify the holding period.
Step 3. Determine the real after tax cost of capital. (This is the capitalisation rate.)
Step 4. The productive value equals the capitalised tax net returns.

Investment Value

Step 5. Estimate the current land price.
Step 6. Estimate the percentage change in land values over the holding period (multiply current land value by the percentage change to estimate future value.)
Step 7. Determine the discount rate. (This is the after tax cost of capital.)
Step 8. Investment value equals future land values discounted to present value.

EXAMPLE - BID PRICE METHOD

Productive Valuation

Step 1. From our budget we determine the after tax net returns per ha are $120.
Step 2. The holding period (the period that the investor plans to

own the property) needs to be specified. An examination of farm turnover rates gives some idea as to the `typical' holding period. For this example say 20 years.

Step 3. (a) Calculate the nominal pre-tax weighted average cost of capital to take account of the opportunity cost of the equity invested in the farm and the cost of borrowing.

	%		Interest Rate %		
Equity	.6	x	.15	=	.090
Mortgage	.4	x	.20	=	.080
			Weighted Rate	=	.170

(b) Convert the nominal pre-tax cost of capital to an after tax rate basis. (Assume the marginal tax rate is 30%.)

After tax cost of capital

(.17x(1-.3)=.119

(c) The real after tax cost of capital (RATCC) is calculated by dividing one plus the after tax cost of capital (1.119) by one plus the expected rate of increase in net returns. (In this example we will assume that net returns increase 8% per year.) This number 1.0361 minus one equals the real after tax cost of capital.

RATCC = ([1.119/1.08] 1) x 100 = 3.61

Thus the capitalisation rate is 3.61%

Step 4. The after tax net income of $120/ha is capitalised at 3.16% for the 20 year holding period. the income ($120) will be multiplied by the present value of an annuity factor for 20 years at 3.61% (14.0719). Thus the productive valuation is $1,688.63/ha.

Investment Value

Step 5. From sales data we estimate that similar land is selling for $2,500/ha.

Step 6. We estimate that land values will double over the 20 Year holding period. This means that the future value at 20 years is $5,000/ha. (The increase approximates an annual compound rate of 31/2 %.)

Step 7. The discount rate is the after tax cost of capital of 11.9 % as calculated in Step 3(b). This gives us a discount factor of .105535.

Step 8. The future value ($5,000/ha) multiplied by our discount factor (.105535) gives us an investment value of $527.67.

BID PRICE = $1,688.63 + $527.67

BID PRICE= $2,216.30/HA

One of the major advantages of the bid price method is that it can separate what the land is worth on a purely productive basis. This means that a lender can quickly assess the cash flow available to service a proposed loan. Prospects of future capital appreciation in the asset value do not help with debt servicing. Part of the current problems with delinquent farm loans is that a number of past lending decisions were made mainly on the basis of available security and without sufficient consideration of debt servicing ability. If more rural valuers included a productive valuation with their reports then lenders would be in a better position to make sound lending decisions. It is appreciated that most rural valuers do supply budgets to back up their mortgage recommendations. However, there are still a surprising number of valuers that make loan recommendations without reference to either debt servicing ability or productive values.

The bid price method can be criticised on many of the same grounds that have let to difficulties with the traditional income approach. The method is very sensitive to the assumptions used to determine the capitalisation rate, errors in the budget are magnified by the capitalisation process, and the model is very sensitive to the assumptions made about future changes in the land value.

The bid price method is mainly applicable as an investment analysis tool for individual investors. For it to be used in a strict market valuation context the budget would need to reflect the income achievable by an "average efficient farmer".

consumers of rural valuation services will increasingly demand that a productive valuation be included with the valuation report.

Despite the limitations that have been outlined above it seems fairly clear that the consumers of rural valuation services will increasingly demand that a productive valuation be included with the valuation report. The bid price method appears to simulate investor behaviour much more closely than the traditional income approach.

To minimise the time required to use the bid price method the author has developed a simple interactive program. This program is shown in Appendix I. It is written in a very generalised form of BASIC and can be easily adapted to operate on most brands of microcomputer. This program takes the user through the steps previously outlined and rapidly calculates the bid price.

Summary and Conclusions

It seems clear that the time has arrived for rural valuers to sit down and formulate an income approach that simulates buyer behaviour in the rural market place. Gross income multipliers such as the price paid per kg of milkfat and price per stock unit are likely to continue to remain important check methods as these benchmarks are widely used in the market place. The gross margin multiplier approach may have application in farming areas where there is a diversity of land use on one soil type.

It is unlikely that prudent investors will purchase farms simply on the basis of gross income estimates. The capitalisation of net income is a more accurate method of calculating the productive value of a farm. The bid price method as outlined in this paper is a good starting point for a new approach to income valuation on the rural scene.

Although the comparable sales method is likely to continue to dominate rural valuation methodology in the foreseeable future there is a need for greater use of the income approach. Clearly, some of the the mistakes of the immediate past may have been avoided if rural lenders had been made aware of the difference between the productive valuations and the market values of mortgagors' farms.

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```
10    PRINT "BID PRICE MODEL"
$0    PRINT "ENTER AVERAGE PRICE/HA FROM SALES DATA"
30    INPUT AP
40    PRINT "ENTER % OPPORTUNITY COST OF EQUITY CAPITAL"
50    INPUT CC
55    IF CC > 1 THEN CC = CC/l.OO
60    PRINT "ENTER BUYERS PLANNING TIME HORIZON (YEARS)"
70    INPUT N
100   PRINT "ENTER BEFORE TAX NET RETURNS/HA"
110   INPUT AN
120   PRINT "ENTER % EXPECTED ANNUAL RATE OF GROWTH IN NET RETURNS/HA"
130   INPUT GN
135   IF GN > 1 THEN GN = GN/ 1 00
140   PRINT "ENTER % FOR BUYERS MARGINAL TAX RATE"
150   I NPUT MT
155   IF MT> 1 THEN MT = MT/ 100
160   PRINT "ENTER % DOWN PAYMENT"
170   I NPUT DP
175   IF DP> 1 THEN DP = DP/100
180   PRINT "ENTER % FOR NOMINAL INTEREST RATE ON LOAN"
190   INPUT IR
195   IF IR>1 THEN IR = IR/100
200   PRINT "ENTER LENGTH OF LOAN (YEARS) "
210   INPUT T
220   PRINT "ENTER ANNUAL INCREASE % -LAND VALUES"
230   INPUT IN
240   IF IN) 1 THEN I N = IN/100
250   WR = (DP * I R) + ( (1 -- DP) * CC)
260   NC = (WR * (1 MT))
270   RC = (1 + NC) / (1 + GN)
$75   I = RC -- 1
280   AF = ( ( (1 + I) N) -- 1) / (I * (1 + 1) N)
290   PV = (AN * ( 1 - MT)) * (AF * RC)
300   PRINT "PRODUCTIVE VALUE="uPV
320   FV = AP * ( 1 + IN) "' N
330   CA = (CC at (1 - MT) )
340   NV = FV / (1 -+- CA) N
350   PRINT "INVESTMENT VALUE= " b NV
360   PRINT "BID PRICE=' NV + PV
```

Rent Reviews
Jurisdiction to Award Interest

by Derek Firth

Derek Firth is a litigation partner in the Auckland law firm of Simpson Grierson Butler White. He graduated from the Auckland Law School in 1965 and has appeared frequently in the Court of Appeal, High Court, before various tribunals and in a number of arbitrations.

He is a Fellow of the Chartered Institute of Arbitrators (London) and a member of the Arbitration Panel of the Hong Kong International Arbitration Centre.

He is a member of the Dilworth Trust Board which is a substantial commercial and industrial property owner in the Auckland area and is a director of a number of private companies.

It is usual for a lease to provide for rent reviews by agreement or, failing agreement, in one of the following ways:

(a) by arbitration under the Arbitration Act 1908.
(b) by valuers, one appointed by each party and failing agreement, by their umpire appointed by such valuers.
(c) by arbitration in the same terms as (b).

The Arbitration Act provides that a simple reference "to arbitration" (as in (a) above) means to a sole arbitrator and unless the parties can agree upon a sole arbitrator, the Court will appoint one on the application of either party. In other words one is not obliged to have two arbitrators plus their umpire in such a case. Either side can insist on a sole arbitrator being appointed by the Court if the parties cannot agree. Terms of reference along the lines of (b) or (c) above may not in fact be arbitrations at all but "valuations". Many articles have been written on this debatable topic by learned authors who have endeavoured to reconcile the decided cases but for the purpose of this article it is assumed that it makes no difference to the question of interest.

Some leases expressly provide for interest on arrears of the additional rent payable following a rent review and what follows in this article has no application to those cases because whatever is agreed upon by the parties in the lease prevails.

The purpose of this article is to consider whether or not a valuer/arbitrator/umpire (as the case may be) has jurisdiction to award interest on the additional rent for the period between the date when the new rental becomes effective and the date of the ruling or award.

This is an important issue in practice because, while some leases expressly provide for the rent fixing procedure to be commenced some months prior to the review data to ensure there is no or minimal delay, most do not, and there can be, in practice, a substantial delay between the effective date and the ruling.

Putting aside for one moment the question of rent reviews, the position in other arbitration claims was firmly laid down in a decision of the English Court of Appeal, *Chandris v. Isbrandtsen Moller Co Inc.* [1950] 2 ALL E.R. 618 where it was held that (in the absence of any express provision in a contract or reference to arbitration, to the contrary) it is an implied term of a reference to arbitration that the arbitrator has the same power to award interest as a Judge of the High Court. This decision has been followed for some years in New Zealand. Recently some doubt about this proposition arose as the result of an Australian case but the old rule was confirmed in a recent New Zealand decision, *Kenneth Williams & Co v. Martelli* [1980] 2 NZLR 596.

The jurisdiction of the High Court is contained in section 87(1) of the Judicature Act 1908 which reads:

> "In any proceedings in the High Court or the Court of Appeal for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given, interest at such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment"

The "prescribed rate" is presently 11%. The equivalent legislative provision in England is almost identical but there is no "prescribed rate" and English Judges are free to award interest at full commercial rates if they wish.

The first point to note about the section is that the entitlement to interest is discretionary both as to amount (up to the prescribed rate) and the period.

The second, and more important point for present purposes, is that the jurisdiction arises only in respect of "the recovery of any debt or damages."

In the case of a building or shipping dispute, or other commercial claim, there is no difficulty because those arbitrations are in respect of "the recovery of any debt or damages."

The crucial question is whether or not the fixing of a new rent (or valuing property to fix a price, or valuing shares to fix a price) is the recovery of a debt or damages because if not, there is no jurisdiction in the High Court to award interest (subject to any express provision to the contrary in the relevant contract or reference to arbitration) and therefore a valuer or arbitrator has no jurisdiction to award interest.

Clearly the fixing of a new rent is not `damages"

Clearly the fixing of a new rent is not "damages".

Is it a "debt"?

In a very general sense it might be said that the arrears of rent are a "debt" in that they are payable. However a claim for an amount which is uncertain cannot legally be called a "debt": *Ogdens Limited v. Weinberg* (1906) 95 L.T. 467 H.L. per Lord Davey. The word `debt' is defined in Strouds Judicial Dictionary as "a sum payable in respect of a liquidated money demand, recoverable by action" In Canada it was recently held "The word `debt' has a well-defined judicial meaning as a sum payable in respect of a liquidated money demand. It does not include an

unliquidated claim . . *"Pizzolati & Chittaro Manufacturing Co. Limited v.* May [1971] 3 L.R. 768, 770. Liquidated means a determined amount. An unliquidated amount is one which requires more than nominal investigation *Paterson v. Wellington Free Kindergarten Association Inc.* [1966] NZLR 468; 471.

It is submitted by this author that having regard to section 87(1) of the Judicature Act 1908 as a whole, and the context in which the word appears, it does not include the fixing of a new rent or the valuation of shares or property. This is because the new rent is not a liquidated amount and cannot be paid (nor can the price in the case of property or shares) until it has been fixed and the amount in question was not payable prior to the award because there was no defined amount. In other words the fixing of the rent (or valuation) is a condition precedent to the ability of the lessee (or purchaser) to pay. It is difficult to see how the amount in those cases could be said to be the "recovery of a debt".

If this view is correct (and one cannot be sure until it is tested in Court) then there is no jurisdiction to award interest on the arrears of a rent increase.

Conclusions

1. It is highly desirable that a lease provides expressly for continued payment of the current rental pending the determination of the new rental, and for interest on the difference between the current and new rental between the effective date and the date when the arrears of the increase are paid.
2. In appropriate cases consideration should be given to commencing the rent review procedure prior to the effective date so as to minimise the delay. (This is done for example in section 22 of the Public Bodies Leases Act 1969).
3. Ensure that all rent reviews are conducted as speedily as possible so as to ensure that the period of any arrears will be as short as possible.

GST - Further Amendments

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Since arriving in New Zealand he has been involved in preparing GST material for the New Zealand Society of Accountants, writing technical material on GST and authorship of Arthur Youngs practical guide to GST.

Tony contributed an article dealing principally with GST and insurance matters in the December 1985 edition of the New Zealand Valuer.

This article is based on a paper delivered to the Auckland Branch of the New Zealand Institute of Valuers in July 1986

The amendments recently proposed for introduction are still in bill form and are scheduled to go to select committee hearings. They may therefore themselves be subject to change and we may not have a final form, until the end of August. There is, of course, a positive side to that. If you find that the amendments are particularly disadvantageous, there may still be time to effect those changes. Many of the submissions made to the select committee on finance earlier in the development of the GST bill were effective and further representations may also be successful if well prepared and convincingly argued.

The amendments are significant because they are evidence of the Government and Revenue's latest thinking on how construction in particular and various matters which will affect property indirectly, are to be subject to GST. Hopefully, many will find that the amendments represent an improvement on the GST Act as it was previously drafted, since many of them have arisen as a result of industry representations.

Bear in mind, however, that when the amendments pass into law, in whatever form, they eventually take, they will be deemed to have been in effect since 3 December 1985. For those of you who have not been following the development of the tax, that is of course the date on which the principal act came into force.

1. ZERO-RATING

You will appreciate that zero-rating constitutes a complete relief from GST (except perhaps for cashflow effects) as it enables the supplier of the zero-rated item to charge no output tax, while continuing to recover input tax incurred on expenditure in relation to those supplies. For this reason, it will be desirable to use the zero-rated relief, wherever possible, but equally we can expect the Inland Revenue to be rigorous in their scrutiny of zero-rated supplies (which will occur through normal occasional control visits) to ensure that the relief is not being abused. The first point to make about zero-rating therefore is that while it may apply to "exports 7, it is not as simple as this and it will be advisable to check with the zero-rating provisions of the Act to ensure that what you may think is "exported" actually comes within the provisions.

zero-rating constitutes a complete relief from GST

When considering the zero-rating of a supply of goods, the first thing to notice is that a supply of goods which is outside New Zealand at the time it is supplied, is zero-rated. Clearly therefore, a supply of land or improvements to land situated abroad will be zero-rated.

Secondly, the supply of a taxable activity, (basically a business which is principally concerned with the making of taxable rather than exempt supplies), will be zero-rated if sold to another

registered person as a going concern. Since going concerns consist principally of parcels of assets, this is an area where you may find a knowledge of the zero-rating provisions is of assistance. However, bear in mind that a parcel of assets of itself cannot be zero-rated, it must be a sale as a going concern or at least of assets which consist of a business which could be carried on separately from the business from which they are being sold. Furthermore, the sale must be to a registered person.

The Services section of the zero-rating relief provides rather more opportunity for zero-rating, the sort of supplies valuers normally make. The most significant provisions are:

- Services supplied directly in connection with land or any improvement to land situated outside New Zealand. Clearly this would cover the services of buying and selling such land, and in effect buildings, and the valuing of these sorts of assets.
- Services physically performed outside New Zealand; since it is presumably difficult to value land situated outside New Zealand without going offshore to perform some sort of assessment (though this will not always be the case), this provision may therefore not expand on the previous provision, in practical terms.
- Services supplied for and to a person who is not resident in New Zealand and is outside New Zealand at the time.

Aside from the practical difficulty of determining whether one's client is New Zealand resident, we here start to have to deal with some of the amendments referred to earlier.

It is proposed that the scope of the zero-rating provision should be curtailed in this area and that zero-rating, where the recipient is non-resident and outside New Zealand, will not be available where the service relates directly to land or any improvement thereto situated inside New Zealand.

There are sundry other amendments to the zero-rating section but none are likely to have such a direct impact on valuers' areas of operations.

2. EXEMPT SUPPLIES

There are no amendments in the area of exemptions which are likely to have a direct impact on valuers' activities. However, it would be advisable to consider briefly what is exempt, as this will affect the position of your clients and their ability to recover GST. The general area where exemption is most likely to arise, is in what may be called banking services. As a matter of terminology, one should be careful to say that it is not a bank as such which is exempt but the services which it will often provide. That is to say, borrowing, lending, giving guarantees, dealing in debt and equity securities, etc. Similarly the provision of life insurance will be exempt, the provision of credit on credit contracts, the provision of superannuation benefits, and futures trading through a futures exchange. These all fall into what might be called the financial services area and if your client is dealing in this area at all, it is possible that they will not make a full recovery of GST charged to them. In effect, this alters the price and in a sense the value that your client may place on particular assets.

Of direct application to your area of operations, however, is the fact that the hire of private accommodation, basically private lettings to individuals, has been exempt from the outset and remains so after the recent amendments. Bear in mind therefore that

a private landlord will not be charging GST to his or her tenants.

a private landlord will not be charging GST to his or her tenants. However, it may well be that private rents rise to some extent following the introduction of the tax as a private landlord will not be able to recover GST charged to them on rates, general expenses, repairs, etc. because they are making exempt supplies.

We should consider whether this means that yields on private accommodation will fall. The answer is that it must depend on the letting agreement. If the letting agreement allows the landlord to increase the rent marginally to cover the additional cost of GST, which they will not recover on expenses incurred, then it seems that yields will stay the same. If not, then it seems that yields may be affected until such time as present agreements have worked through the system and new agreements have come into force or reviews/clauses have been invoked.

Before turning to some of the areas more subject to amendment, I think we should say at this point, that there are a number of implications already arising from the fact that many of the services you supply may be zero-rated and that many of your clients' activities may be exempt.

The first implication is that since it will be next to impossible for a valuer to tell with any degree of certainty whether their client is carrying on the supply of exempt activities, and to what degree, it will not be possible to predict the after tax cost of a particular asset to a client. It therefore seems to me that all a valuer can do is to clearly state a value in GST exclusive or inclusive terms, pointing out that GST will be chargeable (with the probable exception of private landlords) and that the purchaser, if that is what we are dealing with, should assess their recovery position in accordance with the normal GST rules.

If that sounds unsatisfactory and uncertain, consider the following:

- If you are dealing with an insurance company, how will you know whether the building will be occupied by the life insurance or the general insurance division? You do not know this and in any case plans may change and often do in the course of rearranging a business activity.
- If one's client is a retailer, how do you know to what extent they are making credit contracts, and whether they deal with their own financing? Again, you would not be in a position to know this and although it is less likely that loss of input tax would occur in this area, there can be no absolute certainty.

All we can say with any degree of certainty is that a supply of property by a dealer or property constructor after 1 October 1986 will be subject to GST and therefore valuations of private accommodation in this situation should reflect the fact that GST will be added. This is because the seller will be carrying on a taxable activity in their own right and therefore will be obliged to charge GST. At the same time the purchaser will almost certainly be buying in their private capacity (whether or not they are registered for GST in some other capacity) and the tax will therefore not be recoverable.

3. TAXABLE ACTIVITY AND EMPLOYMENT

One area that I should mention, before going any further however, concerns the question of whether a particular person, perhaps an individual valuer or an employee of a valuation type business is carrying on a taxable activity or not.

Employment under a contract of service is excluded from the definition of taxable activity. It therefore follows that an employee earning more than $24,000 per year is not required to register for GST. You will appreciate that this is not necessarily a good thing, if the employee has to bear significant expenses out of their remuneration, under their terms of employment. It is unlikely that the employer in these circumstances can reclaim the GST on those expenses, and as a practical matter it would be difficult to achieve.

Who is and who is not an employee as opposed to a self employed subcontractor is however a vexed matter at present. It does not follow, for example, that because someone is paid on a basis which involves the payer making a withholding payment, as opposed to a full PAYE deduction, that the recipient is going to be automatically regarded as self-employed.

Those who are on a commission only basis, should be considering whether their contract results in their having to register for GST. At present, registration application forms are not being sent automatically to many people who are paid on a with-

holding payments or a commission only basis, and requests will therefore have to be made for these forms. In this case the question of employment status may then be raised and may have to be resolved one way or another.

This is an area where income tax implications are going to be raised and maybe more significant than the GST implications that resulted in the original enquiry.

4. TIME OF SUPPLY RULES - AS AMENDED

The basic time of supply rule was, and remains that a supply is deemed to be made on the earlier of an issue of an invoice by the supplier or receipt of any payment. If you have been following the debate on this law, you will realise that this introduces some fairly massive problems. For example, an invoice, for the purposes of this section, is not a tax invoice, but can mean any document notifying a liability to make payment. The IRD have said that they could regard a contract as a document notifying a liability, and it would therefore follow that a supplier might have to account for the full amount of GST on a sale at the time a contract was entered into.

Furthermore, note that as an alternative, it is the receipt of *any* payment that triggers the time of supply. This means that the receipt of a 10% deposit for a supply could render the supplier liable to again account for GST on the full amount the value of the items supplied. Clearly, both of these possibilities have fairly disastrous consequences for the cashflow of builders and were deemed to be politically unacceptable, because it appeared that a young couple going to buy a first house might have to provide financing for the GST at the outset, at which time they would probably not be able to borrow the money from the appropriate lending institutions. That would lose votes for politicians and I hope I will not be accused of cynicism if I suggest that is why an amendment has been effected in this area.

It is now provided that where goods consisting of a building or civil engineering work are supplied -

> ... pursuant to any agreement or enactment which provides for payments in respect of that supply to become due periodically as a result of the constructional manufacture of those goods by the supplier and are payable in relation to the progressive nature of that construction or manufacture, those goods shall be deemed to be successively supplied and each successive supply shall be deemed to take place whenever any payment in respect of the supply becomes due is received or any invoice relating to that payment is issued, whichever is the earlier"

It now appears, therefore, that one would account for GST on progress payments as and when the payments become due, rather than in a lump sum at the outset.

There is a further amendment to the effect that goods supplied progressively or periodically (not being a building or civil engineering work) can be dealt with similarly.

It would follow from both these clauses that progress payment demands, when certified and agreed, should be presented from principal to customer in the form of a tax invoice. This is a practical possibility, if only because the builder will want to be paid and will therefore make sure that his payment demand will be a tax invoice in the correct form, once the amount due has been agreed.

However, a further amendment has also been proposed. You may recall that there were clauses allowing retention payments to be taxed when and only to the extent that a payment was received in respect of the retention, and a similar rule existed for variations.

Both these clauses are now deleted, and it appears therefore that the IRD expect the amended clauses just outlined to be sufficient. In other words, because of the introduction of a progress payments rule for buildings, the special treatment of retentions and variations is considered to be no longer required. It may be however that this is an unwarranted assumption. It would depend for example, on whether a progress payment includes a retention under any particular contract (and one would presumably have to look at the facts of each case) and when the retention was due to be paid. Remember, the amendment requires GST to be accounted for on the *earlier* of a progress payment becoming due, being paid, or an invoice for that payment being issued.

5. BUILDINGS UNDER CONSTRUCTION AT 1 OCTOBER 1986

The normal time of supply rule just discussed and indeed the amended rule based on progress payments are over-ridden for supplies around about 1 October 1986 by the "performance" rule. This provides that where a supply such as a building, paid for prior to 1 October 1986, but not made available to the purchaser until after than date, is deemed to take place after the introduction of GST and the supplier will have to account for tax. The IRD are interpreting availability to be equivalent to possession. Furthermore, section 84 of the Act subsection 3 provided that where the supply was a building or civil engineering work in progress on 1 October 1986, an apportionment could be made, subject to valuation by an approved independent valuer, so that the tax was limited to that part of the goods and materials supplied after the introduction of the tax.

The first amendment to this area is quite helpful in that the IRD may now approve any other competent valuer (i.e. not necessarily an independent one) at their discretion. Typically, this means that valuers who are retained by the customer, and who might therefore not be regarded as independent, can now carry out valuations for the purposes of GST in section 84.

The second amendment, however, marks a significant restriction of the relief available under the section. The apportionment procedure referred to, is now only to apply where the building or civil engineering work has been dealt with under the progress payments rule discussed earlier, and is being constructed under a written contract entered into before 1 October 1986.

It appears therefore to mean that any speculative builder, as opposed to any one building under a contract for a definite supply to an identified customer, is severely disadvantaged. In an extreme case where a speculative builder is constructing a house, the property will be 10 % cheaper if a buyer contracts on 30 September than it would be if the buyer does not appear until 1 October 1986 or after that date. Similarly any speculative builder constructing offices etc., which may be used by a person making exempt supplies (such as a bank or stock broker) may find their price in effect being increased because the purchaser may be unable to recover part of the GST, or may find their profit impacted by the tax.

This is a disappointing restriction, in view of the fact that it appears to have been conceded as a matter of policy that substantial projects in the nature of construction should have some relief by apportionment around 1 October 1986.

6. CONCLUSION

Where do we go from here?

As far as the amendments are concerned, study them with your trade bodies to consider any adverse impact and the best form for lobbying and/or representations should you wish to do so. Speaking more generally and perhaps more for people in the business in an administrative function, your business's planning for GST should now be well under way, and in any case it should include at least the following areas.

- The need to educate your staff to handle GST.
- A review of stationery to ensure that the information requirements of the GST Act are met.
- Changes to systems such as software, analysis sheets and filing systems.

The proposed amendments should not prevent the planning in this area going ahead with the possible exception that it will now be necessary to provide for requiring tax invoices from builders at the time progress payments are to be billed to clients.

GST -Not the Last Word

by Graham A. Halstead F.N.Z.I.V.

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Graham served on the Education Committee and Board of Examiners continuously from 1974 and is currently convener of a project arranging for the writing and publication of a second volume of Urban Valuation in New Zealand. He has contributed articles on a number of occasions to The New Zealand Valuer.

The following article provides considerable insight on the GST problems facing Valuers.

"GST is a tax on spending. It is ultimately paid and borne only by domestic consumers on goods and services and is designed to tax their spending evenly and fairly. It is not a tax on the sellers of goods and services - they will simply collect GST on behalf of the Government".

The above quote is taken from the introduction to the GST Co-Ordinating Office's booklet on "Property Sales, Rentals". The implications of GST on property sales and rentals are complex and fraught with anomalies. GST as applied to property is not as simple or as fair as the Government advertising will have us believe.

Business property sales and rentals do not fit easily into the GST net. Properties are fixed assets and cannot be classed as consumer goods such as food, clothing, whiteware and brownware.

Different types of property and rentals are treated differently in the GST Act. Residential rentals are exempt from GST while most business rentals must have GST added. The unfortunate new home owner has to bear GST while existing house sales do not attract GST. New buildings or improvements for the home owner attract GST while registered persons receive a credit for GST paid on buildings used for a taxable activity. Property investment companies receive a GST credit on property purchases while a bank, for example, may not qualify for a credit for the GST paid on property purchases or new buildings. Property sales qualifying as going concerns are zero rated for GST while others. have GST added.

Why did the Government include certain property sales in the GST net? Originally, the GST Bill only provided for the "value of improvements" portion of property sales to be levied GST. However, the Government recognised the administrative problems associated with apportioning sales and decided to tax the full price, i.e. land, buildings and any chattels, stock, plant or goodwill. This was a strange move and one wonders why property sales were not excluded from GST. After all the GST Act has been modelled on the UK VAT legislation which excludes property sales from VAT.

This article does not have all the answers for valuers; it is not the last word. The reader is assumed to be familiar with the nuts and bolts of GST.

All valuers are recommended to obtain a copy of the GST Act and amendments. The GST booklets and GST Tax Guide are very useful. Do not rely solely on what the IRD tell you - GST is very complex for everyone - there are still many grey areas.

Finally a note of caution. Some articles on GST include odd errors and misinterpretations - this article is not likely to be an exception.

INSURANCE - VALUATIONS, CLAIMS AND PAYOUTS

To date there has been some confusion about whether valuations for insurance purposes should exclude or include an allowance for GST, particularly for the inflation provisions on the insurance certificate forms used by Valuers.

The first point to note is that whatever the insurance company pays out on a claim it is entitled (Section 20(3)(d)) to an input tax credit of 1/11th of that payment. It does not matter whether the insured is registered or not registered. Nor does it matter whether the payment is a lump sum or a reimbursement for actual costs of repair, reinstatement or replacement.

EXAMPLES OF CLAIMS

Registered Person

Costs $100,000 (sum insured) plus GST totalling $110,000 to replace a building.
Insured gets input tax credit on $10,000 GST paid.
Insured claims $100,000 plus GST from insurance company.
Insurance company pays out $110,000 to insured.
Insurance company gets input tax credit of $10,000.
Insured accounts for $10,000 GST output tax.

Non Registered Person

(e.g. House Owner or Owner of Rental Flats)
Cost $100,000 (sum insured) plus GST totalling $110,000 to replace a building.
Insured claims $110,000 off insurance company.
Insurance company pays out $110,000.
Insurance company gets input tax credit of $10,000.

The examples for both registered and non registered persons show that the effective cost to the insurance company in each case is $100,000 i.e. cost exclusive of GST. The insured in either case is not out of pocket.

Insurance premiums will increase by 10% GST. There is no need for sums insured to be increased on account of GST. Registered persons, will, of course, be able to get an input tax credit on the GST portion of premiums.

There is one opinion that, because insurance contracts provide for payments of up to the sum insured or not exceeeding the indemnity value then insurance companies are not obliged to pay out GST in excess of those payments. However, the insurance companies have nothing to lose by paying out GST because they get it all back again as input tax credits.

It would appear that insurance companies have accepted the Insurance Council's recommendation that sums insured be not increased by an allowance for GST. Two insurance companies I have contacted propose to issue endorsements to policies in

respect of GST. The State Insurance Office also appears to accept the Insurance Council's recommendation.

While each insurance company is not bound by the Insurance Council, there is really no other option to take. For some insurance companies to base premiums on GST exclusive sums insured, while others use GST inclusive sums, the situation would be intangible for the whole insurance industry to say nothing of the confused public, including valuers. Uniformity is the real objective and hopefully this will be achieved between all affected parties.

Valuations for insurance purposes should be based on GST EXCLUSIVE VALUES

Valuations

Valuations including preparation of Certificates of Valuation for insurance purposes should be based on *GST EXCLUSIVE VALUES*. This follows the recommendation of the Insurance Council of New Zealand that sums insured should not be increased for GST.

If GST inclusive values are given to clients the premiums will be increased for no added benefit. Clients will simply have higher insurance costs and insurance companies will have higher profits.

All certificates or letters containing valuations for insurance purposes should make it clear that the figures are GST exclusive. As a further precaution clients should be advised to check with their insurance companies that GST will be paid out over and above the sum insured or indemnity value.

BUILDING OR CIVIL ENGINEERING WORK UNDER CONSTRUCTION AT 1 OCTOBER 1986 (Sec. 84(4))

For building or civil engineering contracts entered into:

(a) After 20 August 1985 but before 1 October 1986, or
(b) On or before 20 August 1985 if the contract is reviewable,

GST is payable on only that proportion of the contract which is performed on or after 1 October 1986. Note that the contracts do not necessarily have to be for new buildings or new civil engineering work. Additions, alterations and reconstructions are treated in the same manner. The significance of 20 August 1985 is that this was the date the GST measures were announced. Note that this provision does not apply to sales after 1 October of properties (e.g. spec houses) having new buildings which were built spanning 1 October. The implication of this is that the spec builder will have to add the *full* 10% GST to any sale after 30 September.

If the work was done for a non-registered person (for example, a homeowner) a competent independent valuer (or architect, quantity surveyor or engineer) must certify what proportion in relation to contract price of a contract was completed by 30th September 1986. Such a certificate must be provided by 1st December 1986. An amendment to the Act also allows a competent valuer (i.e. not independent) to value the work in place providing the IRD approves of that valuer - this will allow the Housing Corporation, for example, to do their own valuations.

No certificate is required for building contracts between registered persons. This means that the builder and owner of the building can agree between themselves the appropriate portion of work completed. Even a guess would be good enough because it is of no consequence in terms of GST - the builder accounts for GST collected while the building owner gets an input tax credit for the GST paid to the builder.

Many valuers could be called upon to value the work in place as at 30 September. The *value* of the work has nothing to do with market value. The first step will be to apportion the contract price between the work in place and the work to be completed.

The apportioning exercise is similar to that carried out in the preparation of progress payments certificates (see Urban Valuation in New Zealand by Rodney L. Jefferies).

An added complication will occur when say the section value or land content (in stratum estates) is part of the contract price. Before apportioning the building work in such cases it is suggested that a market based value be deducted for the land factor.

CONTRACTS AND LEASES ENTERED INTO ON OR BEFORE 20 AUGUST 1985 (Sec. 85)

Building Contracts

If the contract was entered into on or before 20 August 1985 and has no review clause i.e. "non-reviewable" (e.g. fixed price contract), GST is charged at zero percent on payments made. Subcontracts are treated the same.

Leases

For lease agreements entered into on or before 20 August 1985 rents are zero rated -

(a) Non-reviewable leases (e.g. 99 year leases).
(b) In respect of reviewable leases or renewals of leases, over the period before the next review or renewal date after 20 August 1985.

For example in the case of a 6 year lease with a 3 year review due on 1 April 1987 there is no GST on the rent over the period between 1 October 1986 and 1 April 1987.

If of course the review occurs before 1 October 1986 then GST is charged on the rent or proportion of rent payable after 1 October 1986.

These transitional arrangements for leases will be of little significance between registered persons in relation to commercial, industrial and farm properties but lessees of residential land (e.g. Crown renewable leases) will have to bear GST after the next review or renewal date.

Turnover Leases

For those lessees whose rentals are based on a percentage of turnover or gross sales the same transitional arrangements apply. However, rents (excl. GST) could rise simply as a result of the addition of GST to sales of goods or services. Each lease would have to be interpreted separately to determine whether turnover or gross sales means the inclusion of GST or the exclusion of GST.

PROPERTY SALES LIABLE FOR GST WHEN IS GST APPLIED?

Contracts Prior to 1 October 1986

Agent's commission attracts GST at the time of performance, that is, when a sale becomes unconditional.

The actual sale attracts GST at the time the property is made available to the purchaser, that is, on the date of settlement and possession. However, it would appear that where a purchaser has a right of occupation prior to settlement then the relevant date for GST becomes the date of occupation.

In practical terms a sale entered into before 1 October could result in GST payable:

(a) on the agent's commission (payable by vendor in respect of *all* property sales) if the sale becomes unconditional on or after 1 October.
(b) on the purchase price (registered vendor), Solicitor's fees (not mortgage fees) and stamp duty (all payable by purchaser) if settlement date or date of occupation is on or after 1 October.

For example, a person buying a new residential section or house off a developer or builder could find that if settlement is after 1 October or is delayed till after 1 October then GST would have to be paid over and above the contract purchase price. To avoid GST the only remedy would be to arrange occupation of the property prior to 1 October.

Contracts On or After 1 October 1986

GST is payable at the earlier of the time an invoice is issued or

the time any payment is received by the supplier (i.e. agent or vendor).

GOING CONCERNS

A sale of a business or property as a going concern (see Section 11 (l)(c)) to *a registered person* will be charged GST at zero percent.

A going concern, although not defined in the Act means according to a GST spokesman "lock, stock and barrel". Shop businesses and the like, including lease, stock and goodwill will be zero rated when sold. However, farms are sometimes sold as a going concern and it would appear that a farm, including livestock and plant, will also qualify for GST zero rating. In respect of commercial or industrial properties I have had all sorts of answers from the IRD on what would qualify as a going concern for zero rating. The IRD has agreed to consider my suggestion that the words "going concern" be defined or at least some guidelines be publicised to clarify the position for vendors and purchasers.

I am informed by the IRD that zero rating of going concern sales was taken from the UK legislation on VAT. Property sales are not subject to VAT in the UK, so it is understandable that the IRD overlooked the implications affecting going concern property sales in New Zealand.

As far as I can establish from the IRD, sales of investment type leased commercial and industrial properties will qualify as a going concern. In contrast the sale of a closed down freezing works would not be a going concern.

It appears illogical that some properties will qualify for zero rating while others will have GST added. Given that the cost of collection of GST on existing property sales will probably outweight the negligible net amount collected by the IRD there appears to be an argument for exempting or zero rating property sales as is the case in the UK.

As long as property sales between registered persons continue to attract GST, vendors and purchasers will no doubt create going concerns wherever possible to avoid the payment of GST and cash flow hiccups for the purchaser.

SECTION SALES

Existing Sections

If a non-registered person sells to another non-registered person for say $22,000, there is no GST to account for.

If a non-registered person sells to a registered person (example builder) for $22,000 no GST is added but the builder can claim a GST credit of 1/11th of purchase making the effective purchase price $20,000.

If a vendor (example builder) sells to another registered person the vendor could attempt to sell for $22,000 plus GST totalling $24,200. The purchaser would get a tax credit thus paying only $22,200 for the section. However if similar sections can be purchased off non-registered persons for an effective price of $20,000, it is more likely that the vendor would have to sell for $20,000 plus GST totalling $22,000. The purchaser of course would pay an effective $20,000 after getting a tax credit of $2,000.

New Sections

GST has to be added to section prices when transferring from registered persons. If the purchaser is a builder then the GST can be claimed back as a tax credit.

Two matters arise with section sales after the introduction of GST.

One is that there is likely to be some aberration of prices for comparable sections as a result of the mix of registered and non-registered vendors. The examples for existing sections just given illustrate this. Confusion and misunderstanding about GST will add to the aberrations. Knowing whether or not the price includes GST will be highly relevant for valuers.

The other matter is that if section values are $22,000 immediately before 1st October, there could be difficulties for registered section developers in trying to realise a net $22,000 over some months after 1st October.

As already discussed the competition with non-registered section owners could in effect force section developers to account for the GST themselves, thus realising a much lower net price for their sections. Perhaps of more importance than competition from private section owners will be the market itself supply and demand. The imposition of GST on house building could force section prices down below pre-GST levels.

RESIDENTIAL PROPERTY SALES

There will be no GST on sales of existing residential properties sold by private home owners (i.e. non-registered persons).

In the case of properties bought for a dual purpose use, such as a corner shop dairy and accommodation above, the rule is that GST will be charged if the principal use is for a dairy (more than 50 % of an area or valuation basis). The purchaser of course would get a tax credit on the full GST paid.

Where a residential property is bought for 100% office use, for example the registered purchaser could claim a tax input credit of 1/11th of the purchase price. However, the trap is that when the property is sold at some time in the future, GST would have to be accounted for.

If a residential property is purchased for principally residential and part business use the registered purchaser cannot claim a tax credit on any fraction of the purchase price.

A house on a farm is not a principal use of the property, but GST would be paid on the whole price if sold by a registered person. For small rural holdings comprising both residential and farming use, sales would be treated in the same way as normal residential properties if the vendor is not registered.

Trading Residential Properties

There are numerous small operators throughout the country buying up run-down residential properties and then giving them a lfossie up and then reselling all within a short period. Many of these people seem to avoid the clutches of the tax gatherers. GST is not likely to alter the status quo.

GST will tend to reduce their trading profits, however. In one example I looked at a property purchased for $100,000 and sold for $150,000 after renovations, the $20,000 profit was reduced to $17,000 if not registered for GST and down to $15,464 if registered for GST. Of course once registered for GST profits would have to be declared as well which would substantially reduce cash profits after paying income tax.

RESIDENTIAL RENTAL PROPERTY SALES

Landlords will not have to register for GST

Landlords will not have to register for GST and therefore sales will not attract GST. But for new buildings GST will be added and owners will not be able to claim a tax credit. This will make rental properties that much more expensive to create and will be another disincentive to providing rental accommodation.

I have worked out an example for a two flat property purchased for $80,000 and having gross rents of $10,000. Assuming the pre-GST outgoings are $2,350 the net return is $7,650. Once GST is introduced the outgoings of rates, insurance, repairs and management will be increased by 10% thus the net return is $7,415. The percentage net return changes from 9.56% to 9.26%.

If a landlord purchases or builds a new rental property the establishment cost will have GST added and coupled with higher running costs the net return becomes even lower. Taking the new cost at say $80,000 plus GST the net return would change from 9.56% for 8.42% using the example above.

All other things being equal, what will happen is that interest returns on residential properties will stay more or less the same but values can be expected to drop marginally as a result of higher running costs with GST added.

Although sales of rental properties will not attract GST the ex-

ception is for those registered persons (example, builder or Housing Corporation) building or trading in rental properties. In such cases GST must be added to the price unless the property has been held for more than five years. Of course, the vendor would effectively pay the GST because the GST inclusive price would be comparable to the normal price of rental properties.

When analysing sales or using the investment approach to valuing rental properties, outgoings such as rates, insurance, repairs and management should *include GST* to reflect the true costs to the investor.

Although there is no GST on interest charges, it is likely that initial mortgage or loan fees and any collection charges will be increased as a means of recouping GST paid by the financial services sector.

FARM SALES

Sales of farms are likely to take place between registered persons. Even farmers with turnovers of less than $24,000 are likely to be registered simply to obtain the input tax credits, particularly on the purchase of a property.

Assuming a farm is sold for $500,000, GST will be added totalling $550,000. The purchaser will have the problem of finding the GST money on top of the price and in fact this could result in a slight across-the-board drop in farm land prices. For example many farmers could be on a six month return period so it could be up to six or seven months before the GST is refunded.

At 20% interest, the interest on say $50,000 GST would be $5,000 for six months. For the vendor, he could have an interest free loan for $50,000 for up to six months.

The end result will be that the Government gets nothing, the purchaser will be $5,000 the poorer, and the vendor will be laughing all the way to the Bank!

The only way to avoid GST would be to purchase a farm as a going concern thus qualifying for zero rating, that is, GST is charged at the rate of zero percent.

COMMERCIAL AND INDUSTRIAL PROPERTY SALES

My comments on farm sales generally apply to commercial and industrial properties. However, being able to sell as a going concern is not clear cut and there could be problems for financial services (e.g. Banks).

In respect of financial services, whose activities are exempt from GST, a purchase of a property will attract GST but whether or not a tax credit can be claimed depends on the principal use to which the property will be put.

For example, if a Bank buys a property for principally banking purposes (exempt supplies) GST cannot be claimed back as an input tax credit. On the other hand if the Bank buys for principally investment purposes the GST can be claimed back in full. The message is clear financial services should aim to use a new or purchased property for more than 50% investment purposes (i.e. leasing out or other business activities).

What if the Bank changes its mind after purchase, having received a tax credit on GST paid? If the banking use becomes a principal use it would appear that the IRD has no power to demand back the GST tax credit. What does seem clear is that if the building is later sold it must be on the same GST basis as when purchased.

If GST cannot be claimed as a credit after purchase then the building when sold would appear to be exempt from GST. If a a property exempt from GST is purchased by say a property investment group, the purchaser would be able to claim a GST tax credit on 1/11th of the purchase price.

Example

(1) Fletcher Development Company sells office building to BNZ for $10m plus GST $lm totally $11m.
BNZ intends to use the building for principally banking purposes (exempt supplies) and is therefore disqualified from getting a tax credit of $lm. The effective cost of the building is $11m.

(2) If BNZ immediately resold to Smart Brothers as an investment for $llm it could recoup its purchase price. Smart Brothers would then be able to claim a tax credit of 1/11th of the price thus paying an effective $10m.

(3) On the other hand if FDC had sold to Jones Investments for $10m plus GST $lm totalling $llm, Jones would claim the GST credit for $lm making the effective cost $10m.

It is clear that financial services purchasers may, in effect, have to pay 10 % more for buildings compared to other purchasers. We thus have two levels of values dependent on the intended principal use of the building.

RENTS AND EXPENSES

Residential Accommodation

As the provision of residential accommodation is an exempt supply GST does not apply to rents. The owner will not and cannot be a registered person in respect of rental properties. This means that GST paid on rates and other outgoings cannot be claimed as tax credits.

The market itself determines the level of rents so that landlord's profits will be squeezed a little after the introduction of GST.

Commercial, Industrial and Farm Properties

Owners of commercial, industrial and farm properties will in the main be registered persons. Even persons with turnovers of less than $24,000 will register simply to derive the tax credit, particularly when purchasing a property. Lessees will also be mainly registered persons.

GST is not likely to be of any real consequence for owners and lessees because of the tax credits. If rent is $2,000 per month GST of $200 will be added totalling $2,200. The owner will pay the GST at his next GST return while the lessee will claim $200 input tax credit in his next GST return.

Owners will benefit from the extra cash generated by GST collected and held till the GST return is to be lodged. On the other hand, the lessee will have to find the extra cash to pay GST.

Rents should be assessed on a GST exclusive basis

Rents should be assessed on a GST exclusive basis.

Where rents are assessed (e.g. as a percentage of land value) in relation to the valuation of the property, the valuation should be GST exclusive. Otherwise if GST were to be included in the valuation then the rent would be 10% higher *before* the adding of GST to the rent to be paid by the lessee. We must remember that GST is a tax. Applying a "tax on a tax" would I believe be inequitable.

Rents based on gross turnover of sales or services are likely to cause some difficulty. Obviously, if GST is applied to sales inclusive of GST then it would be a "tax on a tax" which again would be inequitable for the tenant or lessee. The wording of leases could be important. It is interesting to note that in deciding whether a person has to register for GST the $24,000 turnover figure is *GST exclusive* (see p.3 GST Guide).

The GST Act provides relief for existing leases established prior to GST being announced and an explanation is given further on in this article.

In respect of property expenses, GST paid will be tax credited assuming of course the person is registered. The overall effect will be that commercial, industrial and farm properties will not suffer any loss of net income and therefore values will be maintained. Registered lessees will also be unaffected by GST.

Residential Land Rentals

Owners of land leased out to residential occupiers can be expected to be registered persons. GST will be added to the rent. Home owners will have to bear GST charged to land rentals. However, as already noted above the Act provides relief for existing leases. There is also the possibility, that the Government will exempt

residential land rentals from GST. (An amendment is expected to be passed before 1 October 1986.)

WILL GST AFFECT PROPERTY MARKET?

Pre-GST

In the month or so before the introduction of GST on 1st October there is likely to be a surge in the number of section and new house buyers trying to beat GST. Rural subdivisions involving registered vendors will be affected just like residential subdivisions.

Prices could rise in response to the demand, possibly in some cases to more than the expected GST inclusive value. To beat GST, settlements or occupation rights must take place before 1 October. However, the GST Act could be amended to avoid GST on properties signed up prior to 1 October.

Note that transitional arrangements apply only to building and civil engineering work contracts.

Existing house prices could possibly increase to a marginal extent depending on the advertising publicity about the adverse effects of GST on new properties filtering through to existing properties.

Price levels and turnover of other types of property are not likely to be affected in the period prior to GST being introduced on 1 October.

Immediate Post GST Period

Section developers and new house builders do not seem to be alert to the situation they could find themselves in in-the immediate post GST period. The same applies to purchasers of new sections and houses.

Section prices are likely to be depressed and developers could end up having to bear the GST costs themselves. Developers will also find that home purchasers will find it cheaper to buy off non registered section owners, thus avoiding GST.

Similar comments apply to new houses. My guess is that initially new house prices inclusive of GST will be at pre GST levels and the builder will have to, in effect, bear GST.

The uncertain factor must be the effect of the Government's announced $4,000 loans to qualifying low-medium income new house buyers. The loans are aimed at offsetting the initial effects of GST. Although only available for up to 4 years the 3 % interest rate amounts to a subsidy.

From past experience we know that extra Government mortgage money at subsidised interest rates usually inflates the house market. These GST transitional loans could be of more benefit to the house builders and to some extent the section developers. These loans will tend to push prices above the pre-GST level thus cushioning the indirect effects of GST on builder's profit margins.

The big question is whether existing house property will reflect the addition of GST to building costs and new house property prices. Historically, there is a long term relationship between building costs and values but I doubt whether we will notice any change in the immediate period after the introduction of GST.

Medium to Long Term

Except for residential property, it would appear that GST will have little if any effect on the property market.

Except for residential property, it would appear that GST will have little if any effect on the property market. Although GST is added to new buildings and rents, the offsetting or refund process for businesses means that in almost all cases GST is not effectively paid. All that will happen is a lot of paperwork.

Because only the final consumer pays GST there could be some resistance or reduced demand for those goods and services inlfated in price by GST. Whether this filters back to businesses in the form of lower turnover and profits is open to question.

The Government has stated that GST collected will simply take the place of existing wholesale commodity taxes. Income tax is to be reduced particularly for the low to medium income earners. GST, we are told, is not a means of reducing the internal deficit or increasing Government spending.

A redistribution of disposable incomes appears to be the likely outcome of changes to taxation. However, it is difficult to see how the average level of spending on various commodities will be affected to any appreciable extent.

The Government's control on the economy such as wage levels, internal deficit and money supply would appear to be of more significance to the property market than the redistribution of disposable income brought about by GST and other tax charges.

The effect of GST on residential markets is more complicated. Residential investment flats will most likely, in the short term anyway, suffer a marginal drop in value brought about by the higher running costs as a result of GST added to rates, insurance, repairs, management fees and mortgage fees (not interest). Every landlord knows that the market determines what rent will be obtained and therefore GST cannot be recouped off tenants.

Existing residential properties (owner-occupied) could increase in value indirectly as a result of GST applying to building costs.

Buyers will therefore become more attracted to existing properties than building new ones. Properties in sound condition could become more sought after compared with those requiring extensive repairs and upgrading. A lot will depend on the overall demand and supply situation in the market. For example, if the current population outflow takes on proportions like the mid-seventies, new house building will slump anyway and the section market could become depressed. Higher building costs as a result of GST could be offset by reduced section prices. Raw subdivision land could become cheaper as a result of GST on building costs and costs of developing sections.

Turning back to residential rentals, it could well be that if house prices rise as an indirect effect of higher house building costs, then renting could become relatively attractive, thus increasing demand and pushing rents up. Also, if lower income earners have disposable incomes increased as promised by the Government when GST is introduced, then this too could lead to higher rents.

In the medium to long term the residential market could possibly equalise back to existing relativities, with only raw subdivision land values suffering, but even that is debatable given that the average disposable incomes will not change.

DEPRECIATION

A consistent approach needs to be followed when applying depreciation to valuations, sales analysis and accounting purposes.

According to an IRD official, depreciation for tax purposes can be applied to GST exclusive values in the case of properties owned by registered persons (e.g. owner of an office building) and GST inclusive values in the case of properties owned by non-registered persons (e.g. owner of residential rental properties of financial services buildings).

As valuers we sometimes use the cost less depreciation approach in determining a property's value. The question is should we use GST exclusive or inclusive costs of building before deducting depreciation. Now that the Institute has established that the modal house building cost data will exclude GST, it is logical and consistent to use GST exclusive building cost as a base.

I suggest that in respect of dwellings, GST at 10% should be added to arrive at the effective cost before applying depreciation. The same approach is recommended for residential rental properties.

In the case of farm buildings (including farm dwellings), commercial buildings and industrial buildings, depreciation should be applied simply to GST exclusive building costs or values.

I can foresee all sorts of problems for rural properties that are

somewhere in between farm businesses and principally residential properties. Whether or not GST is added to replacement cost before applying depreciation will depend on the circumstances, but the important thing is that there is consistency in approach between analysing sales and valuing the subject property.

In the strictly commercial area, buildings owned by financial services groups are a special case. A Bank, for instance, could have a new building put up but would be excluded from getting a tax credit on the GST paid if the principal use (more than 50 %) is for its own banking purposes. In the Bank's own accounting system, it would be natural that the GST inclusive costs be shown and that depreciation for tax purposes will be on the GST inclusive value.

Irrespective of the owner's GST registration status or depreciation basis for taxation purposes, it is recommended that all buildings owned by financial services groups be valued on the same basis as other commercial buildings and properties. That is, on a GST exclusive basis. This means that if the cost less depreciation method is used, then depreciation will relate to GST exclusive costs. The valuer should of course make it clear that the valuation of the building or property is GST exclusive.

RECORDING OF SALES, RENTALS, BUILDING COSTS AND OTHER VALUATION DATA

There must be a uniform approach throughout the country on the keeping of records and analyses for valuation purposes.

It must be remembered that GST is a tax. After all, stamp duty is paid on property sales (excluding chattels) but we do not include stamp duty as part of the purchase price. Sales records already involve some apportionment for chattels, so having to keep GST (if applicable) separate, should not be a problem.

The Valuation Department has amended its Notice of Sale form used by Solicitors when advising a change of ownership. The consideration figure will continue to be gross consideration and inclusive of GST. There are spaces on the form to show separate figures for GST, chattels and goodwill. On the microfiche schedules of sales sent to valuers, the net consideration will continue to be shown, i.e. exclusive of GST, chattels and goodwill. The GST figure (if any) will also be shown on the microfiche while chattels and goodwill will be lumped together under one figure.

The Justice Department should also change their prescribed memorandum of transfer form so that GST if paid can be identified. Unless GST can be identified the prices could be misleading when used by valuers for comparative purposes. I believe that the Institute is taking this matter up with the Registrar-General of Lands.

As a matter of interest, stamp duty will continue to be paid and will, I am advised, be on the GST inclusive figure. Stamp duty will not attract GST but on property sales not zero rated as going concerns GST will in effect be paid on stamp duty (i.e. stamp duty will be inflated by 10%). There is some inconsistency and inequitability here.

Rentals should also be recorded excluding GST. Asking rentals will, in all probability be quoted exclusive of GST. After all GST is of no consequence anyway to the business world because it is simply refunded or tax credited.

There is no problem with residential rentals because these rents are exempt from GST.

Building costs should also be recorded exclusive of GST. This will be important when converting cost data to multiples (in relation to modal house costs).

I emphasise that GST is a tax and should be treated as such and should not be included in any of our records. If GST were common to everyone and/or properties then it would not matter whether we used the GST exclusive or GST inclusive basis, but because of exemptions, zero rating and exclusion of the private transactions such as house sales, it is vital to have everyone on a uniform GST exclusive basis.

Having said all that there could be exceptions. For example, a new house purchased from a builder (residential) will have GST added to produce the effective cost to the purchaser. The effective cost or price will be more important to valuers than the GST exclusive cost of a new residential property.

TOPICAL MATTERS AFFECTING VALUERS

(a) Sales analysis.

All sales should preferably be analysed on a GST exclusive basis. The Valuation Department's notices of sales will indicate whether GST was included in the price. The fortnightly microfiche distribution of sales to valuers will show GST exclusive prices.

Consistency of approach to sales analysis and valuation is essential. A mix of both GST exclusive and GST inclusive sales could produce an inaccurate valuation if the GST factor is not allowed for.

(b) Going concern sales.

Going concern sales will be zero rated so that prices will be GST exclusive. This is another example why we should stick to a GST exclusive basis.

(c) Capitalisation rates.

GST should not affect capitalisation rates after GST is introduced. In the case of residential rental properties GST can be expected to marginally decrease values (in the short term anyway) because the net cash flows will be reduced by GST on input costs.

(d) Expense allowances for investment approach to valuation.

Residential flats - GST inclusive.
Other properties - GST exclusive.

(e) Valuations

All valuations should be on the basis of GST exclusive figures. This also applies to insurance valuations. In respect of *new* residential properties, GST could be added to the end of the valuation to reflect the total price to be paid by the purchaser. Alternatively, the valuer could decide to value new sections and house properties simply by comparing GST inclusive prices.

Whatever basis is used it should be made clear to the client whether or not GST is excluded or included in the valuation.

(f) Mortgage recommendations.

Mortgage recommendations should be based on a GST exclusive valuation. However it could be important to establish whether or not the mortgagor would have to account for GST on any resale. For example, a new house property could have *two different mortgage recommendations* (and two different valuations). If the builder is the prospective mortgagor, the recommendation must be on the GST exclusive value because the GST arising from any sale is sent off the the IRD. But when the new house is transferred to a non-registered person (e.g. home owner) the valuation should be based on sales of second hand properties (no GST) and, of course, new properties inclusive of GST.

Example

Builder as *Mortgagor* (assuming builder is registered person)

Valuation GST exclusive = $100,000

Mortgage recommendation (1/3rds=$66,000)

Private House Owner as Mortgagor

Valuation = $110,000

Mortgage recommendation (1/3rds = $72,600)

The important thing will be to make it clear what basis has been used in the mortgage recommendation. We may have to prepare two valuations and two mortgage recommendations and let the client sort out the registration status of the mortgagor. Valuations and mortgage recommendations of properties involving financial services will need to be given special attention. Residential rental properties will not be subject to GST, except traders in such properties, so sales and valuations can be on the same basis.

(g) Government Valuations

Originally the GST bill provided for GST on the improvements portion of property sales and Government valuations were to be used for apportioning improvements and land. However, the Act now applies GST to land as well as on the improvements so in effect, Government valuations will not now be relevant.

Government valuations will of course continue to be assessed under the Valuation of Land Act 1951. These valuations will no doubt disregard the prospect of GST being charged on the sale of any property but there could be anomalies as illustrated under "Mortgage recommendations". Also, for example in the case of residential sections, will land values be based on sales from non-registered vendors or sales from registered vendors?

(h) Valuation of LEI (Land Act), U. V. (Maori and other leases and other land values.

Rural

In the absence of comparable unimproved land sales. (excl. GST), any analysis of improved land sales should be on the basis of GST exclusive costs or values.

Urban

Assessing unimproved values may seem straight forward but should we base them on GST exclusive sales or sales from non-registered vendors? I can foresee many battles fought on this one. I would suggest that prices paid to non-registered vendors be discounted by 10% to exclude the indirect effects of GST.

(i) *Valuing properties owned by financial services.*

I have already recommended that these properties, essentially in the commercial area, should be valued on a GST exclusive basis to be consistent with other commercial properties and, of course, other types of property.

If you are valuing a bank building on which GST was paid and not tax credited the valuation on a GST exclusive basis could then be increased by 10 % GST to reflect its resale value. The reason for this is that GST will not be added on resale.

It is interesting to note that while banks and the like could be forced, on account of GST, to pay 10% more for their properties used for principally banking purposes, their existing properties on 1 October 1986 could be worth 10% more.

G) *Rural residential subdivisions.*

Farmers subdividing land or even just selling off separate titles of land could find that they have to bear the cost of GST themselves if selling to non-registered persons. The reasoning here is that small rural blocks available for sale will generally involve non-registered vendors not having to account for GST. Farmers can be expected to be registered persons so GST has to be accounted for.

As an example, if typical four hectare blocks are selling for $77,000 a registered vendor is not likely to realise more than $77,000. Obviously a purchaser is not going to pay a total GST inclusive price of more than $77,000 so the vendor ends up with a net price of $70,000.

On the other hand if farmers are selling blocks of land suitable for farm business activities like horticultural units then the purchaser, if registered, would qualify for a tax credit.

As for residential section sales, it may be necessary to determine whether GST was paid or not when comparing sales.

(k) Labour Owner Building

Instead of contracting a builder to build a house an owner could decide to buy all the materials himself and pay the builder for his labour. This has always been a cheaper option when building a new house but GST will not be avoided after 1 October.

GST will be charged on all materials purchased. The builder's labour (and travelling expenses) will also have GST added.

If the builder is paid a wage, this would get around GST on the labour but the problem for the builder is that his tax deductible overhead charges and vehicle expenses would have to be reduced by the proportion of the year he was a wage earner. The owner of course, would have to deduct PAYE tax and attend to all the other paperwork demanded of employers.

SHOULD PROPERTY SALES BE EXEMPT?

Perhaps the most unproductive area of the GST system is all the paperwork and cash flow distortions in transactions between registered persons. On the one hand, GST will be paid out and the other hand will be hanging out for up to six months waiting for the money to come back from the IRD. Of concern to purchasers buying properties off registered vendors will be the large sums of money to be raised to pay GST.

There are up to 15,000 transactions of farms, commercial and industrial properties each year. Practically all these sales could be expected to involve registered persons except owners in the financial services sector.

I have already mentioned that sales qualifying as going concerns will be zero rated. Therefore, why not zero rate all property sales to registered persons and save all the unproductive hassles? In fact the Government should look at zero rating or exempting all property sales. Properties and land are assets and are not consumer items.

TIAVSC World Bank Seminar 6: "Local 'taxation"

by G. J. Horsley - New Zealand

Graeme Horsley presented two papers at the May 1986 World Bank Seminar, Washington D.C., US. A. on behalf of The International Asset Valuation Standards Committee (TIAVSC). The New Zealand Institute of Valuers is a member of TIAVSC, and we are represented by Graeme on the committee. The paper covers the issue "Local Taxation"principally Land Tax.

INTRODUCTION

In previous sessions we have looked in some detail at the different methods of valuation in popular use today. During Sessions 3 and 4 the principal methods of valuation were examined in some detail and delegates will have gained an appreciation into the concepts of property valuations and the tools available to appraisers in given situations.

The purpose of this session is to explore a little further the merging together of the science of valuation and the practical application of the profession in the taxation of land. Whilst there is a good deal of internationalism in the practice of valuation and the way in which land taxation systems are applied, my remarks and experience have been gained from a knowledge and observation of the systems in New Zealand and the Pacific generally.

As you will know, New Zealand was colonized by the British some 150 years ago and is an independent sovereign state of 3.3 million people. Although still largely an agricultural-based economy, the population is high urbanised and demonstrating a strong shift towards other sectors of the economy, notably manufacturing, forestry, fishing and tourism. New Zealand has had the benefit of adapting its land taxation systems to suit its particular needs and, at the same time, drawing upon the best features of systems used in Britain, Europe and the Americas. Over the past 15 or 20 years, New Zealand valuers have been invited to many Pacific countries to research options and implement local taxation systems to suit the economy of the country. Even in some of the so-called more developed countries, New Zealand valuation and land taxation legislation has been adopted outright or modified to meet local needs.

DEFINITIONS

"Land" taxation is the term used to describe the levying and raising of revenues from property or interests in property. It can take a number of forms, be recovered by different agencies and be often overlapping in its application with the same property being subject to a number of separate taxes.

"Local" taxes are generally understood to be revenue raised by or on behalf of the City (municipality), Borough, or County in which the property is located. Revenue derived at this level is more often than not used to fund capital works in the nature of street maintenance, the provision of street lighting, public reserves and libraries, the distribution of water and the catchment and disposal of sewage, stormwater and household garbage removal.

"Regional" taxes are understood to be levies demanded by a number of adjoining local councils combining for the purposes of providing major capital works too large to be planned or funded by a single council and having a regional significance. In this category also are works of a regional nature which are provided for the benefit of a wider community, including major reserves or other regional recreational facilities.

"Land" taxation is the term used to describe the levying and raising of revenues from property or interests in property.

Whereas the local council is more often concerned with planning matters at the property and local level, regional bodies find it necessary to produce broader schemes for the collective good of larger communities; included under this heading would be public transport systems of a regional nature.

"State" taxes on land are more likely to be global in nature, levied by the State legislature for the purposes of general State revenues, i.e. they do not necessarily relate to services provided on or for the benefit of the land itself.

"Central Government Taxes" or "Federal Taxes", as they are sometimes known, are again more likely to be in the nature of a revenue device levied on individuals or the business community owning land or interests in land. In a sense, therefore, they are sometimes known and referred to as wealth taxes in that the assets of the taxpayer form the basis for federal government revenues. Some taxes at this level might be a carry over from the earliest times, whilst others have been introduced in more recent years in an endeavour to find new ways of funding federal budgets. In the nature of things, however, very few taxes are dismantled once in place and, in some situations, tax from land forms only a minor contribution to the national budget.

Additionally, there may be special purpose authority taxes levied by an agency with responsibility for a single function over only part of a local district or indeed spanning several cities or counties. Examples of this might be an authority responsible for river control and protection works and the spin-off irrigation activities. Taxes levied by this authority might bear some relationship to the benefits afforded to individual parcels of land, e.g. lfood protection, and have given rise to the use of a property valuation as the basis for distributing the incidence of tax.

Other taxes which might be levied on land include transfer tax, often called stamp duty, taxes based upon the quantum of the estate of a deceased, and gift taxes recoverable upon the transfer of real property assets for little or no consideration. These latter three forms of taxation are more likely to be at state or federal level.

In some economies property taxes are referred to as rates and this term more often applies to revenues struck and levied at local

taxation level - County, Borough or City. The term "rates" is in more popular use in Britain, Europe and countries colonized by Europeans.

HISTORICAL PERSPECTIVE

Land taxation has long been part of civilisation with many references to property taxes in Biblical times and histories. Indeed, before the advent of personal taxes, land was a major capital commodity and used by most societies as the basis for direct revenue collection, including the taxation of crops or other products yielded from land.

Today most western countries have some form of real property taxation and, as indicated earlier, the same parcel of land may be subject to several different taxes. Most of the empowering legislation provided for the raising of taxes contains a provision which ultimately allows the taxing authority to recover unpaid taxes by sale of the land itself. Although such ultimate steps might rarely be exercised, it does indicate the way in which society views its claim to land-yielded revenues.

CONCEPTS OF LAND TAXATION

Most societies today accept that land taxation is a legitimate way for authorities to recover the cost of providing services. Even in the more capitalistic societies the populace accept that land as a commodity is a taxable asset and that services rendered on or for the benefit of the land should in some measure be met from revenues derived or capable of being derived from property.

Land taxation is a tax on the ownership or occupation of land and is thus paid by those who possess the asset or enjoy the right to benefits flowing from it. Further, the community perceives that there should be some form of taxation on the productive and/or extractive value of land. This probably arises from the notion that those using land for agriculture, forestry or mining purposes are trustees or custodians of land for present and future generations and that land should not be simply exhausted without a compensating return to the community. The concept of land taxation is also founded on the premise that people create a demand for land, for services to be performed on land, and expect to meet at least some share of the costs of servicing the community from profits made on land or the potential for profits. As a concept then, taxes are accepted as a legitimate charge on the use of land or upon the occupation of land.

PRINCIPLES OF LAND TAXATION

The principles applying to land taxation are not unlike those principles which apply to most other taxes borne by the community. Firstly, the taxation system should be relatively simple to comprehend by the average taxpayer and, whilst they may not agree with the level of taxation demanded, an acceptance of the linkage between land and the statement of tax demanded is required.

Secondly, and most importantly, the tax should be fair and be seen to be fair. Most taxing authorities would go to considerable lengths to achieve what they believe would be a fair result and the most helpful authorities would attempt to convey the essence of the system and reasons for it to the taxpaying public.

Thirdly, a land taxation system should, as far as possible, be limited in the base options available and apply with equal application to as wide a range of properties as possible, thus leading to an understanding and acceptance of the system.

Fourthly, a land taxation system must provide a measure of equality between one taxpayer and another. In practice, however, this might be extremely hard to achieve, but the object should be to broadly ensure that properties enjoying or having access to similar services and amenities and having similar real estate values, should be asked to bear property taxes of the same general level. In attempting to provide this so-called equality, some agencies may find their decisions compromise other principles of a good taxation system.

Fifthly, any local taxation system must have a right of appeal or objection to the assessment or the basis of that assessment by the taxpayer. This appeal right should be open to an appellant at any time the assessment or basis is changed and thus requires the taxing authority to disclose and inform the public of their rights in this area. Any objection procedure should initially be informal, inexpensive and accessible to the taxpayer and in practice many appeals by the public can be satisfactorily resolved following discussions with the appraisers or the taxing authority; in other words, many appellants will find their reservation and concern can be met by appropriate explanation from the authorities. Beyond that initial objection phase however, the system should permit a challenge to be heard in a judicial or review environment at which the taxing authority, either directly or in conjunction with the appraiser, should be required to justify the valuation assessment made.

Sixthly, a good land taxation system should be administratively simple to develop and maintain; it should be able to reflect changes occurring within the jurisdiction being taxed and the whole process of levying and collection of revenues should be economic in terms of overhead costs of administration and recovery of revenue.

Seventhly, the taxation system should have as few exceptions or exemptions as possible and it should strive for an absolute coverage of all properties within the taxing authority's area. Finally, the assessment, administration and recovery procedures of a taxation system should provide no scope for corruption or possibility of preferential treatment being accorded to individual taxpayers or rewards being offered or solicited by officials engaged in the process. Land is of course a very visible asset and impossible to conceal from a taxing authority; nonetheless, the system should have no scope for legitimate avoidance or other evasion activity.

PEOPLE AND THE VALUE OF LAND

Land itself has limited intrinsic value, although it does of course provide for the very sustainment of mankind in the growth of vegetation, purification of air and so on. Land, however, is but a simple commodity, albeit one of fixed proportions. It could be argued that the land in the rain forest regions of the Amazon is just as valuable as the blocks in the middle of downtown New York. It is only when mankind places his demands on land that gives rise to some land being more or less valuable than that in another locality.

People require the use of land for recreational purposes, for preservation of the environment, for production of food, to provide places of industry and commerce, for reasons of personal shelter and to link all of these uses with an infrastructure of communication systems and services. It is people, therefore, that exert pressure on land for development, for its re-development and change from one use to another, for development, for the urbanisation and growth of our cities; it is people that cause the loss of agricultural land and, sadly, are responsible for the alarming growth in the size of the deserts of the world and the consequences of that tragedy.

The value of land as expressed in monetary terms is relative to present needs and future demands of man.

For the past century or so society has recognised the need and has given to different levels of government, the authority to bring down land use planning to provide for the orderly development of communities, the wise use of resources, the conservation of certain lands and the provision of infrastructural services demanded by the community.

Planning, sometimes described as town and country planning, has had an important influence in the direction and growth of whole communities, cities and regions and borne heavily upon the process of valuation. The planner's objectives are not always consistent with those of the individual property owner, but his actions have an undeniable effect on the use and potential of different land and its value thereof. Good planning, and this means also certainty in the planning process, is an essential ingredient in the development and public acceptance of a land taxation system.

However, it would be fair to say that land values, whilst inlfuenced by factors mentioned above, are really about the demand

for land and the economics of use and development. The considerations weighed by the assessor or appraiser in making valuations for land taxation systems are not really different to those addressed by the valuer making a one-off appraisal of the same property. The assessor in a land taxation role however, may tend to have greater regard to the establishment of a uniform basis between neighbouring properties and across the total jurisdiction in which he is valuing.

LAND TAXATION SYSTEMS

Three principal taxation bases predominate among land valuation/taxation systems today. These are the capital value method, the annual value method and the site value method. No system is universally applicable in all situations; each system has its own particular claimed advantages and disadvantages. Many of the systems in practice today are variations of these three systems or a combination of systems - the land taxation base used in any particular situation tends to be in part of historical inheritance and modified as necessary by the taxing authorities to meet their peculiar claimed circumstances.

In some situations the actual rates (taxes) struck on a parcel of land might be only marginally affected by the market value of the real estate since continuous juggling of figures in the tax striking process may have the effect of reducing the "value" component of the final taxation sum demanded. Let us look in brief at the three systems.

The CAPITAL value rating system takes into account the total value of the land, i.e. the site itself and any improvements thereon together with the buildings; the separate assessment of land from buildings may not be made in all cases with the capital value simply submitted as the rateable assessment.

The SITE value method looks strictly at the land and ignores structural improvements by way of buildings. In a number of situations the term "unimproved value" is used and this concept relates to the land in its original state prior to the actions of man, i.e. the land in its original contour form together with the vegetative cover. More recently however, i.e. over the past 30 years, the unimproved value has given way to the concept of land value in which the section of land is viewed as developed in nature but devoid of building improvements. In the rural situation this can be best demonstrated by looking at the original cover and nature of the land before operations commended to clear the land by felling trees, overburning debris, contouring, draining, sowing and grassing to produce developed pastoral or arable soils. The "land value" or site value state takes therefore cognizance of the "improvements" performed on the land in bringing it from virgin country to productive pasture.

The third broad type of rating system is the ANNUAL value system which looks at the rental that can be achieved from the property having regard to the use of the land and buildings thereon and establishes a relativity between properties, either urban or rural in nature, which are developed to a different extent.

There may be adaptations of the above three systems or in some cases a combination of systems e.g. the prime land taxation system may be based on land value but some component of the taxes actually determined on a capital value. This might occur where Fire Board rates and taxes are determined on the value of the full property reflecting as it would the relative values of buildings afforded protection by a fire service rating.

One of the claimed advantages of the site or land value rating and taxation system is that it does not penalise the development effected by the owner in the nature of buildings. It is held therefore to be a taxation system which encourages development insofar as the maximisation of buildings on the land will attract no greater taxes than had the land been held vacant.

Conversely, the capital value rating system is seen as one which taxes the capital endeavours of the property owner. In an agricultural situation however where the "land" system of taxation is in place there is little difference between the land value and the capital value since the visible improvements discussed earlier, i.e. clearing of vegetation, draining, filling, excavation and the build up of soil fertility, are in fact improvements which have merged with the land and are inseparable from it.

The annual value or rental value system of land taxation relies for its operation on the availability and accuracy of regular information or, in the case of special purpose properties, the determination of hypothetical rentals for the realty. To the extent that a rental will take account of the buildings and be reflective of the extent of those improvements effected to the land, the distribution of taxes occasioned by the annual value system is not significantly different to that resulting from the capital value system.

The annual rental method of land taxation is found primarily in the United Kingdom, Europe and territories influenced by those nations - for example Hong Kong and Singapore. The capital value system predominates in North America whereas the land value taxation approach has been the principal basis in Australia and New Zealand. However, legislation in some countries permits the local taxing authority to determine the basis to be adopted and often provides for taxpayer polls enabling a change from one system to another.

As a very general observation, the annual and/or capital value taxation systems appear to dominate in the more urbanised, westernised and developed countries whereas land value systems more often than not are found in less populous nations with rural or primary industry economies.

As mentioned earlier, no system is universally applicable in all situations and even within a local taxation district moves have been necessary to provide a measure of rating and taxation relief for certain classes of property. As an example, in older established residential areas caught up in changing use to industrial zones, it may be found that the taxes on residential property are excessive when compared to the services offered and enjoyed by similar use properties in residential zones. In order to preserve this housing from an early demise, taxing authorities have instituted measures to alleviate the otherwise high rating burden fixed on the land value by some form of differential or discounting of the actual value to a lower level. Alternatively, a lower percent tax is simply struck to restore some apparent equity.

In other situations, taxing authorities have attempted to provide rating relief occasioned by high real estate values or properties of architectural or historic merit which may be designated for preservation. Other jurisdictions have examined ways to mitigate the high rating burden falling on rural or food producing land in close proximity to urban areas; whilst the property may have a greater value for its peri-urban potential than land of similar use and productive capacity more distant from the urban area, authorities realise the social and economic losses which can be caused by land being forced out of production prematurely by high taxation burdens.

FOUNDATION OF A LAND TAXATION SYSTEM

Unquestionably, the basis of a good land taxation system rests on the maintenance of comprehensive records,;on every parcel of land, the details to include ownership, name of occupant, deed or title information including site area, information on town planning or buildings erected on the land.

Secondly, there needs to be a high degree of accuracy and completeness with those records particularly where units of measurement (site area, building dimensions etc.) are used in the computation of individual land or capital values. Furthermore, systems must exist to enable the almost daily amendments to the property records in relation to further subdivision of land, changing uses and ownership transfers.

A land taxation system must be cost efficient to administer both in terms of data capture and the appraisal process itself and to be inexpensive in the collection of revenues from the taxpayer. Land is constantly changing in use, the demand shifting from district to district and affected by a wide range of factors extrinsic to the land parcel itself.

There is a need for constant and preferably frequent revision of the taxation base to reflect those changes and ensure ongoing fairness and equity between properties, between districts and be-

tween classes of taxpayers. Where property valuations are used as the primary yardstick of such changes, the valuer's task is to assemble, analyse and assess what is happening and carry those changes into the revaluation process.

Where the public can see that the taxation system is reflective of changes there will be a degree of taxpayer confidence in the system. Most people in developed countries today take some interest in the real estate market and in particular their own humble house property. Where the rateable value broadly equates with their understanding of the the property's value, this will go some way to acceptance of a system. Furthermore, the opportunity for the taxpayer to contest the appraisal and a process which permits early resolution of appeals will also lead to confidence in the local taxation base. It is interesting to note that many people pay thousands of dollars more in personal income tax than they do in property taxes but, possibly because property is a visible and readily understood asset, there is a much higher occurrence of taxpayers appealing their property taxes as opposed to their personal income assessments.

BASIS OF PROPERTY APPRAISALS

The property valuer engaged in the preparation of a land taxation based system has at his disposal all the traditional methods of valuation used in any appraisal process. The principal method used in any particular situation may well depend on the type and level of accuracy in the base information available e.g. building details, site information, real estate transaction details etc. Suffice to say however that any method of valuation could be valid including the capitalisation of income approach, the building cost less depreciation method, and the market sales data approach.

Each of the above methods of valuation have been discussed in earlier sessions and it is not intended to explore these methods in any detail. The end objective in each case is to produce for each property a land or capital valuation that is reflective of the market worth of the property, has a high degree of relativity and uniformity with neighbouring and like properties in the taxing jurisdiction and can be adequately defended in any appeal situation.

In a highly developed district and more particularly an urban environment in western cultures, one would expect to find a high level of data collected and maintained for each parcel of land including full deeds of title documentation, planning information, building construction details and a sales history of each parcel. Where a central repository of property sales is available, generally for public search and scrutiny, this would form the principal base point for establishment of a pattern of real estate values for setting across a local taxation district. It is the expertise of the appraiser and his professional judgement which can take the raw information and interpret the sales into a meaningful basis for reapplication across the total district.

At the other end of the spectrum one might find in less developed country with little land use planning or comprehensive registers of property details, that insufficient information exists to place precise values on property holdings. In some situations even basic survey records may not be available and land is simply occupied in relation to natural boundaries or historic fencelines etc. Few open market sales might be evident and in any event of limited use in building a pattern of property values. Land may also be held in multiple ownership and/or tribal lands where the sale of freehold property is rare. In these situations, a land taxation system might be better founded on some form of productive value in which the occupier in possession is liable for local taxes.

The advent of computer technology has enabled the more developed land taxation systems to grow and be enhanced with the addition of more and more data on each property. The power of computers has also made the calculation of rates and assessment of each liability a purely mechanical exercise.

Computers have also enabled by-products to be produced in the form of statistical information relating to land within particular zones, land having other similar characteristics and the quick location and retrieval of an individual record from any number of variables. Most taxing authorities in developed countries today are using computers for all of the above purposes.

In more recent times however, perhaps over the past fifteen years, more exciting developments have taken place with the use of computers where the computer capability has been harnessed to the actual valuation or appraisal process. Many taxing authorities, particularly in America and certainly in my own country, are now using computers to weigh the masses of information contained on each property and to generate estimates of value mostly using a multiple regression modelling approach. The results of this work have been widely accepted by valuers using the technology and a high level of accuracy and uniformity can be achieved with a computer that is not always possible with a team of individual appraisers. In these circumstances, the appraiser is still responsible for the final estimate of value and is really only using the computer for much of the number crunching functions which would be impossible with manual appraisal systems. Major savings in manpower and overall cost of appraisals have been achieved and computers have also enabled taxing authorities to consider and implement more frequent reviews of the taxation roll thereby improving the quality, accuracy and public acceptance of taxation estimates.

land taxation will remain a principal source of revenue for the foreseeable future in most societies

ABOUT THE FUTURE

Local land taxation will remain a principal source of revenue for the foreseeable future in most societies. Additional to taxes raised on land, many jurisdictions now also derive revenue from various forms of citizens tax, taxes on goods and services and some revenue sharing with federal governments of the income tax paid by citizens and the business community.

The original concept of local taxation was to provide the finance for capital and maintenance of services to the community in the nature of roads, water supply, etc. However many cities are now charged with responsibility for such things as fire control, law and order, education and social welfare programmes - activities which might previously have been seen as resting with a federal or state parliament.

Conversely, the federal and state authorities have seen the use/occupation and ownership of land as a taxable commodity and themselves now derive revenue from this source. In New Zealand for example land tax at central government level was introduced about 100 years ago as a penal tax on the wealth and ownership of land in a step to force the breaking up of large pastoral estates into smaller and more productive farming units. Today, when that original aim has been achieved and the aggregation and holding of large land tracts in few hands is not a national concern, farmland is in fact exempt from land tax but the measure has remained to this day and generates approximately 2 % of the state revenue entirely from the commercial and industrial sector on land holdings in excess of $175,000. Residential properties are also exempt.

For reasons set forward earlier in my address in relation to what makes taxation of land an acceptable measure, there seems little doubt that local taxation of land will remain a reality for many decades to come. Whilst all forms of taxation are criticised from time to time, many inquiries, commissions and other investigations have reached the same conclusion and failed to find acceptable alternative revenue sources particularly at the local level. Whilst there are no significant alternatives, I anticipate the present systems of striking a rate on individual classes of property may undergo further modification and the actual value of the real estate parcels may become of lesser significance than the actual ownership of property. Already most local councils in New Zealand determine some form of minimum rate per property or

assess the average cost of supplying basic services (water, sewage etc.) and compute these amounts as a lump sum again levied against every property irrespective of its actual appraised worth.

During the next few years we will continue to see efficiencies in the operation of local taxation systems resulting from an improved level of capture, storage and maintenance of data on computers giving the assessors more information on individual properties and trends over their districts. The preparation and maintenance of taxation land registers is a personnel-intensive operation but responding to the call for greater efficiencies has seen the shedding of some appraisal staff in jurisdictions in favour of more technical level inspectors, data gatherers and so on at a saving in overall and average salary remunerations. This has freed the professional appraiser to take a more overview responsibility for setting property value levels for taxation and to concentrate on the more demanding appraisal work which cannot be as readily computerised as the assessment of house sections, single family dwelling-houses and apartments.

To assist the appraisal team further, technologies are now available including a wider use of photography, the video taping of all properties for retrieval and viewing in the office, three dimensional imagery of buildings on the computer terminal and much improved access to real estate transaction information. The appraiser's job is no longer one of simply revisiting each and every property on a regular basis to make a phsyical observation of the property's attributes and value. Rather, technology and the handling of information has allowed more sampling of typical properties to form the basis for judgement on classes of land and like property within the same district. More appraisals are now being completed without an actual inspection of the asset.

One further trend which has developed in some societies has been for land use planners to try and achieve planning objectives by use of taxation measures. Concessions may be given to certain forms of development as an encouragement to build or conversely a penalty level tax could be imposed to hasten the removal of objectionable land uses e.g. old established industrial plants within residential environments. These activities may have little to do with the actual value of the holding but use the taxation system as the means to encourage land use changes. Further, concessions are granted fairly widely to ensure the preservation of areas or buildings of historic heritage to the community or nation. One could envisage that this fiddling of the tax system would continue to grow and to some extent further diminish the purist approach which uses the property's worth as some measure of the ability to pay taxes.

Local taxation is so well established as a financial tool in the modem economies in most countries that there seems little likelihood of property ever losing its appeal as a revenue generator.

Rather one could predict a further widening of responsibilities for taxing authorities and a continuing drift away from assessed land value to taxes paid equally on the very existence of land. History shows that once a taxation measure is in place and gains any measure of acceptance and respectability by the public that efforts to dismantle that tax are singularly unsuccessful. I think it was Benjamin Franklin who said "There are only two certainties in life - death and taxes" With the imposition of death duties on a deceased estate, some legislators have managed to link the two into a successful industry!

New Classification for Preservative Treatment of Timber

M. Blakeney
- New Zealand Forest Service

A new system of classification for preservative treatment of treated timber has been introduced by the Timber Preservation Authority.

The system, which came into effect in April, identifies the level of treatment given to a piece of timber by placing it in one of six "hazard classes'. This replaces the old Commodity Specifications, which are to be phased out by the end of the year.

A hazard class does not refer to a particular type of preservative chemical or a particular method of application. Instead, it indicates that the timber has been treated with chemical preservatives to meet a certian level of hazard of deterioration in its intended end use.

Builders, home handymen, architects and specifiers need not be concerned with the details of the commercial methods of preservative treatment of timber. They only need to know which hazard class is appropriate for the particular end use application they have in mind.

Timber used in situations with low risk of deterioration - out of ground contact and fully protected from the weather - has the lowest requirement for preservative chemicals. When timber is used for this purpose, treatment to Hazard Class One (Hl) should be specified.

At the other end of the scale, H6 covers timber with an extreme hazard risk - in contact with seawater.

Each piece of commercially treated timber (except very small dimensions) must be branded with the treatment plant's identification and the hazard class the timber has been treated to. This is the purchaser's guarantee that proper preservative treatment has been carried out to the required hazard rating.

Timber is burn branded on one end, or if dressed will be ink or impression branded along the surface length. The brand will show the registered number or trade name of the treatment plant, followed by the hazard class the timber has been treated to.

Purchasers should regard all unbranded or illegibly branded material as untreated

Purchasers should regard all unbranded or illegibly branded material as untreated.

The Forest Service has published a short guide to appropriate hazard classes for various timber items ("Selecting the Correctly Treated Timber for the Job"). Relevant portions of the guide are reprinted below.

A full copy of the specifications is available from the Timber Preservation Authority, C/- Forest Research institute, Private Bag, Rotorua. The cost is $19.50.

Selecting the Correctly Treated Timber for the Job

Why Does Timber Deteriorate?

A major cause of timber deterioration is fungal decay (wood rot). Generally, before decay will take place the timber must be moist. Wood boring insects are another significant cause of timber deterioration. Wood boring marine organisms are the main cause of deterioration of timber used in sea water.

The natural resistance (durability) of timber to the different forms of deterioration varies widely among timber species. The sapwood (timber from the outside of the log) of all timber species is perishable and subject to attack by all forms of deterioration. The heart-wood (timber from the middle of the log) varies in durability from perishable to very durable, depending on the species of timber.

Choosing the Correct Level of Treatment

Some uses of timber place it more at risk from deterioration than others. Commercially treated timber is treated to various levels according to its intended final use. The higher the risk from deterioration (the hazard risk), the greater the need for protection by increasing the concentration of preservative chemicals and the depth to which they penetrate into the timber.

The different situations (hazard situations) in which timber is used are classified by the TPA under a hazard rating depending on degree of exposure to deterioration. Each piece of commercially treated timber is required to be branded accordingly. The brands (hazard classes), identify the level of treatment given appropriate to the situation in which the timber will be used. The hazard situations and hazard classes are summarised in Table 1.

It is very important that the level of timber treatment, indicated by the brand, is appropriate to the situation in which the timber will be used.

Appendix 1 expands on the typical uses section in Table 1 with a comprehensive alphabetical listing of specific items, e.g., compost bins, gates, which are matched against the appropriate hazard class.

How Long Should Treated Timber Last?

The life of timber treated for ground contact should not be less than 30 years. Treated timber used in buildings should last the expected useful life of the building. Some suppliers of treated timber give their customers extended guarantees for the life of their products.

Where cutting or shaping of timber treated for a high hazard situation is unavoidable, preservative should be applied to the cut surfaces. Suitable preservative applications are copper or zinc napthenate. These preservatives are obtainable at most hardware stores.

The Timber Preservation Authority (TPA)

The role of the TPA is to secure and maintain a high standard of timber preservation and to ensure that the public interest is protected in matters relating to timber preservation.

The TPA sets out specifications for the treatment of timber in New Zealand and monitors standards of commercial treatment plants.

The TPA, Forest Research Institute, and the preservation industry, monitor the performance of treated timber in service, and treatment standards are modified in the light of any new findings by the TPA.

All preservative chemicals are thoroughly tested for long term effectiveness and are specifically approved for use by the TPA

Treatment Identification Brands

Each piece of commercially treated timber (except for very small timber dimensions [1250 mm 2 cross section], fence battens, droppers or timber less than 19 mm thick), should be burn branded on one end or ink or impression branded along the surface length. The brand contains the registered number or trade name of the plant which treated the timber, followed by the hazard class the timber has been treated to, e.g. 506.H4 or Timtreat.Hl. This enables the correct selection of treated timber to be made for the job. Purchasers should regard all unbranded or illegibly branded timber as untreated.

TABLE 1 - Hazard Classes

Hazard situation	Brand Identification: New Hazard Class (introduced 1 April 1986)	Brand Identification: Old Commodity Rating (to be phased out by 31 Dec. 1986)	Typical Uses
Low hazard risk Out of ground contact - protected from the weather.	Hl	C8, CIO	House framing, interior finishing, lfooring, painted weatherboards, plywood.
	H2		Not applicable in New Zealand.
Moderate hazard risk Out of ground contact but exposed to the weather.	H3	C5, C6, C7, Cll	Fence battens, fence palings, part and full rounds, exterior joinery, decking, rails and plywood.
High hazard risk In ground or fresh water contact	H4	C3, C4, C13	Fence posts, sawn fence posts, poles, crib walls, plywood, culverts and wharf decking.
Severe hazard risk Critical end-use situations In ground contact.	H5	C2, C2B, C14	Horticultural posts and poles. House piles or poles, transmission poles, plywood (foundations), sawn posts and piles.
Extreme hazard risk In contact with sea water.	H6	Cl	Marine piles, sawn timbers (final shape and form).

A Guide to the Appropriate Hazard Class for Various Timber Items

Item	Hazard Class
battens, fence	3
beams, laminated	3
boat building timbers	4
boxing, concrete	4
cattle stops	
compost bins	
containers, plants	
cooling towers	
crib walling, sawn	
decking, bridge	4
decking, wharf	4
drain linings	4
droppers, fence	3
fascia board	
finishing timbers, exterior	
finishing timbers, interior	
fire escapes	
lfooring	
formwork, concrete	
framing, house	
furniture garden	
gates	3
glasshouse timbers	3 or 4
gratings, sheep	4
horticultural sawn timber (severe sites)	
joinery, interior	
joinery, exterior	
joists, ceiling	
joists, floor	
marine timbers, i.e. fixed in sea water	6
mushroom boxes	4
oyster farming timbers	6
palings, fence	3
patio decks	3
pergolas	3 or 4
pickets, fence	3
piles, building foundation	5
piles, fresh water	4
piles, marine	6
piles, wall	1
plywood, interior linings, sarking, flooring	1
plywood, external cladding, bracing, decking	3
plywood, ground contact, sheathing, bins, races	4
plywood, ground contact, treated timber frame foundations	5
poles, barn	4
poles, electric transmission	5
poles, horticultural (severe sites)	5
poles, houses	5
poles, telecommunication	5
posts, guardrail	4
posts, horticultural (severe sites)	5
posts, round, half round, sawn	4
posts, sawn, for domestic fencing	4
purlins	1
rails, fence	3
rails, stockyard	3
sarking	
seed boxes	
shingles, roof	
slipways (marine)	
spa pools	
studs	
sundecks	
trusses, roof	1
turnery	1
verandah floors	3
weatherboards	1 or 3
wet process factories	4

Book Reviews

Investigation into Methods of Valuing Horticultural Properties.

By John Luke Comely (1986)

Reviewed by Graham A. Halstead.

(A dissertation presented in partial fulfilment of the requirements for the Diploma of Horticultural Science at Massey University.)

This dissertation is the culmination of research into the valuation of horticultural properties based on interviews of 38 North Island valuers.

The horticultural industry in New Zealand has increased substantially in recent years and the author observes that valuers' training has tended to concentrate on agriculture and not horticulture while there has also been a paucity of published information available on horticultural valuation.

The Research objectives were defined as:

(a) To conduct a survey of Valuers. To ascertain the valuation methods currently being used by valuers operating in the main horticultural areas of the North Island.
(b) To analyse the survey with a view towards highlighting difficulties in the current methodologies and seeing if the income approach is applicable.
(c) To then concentrate on developing techniques to improve on current valuation methods.
(d) To examine the question of using fruit trees and vines as security for mortgage advances.

The results and conclusions are presented in a logical, easy to read style. The study illustrates the lack of truly comparable sales when valuing a horticultural property and the difficulty of adjusting for land area, variety and age of trees and vines, natural and artificial shelter, irrigation and structural improvements.

On the question of mortgage recommendations there was a diverse range of opinion on whether the added value of vines and trees offered safe security for mortgage advances. Public valuers tended to follow a more conservative line than Government valuers.

John Comely is to be congratulated on his valuable contribution to the better understanding of the methods of valuing horticultural properties. His effort is also a reflection of the dedication and encouragement given to students by Bob Hargreaves and other teaching staff at Massey.

Members will be interested to learn that John Comely was the first recipient of the Institute's Post Graduate Scholarship. A financial grant made it possible for John to carry out more extensive ifeld work.

A bound copy of this dissertation can be borrowed from the Institute library in Wellington.

An Investigation into Methods of Valuing Horticultural Properties.

Reviewed by R. V. Bob Hargreaves.

This 1986 dissertation was completed by Mr Luke Comely as one of the requirements for the post graduate Diploma in Horticultural Science at Massey University. Mr Comely was the first recipient of the NZIV post graduate scholarship.

The 38 North Island rural valuers questioned in the survey used a considerable variety of methods. The author found that valuers resident in established horticultural regions showed more proficiency than their counterparts in developing horticultural regions.

All the valuers used some form of sales analysis to derive the land value. The survey showed that replacement cost was the most popular method used for valuing structural improvements. The valuation of trees and vines emerged as being one of the most difficult areas for horticultural valuers. Tree and vine values depend on a number of factors including age, productivity, density, vigour and crop quality, species, variety and type of support structure. The author concluded that the best unit of comparison was usually the price paid per net plantable hectare. In the case of pip fruit he found several Hawke's Bay valuers were using a concept of classifying apple trees into "a bundle of preferred varieties".

The author found that both the cost and sales analysis approaches are used for the valuation of shelter. The sales analysis method appeared to work well for the valuation of mature live shelter with the cost approach often being preferred for young life shelter. The author recommended that both cost and sales analysis be used for the valuation of artificial shelter.

Valuers appear to have differing approaches to the question of using trees and vines as mortgage security. Most valuers included the trees and vines to security. Loan recommendations ranged from 85 % to 20 % of value.

The author devoted one chapter of the thesis to developing an electronic spread sheet model using discounted cash flows to ascertain the value of kiwi fruit at different ages. This model was validated against actual sales data.

The diversity of valuation methods being used in horticulture is somewhat surprising. The survey showed that there is clearly a need for a more standardised approach to be adopted. The author concluded that some of the methods currently being used by a few of the valuers should not be used under any circumstances.

To encourage the sort of debate that might lead to a more uniform valuation approach the Institute have arranged for a condensed version of the dissertation to be published separately. This publication is called A Survey of Horticultural Valuation Methods' It will be available in booklet form from the General Secretary.

In addition a 9 minute video summarising the research findings has been produced at Massey University. Copies of video (which is in VHS format) can be borrowed from the General Secretary.

Legal Decisions

CASES RECEIVED

Notice of cases received are given for members' information. They will be printed in The New Zealand Valuers' Journal as space permits and normally in date sequence.

CASES NOTED

Cases `noted' will not normally be published in The New Zealand Valuers' Journal.

Copies of cases `received' and `noted may be obtained from the Registrar of the Court under whose jurisdiction the cases were heard. (A charge is normally made for photocopying.)

CASES NOTED

IN THE MAORI LAND COURT OF NEW ZEALAND TE WAIPOUNAMU DISTRICT

IN THE MATTER of an appeal by the Board of Maori Affairs and the Maori Trustee against an order of the Maori Land Court delivered at Palmerston North on the 12th day of October 1984 creating a roadway order pursuant to section 442 of the Maori Affairs Act 1953 over Rowallan Block VIII Section 1 and other blocks in favour of Alan Johnston Sawmilling Co Ltd.

Coram:

Judges Cull, Russell and Hingston

Hearing at Christchurch on 14 June 1985

Mr Hindmarsh for the applicants

Mr Corcoran for the Respondent

DECISION:

Delivered at Hamilton on the 17th day of October 1985

Pursuant to separate judgments delivered herewith, the appeal is allowed.

Rowallan Block case. This was a case on its own facts relating to permission to go on to land and also as to derogation from the proprietery rights of the owners. The special powers of the Court part of the Maori Land legislation were considered by the High Court in *Albert's* Case [1967] 2 NZLR 624 which found that the powers conferred by the sections in the Special Powers part of the Maori Affairs Act 1953 are not dependent upon the powers conferred by other Parts.

Furthermore, although there well may have been a tradition in some districts for timber millers to obtain roads and tramways orders from the Maori Land Court merely by asking for them, and the ancillary question of compensation being treated as a minor nuisance, is an incorrect approach, the Court needing to have "proper and cogent evidence before it to enable a considered decision".

Rowallan Block (Christchurch 14 June 1985). This was a road order appeal case in which the significant point to note is on page 2 of the typed case reading "In *Jennings & Ors v. Scott &* Ors (1984) unreported High Court decision Rotorua Registry, the High Court in review proceedings quashed an order pursuant to ss. 435 and 438 of the Act on the grounds that inadequate or no notice to some of the Maori owners in the various lands of the proposals to amalgamate was a break of natural justice that went to jurisdiction".

DECISION OF THE BOARD OF INQUIRY OF THE VALUERS REGISTRATION BOARD

MEMBERS OF THE BOARD:

Mr D. J. Armstrong (Inquiry Chairman)
Mr R. P. Young
Mr P. E. Tierney

COUNSEL:

Mr C. Browne for the Valuer-General
Mr F. Bryson for Mr Steele

DATE OF HEARING:

5th December 1985

DATE OF DECISION:

14 March 1986

This inquiry arose from a complaint lodged by a Mrs M. E. Aburn of Paraparaumu relating to a valuation prepared by Mr Steele on a property which she had an interest in as a beneficiary to her father's estate.

The letter of complaint dated 7th August 1985 notes that the property was valued by Mr Steele on 22nd April 1985. The valuation was requested by the Public Trustee with agreement of the beneficiaries to establish the selling price of a house situ*ated* at No.15 Leybourne Avenue, Waikanae. The report advised the trustees that the fair market price including chattels to be in the order of $80,000/$82,000 and recommended an asking price of $84,000/$85,000 to test the market fully. The complainant then advised that after endeavouring to market the property at $84,000 for some time, they reduced the asking price to $65,000/$70,000 and received an offer in mid-July 1985 of $64,000 which was accepted.

The complaint states that they find it "incredible" that this figure proved to be $20,000 less than Mr Steele's suggested market price of $84,000 - and that they paid $160 of fees for nothing, asserting that they could have placed a more realistic figure on the property themselves.

In terms of Section 32(1) of the Valuers' Act 1948, the complaint was investigated by the Valuer General and he reported to the Board in a report dated 18th October 1985. After considering the Valuer General's report, the Board decided to hold an inquiry into the matter. By notice dated 5th November 1985 Mr Steele was advised of the Board's intention to hold an inquiry and the charges against him.

This Charge was as follows:

> "it is charged that you have, in terms of Section 31(l)(c) of the Valuers Act 1948, been guilty of such incompetent conduct in the performance of your duties as a valuer as to render you liable to a penalty or other disposition provided by that Act in that you, in compiling a valuation report dated 23 April 1985 in respect of a property at 15 Leybourne Avenue, Waikanae grossly overvalued that property"

Through Counsel Mr Steel pleaded not guilty to the Charge. Counsel advised that Mr Steele was unable to attend the hearing for health reasons.

The Valuer General was called by prosecuting Counsel, producing a report outlining the background to the complaint and copies of correspondence.

Mr W. E. Bartosh, Supervising Valuer, Valuation Department, Palmerston North presented his valuation of the property as at 23rd April 1985 which produced a figure of $64,200 including chattels. The property was inspected by Mr Bartosh on 18th September 1985. The report described the property well and discussed sales. Reference was made in the report to the location of Leyborune Avenue being outside the premium market area of Waikanae, locally referred to as the "Garden area. The point was further explored in questions to the witness under cross examination and from the members of the Board.

Further valuation evidence was presented by Mr Earl Gordon, a Registered Valuer of Wellington. Mr Gordon's valuation, including chattels produced a figure of $68,500. Under cross examination and questions from the Board, Mr Gordon advised that the property was below the average standard for Waikanae area and also was not in the premium garden area. He did say however, marketed at the right time of the year, when demand was highest (in the summer), it could have been possible to have sold the dwelling for up to $72,000, and in fact he would have recommended marketing the property at that figure and been prepared to come down to $70,000.

In defence, Mr Brown submitted written statements from (i) the District Manager of the Public Trust Office which confirmed previous statements relating to the background of the case and the extent of Mr Steele's work for the Public Trustee and (ii) Real Estate persons involved in selling property in the area, commenting on the market and the sale price of the subject property.

This evidence was not formally presented by the authors and was not taken in the form of affidavits. Accordingly, the Board has not been able to give much weight to it. Likewise, the Board was not able to hear Mr Steele and examine his reasons for arriving at the valuation set out in his report. While the Board accepts the reasons for Mr Steele's non-attendance, members of the Board would strongly recommend to persons involved in such hearings that every endeavour be made to attend. In this case the Board would have been much happier to have come to decision, having heard Mr Steele. We are now faced with making a decision based purely on evidence put in by the prosecution.

That evidence leads us to the view that the property was over-valued; but probably not to the extent alluded to by the complainant. The Board notes Mr Gordon's view that notwithstanding his formal valuation of $68,500, he advised that

he would have recommended a marketing figure of $72,000. The Board notes Mr Steele's figure of $84,000 and Mr Bartosh's of $64,200.

The Board finds the Charge to be proven and in deciding the penalty recognises Mr Steele's long experience in the valuation profession and that this is the first complaint against him. Accordingly the Board reprimands Mr Steele for his gross over valuation of 15 Leybourne Avenue, Waikanae.

Signed:

D. J. Armstrong
Chairman of Board of Inquiry

EXTRACT FROM "RECENT LAW " - February 1986

COMMERCIAL NOTES

PARTNERSHIP BY ESTOPPEL - PARTNERSHIP ACT 1908, 5.17

Bank of New Zealand v Harrison & Groothuis, *High Court, Rotorua. 13 September 1984. (A.33182). Gallen J.*

The plaintiff bank alleged that, in reliance upon a valuation, it advanced a large sum to a company. The bank claimed the valuation *to have been negligently made and that the amount which it indicated as principal for mortgage advance was excessive. It sought to recover damages from the defendant registered valuers* as *a result of the loss it claimed to have suffered. The valuation* was *prepared by H., the first defendant. It was not prepared* for *the bank, but was made available* to *the* bank, having *been originally made for Auckland solicitors. The valuation was made* on *headed stationery containing the following heading:*

"In Group Practice
REGISTERED VALUERS

Hugh Harrison, A. N.Z.LV. *18 Wharf Street*
Tauranga *P.O. Bar 455*
TAURANGA.

Henk J. Groothuis, A.N.Z.I.V
Mt. Maunganui"

The valuation was signed *by H. and dated 28 August* 1979.

H. and G. were originally practising as registered valuers in partnership. In 1977 they dissolved their partnership by written agreement. Since 1 January 1978, G. had been practising as a *valuer quite separately from H. He operated from the same offices* as *H. and they shared certain facilities. There had been no profit* sharing *since 1 January 1978 and separate accounts had been kept in respect of the separate businesses. G. had had nothing to do with the valuation the subject of the present proceedings. H. confirmed this, swearing that he had used the letterhead described above and had added to it the words "In group practice"by application of a rubber stamp. Two types of letterhead were used - one for the top copy, the other for the carbons. The top copy contained the added words, the other copy did not. Both contained the names of H. and G. G. swore that the use of the common letterhead was for administrative convenience.*

An application was filed to strike out G. from the proceedings on the basis *that he* was *not involved in the valuation or at any material time in partnership with H. The bank opposed this, contending that the circumstances indicated a holding out of the continued partnership. Having referred to* Lindley on Partnership *(14th ed.) p.105, to* Keith Spicer Ltd v. Mansell *[1971] 1 W.L.R. 333: [19701 1 All E. R. 462, and Spencer Bower and Turner,* Estoppel by Representation *(3rd ed.) p.182, his Honour held that, at least at the present stage, it was open to the bank to contend that there was a holding out - a matter which might properly be dealt with in the proceedings when they were heard. He noted the appearance of both names on the letterhead, the reference to registered valuers* as *being in the plural, and the appearance of the words "in group practice"*

Comment: *The* case *may usefully be compared with* Armstrong v. Powell and Powell *(1935) 30 M.C. R. 62 and* Tower Cabinet Co. Ltd v. Ingram *[194912 K. B. 397,• [194911 All E.R. 1033 (D.C.), discussed* in para.86 *of Webb & Webb,* Principles of the Law of Partnership *(3rd ed.,* 1984). *(P R. H. W.)*

IN THE HIGH COURT OF NEW ZEALAND ROTORUA REGISTRY
A.33/82

BETWEEN BANK OF NEW ZEALAND
a body corporate constituted by the Bank of New Zealand Act 1979 and carrying on the business of banking in all its aspects
Plaintiff

AND

HUGH HARRISON
of Tauranga, Registered Valuer and Henk Groothuis of Mount Maunganui, Registered Valuer, trading as HARRISON AND GROOT11"S sued as a firm
Defendants

HEARING:
8 August 1984

COUNSEL:
L. A. Andersen for Plaintiff
M. S. NcKenchnie for Defendants

JUDGEMENT:
Delivered 13 September 1984

JUDGEMENT OF GALLEN J.

The Bank of New Zealnd alleges that in reliance upon a valuation, it advanced a substantial sum of money to a company known as Tina Cannery Limited. The bank claims that the valuation was negligently made and that the amount which it indicated as principal for mortgage advance was excessive.

It claims to recover damages from the defendants as a result of the loss which it claims to have suffered. The valuation was actually prepared by the first named defendant, Hugh Harrison. It was not prepared for the bank, but was made available to the bank having been originally made for Auckland solicitors. The valuation was made on headed stationery which contained the following heading:

"In Group Practice
REGISTERED VALUERS

Hugh Harrison, A.N.Z.I.V. 18 Wharf Street
Tauranga P.O. Box 455

Henk J. Groothuis, A.N.Z.I.V. TAURANGA.
Mt Maunganui"

The valuation was signed by Mr Harrison and was dated 28 August 1979. It now appears and it is undisputed, that although Messrs Harrison and Groothuis were originally practising as registered valuers in partnership, in 1977 by written agreement the partnership was dissolved. Since 1 January 1978 Mr Groothuis has been practising as a registered valuer quite separately from Mr Harrison. He operates however, from the same office premises as Mr Harrison and they share certain facilities such as secretarial assistance. There has been no sharing of profits since f January 1978 and separate accounts have been kept in respect of the separate businesses. Mr Groothuis had nothing to do with the making of the valuation, the subject of the proceedings. This was confirmed by Mr Harrison who filed an affidavit indicating that he used the letterhead concerned and added to it the words "in group practice' by the application of a rubber stamp. It appears also that two types of letterhead were used - one for the principal or top copy and other others for carbon copies. The principal copy contained the added words "in group practice", the other did not, However, both contained the names of both Messrs Harrison and Groothuis. In his affidavit, Mr Groothuis stated that the use of common letterhead was for administrative convenience.

An application has now been filed to strike out Mr Groothuis from the proceedings on the basis that he was not involved in the valuation or at any material time in partnership with Mr Harrison. The plaintiff opposes this application, contending that the circumstances indicate a holding-out of the continued partnership. A person who is not a partner, becomes liable as if he were one to people towards whom he so conducts himself as to lead them to act upon the supposition that he is a partner in point of fact, see *Lindley on Partnership* 14th ed. 105. Whether a defendant has or has not so held himself out, is a mixed question of fact and law, see *Keith Spicer Limited v. Mansell* 1971 W.L.R. 333. The principle is based on estoppel and depends on the existence of a situation where the person against whom the allegation is made can be shown to have represented that the relationship of partnership exists between him and a third person, see *Spencer Bower and Turner, Estoppel by Representation* 3rd ed. 183.

In this case, both names appear on the letterhead; the reference to registered valuers is in the plural and the words "in group practice" appear. In regard to those circumstances, it is my view that at this stage at least, it is open to the plaintiff to contend that there was a holding-out and that this is a matter which may properly be dealt with in the proceedings when they are heard.

The application will therefore be dismissed. Costs are reserved.

SOLICITORS FOR PLAINTIFF:
Messrs Osborne, Handley, Gray and Richardson, Whakatane

SOLICITORS FOR DEFENDANT:
Messrs Scott, Morrison, Dunphy and Company, Wellington

IN THE HIGH COURT OF NEW ZEALAND (ADMINISTRATIVE DIVISION) CHRISTCHURCH REGISTRY M.613/83

IN THE MATTER of the Public Works Act 1981

BETWEEN

PATRICIA AILEEN HAIGH Appellant

AND

THE NORTH CANTERBURY ELECTRIC POWER BOARD - Respondent.

DATE OF HEARING: 5 September 1985.

COUNSEL: R. J. De Goldi for Appellant.
R. H. Bowron for Respondent.

JUDGMENT: 5 September 1985.

Haigh v. North Canterbury Power Board. This is a case on its own facts except that, as in *M.O. W. v. NML*, the Administrative Division again followed *Drower's* case by directing that compound interest should be paid on the compensation at 10010 in full satisfaction of both the diminution of the value of money and the loss of use of the money factors.

ORAL JUDGMENT OF HOLLAND J. AND MR I. W. LYALL

This is an appeal to the Administrative Division of the Court from a decision of the North Canterbury Land Valuation Tribunal given on 21 March 1983. The issues raised are relatively simple and as a result we are able to give an oral judgment.

The claim to be considered by the Valuation Tribunal was a claim for compensation for $5,200 brought against the respondent for the erection of five power poles and electricity transmission lines installed by the respondent across the land then owned by the appellant for a distance of approximately 430 metres. The land involved was a parcel of 101 acres. The 430 metres of power line affected eight hectares but as we will explain later in our view not to a marked or considerable extent.

This case has an unusual feature. Valuers were engaged by the appellant and the respondent. Both valuers adopted the same method of assessing compensation for the injurious affect to the land. In each case they valued the land before the power lines were installed and afterwards. For the appellant the valuer valued the land before at $75,000 and after at $70,000. This justified the appellant's claim for $5,200 because there was an additional $200 claimed for the actual land taken in respect of the poles. For the respondent the valuer valued the land before the work at $66,600 and afterwards at $65,250 allowing for a loss or diminution of value of the land suffered by the appellant of $1,350. Both valuers recognised that there was no appreciable element of betterment of land as a result of the work. One might have expected that the issue before the tribunal was to consider the differences between those two valuations, namely $5,200 against $1,350.

Some eight months after the valuation performed on behalf of the respondent and six months after the valuation of the appellant, the appellant sold the land for $100,000. This was a sum very much in excess of the value of the land considered by the valuers either six months or eight months previously. The valuer called for the respondent said in evidence before the Tribunal that in his opinion any loss suffered by the appellant had been absorbed in the purchase price of $100,000 paid to the appellant eight months later. This view was adopted by the Tribunal which held that the appellant had suffered no loss.

With respect to the Tribunal and the valuer concerned, we think that both erred. The issue before the Tribunal was what was the diminution in value of the land of the appellant at the time the work was committed. We do not wish to state that a subsequent sale may never be relevant: indeed a sale more or less contemporaneously with the work may well in some circumstances be relevant. In this case the Tribunal took the view that although there was a substantial escalation in the value of farm lands over the period between the valuation and the sale, the sale price was the full value of the land as if the work had not been carried out. There was no evidence before the Tribunal of any negotiations between the parties and it is purely a matter of surmise to determine whether the purchaser did take into account the power lines across the farm in the final price he agreed to pay for the land or whether he did not. We do not consider that there is any evidence linking this sale eight months later to the installation of the power lines so as to justify the Tribunal in ignoring the opinion of both valuers that at the time the work was done there was some diminution in value. As we have previously stated, in this particular case we consider that the subsequent sale of the land should not have been considered. We turn now to assess what the proper compensation should have been.

Both valuers adopted the same principle of valuation but reached a different result, mainly because the valuer on behalf of the appellant considered the interference with the land from farming activities was far greater than that considered to be appropriate by the valuer for the respondent. We appreciate that we have not had the advantage of hearing the two valuers but we have had the opportunity of considering carefully the very full and lengthy cross-examination of each. In the end, we have reached the conclusion that we prefer the valuation adopted by Mr Cooke for the respondent. We are of the view that Mr Burnett has exaggerated the harm done to the land as a farm in his assessment of $5,000. We are particularly influenced in this regard because of the proximity of the line of poles to an existing drain across the land which in itself would affect the working of the farm land. We also consider that some exaggeration was made as to the interference with the working of the land from the poles themselves which of course are not to be confused with power pylons. In addition, the evidence establishes that although the view from a house property might be affected by the power poles there were only a limited number of reasonable choices of position for a house and some of those could be adopted without having the view spoilt.

Mr Cooke's total valuation of the land before was $66,600. Mr Burnett's valuation was $75,000. We are of the view that the proportion to the total valuation, of the diminution in value, adopted by Mr Cooke which was approximately 2% correctly assesses the loss in value of the land. It is possible that the total value of the land as stated by Mr Cooke was somewhat on the low side but giving the matter as much consideration as we can we cannot help but feel that in this regard we might be giving too much attention to the very good price received by the appellant when the land was sold eight months later. If the proportion is 201o, an increase in the value of the land from the figure adopted by Mr Cooke, even to that adopted by Mr Burnett, will result only in a very small increase in the compensation and we do not feel justified in interfering with the conclusion reached by Mr Cooke.

It accordingly follows that the appeal should be allowed and the respondent ordered to pay compensation to the appellant in the sum of $1,350. The appellant is clearly entitled to interest on this sum. We propose to follow the judgment of the Court of Appeal in *Drower v. Minister of Works and Development* (1984) NZLR 26 by directing that compound interest should be paid on that sum at 10% in full satisfaction of both the diminution in the value of money and the loss of use of the money factors. There was no precise evidence as to the date from which the assessment should be made. We order that the interest is to be calculated from 30 September 1980.

The appellant is clearly entitled to costs before the Tribunal and in this Court. Mr De Goldi made a submission that this being a claim for compensation for land taken by a public authority the costs should in general compensate the appellant for what he described as the necessary costs incurred by her. We are sympathetic to that submission but do not consider that this is an appropriate case to make a conclusion in this regard. The amount claimed was $5,200. The amount awarded was $1,350. We are told that the hearing took a day before the Land Valuation Tribunal. It is perhaps easy to be wise after the event, but we must say we are surprised that a claim of this kind, where there were no major issues of principle other than the one factor, should have taken as long as it did. We would not for one moment criticise the appellant or her counsel for the industry with which her case has been presented, but the issue really is also whether it is appropriate that the unsuccessful respondent should pay the full costs. We are also of the view that a different principle in relation to costs may well apply to an appeal as against an original hearing. We do not wish this case to be taken as deciding one way or the other as to costs in compensation cases except that we are clear that in no case should a claimant for compensation be entitled to transfer the liability for legal costs to the defendant or respondent regardless of whether those costs were reasonably incurred.

Looking at the matter overall, we are of the opinion that an award of costs in the sum of $250 together with an order that the valuation fee and other disbursements and other necessary payments of the appellant should have been awarded before the Land Valuation Tribunal. An award of costs must have some relation to the amount involved. We are also of the opinion that a similar sum should be awarded in respect of this appeal so that on the appeal the respondent is ordered to pay costs of $250 together with disbursements if necessary to be fixed by the Registrar.

Solicitors for the Appellant *De Goldi and Cadenhead* (Christchurch)
Solicitors for the Respondent *Helmore Bowron & Scott* (Rangiora)

NEW PUBLICATIONS AVAILABLE

(see book reviews)

"Seminar on Leasing and Alternative Forms of Land Tenure".

A compendium of papers delivered at the NZIV Tauranga Sub-Branch Seminar held on October 11, 1985.

The highly successful seminar held by the Tauranga Sub-Branch of the Institute concentrated on the leasing of land and property and drew a number of eminent speakers delivering excellent papers in their specialist fields. The day was actually divided into two divisions with papers of more particular interest to the urban valuer and those with essentially a rural flavour. In total some eight papers were given and this publication reproduces those addresses together with most of the questions and answers which took place in the subsequent open discussions.

This title (bound in single soft cover. A4 format, approximately 130pp., cost $15.00 p&p included) is a permanent record of the proceedings of that seminar and conveniently binds the papers in accessible format.

It would be difficult and unfair to identify the highlights of this seminar, since all papers were presented and delivered to a high standard. In the rural area Mr D. Horner delivered a paper on horticultural syndication, there were two papers centered on Maori land and the leasing thereof (Mr D. Wright and Mr T. Te Kani) and a paper from Mr R. Calver on share farming. In the urban area, Mr Ollie Newland produced his views on commercial leasing, the BOMA viewpoint was expressed by Mr McLennan as President of the Auckland Branch of that Association; Mr K. Brown from the Government Life Office outlining the development and operation of the major Bayfair shopping complex at Mr Maunganui and Mr G. Wood delivered a timely and absorbing paper on the leasing of motels in New Zealand.

Because of the quality of the papers delivered the Institute felt that they should be bound and offered for sale as a single publication adding to the available literature published as a permanent record by the Institute. Whereas some 150 persons actually attended the seminar, the publication of papers allows the wider readership including practitioners, students and others in any way involved in property to absorb at leisure the excellent and highly relevant views and facts delivered at this time. This publication is a worthy purchase and one where the valuer should ask himself "Can I afford to not buy this edition?"

* * *

The above publication is now available for purchase by writing direct to the General Secretary of the Institute.

"An Investigation into Methods of Valuing Horticultural Properties': By J. L. Comely and R. V. Hargreaves. (65pp., published by NZIV June 1986, A4 size, soft cover - $15.00 p&p included.)

J. Luke Comely was awarded a post graduate bursary by the Institute and his specific topic in completing his Diploma in Horticultural Science at Massey University centred on the approaches being used and the various methods for the valuation of horticultural vacant land and existing properties. In delivering his dissertation it was felt the work was of current and wide interest to practising valuers and the profession at large and a decision was taken to reprint a limited number of copies of an edited version of the full dissertation. Mr Comely was assisted in this task by Senior Lecturer at Massey University, Mr Bob Hargreaves.

The above publication is now available for purchase by writing direct to the General Secretary of the Institute.

NORTHLAND

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