

new zealand march 2004

***PROPERTY
JOURNAL***

CONTAMINATED LAND VALUATION

Methods and the current status

LEAKY HOME STIGMA

Its impact on property values

RURAL LAND USE

Can forestry land produce milk?

ANALYSING APARTMENT DEMAND

Projections and Demands

CITY HOUSING UNITS

A blueprint for future development

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From the president...

With the first quarter of the year almost completed the Property market has maintained much of its momentum from the previous busy year. The question is "Where to from here?"

Notwithstanding continuing low interest rates and net migration inflows, there are now signs that the residential market is slowing and not unexpectedly given the level of sales activity and price rises over the past two years. Riding on the back of low interest rates, the commercial and industrial markets have continued to benefit from real investment returns and the prospect of rental growth in line with the expanding economy. The farming sector however is having to accept lower returns at least in the short term and the question is whether this will or is already affecting farm prices.

"Where will you be when the music stops?" will be one of the topics at the Property Institute's annual conference in Queenstown in July this year. The Presidents of the New Zealand and Australian Property Institutes, together with the President of the American Appraisal Institute and the Royal Institute of Chartered Surveyors will jointly address the conference on the challenges facing property professionals operating in cyclical property markets. The programme for the conference will be distributed in the coming weeks and will canvas a range of property issues involving international and local speakers. This conference is being co-branded by the New Zealand and Australian Property Institutes and with the destination being Queenstown, the conference organising committee has already received a high number of pre-registrations. The conference includes the presenting of industry awards and will be one of the highlights of the year not to be missed.

Recent floods in the Manawatu demonstrate the enormous impact that natural disasters can inflict on real assets. The aftermath of this disaster is already involving the services of Property Institute members in the assessment of damage and the loss in value to productive farms on behalf of land owners and the insurance industry. Land ownership issues surrounding the foreshore also have the potential to affect property values or at least the perception of those values.

Members will by now have received the new Professional Practice Guidelines (PPG) 2004 either in CD rom form or hard copy. These guidelines which have been produced in association with the Australian Property Institute now form an Australasian standard and will also be posted on the Institute website for members use. A roadshow to highlight the essential parts of these guidelines and any changes to practice standards will be undertaken in April and May of this year in Auckland, Wellington, Christchurch, Dunedin and Rotorua.

Ultimately, it is only through setting high standards and marketing those standards within the industry and to the public that the Property Institute will achieve its aim to provide an over-arching body of property professionals with the common goal of providing recognised high quality services and standards.

The Property Institute is also currently refining its membership structure with a view to providing a career pathway for those involved in the property industry. In this structure the Institute considers it essential that the institute embrace the range of property disciplines and encourage the inter-change of ideas and experiences at all levels of membership. Practising members will still be encouraged to achieve Registration in their respective practising stream with registration being marketed as the quality brand of the Institute.

Finally I am pleased to report that Conor English has regained his good health and is now back in his office on a part time basis from this week. In his absence the office staff energetically led by Lynelle Waldie have done a sterling job of keeping up the day to day delivery of services to members. As I have said to Conor, now that he has his head back together, all he can look forward to is his body falling apart!

Chris Seagar
President, NZ Property Institute

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PROFESSIONAL DIRECTORY

NZ Property Institute benefits

The New Zealand Property Institute was launched in 2000 to take the profession into the 21st century. This followed overwhelming support for a new organisation by members of the New Zealand Institute of Valuers (NZIV), the Institute of Plant & Machinery Valuers (IPMV), and the Property & Land Economy Institute of New Zealand (PLEINZ).

The Institute has a membership of 3000 key property professionals, who provide services in a number of property related areas involving people, places and spaces. These include; property management, property consultancy, property development, property valuation (rural, residential, commercial and industrial), facilities management, plant and machinery valuation, financial analysis, real estate sales and leasing, project management, and others.

The Institute has 17 branches across provincial and metropolitan New Zealand, a number of overseas members, and is affiliated to a number of other international property organisations.

The Institute's business plan has 3 key goals:

- To become the first choice pre-eminent organisation for property professionals to belong in New Zealand;
- To lead and influence the New Zealand property sector and its environment;
- To provide professional support of members to enhance public confidence in the profession.

The institute promotes a code of ethical conduct and provides a range of membership services and benefits.

The institute provides a range of products, services and benefits including:

- The Property Business - published bimonthly in partnership with AGM Publishing, this is the Institute's flagship publication, which has established itself as the leading property publication in New Zealand.
- JOBMail - a weekly email service to all members advertising jobs available in the sector, these job vacancies (and positions sought) are also put on the Institute's website: www.property.org.nz.
- Property Registration - an added status conferred by the NZ Property Institute Registration Board in the streams of Plant and Machinery Valuation, Property Consultancy, Property Management, and Facilities Management. The Valuers Registration Board registers property Valuers.
- Property Standards - sets standards of practice in New Zealand, and is developing Australasian-wide standards. In addition, the Institute has had considerable input into the development of international Valuation Standards.
- Code of ethics and discipline- has a code and rules of conduct, which are enforced by a professional practice committee to ensure that the public are served ethically and have some measure of protection.
- Education- enhancing the quality and skills of the profession through initiatives such as the provision of textbooks, accreditation of university courses, provision of professional certificates, education seminars, audio conference and events.
- Membership Benefits package- all Institute members are automatically entitled to a number of discounts off the Institute's affiliates products and services. For example 30% subscription discount to the award winning Unlimited Magazine, office supplies, accommodation average savings have been estimated at over \$11,000 across a range of products. For further information, please visit:

www.property.org.nz.

- NZ Property Institute Awards - the Institute promotes professionalism and recognises excellence by providing national, internal and tertiary studies awards to key individuals who contribute to the industry, profession and Institute.
 - Property Network - the network of 17 branches across the country, and one in London. This provides a local focus point for Institute networking, educational activities and social functions such as the Property Ball, golf days, BBQs and Christmas functions.
 - International relationships- the Institute has a number of reciprocity arrangements with other countries that have regulated professional marketplaces, allowing some NZ members to practice overseas more easily. In addition, the Institute has an MOU with the Australian Property Institute, an agreement with IFMA (International Facility Management Association), is represented on other international bodies such as IVSC (International Valuation Standards Committee), WAVO (World Association of Valuation Organisations), PanPac (Pan Pacific Congress of Real Estate, Appraisers, Valuers and Counsellors) PRES (Pacific Rim Real Estate Society), and has a number of other international relationships.
 - NZ Property Institute Confidence Index - measures confidence and other key indicators in the property sector.
 - Career Foundations - a key package, which provides additional support, targeted at university students and graduates needs.
 - Schools project - established in 2003 to promote the Institute, profession and universities offering the Property Degree, to youth (specifically school leavers) throughout New Zealand. Initiatives include visitations by local members to secondary schools, distribution of promotional material to schools, and other communications.
 - Property Publishing - includes discounted textbooks for student members, the 'Property Journal', NZ Property Institute's Statscom, and other publications.
 - Library Services - the Institute has an extensive range of publications on all aspects of the property profession available to members, who are welcome to request information.
 - Property Card- given to all Institute members, and gives entry to Institute events at discounted prices. It can also be used as a form of identification/verification of membership with the NZ Property Institute, when accessing the Institute's affiliates products and services at discounted rates.
 - www.propertyorg.nz - the Institute's website provides information on the Institute and its members, such as 'branch events', 'find a registered member' and on line publications. Information about the products and services identified above, as well as additional products launched by the Institute can be also found on the site. The site continues to be developed further.
 - Other NZ Property Institute products and services: the institute is also looking at partnering with other organisations to bring more benefits to members and these will be announced as they are progressively launched.
- To become a New Zealand Property Institute member: There are eight levels of membership that recognise professionalism and achievement - Student, Graduate, Affiliate, Associate, Full Member, Senior Member, Fellow and Life Member. Not everyone is able to become a New Zealand Property Institute member. To check out how you can become a member either contact us, go to our website for more information, or contact Mike Clark, chairman of the PI membership committee at mac@seagars.co.nz

Submitting articles to the New Zealand Property Institute Property Journal

Notes for Submitted Works

Each article considered for publication will be judged upon its worth to the membership and profession. The Editor reserves the right to accept, modify or decline any article. Any manuscript may be assigned anonymously for review by one or more referees. Views expressed by the editor and contributors are not necessarily endorsed by PI.

Deadline for contributions is not later than the January 10, May 10 and September 10 of each year.

Format for Contributions

All manuscripts for publishing are to be submitted in hard copy - typed double-spaced on one side only of A4 sized paper and also in Microsoft Word document format on IBM compatible 3.5" disk or alternatively emailed to head office.

Any photographs, diagrams and illustrations intended to be published with an article, must be submitted with the hardcopy. A table of values used to generate graphs must be included to ensure accurate representation. Illustrations should be identified as Figure 1, 2 etc.

A brief (maximum 60 words) profile of the author; a synopsis of the article and a glossy recent photograph of the author should accompany each article.

Manuscripts are to be no longer than 5000 words, or equivalent, including photographs, diagrams, tables, graphs and similar material.

Articles and correspondence for the PI Property journal may be submitted to the editor at the following address: The Editor, PI Property Journal, PO Box 27-340, Wellington.

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Why become a member of the New Zealand Property Institute?

NZ Property Institute's primary objective is to represent the interests of the property profession in New Zealand.

The New Zealand Property Institute:

- Promotes a Code of Ethical Conduct
- Provides Registration – the formal recognition of experience and certified qualification of excellence
- Provides networking opportunities
- Assists in forming professional partnerships
- Provides a marketing tool in the approach to new and existing clients
- Provides The PROPERTY Business 6 times a year in partnership with AGM Publishing
- Distributes national PI newsletters and email updates
- Delivers a National and Branch CPD programme
- Offers membership with the international Facility Management Association (IFMA)
- Offers other international linkages
- Offers networking opportunities between the profession and the universities through the PI "Buddy Programme"
- Promotes annual PI Industry and Student Awards
- Delivers an annual PI Conference
- Offers links and information through the PI website www.property.org.nz
- Provides regular branch breakfast and lunch seminars
- Promotes the annual Property Ball in partnership with the Property Council
- Provides PI Confidence index and PI JobMail

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EDITORIAL

2004 is now well underway. The property market has some uncertainty as various drivers of the market over the last few years take a breather. However, what is certain, is that professionalism and knowledge are required, whatever the market conditions.

In this month's issue of the Property journal, we take a look at a wide range of topics. Our NZ Property Institute scholarship recipient for 2003, Song Shi, has his 'Leaky Home Stigma' paper published. The growth in apartments has been massive so we take a look at 'Analysing Apartment Demand'. In addition, the winners of the Institutes 2003 Innovation in Property Award publish two papers 'Integrated Benchmarking Performance Management' and 'Establishing Future Demand and Geographical Allocation of City Housing Units- A blueprint for future development'. This will add to the urban development discussion that is emerging in New Zealand.

For valuers, we have published an update on Contaminated Land Valuation Methods and look at the Valuation of business goodwill for compensation under the PWA. On land issues we ask the question 'Can Forestry Land Produce Milk?'

Education is of increasing importance to the profession, and an increased focus for the Institute, so we examine 'Training, Education and the Property Profession' to assist us with ideas.

Papers in this edition will be available on the institute's website, www.property.org.nz. The Institute is currently looking at enhancing online delivery of these and other papers, to provide a more immediate and user-friendly way of accessing a wide variety of useful material.

I hope you enjoy this edition as always any contributions, ideas and suggestions, are most welcome.

Kind regards

Conor English

Valuation of Business Goodwill for Compensation under the Public Works Act 1981

Introduction

As demands on public transport and other infrastructure increase, there is likely to be increasing use by local authorities and Requiring Authorities of the Public Works Act 1981 ("PWA") to obtain land for necessary public works. While these plans may mostly affect private landowners, more and more businesses will be affected by the need for land.

The PWA enables a local authority or the Minister of Land Information to acquire by voluntary agreement or to compulsorily take, land or an interest in land for any "public work". The latter term is broadly defined, and essentially applies to any project undertaken by a Government department or local authority.

In addition to the Crown and local authorities, there are also a wide range of Requiring Authorities, who are generally infrastructure providers and are approved as such under the Resource Management Act 1991. They are then able to obtain a designation over land they require, and request the Minister to acquire or take that land under the PWA for their benefit. For convenience, we refer to Requiring Authorities, the Crown and local authorities together as "acquiring authorities".

When land is acquired or taken under the PWA, compensation is payable, and Part V of the Act sets out the various elements of compensation to which the landowner may be entitled. This article is concerned with one of these elements, the entitlement under s 68 (1) (b) to compensation for the loss of a business where that business is closed down and not relocated to an alternative site. For convenience, we use the term "acquired" to refer to both acquisitions and takings; Part V applies equally to each.

Section 68 PWA

The PWA makes express provision for compensation for what it terms the "loss of goodwill" in a business. Section 68(1)(b) states:

The owner of any land taken or acquired under this Act for a public work who has a business located on

that land shall be entitled to compensation for loss of the goodwill of any such business ...

There is surprisingly little case-law on this section. The previous statute the Public Works Act 1928 had no equivalent provision to s 68, and business losses were generally compensated under the obligation to make full compensation for the acquisition or taking of land. Little assistance can therefore be gained from case-law under the former Act, although general observations in case-law regarding business valuations can be of assistance in interpreting and applying s 68.

Section 68 must always be considered in the light of s 60(1), which sets out a landowner's overall or basic entitlement to compensation, and provides that (emphasis added):

where under this Act any land is acquired or taken for any public work ... and no other provision is made under this or any other Act for compensation for that acquisition ... the owner of that land shall be entitled to full compensation from the Crown (acting through the Minister) or local authority, as the case may be, for such acquisition ...

Valuation Process

Goodwill is inherently an accounting concept, and the valuation of business goodwill under s 68 is therefore largely based on the financial statements of the business concerned. Land Information New Zealand, which must ultimately approve any compensation settlement on behalf of the Crown, requires the previous three years' financial statements as a basis for assessments of goodwill. While this may be sufficient for many situations, in some cases (especially where recent years have been affected by the prospect of acquisition or are not representative of the business in the future) it may be necessary to use the financial statements for a longer period and make appropriate adjustments.

LINZ has Accredited Supplier Standards, which require negotiation agents acting for an acquiring

authority to use Chartered Accountants rather than Registered Valuers to assess business goodwill. If a valuer assesses the business goodwill and the assessment is deficient, there are obvious risks in professional negligence for a valuer. Even if the assessment is not deficient in any way, there is also a risk to the landowner or acquiring authority that, although an agreement has been reached between them, LINZ may decline to approve the settlement on the grounds of non-compliance with its own Standards. LINZ may be prepared, though, to accept in individual cases an assessment made by valuers, but express approval would be required to minimise the risk just outlined.

Although the valuation process is not primarily a legal process, legal considerations drawn from the analysis above apply to the process. A common (but not the only) method employed is to assess the annual earnings produced by the business, capitalise that using an appropriate discount rate, deduct the tangible assets, and so arrive at a goodwill figure. We adopt his method for the purposes of illustrating the application of the relevant legal principles.

Legal Principles

Drawing on ss 60 and 68, and in the absence of any case-law to the contrary, the following legal principles governing valuations of business goodwill under s 68 (1)(b) can be identified:

- the actual business on the land being acquired must be the subject of the valuation – valuations drawing on industry standards or averages are quite inappropriate; the valuation must be of the loss that the land owner is actually suffering as a result of the acquisition, and not of the market value of the business on the open market; and
- the valuation must be based on the actual financial statements for the business, adjusted only on restricted grounds.

These principles mainly relate to the process of determining, from the financial statements, the annual earnings from the business.

Which Business – actual or industry average?

The words of s 68(1)(b) are very clear, that the actual business is to be valued. The section says: "the owner of any land ... who has a business located on that land shall be entitled to compensation for ... loss of the goodwill of any such business" (emphasis added). This is also consistent with the landowner's overall entitlement under s 60, which requires "full compensation" to be paid for the owner's loss, not for the industry average owner's loss.

On what basis: market or earnings?

Some negotiation agents for acquiring authorities

propose that the owner should receive the market value of the business – or what a willing buyer would pay a willing seller on the open market for the business – which in some situations may differ significantly from the value indicated by the financial accounts, possibly because the owner is able to operate the business in a way other operators could not.

In our view, such an approach is entirely inconsistent with the PWA. The owner is not losing the market value of the business, but the annual earnings flows as recorded in the financial accounts. Section 60 requires the acquiring authority to make "full compensation" for the owner's loss, which must therefore be those earnings flows.

If the valuation were to be based on the market value, words similar to those that appear in s 62 in relation to the valuation of land – "that amount which the land if sold in the open market by a willing seller to a willing buyer on the specified date might be expected to realise" – would have to appear in s 68 also. No such words appear, and it would be quite inappropriate to insert what Parliament has clearly excluded.

In one of the few cases dealing with business valuations under the PWA, the High Court expressly rejected a willing buyer/willing seller market valuation of a business. In *McNulty v Minister of Survey & Land Information* (unreported, M61/92, High Court Dunedin, Hansen J & Mr Lyall, 9 July 1993), the Court noted that the Minister's valuer "*approached the matter on the basis of an open market willing buyer willing seller of the business. We do not consider that to be the correct approach*".

What adjustments should be made to the financial statements?

For the valuation to reflect the actual loss to the owner arising from the acquisition, it must be based on the normal and sustainable income and expenditure of the business, as it existed before it was affected by publicity regarding the acquisition. Adjustments may therefore need to be made to the financial statements to reflect extraordinary or unsustainable items and any effect ("blight") on the business caused by the prospect of the acquisition.

If the valuation is to be based on the actual financial statements for the business, it will need to reflect the trends shown in those statements, adjusted only for those items which are acknowledged to be in the long term. This would exclude one-off or non-recurring items, and should produce "normalised" figures on which the valuation may be based.

Where income or expenses are not stable over time, trends can usually be identified from the statements from both financial analysis and explanations from the owner, and used to assess the normal and sustainable figures.

In a 1947 decision of the then Land Sales Court,

Mountenay to Young [1947] NZLR 436, the Court emphasised that, where a valuation is undertaken on the basis of financial statements, extraordinary items or events should be excluded and trends determined from the revised financial statements. A "hypothetical buyer would note the steady increase in takings but would remember that 1945-46 was an exceptional year ... as to expenses, he would be impressed by the steady rise in costs, and knowing the general tendency of the times would assume that his average outgoings in future would be unlikely to be less than the actual outgoings for 1945-46".

What discount rate?

Having determined the annual earnings generated from the actual business on a normalised and sustainable basis, it is necessary to capitalise these using an appropriate discount rate.

The selection of a discount rate reflects such factors as the level of risk in the particular industry as a whole, comparable alternative investments, and rates of return. However, it cannot be solely market-based, as the overall requirement is to make full compensation for the owner's loss and, specifically, to compensate for the loss of goodwill in the business on the land being acquired. This precludes a purely market-based approach.

All businesses differ from one degree to another, and is highly unlikely that there is such a thing as an industry standard business with no distinguishing features. It is therefore necessary, when selecting the discount rate, to consider those factors that distinguish this business from the industry average.

Although it is a decision under the 1928 legislation, which had no equivalent of s 68, Minister of Works v Cromwell Farm Machinery Ltd [1986] 2 NZLR 29 is of assistance in identifying some of the factors that are relevant when considering the valuation of a business. The Court of Appeal noted that factors such as "an established and reputable business which has available dealer franchises, a locally resident staff which might be expected to remain, and an established clientele" would be relevant. Given the provisions of the 1981 Act, these factors are appropriately included at the discount rate stage of the valuation.

If these factors suggest that the business is different (whether better or worse) than the industry average, the discount rate that is adopted must reflect these factors. If the discount rate does not do so, the resulting valuation cannot be said to be that of the business on the land being acquired, or to fully compensate the owner for the loss of that business.

Conclusion

Where land is being acquired, and there is a business that will not be relocated following acquisition, the acquiring authority's obligations under the Public Works Act 1981 are:

- primarily to make "full compensation" for all losses arising from the acquisition; and
- specifically to pay compensation for the "loss of the goodwill" of the business.

Although there is very little case-law on the valuation of business goodwill under s 68 of the PWA, an analysis of relevant provisions of that Act and case-law on business valuations generally reveals several key legal principles governing such valuations:

- the actual business on the land being acquired must be the subject of the business, and not an industry standard or average business;
- the valuation must be of the loss that the land owner is actually suffering as a result of the acquisition, and not of the market value of the business assessed on a willing buyer/willing seller basis in the same way as a sale on the open market;
- the valuation must be based on the actual financial statements for the business, adjusted only to remove extraordinary or unsustainable items, or the effects of pre-acquisition "blight"; and
- although the discount rate applied to the annual business earnings may include market factors, this must not be to the exclusion of factors relating to the specific business, if these indicate that it differs from other industry businesses.

About the authors: Brian Joyce is a Partner and Matthew Ockleston is an Associate at Clendon Feeney, Barristers & Solicitors, in Auckland. They have experience in Public Works Act and land valuation matters, and this article draws on their recent research and experience during a complex business valuation.

Please note that this article was also published in the November (2003) edition of the Property journal. It has been reprinted due to an error that occurred because of technical difficulties.

Training, Education and the Property Profession

Introduction

The purpose of this paper is to review several major issues as they affect the design and presentation of property courses. It is argued that university level courses differentiate themselves from technical training programmes by equipping students with background and depth considerably beyond what is necessary for a particular occupational role. This type of education should equip the student with a broad background to the nature and operation of professional roles and their relationship to human society.

By contrast, technical training is directly related to conveying expertise in occupational skills without emphasis on background understanding. Training under this definition is highly job related and may avoid any depth or breadth that is not clearly related to immediate professional practice. The technically trained person is immediately employable and productive, but is incapable of responding to the challenges of change or to the interpretation of the relationship between his or her occupation and the wider community.

Property courses need to contain both education and training. The balance between the two is considered in the light of contemporary learning techniques that have gained acceptance in recent times. These approaches can be interpreted as taking training to an extreme, where practical competencies can be rapidly developed with negligible background understanding. The applications and challenges of these approaches are considered with a focus on their application to university programmes. The paper concludes that the community and the profession will be best served by graduates who have a balance of classical learning as well as a sound training in their application for property practice.

The views expressed in this paper are those of the authors and do not necessarily reflect the views of the University of Technology, Sydney.

Background

Over the past century, university education has tended towards vocational preparation and away the general background study of the liberal arts (e.g. history and philosophy) once thought necessary as a foundation for any educated career. To some extent, the process began much earlier than the twentieth century and the early intrusions of vocational study have made the interpretation of recent developments all the more

difficult. An understanding of the fundamental issues that lie behind the distinction between education and vocational training provides important guidelines for the future direction of property education in Australia.

The university began as a tertiary institution of learning, predominantly focused on the liberal arts. The purpose of the liberal arts was to explore the biggest questions that face the person, questions regarding the nature of existence and the role of the acting person within it. In the classical scheme of the sciences the first big question gave rise the physical, or natural, sciences (physics, chemistry, etc), and from the second developed the practical sciences (ethics, politics, etc). These two groups of sciences were limited in that they could not prove their own principles, or starting premises. Consequently it was always recognised that they were subject to review by the higher, (or queen) sciences, particularly mathematics and philosophy (Wallace 1977). Mathematics provides a flexible set of tests and predictable relationships for the lower sciences (e.g. psychology and economics) while philosophy provides the fundamental logic of enquiry and the ability to make the statements of being that form the foundations of any science. While some of these sciences have professional applications, they are often used as the foundations for the more applied, or practical, sciences that include most professions. The applied, or practical, sciences use the pure sciences for a socially useful purpose. As such they always contain some ethical content and their social value enables them to operate partially as tradable services.

The property professions apply several pure sciences, including economics, psychology and sociology. These in turn rely on the higher sciences of mathematics and philosophy. To a certain extent property practice can also be informed by the history of our culture's use of property and the cultural practices of other societies regarding property. Hence, history and anthropology are informative, especially when cultural or social change threatens to affect the way that property is dealt with. This means that the educated property practitioner should have some background in all of these areas. This understanding of the sciences implies that education should be grounded in the higher sciences rather than applied vocational studies. Once the foundations for property economics are understood by students then they can be most flexibly and creatively applied to new questions.

Academically, property economics exists as a practical sub-discipline of general economics so the location of economics amongst the sciences is important to property practitioners. The science of economics grew out of political economy which had a focus on the common good. As such, it was a sub-discipline of moral philosophy (ethics). The father of modern economics, Adam Smith, was a professor of moral philosophy who specialised in political economy. John Locke is studied more for his philosophy than his economics, though the latter flows from the former. John Stuart Mill likewise straddled the two disciplines with more of a contribution to philosophy. Modern economics is best understood as a behavioural science, a sub-discipline of social psychology. As such, it traces its pedigree along with other behavioural sciences, such as sociology and psychology, back to the specialisations of politics (a sub-discipline of morals). Economics is therefore not strictly a vocational study, but a branch of moral philosophy in the classical scheme. It has a natural place in the classical university where students based their education about philosophy, history and even languages.

The early university vocational studies were closely tied to the pure sciences. Law is closely related to morals and politics. Medicine is closely related to biology, chemistry and anatomy applied for the good of humanity. The other distinguishing features of these disciplines are the level of skill required for their practice, their importance for society and consequently, the way that they occupy a special ethical space in society. These qualities contribute to their distinction as professions, especially when it is recognised that it is impractical for the community to be able to assess the quality of their practice (Small 1999). It is useful to note that even the early professions did not always go to the university for their vocational training. Medical practitioners learned their trade as apprentices, as did lawyers, though the latter were the first to enter the university.

Like property professionals, engineers were late entrants to the university, and their history is instructive for similar professions. Education and training is evident in the case of engineering. The naive inventor or designer may be moderately successful without a formal knowledge of physics, chemistry, or even mathematics. Effective vocational skills could be learned as an apprentice to a practitioner with observation informed by common sense. However, a formal education in the sciences greatly aided practice and the best practitioners emerged as those with university education. With apprentice engineers swelling the ranks of those doing physics and other natural sciences, the obvious next step was the development of specialist programmes of study designed to educate these students more

specifically in the application of the sciences to practical problems. Thus evolved the applied sciences.

This account of the evolution of education tends to obscure an important aspect of vocational study. While the engineer may have benefited from the study of the applied sciences, professional practice continued to revolve about practical skills that were never derived from the sciences. Technical drawing, the operation of various machines, and familiarity with the specific, often positive, codes and rules of practice are good examples, amongst the many that underpin practice. These are technical skills, or crafts, and training in them remains better suited to learning through doing, usually on the job.

Vocational skills training has crept into the university syllabus and may be argued as suitably located there for the following reasons:

- Some skills are necessary for the advanced study of applied sciences.
- Complete vocational preparation in one package is easier to deal with.
- Skills training activities by academics may subsidise university pursuits, such as research.
- An interest in skill areas may stimulate research derived from these areas.

On the other hand, an emphasis on skill training at a university obscures the importance of scientific education and appears to threaten a loss of an understanding of what distinguishes science and education from craft and training. To learn how to operate a computer package, or how to apply the critical parts of a statute pertaining to professional practice requires little critical thinking compared to mastering the physics of electronics or the concept of justice. When the university contains educational and training subjects with similar credit points, students can be excused for concluding that they are of similar value. The problem is that this perception tends to degrade the status of the more challenging content, especially when it does not correspond as readily to day to day practice. Professions in the transition from technical to university modes of vocational preparation can be expected to have greater difficulty with resolving the education versus training balance. In these, existing practitioners and teachers both tend to have backgrounds that emphasise training and vocational skills. Hence, the distinctive contribution of the university, being able to provide deep background understanding that forms the ability for critical thought and provides insights into background issues that lie behind the day to day issues of practice is not well understood by the peers of the profession who are responsible for directing the transition. As universities take on more vocational programs, especially where the training/education balance is compromised, the true balance is further obscured.

History of Property Economics Training and Education

The two decades between 1960 and 1980 saw the emergence of specialisation in the property industry and the beginnings of the trend towards vocational university courses to replace workplace training augmented by technical college study. At the beginning of that period most engineers held technical college diplomas, but were amongst the first to move into the universities. They have been followed by land surveyors, urban planners, property valuers and other property professionals.

Programmes in business studies were added to the university offering over the same period. The practice of commerce for most of human history did not demand academic study, and even in the modern era up to the twentieth century, the only necessary skill was the art of double entry book keeping which was passed on through practitioners, not universities. It remains that the core knowledge in business is the principle that one should buy cheap and sell dear, but that simple dictum is now wrapped in complex theories of commerce and finance. The property professions have been caught up in the ascendancy of business studies to the point that graduates now need to have a good working knowledge of the commercial and financial dimensions of property practice commensurate with the developments in the way that property is employed by business and society.

The casualty in this trend has been balanced university education. While graduates are now finely tuned practitioners, they lack the critical understanding of their place in society that once distinguished the educated person. They may be adept at profitably administering the business of property, but they do not know how to ask if that is a good thing. Often, they are also deprived the opportunity to acquire critical tools necessary for the development of technique. Graduates are excellent in technical practice as it currently stands, but ill equipped to respond to the need for changes in the technical environment. These abilities were once the distinctive attributes of university graduates over their technically trained colleagues.

Future Directions

The incursion of training into university programmes challenges the integrity of the meaning of education and the distinctiveness of the university as a provider of knowledge. This trend is itself related to developments in philosophy, especially the popularity of post-modernism. Post-modernism is fundamentally a philosophical paradigm that underlies a broad range of human pursuits. In art and architecture its underlying doctrine that there is nothing distinctive in belief or the association of concepts. In philosophy the outcome is less satisfactory. Post-modern thinkers such as Derrida and Lacan believe that objective knowledge

is impossible and even assert the paradox that people's public statements oppose their own inner beliefs (Grosz 1990). While this position frees the hearer totally from any compulsion to accept what is heard, if it were believed and applied to its own utterance it would be rejected. The post-modern university is the one where the students teach themselves what they choose to believe, unconstrained by prior learning, and where grading is meaningless. The notion is absurd when faced directly but current pressures and educational fashions are already moving in that direction.

The assessment of the quality of education has moved away from objective measures to measures that are little more than student enjoyment. This type of quality assessment implies that students are the best assessors of subject quality, and that delivery is more important than content. These assessment instruments are currently being used extensively to assess quality for a range of purposes, including promotion and funding.

The education/training issue has application in this context. Training is by nature less demanding and more vocationally relevant compared to education in content derived from the sciences. Programmes that emphasize training are therefore more likely to score better on the current scheme of assessment. This is not to totally absolve programmes that score poorly, as there may be correctable problems in delivery and effective educators tend to encourage better learning by stirring up the interest of their students. Rather, the point to note is that the qualities assessed lie on a different plane to the real goals of education. Perhaps effectiveness surveys completed by employers may be more effective, but even these could over-emphasise skill issues rather than education.

The implicit promotion of skills training over education in the sciences threatens considerable long-term costs. The reason that the professions came to the university in the first place was to acquire deep background knowledge that could be applied to practice in order to solve novel problems. This strategy has successfully fuelled much of the technological advancement of the last century. Training, strictly speaking, does not prepare students for novelty and change.

The tradition of education of the last century forms a type of intellectual capital reserve in the professions that may buffer the negative effects of current teaching trends that stress training. While property studies do not have such an explicit tradition, a careful inspection of the content of property programmes reveals a heavy reliance on areas such as economics, law and commercial culture. These do link to deep and challenging intellectual issues that may currently be traded for immediate vocational skills.

Phenomenological Teaching Methods

Closely related to the trend towards training over education is the use of training methods to teach background sciences. Over the last five decades or so, there has been a movement towards experimentation with teaching methods based on phenomenological principles. Phenomenology is the view of the world that focuses on one's understanding of the world purely as it is perceived. We say that the sun rises, even though we know scientifically that the earth rotates. Phenomenological teaching is interested more in the sun rising than the earth rotating. It teaches useful applications of scientific principles very rapidly, but it omits the systematic understanding of causality that leads true understanding forward. For example, valuation by capitalisation can be taught as a practical skill without the student understanding the background assumptions and theories that make it work.

Phenomenological teaching is already well advanced in the school system. Despite 90% of English words being spelt using the phonic principles within the alphabet (i.e. the sounds of the letters and the rules that govern their operation), infants are taught to read using the "whole word" or "sight word" approach. This method trains children to memorise the meaning of words by their shape and appearance, not through the logical construction of their letters. This has the short term benefit of enabling kindergarten children to read carefully prepared books within the first few weeks of school, but the proven long term cost of plummeting high school literacy levels. A visible gap has developed between countries that have adopted the methods and those that have not (Davidow 1977).

A similar system has been used for mathematics with similar results (Kline 1973). The use of calculators promotes the approach to problem solving that is based on learning rote solution algorithms without mastering the mathematical relationships that underlie them. That approach enables students to rapidly learn how to solve complex problems without the inconvenience of learning the logic behind the steps involved. This is highly successful so long as the student can identify the appropriate solution template, or algorithm, for the problem at hand. Mathematics training becomes the collection of an increasing number of templates. Like reading, the solution of common problem is very efficient, but tackling novelty is impossible. With this preparation, it is no wonder that a rising number of people leave school disliking mathematics and many high schools no longer bother to offer senior mathematics at the highest level.

Phenomenological teaching suits training where it is particularly effective. Applied to the sciences, such as mathematics, it converts true education into a form of training. It has the attraction of making students job-ready very quickly and inspires pride in the rapid acquisition of apparently difficult abilities. Universities

are dabbling with these methods under a number of titles, such as problem based learning. This approach sets students complex practical problems rather than systematically teaching them the underlying principles applicable to those problems. While some students may glean an understanding of the underlying mechanisms, most search out established methods of solution and apply them. Like the template approach to mathematics, it is effective if appropriate templates are available, but very poor for actually designing genuinely new solutions or critiquing the existing ones.

In the case of the schools, the long term use of these methods have produced an entire generation who have no knowledge of their subject areas beyond what they have been taught using these methods. This is dangerous because even if these methods are judiciously employed they must be designed and controlled by an academic elite, who do know what they are doing. If there is no one left to fill this role, obviously the system will eventually falter.

In the case of economics and property, this means that if property courses are permitted to sway towards training and phenomenological teaching of the sciences, then the level of understanding and the ability to creatively manage change will both decline. This would suggest that investigation into topics such as the following should not be permitted to be limited to that required for professional practice:

- Algebra and general mathematics
- The meaning of property
- The validity of received theories of urban economics
- The social obligations of practitioners and property owners

As it stands, these topics are often presented to students, but only as they pertain to the current property practice environment. Even at the post-graduate level, there is a tendency to present material that appears to be more aligned to advanced practice training than a deeper exploration of the scientific foundations.

The Way Forward

Modernity has long suffered from the tendency to value short term benefits over long term costs. A sound study of history is a powerful antidote for this weakness but one that is belittled in the modern mind. "*History can prove anything*" is a common, though fallacious modern belief. Currently few economics programmes teach the history of the discipline or an adequate study of the economic history of the great civilisations. Property economics programmes likewise avoid detailed treatment of the history of the institution of property and its impacts on society. A related contemporary shortcoming is the absence of the other classical subjects of the now

popularly maligned liberal arts programmes, especially philosophy. Again, modernity has its views on philosophy and its supposed impotence in the face of mathematics, but this is largely based on an argument that can be shown to be misleading. An argument can be made to the conclusion that it has been the realignment of the liberal arts through modernity that has corrupted their content. It is no coincidence that the Father of the English Enlightenment, David Hume, is also dubbed (even by his admirers) as the greatest philosophical terrorist of all times. Even further than history and philosophy, the champion sciences of modernity have not been protected from the trend to disparage sound education. Mathematics is currently falling on its own sword as the faulty philosophical foundation of modern mathematics education is breeding a generation of graduates who misunderstand and detest it.

These issues are apparent to most practitioners, who by and large need little more than common sense to recognise the changes in what is coming out of educational establishments. As an academic I am often challenged about the quality and worth of contemporary education. In many cases I have to agree with the criticisms, but I cannot agree with the popular conclusion that education is bunk – a necessary ordeal in order to get a ticket to practice. The irony remains that as we try to make education more popular and relevant to the real world, we are making it less so, despite short term impressions. The long term future for property education lies in maintaining a necessary balance between sound classical education and quality vocationally relevant training. Despite the politics of industry relevance and a disproportionate reliance on student satisfaction, the challenge for the profession is to maintain focus on the long term goals and the profession's obligation to the community to remain professional. Only this perspective will foster an educational balance that will help our next generation of practitioners become the leaders that the community and the property industry require.

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Contaminated Land Valuation Methods - The Current Status

Abstract

Valuation of contaminated land is not an easy task. It requires the valuer to have sound knowledge in the relevant environmental laws, impacts of contamination on the land, and the appropriate methods to assess the land value. Regarding valuation methods, valuers generally use conventional methods to value contaminated land. However, these methods cannot adequately take all factors of contaminated land into account. Alternatively researchers have introduced various alternative methods to enhance efficiency and accuracy of contaminated land valuation. This paper gives readers an update of the various contaminated land valuation methods available to date.

Introduction

Land is a scarce resource. The demand for land to support the population and economic activities is ever-increasing. Despite the huge demand for land, recycling contaminated land for alternative uses was not common in the past. The potential health risk, environmental impact, legal and financial consequences, high remediation and long term monitoring costs have made contaminated land a liability rather than an asset to the owners and investors. The situation has changed in recent years. The availability of more information on land contamination, the short supply of development-worthy land in urban areas, and the relatively low value of contaminated land have created a niche market for redeveloping contaminated land in Australia (Chan 2000b) and other countries such as the US (Simons 1998), and the UK (Syms 1997b).

Today, valuers are more frequently instructed to value contaminated land. Unfortunately, valuation of contaminated land is not a simple task. It is a cross-disciplinary practice that requires knowledge in economics, environmental law, environmental planning, property management, human health risks, impacts on the environment, identification and remediation of contaminated land, and valuation methods. On the other hand, there are problems like the lack of sales evidence, the difference in the type and degree of contamination between the subject and comparable properties, and also the impacts of stigma. Valuers in Australian, New Zealand, the UK, and the US mainly use traditional methods such as

direct comparison method, capitalisation method, cost approach and hypothetical development method, etc. to value contaminated land (Chan 2000a). While conventional valuation methods are still being used to value contaminated land, they cannot adequately address these issues. Accordingly researchers attempt to introduce various alternative methods to address these issues. This paper is aimed at giving readers an update of the various alternative contaminated land valuation methods available to date.

Methods from property researchers in recent years

Valuation of contaminated land differs from valuation of clean properties in that in addition to normal property valuation considerations, valuers need to consider factors such as market perception of environmental health risk, possible legal and financial liabilities, and remediation costs, etc. It has been well accepted that valuation of contaminated property is more than simply deducting the typical remediation cost from the uncontaminated value. Extra considerations should be given to factors such as marketability (Mundy 1992b; Wilson 1994), stigma (Patchin 1991; Mundy 1992a, b & c; Roddewig 1996; Neustein & Bell 1998), and possible change of highest and best use (Wilson 1996). Since valuation of contaminated land has to take more factors into consideration, conventional valuation methods are not adequate to address these factors. There is a need for a better method to value contaminated land.

Over the years, property researchers have introduced different methods to value contaminated land. At present, there are more researchers investigating contaminated land valuation methods in the US and the UK. To keep members abreast of these methods, the Australian Property Institute (API) has incorporated the Environmental Balance Sheet Method from Wilson (1992) and the stigma valuation method from Patchin (1994) and Syms (1995) into Guidance Note 15 of Professional Practice 2002. The following sections highlight other methods introduced in recent years in the US and the UK.

USA

Survey Method

Socio-economic researchers have been using survey methods for a long time. Property researchers are interested to find out if the methods are also suitable for contaminated property valuation. For example, Greenberg and Hughes (1993) use the survey method to obtain the opinion of 567 tax assessors in New Jersey to testify if hazardous waste sites have lowered the appreciation of property values, deterred land uses and affected community plans. They find that the survey approach cannot replace detailed valuation of individual property.

Regarding the applicability of survey methods to contaminated property valuation; McLean & Mundy (1998) have carried out a study of the contingent valuation method, conjoint analysis and perceived diminution approach. They find that the contingent valuation method is the most defensible one. The contingent valuation method uses carefully structured survey questions to obtain people's value for goods and services according to their willingness to pay (WTP) or willingness to accept (WTA) for specified changes in the quality or quantity of such goods and services. In the research, the authors use the WTA approach to determine the minimum amount of just and fair compensation a property owner is willing to accept for contamination to property. They conclude that while the survey methods can be used to value contaminated properties, they recommend using these methods to complement, and not to replace, traditional valuation methods.

The findings of Greenberg & Hughes and McLean & Mundy show that the survey methods cannot replace detailed valuation of individual property. None of the researchers discussed here reveal whether the method can be applied to assess stigma.

Multiple regression analysis

Economists have been using multiple regression analysis (also used in hedonic pricing approach) to assess environmental impacts for a long time. Property researchers are trying to use this method to value contaminated properties. In general, they use two common hedonic housing models, the linear and log-linear models, to analyse the impact of contamination on property prices. The former model "implies constant partial effects between housing characteristics and selling price", while the latter "allows for non-linear price effects" (Reichert 1997). For example, Dotzour (1997) has used a multiple linear regression model to find the impact of ground water contamination on residential property values, and Reichert (1997) has used an exponential log-linear functional regression model to assess the impact of a toxic waste Superfund site (i.e. a contaminated site under the priority list of the US EPA) on property values. Using these models, they have successfully

identified the negative impacts of contamination on property values.

Nevertheless, this method has limited application in day-to-day contaminated land valuation because it requires a large amount of market data for the analysis. In addition, the subject and the comparable properties have to be in the same neighbourhood. In real life, it is difficult to meet the market data requirements. While the method may be used to assess stigma, the lack of market data makes the objective difficult to achieve.

Option Pricing Approach

A number of researchers have considered extending the financial option pricing model to value real property (Capozza & Sick 1991; Williams 1991; Quigg 1991). Lentz & Tse (1995) have extended the idea and applied the method to value contaminated income producing properties. The model assumes a property owner has two options for improving the value of the property. The first option is to clean up the property at the optimal time and the second option is to redevelop the property to a higher and better use at the optimal time. Since the second option cannot be undertaken without remediation, the first option is a compound option that not only relates to the clean up the property but also releases the opportunity to undertake the second option.

The model assumes that the value of a contaminated property before and after remediation is proportional to the value of a similar but clean property. The authors then use a complex mathematical method - differential calculus - to develop mathematical equations for valuation of the contaminated property according to the following scenarios:

1. as if clean,
2. before remediation,
3. with a decision to remediate and redevelop sequentially
4. with remediation and redevelopment as simultaneous decisions

The property's cash flow in each of the listed scenarios is analysed to determine the optimal action at the time of valuation. Using the proposed model, Lentz & Tse manage to determine the value-maximising strategy of the contaminated property, i.e. whether the redevelopment of the contaminated property is to be accelerated or postponed.

This method is not suitable for day-to-day operation of a valuer. The use of differential calculus is beyond the capacity of most valuers. This method may be used to assess stigma. However, Lentz and Tse do not mention this point in their paper.

Mortgage Equity Analysis Approach

In 1959, Leon Ellwood introduced the mortgage - equity analysis technique to value income producing

properties (Lombard 1998). He believed that the capitalisation rate of an income producing property should comprise a rate of return to the mortgagee and the investor respectively. The capitalisation rate is thus an overall rate used to capitalise the net income from the property. Chalmers & Jackson (1996) extend the idea to value contaminated properties.

They see value deduction as a function of the increased risk associated with contamination. Using the mortgage equity analysis model, they estimate an overall capitalisation rate, which reflects the value reduction due to contamination. For this, it requires adjusting equity and lender requirements such as the equity interest rate, loan-to-value ratio, mortgage interest rate, expected value change over the holding period, expected income change over the holding period and percentage of loan paid off during the holding period, etc. The overall capitalisation rate obtained is then used to assess the market value of the contaminated property using the conventional capitalisation method.

This method relies on the accuracy of the overall capitalisation rate. Since the method requires the adjustment of a number of equity and lender requirements, it is difficult to maintain accuracy. Kelly and Mitchell (1995) point out that the Ellwood method has two major flaws, i.e., "the future value of the property and the loan financing depend functionally on its current value. This means that ... the Ellwood rate equation is logically circular in a manner that cannot reflect the situation" and "since the Ellwood equation presumes that the income rate I_0 remains level, the notorious J- and K-factors had to be developed to handle situations where the I_0 was projected to change in a known pattern" (pp. 285-286). Furthermore, due to the uniqueness of individual contaminated properties, it is difficult to use market data to verify the accuracy and reasonableness of the overall capitalisation rate. Since the overall capitalisation rate is a single rate that reflects all pros and cons (including stigma) of the property, it is difficult to isolate the weighting of stigma in the rate. Hence it is difficult to tell to what extent is the property affected by stigma.

Monte Carlo-based Method

Ever since William Kinnard introduced the idea of using statistical methods and computers in property valuation in 1966 (Burton 1982), there have been a lot of studies in the use of statistical methods and computers for property valuation. Researchers, including Phyr (1973); Mollart (1988); Gain (1990); and Byrne (1996), advocate using simulation methods in property valuation. Unlike deterministic approaches such as the multiple regression analysis method, the Monte Carlo simulation method is a probabilistic approach that allows for random variations about a pattern or set of overriding influences. A computer

is used to carry out a large number of repeated calculations based on the random occurrence of an event, and the most likely scenario is finally estimated.

Weber (1997) extends the application of the Monte Carlo simulation method to value contaminated land. By incorporating the Monte Carlo simulation method into a discounted cash flow (DCF) model, he manages to assess the most likely value of a contaminated property after remediation. He claims that the model can also be used to quantify stigma although he does not show how.

The Monte Carlo method is a statistical means to help the decision maker tackle uncertainty. It requires the user to set a computational model first. If the model is incorrectly set up, the Monte Carlo method alone cannot return a meaningful answer. Although it has a potential to contribute to stigma assessment, the success is hinged on the availability of a reliable model.

United Kingdom

Expected Utility Model

In view of the general lack of data relating to contaminated property, Wiltshaw (1996) suggests the use of an expected utility model based on the micro-economic theory of risk and uncertainty to value contaminated properties. Using the model, he demonstrates that the owner of a contaminated property can make a decision as to whether the contaminated property should be sold as it is or after remediation. The model can also indicate if remediation is to be carried out, what is the maximum amount that can be spent to shift liability from the vendor, and under what circumstances will liability be shifted or retained. Based on the model, he concludes that the decision whether to clean up the property prior to sale depends on whether the remediated land value is greater than the expected land value.

Obviously this finding is not a surprise. It is a common sense that development or redevelopment of a contaminated site will take place when there is a profit to the developer, i.e. when the remediated land value is a reasonably positive figure. Wiltshaw does not mention whether his approach can be used to assess stigma.

Normative Valuation Model

Richards (1997) suggests a normative valuation model to assess contaminated properties for investment purpose. The model consists of 3 fundamental components – net income, direct contamination costs and discount rate – which are incorporated into a DCF framework. The net income is obtained by analysing net rental of uncontaminated comparable properties. He suggests using Monte Carlo Simulation technique to estimate the most likely figure for the direct contamination costs (such as remediation cost, monitoring cost, relevant professional fees and

income losses due to contamination). He accepts the idea of using a risk adjusted discount rate to reflect the impact of stigma. However he considers that it is inappropriate to use a single discount rate over the life of the investment because stigma fades with time.

He suggests using various discount rates over the life of the investment in the DCF model. The discount rates are to be obtained by analysing the time series of discount rates from comparable properties. While this model looks good theoretically, there is a problem in applying it in practice. In the real world, there are not many contaminated property transactions and it is difficult to get good comparable properties that match the subject property. Furthermore, there must be transactions of comparable properties before the required yield (discount rate for the DCF analysis) can be analysed. This requirement is difficult to satisfy because of the likely dearth of comparable evidence for the required time series analysis. It follows that this model is difficult to be applied in practice.

Explicit Appraisal Model

Gronow (1998 & 1999) introduces an explicit valuation model based on the DCF method to value contaminated land. He suggests the model should incorporate the following elements:

1. defined time periods and holding period;
2. fees on purchase, annual management fees and costs, rent review fees, fees on sale and/or reletting fees;
3. rental forecasting based on growth and depreciation;
4. a discount rate explicit as to risk adjustments;
5. remediation costs plus regular monitoring costs;
6. the costs of a Land Quality Statement tie. an environmental audit statement];
7. an allowance for stigma.

Gronow (1998) claims that the explicit approach is inevitable because clients want to know what factors are taken into consideration, and how they are accounted for in the valuation. Chalmers & Roehr (1993) had previously used a DCF model to value contaminated land. In comparison, Gronow's explicit approach is an improvement because it incorporates the explicit elements listed above. Unfortunately Gronow does not show how to allow for stigma.

The issue of stigma

A valuation of contaminated land is incomplete if the issue of stigma is not considered. Stigma is a detrimental impact on the market value of a contaminated property due to market perception of environmental health risks and possible future legal and financial liabilities. The API's Guidance Note 15 defines it as "an intangible factor that may not be measurable in terms of cost to cure but may have real impact on market value. It arises from the

effect of present or past contamination upon the market's perception of the property and represents a discount, beyond the direct and indirect costs likely to be incurred, required to compensate for the risks associated with contaminated or previously contaminated property" (API 2001 p.190).

A number of property researchers, such as Patchin (1988, 1991 & 1994), Mundy (1992a, b, & c), Wilson (1994), Roddewig (1996), Sanders (1996), Syms (1996, 1997a, & b), Richards (1997) Neustein and Bell (1998), Bond (2000), and Chan (2001) etc. have studied and confirmed the impacts of stigma on the value of contaminated property. Stigma may have an impact on contaminated land value before, during or after the remediation process (Roddewig 1996). Apart from the contaminated property, stigma may also affect the adjoining land even though it is free from any contamination (Dybvig 1992). Where there is market evidence to show the presence of stigma in the contaminated property, the valuer has to take the stigma impacts into consideration. The methods outlined above do not specifically address the issue of stigma.

How to quantify stigma?

The impaired value approach allows valuers to explicitly consider the impacts of stigma on contaminated property value. Property researchers such as Mundy (1992a), Wilson (1994), and Dotzour (1997) have introduced various impaired value models to assess contaminated land value. The one presented below is a consolidated impaired value model based on these models

$$V_c = V_u - L - Cr - S \quad \text{Equation I}$$

Where V_c = contaminated value

V_u = uncontaminated value

L = financial loss due to reduced income/ productivity and/or legal liabilities

Cr = remediation and related cost

S = stigma impacts

(Chan 2001)

This model is simple and easily understood by valuers and clients. Once the stigma impacts are assessed, the model can be used to assess the impaired value of the contaminated property. Unfortunately stigma is a conceptual thing that arises out of market perception of environmental risk and possible future legal and financial liabilities, it is difficult to quantify it.

A survey of Australian valuers conducted by Chan (2000a) shows that they use a number of methods to quantify stigma. These methods include arbitrary discount rate, percentage adjustment, lump sum adjustment, zero adjustment, arbitrary adjustment, higher profit and risk factor, using comparable evidence and lower loan to value ratio. The survey also

finds that the majority of valuers obtain the stigma discount figures arbitrarily or through their "valuers' gut-feeling". Clearly this 'guesstimation' approach is not satisfactory and researchers have tried to introduce better methods to quantify stigma impacts.

Presence of market data

Mundy (1992a) suggests that in a perfect world where there is a good quality set of market data, stigma can be determined using a direct approach having regard to rent, occupancy, expenses and capitalisation rate. Based on this idea, researchers have demonstrated that the capitalisation method (Chalmers & Roehr 1993) and the direct comparison method (Patchin 1994, Syms 1996 & 1997b) can be used to quantify the stigma impacts.

In contrast to the use of traditional valuation methods mentioned above, Roddewig (2000) has suggested the use of an environmental risk scoring system to assess stigma. It is based on analysing case studies (sales of comparable contaminated properties) and assigning a score to source/cause of risk/stigma of the comparable properties and the subject property respectively. By comparing the total score of the subject property to those of the case studies, the valuer may determine the stigma adjustment percentage for the subject property.

The success of these methods relies on the availability of data from comparable contaminated properties. This may not be a problem in the US because there are more transactions of contaminated land. In Australia, this is a problem because there are much fewer transactions of contaminated properties making it difficult to use the market data approach to quantify the stigma impacts.

Absence of market data

In the absence of the required set of market data, Mundy (1992a) suggests that stigma can be quantified by the application of contingent valuation method and trade-off (conjoint) analysis method. Mundy's suggestions have support from researchers such as Chalmers & Roehr (1993), Greenberg & Hughes (1993). However, in a subsequent study (McLean & Mundy 1998), despite finding that the contingent valuation method is the most defensible one, Mundy and his co-author had reservations and recommended using this method to complement traditional valuation methods.

In the UK, Syms (1997b) introduces a risk assessment model to assess stigma where reliable market data is not available. The model consists of 5 sets of data:

1. Stigma effect (observed in the literature)
2. Potentially contaminative uses (selected from research)
3. Risk assessments (perceived impact on value before redevelopment)

4. Owners/investors perceptions of post-treatment (impact on value by end use and treatment method groups)
5. Risk assessments (perceived impact on value after treatment/redevelopment)

It does not rely on market evidence but instead is based on 26 industrial activities identified by Syms and a stigma value reduction range of 21% - 69% taken from the work of Patchin (1994). It uses a survey of valuers and developers of contaminated properties to state the perceived impact on value before redevelopment; the perceived post-remediation impact on value; and the perceived impact on value after remediation/redevelopment. To apply the model, a valuer needs to obtain 'value adjusters' from data set two to five of the model. A mean value is calculated using the 'value adjuster' figures. The mean value obtained is the stigma factor required for the valuation.

This model has room for improvement in that in the real world there are more than 26 industries and land uses that may have land contamination problems. For example in Australia, the Australian Property Institute Professional Practice 2002 lists 67 problematic industries and land uses. Yet this list is still not exhaustive. On the other hand, Bond (2000) questions the validity of the suggestion to take the average of the 'value adjusters' in this regard. Since 'value adjusters' reflect different characteristics of the property, the different stage of the redevelopment process and the remediation method, the averaging approach appears to be inappropriate. Also if the 'value adjusters' vary widely, the accuracy of the mean value is questionable.

More recently, Chan (2002) suggests quantifying stigma impacts by using an Analytic Hierarchy Process (AHP) approach. AHP is a multi-criteria decision making (MCDM) method introduced by Saaty (1980). In real life, valuers need to consider many criteria when estimating stigma impacts. Patchin (1991) and Mundy (1992a) have identified 13 criteria for stigma assessment. It is obvious that stigma is a function of an array of criteria or multiple criteria and it is logical to the AHP approach to assess stigma impacts.

Chan's AHP model consists of 16 criteria derived from a survey of 500 Australian valuers carried out by him in 1998. To use the model, a valuer needs to initially estimate several likely stigma adjustment factors (known as alternatives in the model) based on the evidence before him. The valuer is then required to use a 0 - 10 scale to explicitly rate the relative importance of each of the criteria with respect to the goal (the preferred target stigma adjustment factor) and the alternatives. The data are finally entered into a computer running appropriate software (Criterion Decision Plus from InfoHarvest Inc. was used in the research). The preferred stigma adjustment factor is

then chosen by the computer from the alternatives. Before applying the preferred stigma factor, the result is reviewed to verify the robustness and reasonableness of the AHP model.

The chosen stigma adjustment factor is then applied, together with the separately assessed uncontaminated land value, relevant financial losses, and remediation costs, to the impaired value model in Equation 1 above to assess the contaminated land value. The revaluation result of the case study property in the research was very close to the original valuation. It appears the AHP approach is a good candidate for further research. Interested readers may refer to Chan's article for details.

Conclusion

Valuation of contaminated land is not an easy task. It is a cross-disciplinary practice that requires valuers to take a number of factors into consideration such that conventional valuation methods are not adequate to address the issues. There is a need for a better method to value contaminated land. In this regard, researchers have introduced a number of alternative methods to value contaminated land. Today valuers are confronted by a large number of contaminated land valuation methods ranging from conventional valuation methods to the innovative methods introduced by researchers. The problem is not about the lack of valuation methods, but about what are the acceptable methods.

Not all of the methods introduced by researchers are suitable for the day-to-day operation of a valuer. Despite being innovative, some of the methods are too academic, for example, those that require knowledge of multiple regression analysis, differential calculus, or micro-economic theory related to risk and uncertainty. Some of them require the availability of a large amount of market data or a suitable computational model while the others require the conduct of time-consuming surveys. Valuers who want to apply these methods may need to enhance their academic knowledge.

When there is evidence to show the existence of stigma in a contaminated property, the valuation will become more difficult. Stigma is a concept that arises from market perception of environmental health risks and possible future legal and financial liabilities. It is difficult to quantify its impacts on the property value. The current arbitrary or 'gut feeling' approach used by valuers is clearly not satisfactory. However, many methods introduced by researchers are neither practical nor acceptable to the practitioners.

Trott (1980, cited in Baum & Crosby (1989) p.128) points out that "[a] valuation technique, if it is to be accepted by the profession, must be easily understood and easy to use. Its theoretical soundness must be matched by a practical application". The impaired value model in Equation 1 has apparently met the requirements. However it needs to be

complemented by a good method to assess the stigma impacts.

Given that stigma impacts depend on a number of criteria, the multi-criteria decision-making approach appears to be a logical way to assess the stigma factor. The AHP model allows valuers to convert their 'gut-feeling' into explicit weights for each of the criteria, and the data are processed by an established multi-criteria decision-making method. Its operation is in line with the modus operandi of valuers and it provides a structure framework for assessment of stigma impacts. In view of the encouraging preliminary research result, it is recommended that further research into the AHP approach should be conducted.

About the author: Nelson Chan is an academic at University of Western Sydney since 1991. He began research in contaminated land issues in 1995. He was awarded a PhD degree from Macquarie University in 2001 for his thesis "Contaminated Land Valuation And The Problem of Stigma". Apart from contaminated land issues, Nelson is also interested in research of the Chinese property market.

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Note: a full reference list can be obtained from the author

Leaky Home Stigma

Abstract

The relaxation of the building code in New Zealand in the early 1990s resulted in the use of a variety of new materials and housing designs. Some of these new houses, particularly those with monolithic claddings and limited roof overhang, had problems achieving weather tightness. The main problem was the penetration of wind driven rain through the exterior walls. Such houses are likely to be discounted in the market place. The authors used a mail questionnaire to survey a sample of real estate agents, valuers & building consultants in order to obtain their opinions on the impact of leaky home syndrome on property values. The results of the survey showed a residual stigma of 10-15% after remediation.

Background

The introduction of the Building Act 1991 resulted in a period of light-handed regulation for New Zealand's building industry that allowed architects and builders to be much more permissive with respect to the introduction of new building designs and materials. Historically the building industry had been heavily regulated using a very prescriptive set of building controls.

One form of construction that became very popular during this period was the "Mediterranean" style with monolithic cladding on the exterior walls. Monolithic claddings are defined by the Building Research Association of New Zealand (BRANZ) as; "claddings with the appearance of unbroken wall surface like traditional plastered masonry" (BRANZ Seminar Series 2001). The materials used for monolithic claddings are normally stucco, or EIFS (polystyrene) with a textured finish, or texture-coated fibre cement. Monolithic cladding systems were well insulated, relatively inexpensive to build and offered architects a wide choice of colours and textures. However, monolithic systems may not be weatherproof in exposed situations with wind driven rain, poor construction detailing, or no roof overhang (eaves). Houses in New Zealand are likely to move slightly over time from earthquakes, ground settlement and wind loadings. These factors can cause cracks in the outside walls also resulting in water intrusion into the structure.

During the 1990s many builders stopped using chemically treated framing timber and began to use

kiln dried untreated framing timber. This factor compounded the damaging effects of water intrusion because once the water penetrates monolithic cladding the untreated pine framing timber can rapidly rot unless there is a cavity (drip gap) between the framing and the cladding. Rotting can endanger the structural integrity of the building. In addition there is a potential health hazard because toxic mould may grow in the damp environment. Fixing the problem can be complicated because when the framing timber is weakened, remediation is not just a matter of replacing the exterior cladding.

An increasing number of New Zealanders live in apartments, units, and town houses. This means that decisions about remediation may need to be taken by groups of owners rather than individuals. There are arguments about who benefits and who pays, who is to blame and who to sue.

In many respects the current situation in New Zealand, with respect to leaky buildings, mirrors the North American experience reported by Ricketts (1999). The main difference is the North American problem was identified much earlier, particularly in Canada. The Barrett (1998) report was commissioned by the British Columbian Government after major weather tightness problems were identified with condominiums in the Vancouver area. Barrett made 82 recommendations and many of these have been acted upon. A second report by Barrett (2000) dealt with the issue of New Home Warranties. Ramsay (1999) outlined the establishment of the Home Owner Protection Office in British Columbia in evidence presented to the second Barrett inquiry. It is clear from the Canadian experience that resolving the weather tightness problem in buildings is a costly and very time consuming business. Problems first emerged in the wetter parts of Canada and are now spreading eastwards into housing situated in the drier prairie areas. Boel (2002) noted that some condominium owners were proactive in their approach to building repairs while others were less so.

In the USA similar leaky home problems have emerged in a number of states where there is more emphasis on consumers engaging in class action lawsuits against the large building supply manufacturing companies. Groups such as Homeowners Against Deficient Dwellings (HADD) (2000) maintain websites to help owners act with

combined effort and provide consumer information. Schmitt (1998) describes a class lawsuit against the Louisiana-Pacific Corp, the manufacturer of an external cladding system experiencing weather tightness problems.

The Hunn report (2002a) identified a complex and systematic failure within parts of the New Zealand building industry that has resulted in what is now known as the leaky home syndrome, and Hunn (2002b) outlined additional recommendations to the Government. In response the New Zealand Government is in the process of re-regulating the building industry along similar lines to the British Columbia model.

The full extent of leaky home problems is difficult to define. Approximately 220,000 homes have been built in New Zealand over the last decade and around 35% to 40% of these have a monolithic cladding plaster finish. Consumer (2002) suggested some 75,000 to 90,000 homes could be at risk. This is probably an over-estimate because where the monolithic systems manufacturers assembly recommendations have been adhered to there is much less risk of water intrusion. A large number of weather tightness problems have occurred in the Auckland region, especially associated with multi-unit speculative housing and very complex high cost single family homes.

The overall "cost to cure" leaky building syndrome is also difficult to measure. This involves quantifying the number of houses presently affected, those that might be affected in the future, assessing the cost of remediation on a case by case basis and dealing with owners who believe it is in their best interests not to reveal the problem. According to the Hunn report the cost of repairing multi-unit houses alone was estimated at \$240 million dollars. This figure is probably very conservative and excluded single family homes, the largest housing type with leaky home problems.

Another important aspect about leaking home syndrome is its hidden nature within the walls of buildings. A lack of evidence of water intrusion at one inspection point does not guarantee no leaks further down the length of the timber framing. Therefore the extent of potential leaking problems and repair costs relies on the best estimates of contractors and engineers. The current generation of moisture metres used by building inspectors to measure dampness are intrusive and home owners do not appreciate having holes made in the interior walls. Technology may offer better solutions in the future if non-invasive medical imaging methods can be applied to measuring moisture differentials in the home.

Stigma Studies

Only a limited number of studies have examined the impact of leaky home stigma on residential property values. Kilpatrick, Brown and Rogers (1999) analysed

the performance of exterior insulation finish systems (EIFS) on property values. They concluded that future maintenance costs and the impact of stigma must be considered when valuing EIFS properties. The said buyer perceptions of stigma relate to aspects such as diminished rents, increased vacancy rates, higher ongoing expenses for building maintenance and an increased capitalisation rate to cover risk.

Simons and Throupe (2003) researched the impact of toxic mould on property values in Seattle, Washington and Cleveland, Ohio. Their preliminary results indicated reductions in property value, due to presence of toxic mould, of 20-37% of the unimpaired value. They reported in some cases that properties with toxic mould may be uninsurable and in extreme cases it may be better to demolish the building and start again.

Sanders (1996) considered the impact of post tension structure (PTS) on property values in Calgary, Canada. His research result showed that there was a loss in value from PTS stigma both before and after the repairs were undertaken. Evidence of PTS stigma extended to all properties built during the susceptible period in Calgary once the presence of PTS was known.

A wider review of the literature revealed that the concept of stigma has received attention over the past decade in the academic literature on environmental issues. Sanders (1996) observed that the same market forces commonly affect properties damaged by structural or geotechnical problems and construction defects. Stigma is commonly described as; "a residual loss even after completion of necessary repair as a result of increased risk or uncertainty regarding future events," (Sanders, 1996, Arens, 1997, Syms, 1995 and Wilson, 1993). This reflects; "the resistance of buyers to purchase a property that has been damaged or (where there remains a question about the adequacy of the repairs) market perceptions, the fear of future related issues arising, or simply the real or perceived trouble of owning a property with a history of being damaged" (Bell, 1997, p254).

There are various valuation approaches for studying the effect of stigma. It is generally agreed that case studies involving sales of previously damaged properties provide a reliable method of evaluating stigma, even if case study properties are not locationally or physically comparable to the subject (Patchin, 1994).

Arens (1997) examined the valuation approaches for defective properties. In his case study of contaminated sites, the stigma (certainty/uncertainty) level was measured by the grid/matrix at 8% of the undamaged (before-condition) value. Patchin (1994) indicated a stigma effect on a contaminated site might be of the order of 21% to 69% of the unimpaired value.

One of interesting issues arising from previous studies is about the time specific nature of stigma.

Some researchers believe that in certain instances any residual loss due to stigma will eventually disappear. They go on to argue because such a loss should be viewed as temporary, it should not be subject to compensation. Among these researchers, Kiel and McClain (1996) examined house prices in a market surrounding a failed incinerator. Their results showed that while proposing an incinerator initially impacted negatively on house values, prices rebounded after the facility was cancelled and residents did not attach any long term stigma to the site.

Other researchers argue that market value is measured at a specific point of time, and the fact that a real loss has occurred is more important than the speculative presumption that the owner may eventually recover the full value of the property (Sanders, 1997). As both Wilson (1993) and Mundy (1992) point out, stigma is a perception problem, and public perceptions are often not logical, and most certainly, not easy to reverse.

In New Zealand, there is no published academic research on leaky home stigma, however similar research on the effects of high voltage overhead electric transmission lines on the urban property was studied by Valuation Department (1984), in which it found that proximity to an electrical transmission line was generally associated with diminished selling prices. Callanan and Hargreaves (1995) further examined the effect of transmission lines on property values in the Wellington area using statistical analysis. They also found the stigma was attached to properties close to the transmission lines and the effect diminished to a negligible amount after one hundred metres.

Research Objectives

The research objectives of this paper are as follows;

- 1) To investigate if there is a stigma attached to remediated residential properties.
- 2) To explore the reasons why leaky home stigma might exist.

- 3) To determine the loss in value from leaky home stigma.
- 4) To determine which residential property types are most affected by leaky home stigma.
- 5) To ascertain if leaky home stigma should be viewed as temporary.

Research Concept

The concept of stigma in relation to leaky homes is defined as a residual loss in value, after remediation, as a result of increased risk or uncertainty regarding future events.

Stigma reflects the resistance of buyers to purchase a property that has been damaged and where there remains a question about the adequacy of the repairs, market perceptions, the fear of future related issues arising, or simply the real or perceived trouble of owning a property with a history of being damaged.

By definition, the conceptual framework of stigma is described as a "negative intangible" caused by:

- Fear of hidden remediation costs;
- The "trouble" factor associated with the work involved in remediation;
- The fear of public liability;
- The "trouble" factor associated with compensation;
- Ongoing expense for insurance, debt servicing, monitoring and repairing;
- Market considerations due to diminished price, increased marketing time, due diligence costs and health issues arising from toxic mould and dampness.

Value losses from leaky home syndrome may result from tangible (the cost-to-cure) and intangible market resistance (stigma). This is best illustrated by Bell's (1997) Four Stages of Recovery theory for detrimental properties, also known as the Bell Chart as replicated in Figure 1 below

C'

B

iane.

Bell noted that stigma might exist in each of the four recovery stages and be extremely difficult to quantify at the first three recovery stages. This study researched stigma impacts on property values only at the fourth recovery stage.

For the purposes of this research leaky home stigma was defined as; "the value of a remediated leaky home as compared to a home with no history of leaky home syndrome".

Research Hypothesis

The research hypothesis was that stigma would still exist after leaky homes had been remediated.

Research Methodology

Collection of Data

The mail questionnaire was sent to all public valuers, a sample of real estate sales people and a small group of building consultants. This group was considered likely to have the most expertise regarding leaky home stigma and property values.

The mail survey was confined to New Zealand.

Analysis of Data

Information contained in the questionnaire was analysed with the aid of the Statistical Package for the Social Sciences (SPSS).

Questionnaire

The main purpose of the covering letter was to briefly introduce the researchers, the objectives of the research project and to encourage the recipients to complete the questionnaire and mail it back in the freepost envelope. As an incentive to complete the questionnaire the researchers promised to email a summary of the results to the respondents.

The questionnaire comprised five sections as follows

Part A: Background on Leaky Home Syndrome

The concept of monolithic cladding and the history of leaky home syndrome over the past decade was briefly reviewed.

Part B: Reasons Why Leaky Home Stigma Might Exist

The objective was to test the reasons why buyers might discount remediated leaky homes. Respondents answered on a five point Likert scale with the mid-point (a score of 3) being a neutral position.

Part C: Scale and Extent of Stigma

This section was the most important part of this research and asked respondents to give their opinions about value loss in percentage terms.

Question 12 was designed to confirm the key question "is there a residual loss in value from leaky home stigma?"

Question 13 aimed to answer the question "if

stigma exists, does it occur before the repairs are undertaken, after or both?"

Question 14 was designed to gauge the respondent's perception regarding the question "which residential properties are most affected by leaky home stigma?"

Question 15 asked respondents to specify the percentage of value loss from leaky home stigma.

Part D: Additional Leaky Home Stigma Issues

This part explored some specific features of leaky home stigma. Included in this part were the time dimension, market movements, effects of media exposure and the impact of treated framing timber.

Part E: Demographic Profile

Question 21 recorded the respondent's experience with leaky home syndrome, question 22 occupations, question 23 years in current occupation, question 24 level of education and question 25 business location.

Analysis and Results

Part A: Response Rate

A total of 1,362 questionnaires were sent out on 7 August 2003 and by 15 September 2003, the date which the mail survey closed, the total number of returned questionnaires was 525. Among these 109 were returned because of a change of address or because the person did not have the required knowledge about leaky home stigma, leaving a balance of 416 valid questionnaires.

The overall response rate was 33.2%. This was a good response rate as this type of questionnaire often struggles to achieve a 20% response.

Part B: Demographic Profile

Q22. Current occupation

Two thirds of the respondents were valuers and one fifth real estate agents. Building consultants comprised 2 percent of the sample and the rest (8%), identified themselves as "others". These were typically valuers who had moved into other property related professional careers.

Q21. Experience with leaky home syndrome

Among the respondents 38% reported first-hand experience with leaky home syndrome, 46% had indirect experience and 16% no experience.

Further analysis on the relationship between leaky building experience and occupation showed nearly the same distribution pattern between valuers and real estate sales people, and this is illustrated in Figure 2. With valuers, 38% had first-hand experience and 47% indirect experience. With real estate professionals, 36% had first-hand experience and 48% indirect experience.

Figure 2

Respondents' Experience Vs. Respondents' Occupation

1 valuer 2 -wilding consultant 3 real estate agent 4 over

ifirst-hand experience o "indirect experience" none

Q23. Years of current occupation
 More than two thirds (71%) of the respondents had been employed in their current occupation over 10 years, 18% between 5-10 years with the balance less than 5 years. Overall the respondents were a very experienced group of property professionals.

Q24. Highest level of education
 Respondents were asked to indicate their highest level of education. The majority, seven out of ten (69%), said they had university diploma or degree.

Q25. Region where respondents usually work
 Respondents were asked where they usually work. The biggest grouping, 36% came from Auckland. This data was then reclassified in four groups as follows and graphed in Figure 3:

1. Greater Auckland Region
2. Centre North Island Region
3. Greater Wellington Region
4. South Island Region

Figure 3

New Recorded Region Variable

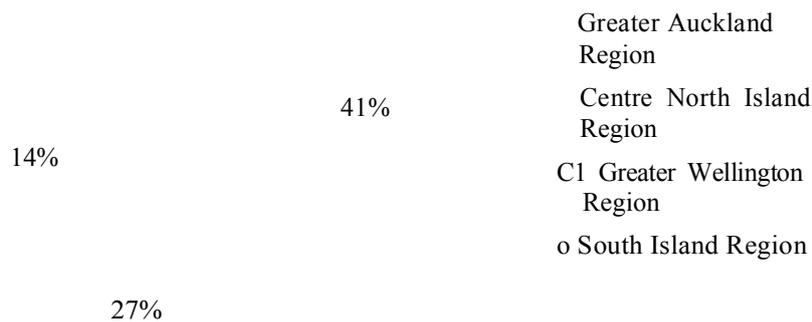
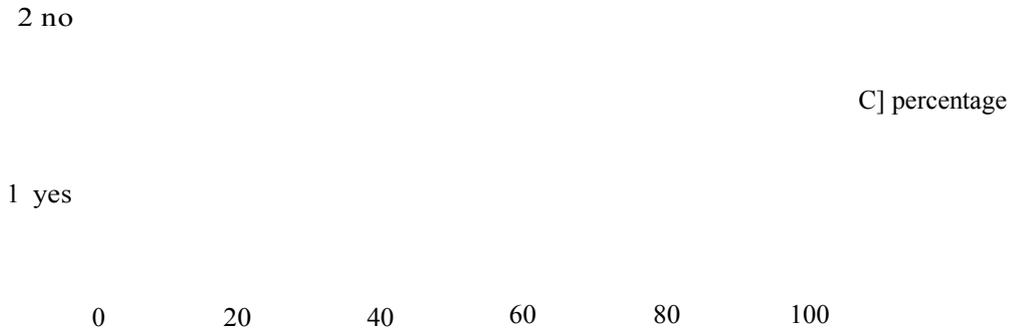


Figure 4

Is there a Residual Loss in Value from Leaky Home Stigma?



Part C: Analysis of Scale and Extent of Stigma

Q12. Is there a residual value loss from leaky home stigma?

The results for this question are summarised in Figure 4.

In this case 95% of respondents thought that there was a residual loss in value from leaky home stigma.

Q13. When does stigma occur?

Figure 5 summarises the results of this question.

The vast majority (85%) said stigma occurred both before and after the repairs had been undertaken, while 13% said it occurred before the repairs. Only 2 percent claimed it only occurred after the repairs.

Figure 5

Does Leaky Home Stigma Occur Before the Repairs are Undertaken, After, or Both?



Figure 6

Which Residential Properties Are Mostly Affected By Leaky Home Stigma?

4 only "monolithic" style homes built since the mid of 1990s

percentage

0 10 20 30 40 50 60

Q14. Mostly affected residential property groups
Respondents were given four interrelated choices as shown in Figure 6.

One third of the respondents (37%) said that leaky home stigma mostly affected "all monolithic style properties", while half of the sample (48%) chose "only monolithic style homes built since the mid of 1990s". Of the balance, 13% said it would mostly affect "all new homes built since the mid 1990s and 2% claimed that it will affect "all residential

properties".

Monolithic style properties are considered to be the benchmark in identifying the leaky home stigma, particularly homes built since the mid 1990s.

Q15. Percentage of value loss for a remediated leaky home?

This is probably the most important question and the results are shown in Figure 7.

Figure 7

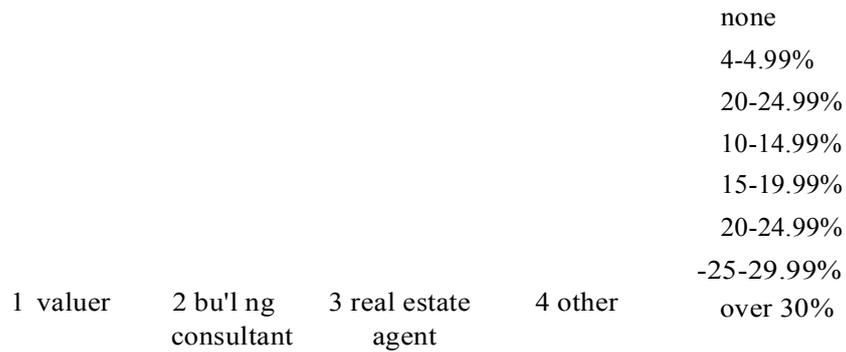
Percentage of Value Loss

26% of respondents believed the percentage of value loss was 5%-9.99%, 31% chose 10%-14.99%, 15% said between 15%-19.99% and 12% said between 20%-24.99%. About 6% chose over 30% and the rest were spread thinly across a wide variety of other percentage groups.

Further analysis as detailed in Figure 8 shows some variation in response according to occupation. Among valuers 33% said value loss is 10%-15%, 27% chose 5%-10% and 8% chose 20%-25%. In contrast with valuers, 28 percent of real estate agents said 10%-15%, 20% chose 5%-10% and 26% said 20%-25%.

Figure 8

Percentage of Value Loss Vs. Respondents' Occupation



Valuers tend to place a lower estimate on stigma than real estate agents, with a mean of 4.07 as compared to

a mean of 4.7 for real estate sales people. The overall effect is illustrated as follows in Figure 9:

Figure 9

Indicated Occupation

Figure 10

Figure 10 charts value loss according to the experience factor. Interestingly, respondents with first hand experience attribute a smaller percentage of loss through stigma than those with second hand or no experience.

Part D: Analysis of Other Aspects of Stigma

Q16. Will leaky home stigma gradually diminish over time?

About half of the sample (53%) agreed with the statement, 30% disagreed and the rest (17%) were undecided. These results are summarised in Figure 11.

There was not much difference between valuers and real estate sales people when answering this question.

A significant difference was shown between those who had first-hand experience and indirect experience with leaky home stigma. The respondents with first-hand experience tended to choose either "agree" (38%) or "disagree" (35%) without much difference (with median of 3 and skewness of 0.049), while half of the people (51%) with indirect experience chose "agree" and only a fifth (19%) of those chose "disagree" (with median of 2 and skewness of 0.435), for the people with indirect experience, median is 2 and skewness is 1.134:

Figure 11

Will LIDS Gradually Diminish Over Time i

	1 strongly agree	2 agree	3 undecided	4 disagree
Senes11	4	49	17	28

Figure 12

Should the LHS Viewed As Temporary e

18

Q17. Should the leaky home stigma be viewed as temporary?

It may seem odd that those who agree "leaky home stigma will gradually diminish over time" were less likely to support "stigma should be viewed as temporary" than those who do not and vice versa but that's what the data indicated. Perhaps the stigma is thought to gradually diminish, but never diminish entirely. Figure 12 charts the responses to Q17.

Q18. Will stigma decrease in a strong market where demand exceeds supply?

The majority (73%) chose "strongly agree" and "agree" when the two categories are combined leaving 10 percent "undecided", another 17 percent "disagree" and only 1 percent "strongly disagree". Figure 13 summarises this question.

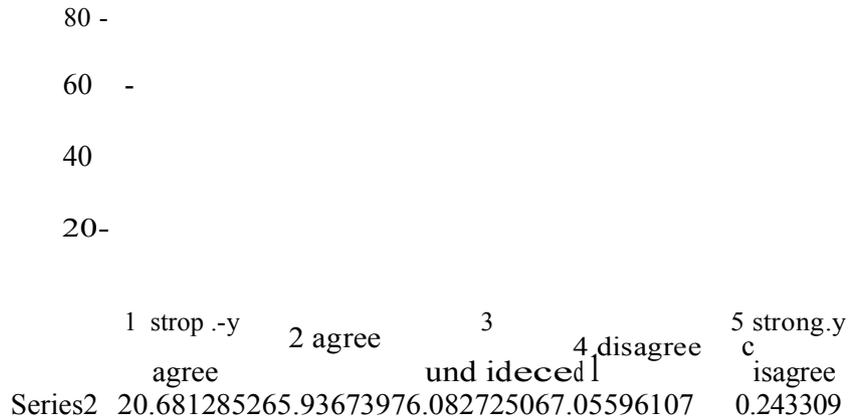
Figure 13

Will LHS Decrease In A Strong Market?

1 strongly agree	2 agree	3 undecided	4 disagree	5 strongly disagree
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Figure 14

More Media Exposure Will Increase Stigma Effect



Q19. Will more media exposure or public awareness increase the percentage of residual loss in value due to leaky home stigma? The vast majority (87%) chose "strongly agree" and "agree" when the two categories are combined leaving 13 percent of "undecided" and "disagree".

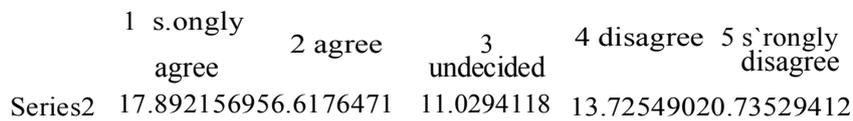
home stigma as compared to homes framed with untreated radiata pine? Three fourths of the sample (75%) in the study chose "strongly agree" and "agree" when the two categories are combined leaving 11 percent of "undecided" and 14 percent of "disagree". Figure 15 illustrates this data.

Q20. Will treated framing timber decrease the percentage of residual loss in value due to leaky

Of those who have first-hand experience only 67% agreed, contrasted to 77% of those who have indirect experience and 83% of those who have no experience agreed.

Figure 15

Treated Framing Timber Will Decrease Stigma Effect



Summary and Conclusions

Many valuers, real estate sales people and building consultants are dealing with leaky building syndrome as part of their every day work. Their opinions on the extent of leaky home stigma should accurately reflect the real estate market. Ideally the results from this survey should be verified against a sales database; however, at this stage there are very few sales of remediated homes. Also difficulties exist in identifying leaky homes because the sellers tend to be secretive about disclosing leaky problems due to worries about the stigma that may be attached to the house.

This research has shown quite conclusively that the property professionals surveyed believe a residual stigma exists after a leaky home has been remediated. The most frequent group of responses suggest this stigma is in the range of 10%-15% of value.

Stigma is a moving target in the sense that it is likely to reduce in overheated property markets, increase when buyers have more market leverage and gradually diminish over time as buyers regain confidence in remediated homes and the housing designs most at 'risk of leaking'.

Future research into leaky home stigma will concentrate on using contingent valuation methodology to assess the attitude of homebuyers and obtaining more information from actual transactions of remediated homes.

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The primary researcher of this paper (Song Shi) was awarded the NZ Property Institute Scholarship for 2003, for his work on this paper.

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Analysing Apartment Demand: Projections and Challenges

Introduction

Institutional investment in apartments has skyrocketed over the years, as evidenced by the rise of the sector's share in the NCREIF Property index from 2 percent in 1984 to about 18 percent in 2002. The apartment sector is also quite large, which is not surprising because housing is one of life's basic necessities.

In fact, the apartment sector, on a par with retail, comprises the largest of the five main real estate categories after the office sector. It forms 28 percent of the commercial real estate market, with a value of \$1.3 trillion and roughly 16 million units, in structures with five or more units. In terms of debt, the multifamily sector had outstanding mortgages worth \$483 billion, as of the third quarter of 2002.

The apartment sector deserves special attention because it has a perfect substitute for itself—owner-occupied housing. Rental apartments compete directly with owner-occupied housing—single-family homes, condominiums and mobile homes—because people needing housing do not have to rent; they may buy. Thus, analysing the demand for rental apartments is complex because the alternative, of homeownership

must be factored into the mix.

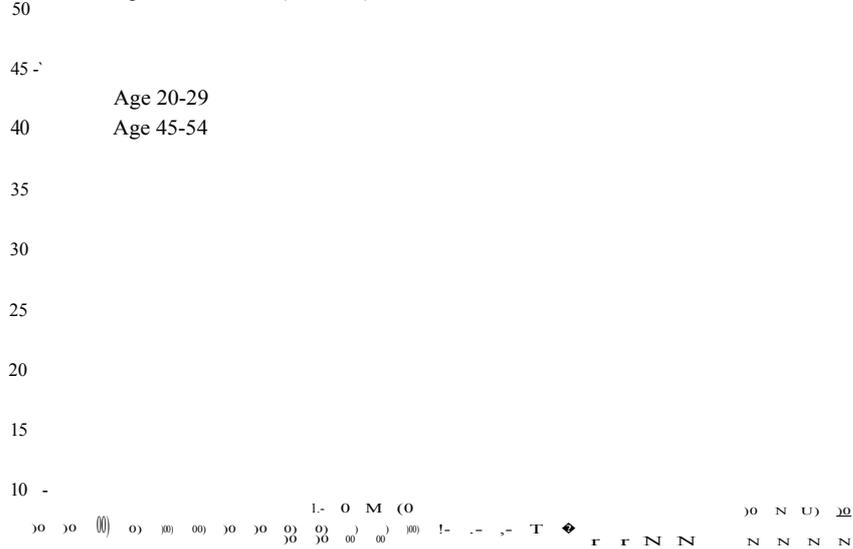
To provide a framework to forecast demand growth in the multifamily sector, we have developed a demand analyser that can aggregate three factors: household growth, growth from population waves and growth from homeownership changes.

Household Growth

The projected population growth is about 0.9 percent per year. Household formation is also growing, but its rate of growth is faster than the population growth rate. This may seem counterintuitive but can easily be explained by population waves, a swelling in numbers of a particular age group. The echo boomers, the children of the baby boomers, were born between 1977 and 1998.

Exhibit 1 shows the rise in numbers of the 20 to 29-year-old age group. In 1977, the first echo boomers were born. In 1997, when they turned 20, there were 37 million people in the 20 to 29 age range. Exhibit 1 shows the swelling of this age group, which won't peak until 2018, with 43.7 million people.

Exhibit 1: Population Waves (Millions)



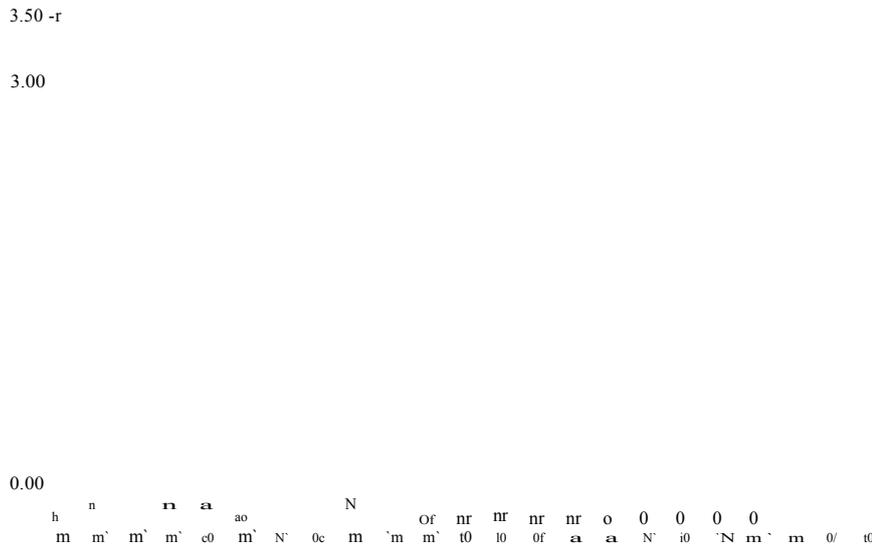
Source: Economy.com

The entry of the echo boom into the workforce and into the prime rental age group will serve as a major demand driver for the next 10 years. Echo boomers will help drive household formation at a rate of about 1.1 percent per year, higher than the population growth rate of 0.8 percent to 0.9 percent.

Exhibit 2 shows that the household growth rate has been as high as 3.3 percent in the early 1970s but has trended downward in a fairly volatile pattern since then. This volatility can be attributed to business

cycles. When the economy is strong, many young people are able to find jobs and can therefore afford to move away from home, which results in increased household formation. Also, in strong economies, immigration tends to rise. When the economy is weak, young adults continue to live with their parents or move back home, if they have been renting. And immigration tends to fall in a weak economy. The volatility of household growth translates directly into fluctuations in demand growth for apartments.

Exhibit 2: Population and Household Growth Rate (% Annual Rate)



Source: Economy.com (projections as of January 2003)

Population Waves

The echo boomers have a higher propensity to rent than any other age group, for a variety of reasons. They are just finishing school and entering the work force, have not yet formed families of their own, do not yet have the money to buy a home, and they prefer more sociable settings, such as urban environments. These factors bode well for apartment demand.

People under age 35 have the highest likelihood of renting, with 59 percent of this group doing so (see Exhibit 3). However, as people age, form families and save money, they become more likely to own a home, rather than rent an apartment. Thus the effect of the echo boom's propensity to rent is somewhat counterbalanced by their baby-boom parents, who are much less likely to rent, with only between 19 percent and 32 percent of them doing so, depending on which age group they belong to.

As both the baby boomers and the echo boomers age, we are able to estimate the percentage of increase in apartment demand based solely on the changing age composition of the US population by combining the two factors of the echo boom's high propensity to rent and the baby boom's low propensity to rent. This net contribution to rental demand growth is projected at 20 basis points, or 0.20 percent per year. Demand growth stemming from population waves may range from a low of 15 basis points to a high of 25 basis points, according to our simulation analysis. Exhibit 3 illustrates one scenario using the household growth projections from the Harvard Joint Center for Housing Studies. In this case, the estimated demand growth for multifamily rental housing is 19 basis points, assuming a 5.55 percent net increase in the total number of households.

Exhibit 3: Estimating Rental Demand Growth Caused by Population Waves

	Households in 2000 (millions)	% Increase 2000-2005	% Increase 2005-2010	Propensity to Rent
Under 35	24.0	0.55	4.80	59
35-44	24.7	-3.70	-7.60	32
45-54	20.7	12.15	5.56	24
55-64	13.7	23.37	19.38	19
65+	22.4	4.12	8.52	20
Total	105.5	5.55	5.29	33
Estimated Demand Growth		0.19	0.11	

'Assuming constant propensity to rent by all age cohorts; formulas not shown.'

Sources: Harvard Joint Center for Housing Studies; US Census; Prudential Real Estate Investors

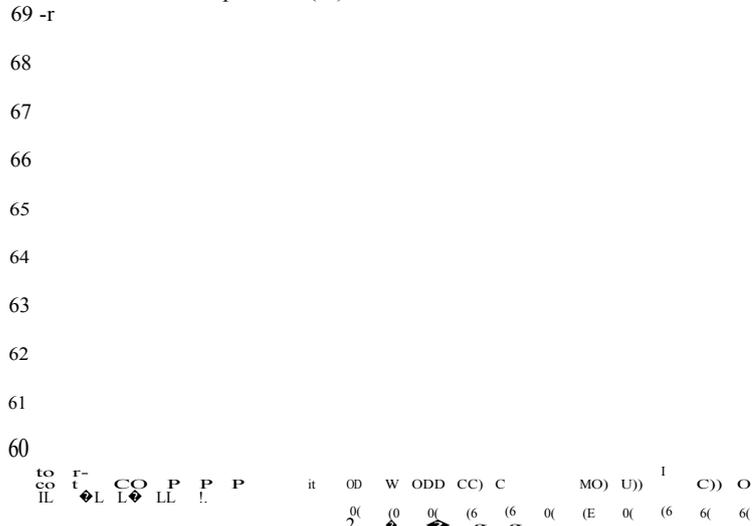
Homeownership Rates

The most uncertain factor in determining demand for multifamily rental housing is the homeownership rate. Changes in this rate are difficult to foresee because these fluctuations depend on a variety of factors, such as interest rates, unemployment, household income, the savings rate, housing prices and the economic outlook in general. Because roughly one-third of all US households are renters and two-thirds are homeowners, when the homeownership rate rises 1 percent, this causes a corresponding decline in rental demand of 3 percent. Thus, changes in homeownership rates, either up or down, have the opposite effect on rental demand growth by a factor of three. For this reason, those seeking to predict

apartment demand must carefully analyze possible shifts in the homeownership rate.

Despite a sluggish economy, the homeownership rate now stands at a historic high of 68 percent. As can be seen in Exhibit 4, the homeownership rate is subject to significant volatility, increasing from below 63 percent in 1965 to almost 66 percent in the early 1980s. In the late 1980s and early 1990s, it stabilized in the neighborhood of 64 percent. In 1995, however, it began its long, steady rise to today's 68 percent. This 4 percent increase in homeownership caused a decline of about 12 percent in apartment demand, although this is not a net demand change, since other factors also contributed to apartment demand.

Exhibit 4: Homeownership Rates (%)



Source: US Census

Going forward, however, the direction of the homeownership rate is uncertain. But even more uncertain than this is the magnitude of the change we may see. Our base estimate is a slow but rising trend of 10 basis points per year, which translates into a 1 percentage point increase in the homeownership rate over the next 10 years. Two other scenarios assume a decrease in the homeownership rate of 5 basis points or an increase of 25 basis points (see Exhibit 5). These possible changes in the homeownership rate will affect apartment demand decline or growth by a factor of three. Thus, apartment demand could decrease by as much as 75 basis points or increase by as much as 15 basis points, based solely on the change in homeownership rates. This 90 basis point range from low to high indicates that homeownership rates are the wild card in forecasting apartment demand.

Forecasting Demand

By aggregating the three factors, growth in household formation, growth from population waves and growth due to changes in homeownership rates, our baseline

projection of total rental demand growth is 1 percent per year (see Exhibit 5).

Total multifamily rental demand growth could range between 165 basis points and 35 basis points, according to the high and low scenarios. This large range mainly results from uncertainties in homeownership trends. The biggest contributor to the variation in our estimate is the household formation rate, with a forecast 1.1 percent increase. The population wave shift represented by the echo boomers moving into the prime rental age group actually contributes a relatively small amount to apartment demand growth, only 20 basis points. Yet this amount underestimates the actual contribution of the echo boomers to rental demand growth because their effect is counterbalanced by the baby boomers. Furthermore, the echo boomers contribute disproportionately to household formation growth, as can be seen by the difference between household growth and population growth, which is about 20 to 25 basis points. This difference can largely be attributed to the echo boomers.

Exhibit 5: Estimated Trend Demand Growth for Rental Housing (2003-2011)

	Hi h%	Base(%)	Low
Growth in Households	1.25	1.10	0.95
Growth From Population Waves	0.25	0.20	0.15
Growth From Homeownership <u>Change*</u>	0.15	-0.30	-0.75
Total Rental Growth	1.65	1.00	0.35

*Assumes a yearly homeownership change of 0.05%, 0.1 % and 0.25%

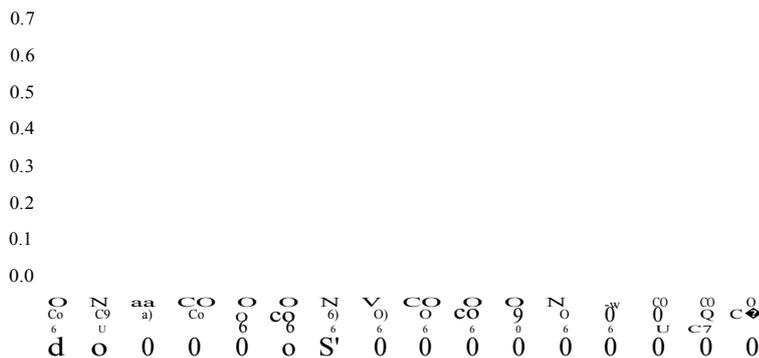
Source: Prudential Real Estate Investors

Reconciling With Starts

Besides looking at the demand for multifamily rental housing, we also need to consider the apartment supply. The US population of roughly 290 million people consists of about 109 million households. Of those 109 million, about 32 percent are renters. Approximately 16 million of these renters rent

multifamily housing in structures with five or more units. Thus a 1 percent increase in demand for rental housing, which is our baseline projection, means that an additional 160,000 multifamily units (1 percent of 16 million) need to be built each year. Yet, we know from building permits that about 300,000 to 330,000 apartment units are now started each year (see Exhibit 6).

Exhibit 6: Multifamily Starts (Millions)



Source: Economy.com

At first glance, common sense tells us that this seems like a vast oversupply of apartment units. Keep in mind, however, that we need to estimate a depletion rate, or rate at which multifamily properties can no longer be used for rental purposes. They may no longer be available for use because of loss through fire, demolition, decrepitude and natural or human disasters. This number is difficult to estimate we cannot predict activities such as demolition with precision, and disasters are random. For example, when the economy is healthy, older buildings are more likely to be pulled down. Another means of rental apartment loss occurs when units are pulled from the rental market and converted to owner-occupied housing. If we assume that buildings, on average, last 100 years, the depletion rate would be 1 percent per year. The US government assumes a much higher depletion rate for multifamily structures, estimating a lifespan of 65 years, or a depletion rate of 1.5 percent per year.

Another big uncertainty, however, is the number of multifamily units built each year that are sold as owner-occupied units versus those held as rentals. The historical average is that 90 percent are for-rent units and 10 percent are intended for owner occupation in the form of condos and co-ops. But this proportion can change depending on the economic situation. When the housing market is strong, that 90 percent share declines as more units are built for sale. When the housing market is weak, that 90 percent rises as more units are held for rental purposes. Also, the decision on how many units will be sold versus rented is often not made until the units are ready for occupancy, based on the housing market conditions at the time. Thus, making precise estimates of the ratio of sold versus rental units at any given time is challenging.

To reconcile demand with starts, we assume multifamily construction starts of about 300,000 to 335,000 per year. We also know that historically, about 90 percent of the units built will be rental units and 10 percent will be sold as condos or co-ops. Subtracting 10 percent from the estimated starts gives us 270,000 to 300,000 new rental units each year. With demand growth estimated at 1 percent of the existing 16 million units, we can calculate a demand for about 160,000 new units each year. Subtracting 160,000 from the number of new units for rent gives us 110,000 to 140,000 residual units, i.e., the number of units that seem to be in excess. Dividing the amount of "excess" units by the total stock results in an implied depletion rate of 0.7 percent to 0.9 percent ($110,000/1,600,000$ to $140,000/1,600,000$). This implied depletion rate is not above the typical depletion rate of 1 percent to 1.5 percent per year, assuming a lifespan of 65 to 100 years for an average building.

Summary

Because the current construction level is about 300,000 to 335,000 units per year, with approximately 90 percent destined for the rental market, according to the historical average, about 270,000 to 300,000 units are added each year to the apartment rental stock. With demand growth of about 1 percent per year, or 160,000 units, we can estimate an implied depletion rate of 0.7 percent to 0.9 percent, which is close to or below an estimated 1 percent to 1.5 percent depletion rate per year. The balance of the market will hinge largely on whether or not the actual depletion rate is in line with the implied depletion rate. To more accurately reconcile the construction level with demand growth we must deal with two supply uncertainties, the share of multifamily housing that will be for rent versus sold and the depletion of stock due to disasters and demolition. Both these factors are difficult to estimate because they depend on circumstances that can't easily be predicted.

The demand analyser we have developed for the multifamily rental sector serves to aggregate three factors growth in household formation, growth from population waves and growth from changes in the homeownership rate. Our base-case scenario projects a 1 percent increase in multifamily demand each year. The biggest contributor to this equation is household growth, with its estimated 1.1 percent increase each year. The population wave shift contribution is smaller than one would anticipate, mostly because of the baby boomers counterbalancing the echo boomers. The factor with the greatest amount of uncertainty is the homeownership rate, which depends on numerous trends that are difficult to predict. Because homeownership can substitute for apartment rental, analysing apartment demand growth provides forecasters with a complex challenge.

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This article also appeared in the Australian Property Journal.

Can Forestry Land Produce Milk?

An Economic Analysis of. Changing Rural Land Use

Abstract

Over the last decade there has been a marked increase in dairying land use in New Zealand. Many hectares of land previously used for sheep, beef and cropping production are now in dairy production. Investors interested in dairy conversion prefer properties with reasonable scale and there are now limited opportunities for large scale dairy development in the North Island. This study gives consideration to dairy conversion of land currently in forestry production. The physical feasibility of dairy conversion of forestry land is investigated and a model is built to investigate the financial viability. The study utilises computer spreadsheets, the residual method of valuation and discounting cash flow methodology. Risk is analysed using the Monte Carlo simulation process.

Results of the analysis show that a change in land use in the Kaingaroa Forest from production forestry to dairy farming is physically possible and that an investor with 50% debt and a required post taxation return rate of 7% could afford to pay between \$4,500 and \$6,000 per hectare for a 420 hectare block in stumps and slash.

The results of the model were then compared with prices being paid in the current real estate market for developed dairy farms. The market evidence supported the price range of \$4,500 to \$6,000 per hectare.

Introduction

In recent years in New Zealand the profitability of dairy farming has increased and the profitability of timber production has declined. This has led to investors questioning the viability of conversion of forestry land to dairying. While no large tracts of land have been converted to pastoral use from forestry to date, several small parcels have and investors are now looking for conversion opportunities with scale.

The pumice lands of the Kaingaroa forest in New Zealand provide this scale. This area was originally intended for agricultural settlement but by the late 1890s farmers were walking off the land in despair as stock died of 'bush sickness'. The afforestation of the region followed. In the 1930s cobalt was identified

as the deficient mineral causing ill thrift in stock and today mineralized fertiliser applications easily remedy the deficiency. Dairy farming is now seen as a profitable land use on the pumice country of this region. Since the late 1980s dairy farming in the Reporoa region, bordering the Kaingaroa forest, has expanded as a large number of dry stock farms have been converted into dairy farms. It is now possible that dairy farming is the highest and best use for land currently in production forestry.

This paper presents results of research to assess the viability of dairy conversion of a hypothetical block of 420 hectares in the Kaingaroa forest.

Research Objectives

The first objective was to determine the physical feasibility of conversion of Kaingaroa forest land to dairy production. The second objective was to investigate the financial viability of developing a dairy farm from Kaingaroa forest land following clear felling of the pine trees. The third objective was to compare the financial model to market evidence.

Physical Feasibility of Dairy Conversion

The physical feasibility of dairy conversion is dependent on suitability of the land for dairy production and determining a financially and environmentally sound process for clearing the land of stumps and slash.

Kaingaroa Forest Land

The Kaingaroa forest comprises an area of more than 150,000 hectares in the central North Island of New Zealand. The forest estate is currently managed by Fletcher Challenge Forests and the land is Crown owned and subject to Maori land claims before the Waitangi Tribunal. Over 90% of the planted area is established in Radiata Pine with Douglas Fir (7%) and other species making up the balance. The first plantations were established in the late 1800s and large tracts of land have been in plantation forestry since the 1930s.

The physical factors that have the greatest impact on suitability of the Kaingaroa forest land for dairy use are topography, soil type, water supply, climate and access.

The forest is on a large plateau, mainly flat to rolling in contour, at an elevation of 450 to 650 meters above sea level. The contour is very suitable for either forest production or dairying.

Soils on the plateau comprise mainly Kaingaroa sand and Kawhatawhati sand. Kawhatawhati sand is described by Rijkse, (1997) as a shallow black friable sand with weakly developed structure that overlies pale brown and yellow gravelly sand with bands of compacted sand. Kaingaroa sand is black silty sand that overlies reddish brown silty sand on compact yellow sand. These soils are free draining which is advantageous for dairy farming allowing higher stocking rates to be carried without pasture damage occurring during wet periods. However natural fertility levels are low. Rijkse (1997, p 56) states that the topsoil has only medium levels of organic carbon. The soil also has high phosphate retention and low calcium, magnesium, sodium and potassium levels. These deficiencies can be corrected with appropriate fertiliser programs. The soil type is well suited to dairy production.

There are virtually no natural watercourses through the forest so stock water would have to be pumped from bores. Good underground water has been sourced on an adjoining dairy farm on the plateau at 100 to 200 meters. Water supply should not limit dairy production.

The climate is well suited to seasonal dairy production. Mean annual rainfall for the area is 1400 to 1450 mm/year with reasonably even distribution throughout the year. Winter temperatures are low limiting pasture production and ground frosts are often experienced from March through to November and may occur during the summer months.

The forest is divided into blocks by a grid of forestry roads. Some of these roads are sealed but the majority have a gravel surface, are well formed and suitable for the requirements of logging transport. Improved roading infrastructure would be necessary for large scale dairy development in this area.

Dairy Farming in the Reporoa Region

The Reporoa region borders the Kaingaroa forest. Large scale agricultural development of the pumice country in this region began in the late 1940s. Research in the 1950s showed that the productivity of pumice land would increase over time as the soil consolidated and fertility levels improved. In the 1960's dairy farms in the Reporoa area were producing 313 kilograms milksolids per hectare (kgms/ha), the average production in this area in the late 1990s was 765 kgms/ha and highest production levels are now in excess of 1000 kgms/ha.

A change in fertiliser programs has been one of the most important factors leading to increases in production. The pumice soils are low in organic matter and require high and frequent fertiliser inputs.

With the anticipated improvement in dairy returns many dry stock farms were converted to dairy farms in the Reporoa region during the early 1990s. These properties are now successful and profitable dairy operations and Reporoa is known as a sound dairying region.

Land Clearing

The change in land use from exotic forestry to pastoral farming is very uncommon in New Zealand. The options available for land clearing are;

1. Complete removal of stumps and slash from the site.
2. Root raking stumps and slash into windrows and leaving to rot. Estimated time frame of 10 years for windrows to rot.
3. Grinding stumps and slash and incorporating into soil profile.

The first option is not viable given the large scale of the development and the quantity of waste that would have to be removed from the site. The second option is the cheapest and has been used for small scale developments in the region. It is estimated that 5 to 15% of the land area would be lost with windrows. However windrows create management problems for the successful operation of a dairy unit. It is imperative that stock can move freely over the land and feed conservation for maximum productivity is important. Feed conservation would be restricted by the presence of windrows. The grinding of stumps and slash is an expensive operation. This method has not been carried out on the pumice soils of the Central North island but is used for removal of stumps in peat swamps and cost estimates of \$3,000 per hectare are based on that. Grinding has the advantage of incorporating organic material into the soil profile immediately. The ground stumps and slash would rot quickly and the process could be accelerated by the application of nitrogen. This process should aid the establishment of a pasture sward.

Research into the physical viability of dairy development determined that the Kaingaroa forest land is suited to dairy production and can be cleared of stumps and slash in an environmentally sound manner at a cost of approximately \$3,000 per hectare.

Financial Viability of Dairy Conversion

Methodology

Land development for agriculture takes several years with high costs incurred during the initial stages of development. Income levels will increase in the years following development as farm productivity increases. In order to assess the value of a development project

initial costs need to be compared to future earnings. It is not possible to directly compare costs incurred today with future returns as a dollar today is worth more than a dollar in the future. So future cash flows are discounted in order to estimate the present value of a development project.

Jefferies (1995) states that properties where the value is dependent on future irregular cash flows may be effectively valued using discounted cash flow techniques. He cites forestry blocks undergoing development and land under transition from rural to subdivisional use as situations where a discounted cash flow technique is appropriate for determining value.

Discounted cash flow analysis is commonly used in the evaluation of forest projects (Maclaren (1993)). This method can be used to determine a land expectation value. This equates to the amount that an enterprise can afford to pay for land given assumptions about future cash inflows and outflows and discount rates.

Ward et al (1966) and Chisholm (1963) used present value analysis for the economic comparison of forestry and agriculture. Ward's study related to a development on the pumice soils of the central North island where land use was changing from a raw undeveloped state into either pastoral or forestry use.

Discounted cash flow analysis is an accepted method of investigating the financial viability of a rural development and was applied in this study. Income, expenditure and the capital structure was assessed on an annual basis, this was discounted to assess a fair present value per hectare of the land ring fenced in a state of stumps and slash. The following assumptions were made.

Cash flow frequency

Dairy farm income is received each month and for greatest accuracy cash flows could be discounted monthly. In this study cash flows were analysed on an annual basis with end of year payment assumed. This was done for simplicity owing to the long-term nature of the analysis.

Investment period

Consideration had to be given to the project length. The development of a dairy farm is a long-term project with stabilised net cash flows likely to take in the order of ten years. In this study it was also important to be able to compare dairy farming land use with the existing land use of forestry. The investment period was taken to be equivalent to one forestry cycle of 25 years.

Allowance for inflation

Forecasting future costs and prices in the agricultural sector is extremely difficult but as income and expenditure are not neutral to inflation an allowance should be made for it.

Taxation

Some capital development expenditure is tax deductible and other capital expenditure can be depreciated with depreciation claimed as a tax-deductible expense. This tax shelter provides further incentive for development projects. It was considered important that the analysis was conducted on a post taxation basis.

Financing

A development of this type is most likely to have debt and equity finance. An assumption was made that 50% of the cost of development was financed with term lending.

Discount rate

The discount rate used in the analysis should reflect the risk of the project. Factors to consider include potential variance in development and conversion costs, the likelihood of achieving forecast milksolids production and the stability of future milksolids prices. In determining the appropriate discount rate consideration was also given to discount rates currently applied in the assessment of forestry projects. Current discount rates used for the analysis of forest projects are 8 to 9% pre tax. A post taxation discount rate of 7% was used in the model.

Terminal value

Terminal value in a discounted cash flow analysis is commonly estimated with regard to net income at the end of the holding period. Value of dairy farm land has historically been strongly dependent on milksolids payout and farm production (gross income potential). This was used as the basis for determination of the terminal value.

Results

Farm Development

The farm development involves the clearing of stumps and slash from the land, establishment of permanent pastures, application of capital fertiliser and the construction of farm improvements.

The farm set up cost for the 420-hectare dairy farm is summarised in table 1. This data has been sourced from Lincoln University (1999), Crafer, Hathaway and Vander Bilj (1996), Jones and Fairweather (1996) and industry quotes and was current at March 2003.

Table 1. Farm Set Up Cost

Cost of Farm Improvements			
Item			
Cowshed, plant and site preparation	770,000		
Water supply	118,300		
Effluent disposal	27,000		
Power supply	25,000		
Housing	405,000		
Farm buildings	55,000		
Stock races	63,000		
Tanker track	10,000		
Fencing	89,000		
Total cost of improvements			1,562,300
Land Development			
Grinding stump and slash	3,000	420 hectares	1,260,000
Disc, harrow and roll	150	420 hectares	63,000
Regrassing	125	420 hectares	52,500
Capital fertiliser	350	420 hectares	147,000
Total cost of land development			1,522,500
Total costs of development			3,084,800

Fair Value of the Undeveloped 420-Hectare Block

Fair value of the 420-hectare block (ring fenced in stumps and slash) is estimated by discounting the future cash flows from the dairy farming operation over the 25-year holding period. These cash flows include the initial farm development, annual income and the sale price of the operation in *year 25*.

Farm income and expenditure is assumed to reach a status quo situation in year 10 of operation. The value of the farm (including dairy company shares) at the end of the project is estimated using a productive approach. Total production in year 25 is multiplied by 5.1 times the milksolids payout to estimate the value of land, buildings and dairy company shares. Tables showing years one to five of the income and capital assumptions and years one to eleven of the discounted cash flow analysis are included in the appendix.

Discounted cash flow analysis of the purchase and development of land in stumps and slash into a dairy farm shows that a purchaser with 50% debt and a post taxation return requirement of 7% could afford to pay approximately \$5,300 per hectare for the land. This assumes the land is ring fenced with power and sealed road to the gate.

Risk Analysis

Investigation of the risk associated with the output is an important component of an investment analysis that is dependent on the volatility of the inputs. There are a number of inputs that are subject to variation. Table 2 details inputs identified as most risky and provides a probable value range for each. The value ranges have been defined following analysis of both historical series and industry projections and tend to be conservative.

It is unlikely that the payout will fall below \$3.60 in year one as a projected range of \$3.70 to \$3.90 has been announced by Fonterra for the 2003/2004 season. The 2003 May Update of the MAF SONZAF report projects payout levels increasing to \$5.13 per kgms by 2008, this level is considerably higher than the most optimistic level used in the analysis.

A per cow production level of 250 kg ms is conservative and well below the national average. The maximum per cow production level of 320 kg ms per cow is the average level achieved since 2000 published by Dexel (2003).

Farm development costs can be estimated with a reasonable degree of accuracy with the exception

Table 2. Probable Distribution of Risky Input Variables

INPUT TABLE	Current value	Distribution	Probable Distribution	
Inflation Rate	2.0%	Triangular	1%	3%
Taxation Rate per \$	\$ 0.33	Triangular	0.31	0.35
Mortgage Interest Rate	7.0%	Triangular	6%	8%
Payout year 1	\$ 3.60	Triangular	\$ 3.50	\$ 3.70
Annual increase in payout	\$ 0.08	Triangular	\$ 0.06	\$ 0.10
Per cow production yr 1	250	Triangular	235	265
Increase in per cow production	8	Weibul	2	15
Cost of Dairy Company Shares	\$ 4.95	Triangular	\$ 4.85	\$ 5.05
Annual Increase in Share Cost	\$ 0.05	Triangular	\$ -	\$ 0.10
Land Development Cost	\$ 1,522,500	Normal	\$ 1,322,500	\$ 1,722,500

of stump grinding. Large scale development of land from stumps and slash after exotic forest production into pasture has not been carried out in New Zealand. The cost of clearing the land has been estimated by contractors with limited experience in large scale stump grinding and costs could vary; a range of 13% above or below the initial estimation is used.

Comprehensive risk analysis can be undertaken using the @RISK add in to Excel (Palisade Corporation (2002)). This programme enables the user to input all risky variables in terms of a probability distribution. A simulation run then provides a distribution of possible results for the defined output. Figure 1 shows the

distribution of value of undeveloped land per hectare given the probability distributions listed in table 2.

This shows that there is a 50% probability that the investor will show a post tax return of at least 7% if a price of between \$4,500 and \$6,000 is paid for the undeveloped land per hectare.

Figure 2 illustrates the risk associated with each of the input variables. Change in payout has the greatest effect on the profitability of the investment as this determines annual cash flow and the residual value of the farm business. Initial land development cost and the ongoing farming expenses (influenced by inflation) also impact strongly on the profitability of the investment.

Figure 1

Distribution for Raw land value

4.000
 3.500-
 3.000--
 2.500--
 2.000--
 1.500
 1.000
 0.500
 n nnn
 1

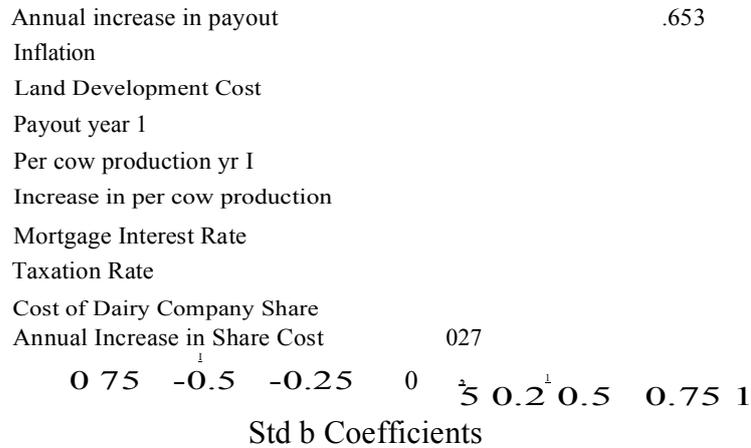
25

4.5523 5.9432

25%

Figure 2 Risk associated with each input variable,

Regression Sensitivity for Raw Land Value



Sales Evidence

The discounted cash flow analysis provides an estimate of the present economic value of the land. In an informed market this would be expected to be equivalent to the price paid currently for a comparable class of land under willing buyer willing seller conditions. It is important to investigate recent sales of properties suitable for conversion and dairy farm sales to verify the model.

The table 3 summarises recent dairy farm sales in the Reporoa region. Sale price per hectare paid in 2001/2002 range between \$11,000 and \$18,000 and average \$15,200 per hectare.

Cost of developing the land from a state of stumps and slash to productive dairy units is estimated at approximately \$7,300 per hectare and the cost of purchasing dairy company shareholding at \$4,200 per hectare. Therefore around \$11,500 per hectare would have to be spent in addition to raw land purchase.

If the raw land ranges in value between \$4,500 and \$6,000 per hectare this equates to a total per hectare price range of \$16,000 to \$17,500. Thus there is little difference between cost of an existing unit and developing a unit from forestry land. However a newly developed unit has the advantage of scale, a high standard of improvements, new pasture species and convenient layout.

Since 1999 there have been two central North Island sales of land in trees where the land has been sold to dairy farmers for conversion from forestry to dairy use. A 93 ha block sold for \$5,300 per ha and a 183-hectare block sold for \$4,450 per hectare. These two sales support the price levels derived from the economic analysis. Inspection of these properties two years after conversion confirmed that land that has been planted in exotic forestry could be successfully converted from stumps and slash to productive pasture within a short time frame.

Table 3. Recent Reporoa Dairy Farm Sales

Address	Land Area (ha)	Sale Price	Sale Date	Sale Price per hectare
Humphrey Rd	29	\$ 400,000	Oct-01	\$ 13,793
Springs Rd RD2	89	\$ 986,000	Apr-01	\$ 11,079
Forest Rd	77	\$ 1,380,000	May-01	\$ 17,922
Tirohanga Rd	83	\$ 1,500,000	Jan-02	\$ 18,072
Springs Rd	155	\$ 2,000,000	Nov-01	\$ 12,903
State Hwy 5	120	\$ 2,120,000	Jan-02	\$ 17,667

Conclusions

The pumice country of the Volcanic Plateau is suitable for dairy conversion. The flat topography and free draining soil are sought after for dairying. The climate is suitable with adequate rainfall, however, low winter temperatures could limit the growing season. Productive dairy units adjoin the forest confirming the suitability of this land for dairy production.

A change in land use from exotic forest production to pastoral farming has not been conducted on a large scale in New Zealand and this study has made assumptions regarding conversion and development. However, successful small scale developments of exotic forestry land to pastoral use show that a change in land use is physically possible. Research is required to confirm the most appropriate method of land conversion and the time frame for development. This study has adopted a conservative approach to conversion and development.

The discounted cash flow is an accepted method for estimating value where value is dependent on future irregular cash flows. The value of the 420-hectare farm in a state of stumps and slash is estimated at a value range of \$4,500 to \$6,000 per hectare. The analysis is based on actual cost and production data from the Reporoa region where it is available. Costs of farm development have been budgeted at a realistic level assuming a high standard of improvements. The time frame for farm development is unproven but believed to be realistic with current management practices. Farm income streams are based on the current payout for milksolids that is at a low point in the commodity cycle.

The value estimate of \$4,500 to \$6,000 per hectare for a 420-hectare block in a state of stumps and slash following clear felling can be supported by two recent sales of forestry land for dairy conversion at rates \$4,450 and \$5,300.

This research has shown that if Kaingaroa land in a state of stumps and slash could be purchased for under \$6,000 per hectare in 2003 it would be financially viable and physically possible to convert it to dairying.

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Appendix

YEAR	0	1	2	3	4	
Payout/kg						
Land Area ha's						
Stocking Rate /ha						
Cow Numbers			840	882	924	966
Production in kg milk solids						
- Total			210,000	227,845	246,389	265,632
- Per ha			500	542	587	632
- Per cow						
Calves Sold %			65%	65%	65%	65%
Sale price - calves			24	25	25	26
Cull Cows %						
Sale Price - Culls			407	416	425	
CAPITAL INVESTED						
Property Value						
- Land development						
- Buildings and other improvements						
Total		3,084,800				
Value of land and buildings			2,587,410	2,916,990	3,270,049	3,647,375
Stock Values per head						
Mixed age cows			814	832	850	868
R2yr hfrs			714	732	750	768
R1 yr hfrs			407	416	425	434
Bulls			407	416	425	434
Total stock value		x,066	922,125	990,238	1,060,446	1,132,750
Plant		1 + ' I d ♦?i !	5,000	5,100	5,202	5,306
Total estimated value		100,000	100,000	100,100	100,297	100,588
Depreciated Value		80,000	72,250	65,748	60,307	55,771
Dairy Co Shares		1,268,190		91,007	95,502	100,066
Total value Shares		1,268,190	1,268,190	1,359,197	1,454,699	1,554,766
Total Capital Invested		5,379,056	4,877,725	5,366,525	5,885,492	6,435,479

Table 1. Income, production and capital invested years 1 to 5

Table 2. Cash flow years 1 to 11.

Integrated Benchmarking & Performance Management

Introduction

Public (Local Government) involvement in housing - "do-gooders' gone mad"... "just another case of empire building" .. "the private sector can do it better, so let them" .. "why should we subsidise all those lazy" !!! As hardened commercial property professionals, we have probably all heard these types of views expressed. Certainly the writer of this paper, who joined the ranks of Local Government a little over a year ago, viewed with some pessimism the validity of Councils involvement in social housing. While the Christchurch "City Housing" portfolio (in excess of \$105 million & 2625 Units) is only one of the Council portfolios it was the first in line for a comprehensive AMP (Asset Management Plan) and the beginning of a steep learning curve.

These AMPs, now required under legislation, are tasked with providing strategic planning to ensure the property component of various Council services adequately meet the identified needs of that service, both now and in the future, and that adequate funding is provided. Like any commercial property holding the medium and long term needs of the end users drive demand and value. Failure to identify current and future needs exposes the property owners to risks associated with obsolescence and demand variance, potentially leaving them with vacancies, under utilisation and a loss of their asset value. To plan for the property component within the Council context, we had to clearly identify the objectives of the activity and review the viability of the service as a whole. This in effect necessitated a long term business viability plan.

Business viability & stakeholder expectations are critical success factors of any organisation. Most businesses planning commitment is driven by short term expectations, either by the need to address their customers immediate needs or by shareholders demanding an immediate return on their investment. Businesses that ignore long term viability (adequacy of funding), however, will in time see lower returns and therefore suffer a loss in "shareholder" value. Good examples of high profile businesses succumbing to short term pressures currently exist. The potential for "mining" a business by not addressing long term

maintenance and upgrade work is not a lot different to asset stripping. In most situations this is counter productive to shareholder value and has wider societal costs.

While City Housing is not in business for profit it is still in business. To that extent City Housing (like other "not for profit" organisations) is the same as any other "corporate" or "commercial enterprise" in that it:

- provides a service or meets a need,
- costs money and someone pays for it,
- they want value for money,
- has "competitors" delivering similar outcomes,
- exists in a changing "market place".

Property as a business "resource" is often under rated, largely due to a lack of understanding, by business people & managers, about the risks and opportunities it provides. Property decisions are generally long term decisions and as such are key determinants of businesses strategic direction. They often denote major turning points in a business by focusing the business on where it pictures itself (medium to long term). Depending on the circumstances these decisions can become either constraints on a business (generally reactive) or catapult the business to greater success (generally strategic). Either way property decisions become something of a "fulcrum" for a businesses future direction and accordingly deserves a significant investment in getting it right.

What differentiates this plan is the extent to which:

- focus was placed on the customer,
- the status quo was challenged,
- the full lifecycle cost commitments of owning and operating the portfolio were identified,
- commercial market based returns, operating costs, constraints & other considerations were balanced against social outcomes,
- macro and micro economic considerations were integrated into a single decision making vehicle (a closed circuit performance management framework).

What does this have to do with benchmarking and performance management? Quite a lot!

The success evidenced by this case study in coming to terms with these long term issues, setting property and customer related levels of service, completing a structural realignment with

core organisational objectives and mitigating risks associated with the business, was made possible only by the benchmarking work that had been completed.

Whereas short term budgeting requires a certain level of accuracy and confidence (in assumptions, data & performance indicators) the reliability of this information is far more critical when extrapolated out over many decades - required to establish the steady state cost of owning and operating the service. Forecasting by its nature tends to be confrontational, for example the graph below showing replacement costs for the City Housing portfolio received an immediate challenge. The central issue with forecasting is that of reliability and confidence about the inputs and conclusions. These concerns can however be mitigated with quality, benchmarked information and a robust assessment of assumptions. If the quality or integrity of these components are low confidence in the projections need to be qualified and focus placed on improving the quality of component parts.

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\$928 Million spent over next 60 to 80 years on replacing existing stock on maturity!!!

Complex Renewal Cost Profile

1 200	\$1,200
1,000	\$1,000
	\$800
	\$600
	\$400
	\$200

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Analysis of data and information requires a structured and measured framework (benchmarking) within which to make comparative judgements and against which the achievement of desired outcomes and financial performance can be assessed (performance management). The micro "economic" and "social outcomes" performance for the portfolio in turn aggregates into and significantly impacts on the macro economic considerations and performance of the organisation.

As with many other corporate real estate examples, the risk is that the property component ends up driving the service, whereas in fact property is simply a platform from which services or products are delivered. To understand your customer you need to identify what is critical to them, scope the size of the market and the market share, complete a SWOT analysis for the service, focus on the business's "competitive advantage", identify critical demographic trends, technological dependence and variability, customer expectation and elasticity of demand, legislation & other change variables. All of these activities put the focus on collecting, measuring and analysing information about your customers needs so that long term property and strategic decisions are made in an informed, rationale manner and risks are mitigated. One of the key questions that impact on the nature of your property decisions is the business's "demand confidence duration" i.e. over what period of time can you confidently predict your customer demand profile. This should be the strongest determinant of tenure decisions i.e. to lease, own, build or renovate.

In the case of *City Housing* existing fluctuations in demand have resulted in a medium term change in

tenant mix, with a lower proportion of elderly tenants. This is now predicted to reverse over the next 10 to 20 years as indicated in the adjoining graph. This significant and extended increase in demand from the elderly will put pressure on our existing housing stock.

Policy

Christchurch has historically had a strong focus on social housing and was politically committed to expanding its operation, upgrading the accommodation dramatically, keeping the rents at low levels (as they were already making 1 to 2 million a year?) and never disposing of any units. Throughout the development of the AMP these, and the very continuance of the service, was debated at management and political levels. With the benefit of good quality information (from the benchmarking work) the Christchurch City Council was able to affirm its commitment to a continuation of this service however this was conditional on the service being sustainable and affordable over the long term. This resulted in many of the political statements, alluded to above, being shelved to the credit of Councillors in making sensible and responsible decisions. Two key Council policy statements supporting this are:

- The Christchurch City Council contributes to the community's social well-being by ensuring safe, accessible and affordable housing is available to people on low incomes including elderly persons and people with disabilities.
- That the Council's housing activity continues to be financially self supporting (allowing for depreciation, loan servicing, administration and maintenance).

Population Growth Projections for Persons Aged 65+ Years

	1996- 2001	2001- 2006	2006- 2011	2011- 2016	2016- 2021
	High	Medium	Q Low	Year	

Objectives

With this policy in mind, one of the challenges was to develop an appropriate management and rental mechanism that provides for long term sustainability as well as a level of affordability for tenants. The new AMP for City Housing primarily focuses on achieving these two potentially contradictory objectives and putting in place decision making mechanisms to ensure ongoing viability of the service.

In doing this the AMP considers current and desired levels of service and aligns these with long term demand and funding mechanisms to deliver the service, over the full lifecycle of assets. The rental structure also needed to more closely align funding streams to the various types of service provided to more adequately identify demand variables and remove significant cross subsidisation.

Background

Christchurch City Council owns and operates a social housing service comprising 2625 rental units. These units cater predominantly to elderly and single persons, whose financial circumstances are limited. Many tenants have physical or mental health problems while others have gone through de-institutionalisation. The service is distinct from Housing New Zealand's service which has an emphasis on housing families. Central Government originally funded Local Authorities into elderly persons housing by providing grants and low interest rate loans for capital improvements with Local Authorities providing the land. A large spike in the establishment of the portfolio occurred in the mid to late 1970s, shown below

This direct Central Government support continued until the early 1990s when it was replaced, to some extent, by the Accommodation Supplement (A.S.). This, however, only takes effect where rentals charged by Councils are above certain thresholds. Many Councils, including Christchurch, had some rentals that were well below the threshold levels e.g. Bedsit/Studio accommodation on average \$50/week, Super-annuitants assistance (A.S.) starts at \$60/week

With direct support ceasing, Local Authorities had to decide if they wanted to stay in social housing, and if so how best to manage and fund their housing portfolios. Many Councils historically chose to use the annual differential of income over expenditure to fund other Council activities. In some instances deferred maintenance and large cyclic renewal expenditure on component parts of the properties have subsequently forced these Councils to use rate payer funds to support the continuance of their social

housing. Since, in most cases, a qualification process entitles access to social housing units for the needy only not all citizens can access the service. This is in contrast to the concept of other public goods such as a Library that is available for all rate payers. Given these circumstances (the draw down on Rates) it is not surprising that some Local Authorities have recently decided to sell their Housing portfolios.

So, why would Councils or Government be interested in social housing? Our research shows that few if any western/developed societies provide one or two bedroom accommodation at market rental levels considered to be remotely "affordable", for the poor. In most western cities, including NZ, the average market rents for one bedroom accommodation equate to between 45% and 75 % of income, for the lower quartile of income. This is primarily driven by the initial and cyclic costs of component elements such as bathrooms and kitchens in relation to potential income

from one bedroom properties. By comparison only marginal cost increases occur for 2,3,4 & 5 bedroom properties but the rentals increase significantly. In essence the private sector is not interested in housing poor individuals (one bedroom units) because the economics of the equation do not provide an adequate return on the capital employed and/or the risks involved. In addition to this many of the individuals housed by Council are considered by the private sector to be high risk, problematic tenants and as such often struggle to get adequate or any housing.

So, what societal benefits accrue from the provision of social housing. Apart from the noble concept of us all living in a moderately humane society, social housing has some very positive social and financial outcomes. The most obvious is a reduction in people living on and begging in the street. Other features include lower crime, less crowded conditions for other households and better health in general. The changing health needs of the elderly are often catered for, encouraging independent living and thereby reducing the numbers of elderly going into hospital or in to relatively expensive rest home facilities, both being Government funded and therefore a greater financial burden on society. The development of the existing AMP has focused on direct service delivery to targeted tenants and has not as yet documented the financial and social benefits accruing to the wider community from this activity. In part this is due to the need to develop a robust methodology to measure the various benefits that are believed to accrue. One of the benefits we can easily identify is the differential between central governments funding of City Housing and that which they would need for topping up private sector landlords this amounts to \$5.12 Million per year.

Given the acknowledged, but as yet undefined, indirect social benefits as well as the exclusive direct benefits (to tenants), there is a strong argument that the service should continue - as long as it remains financially self supporting and not subsidised by rates.

Christchurch City Council has been fortunate in that past portfolio maintenance has generally been of a high standard and surplus funds have not been used for non-housing purposes cash flow is contained within the Housing Development Fund (H.D.E) a dedicated investment account. However, for many years inflation, asset appreciation and the differential between income expenditure allowed an accumulation of funds that were periodically used to expand the portfolio or significantly enhance "Levels of Service" provided. The motivation for this was well intentioned and was also very palatable from a political perspective - i.e. building new complexes for the needy has been a "good news" story. Site location and development work, however, tended to be reactive, opportunistic and not part of a clear strategic response to demand analysis or with a dedicated set of exit

strategies in mind.

A fundamental risk associated with the service was the clarity of funding. Expansion over the last 20 years has arguably been early replacement of aging parts of the portfolio - accumulated reserves, from periods of low operational cost, funded this expansion. This was not considered when expansion occurred. Once in place it is very difficult to shrink the portfolio in the face of high and increasing demand. A second fundamental risk with the enhancements/expansion of the service is that future component and complex renewal costs may force the discontinuation of the service or necessitate large rental increases, making it to expensive for its target demographic.

With positive cash flows and perceived surpluses building up, the Council had deferred rental increases for over 6 years. Sentiments behind this were noble, but ill informed i.e. How could a social housing agency "profit" from its own tenants. By more clearly defining and prioritising the Levels of Service and by accounting for the full lifecycle costs of owning the assets and delivering the service, long term funding requirements were highlighted. A shortfall between existing and required rents to ensure future replacement of stock and sustainability of the service became apparent.

From a historic perspective the existing rental structure was influenced by the structures of 6 different housing portfolios in existence prior to amalgamation in 1989. In addition the portfolio was split into a number of groups with rental differentials. The largest of these were Elderly Person Housing (EPH) and Public Rentals. Rent reviews were reactive and based on a relativity to market rents (stated as being 80% of market for EPH). By far the easiest way to close the funding gap was to increase rentals across the board. After detailed analysis however it became evident that there was significant cross subsidisation between the different groups or types of rentals. Further to this, in adjusting rentals based on tenants circumstances the Council was in effect delivering a level of "social engineering" overlaid over central Government's social engineering (through its benefit levels and varying Accommodation Supplement thresholds).

With large established portfolios, such as this, entrenched systems, structures and expectations inhibit change by virtue of their own momentum. In developing the AMP the team has challenged the validity of most aspects of the service, from core policy and governance structures through to data (tenant mix, demographics, asset condition and functionality etc), Levels of Service (Holistic, Property Specific & Customer Service) and assumptions (where data or information was incomplete or was considered low on a confidence rating). The cumulative "Out of the Square Thinking" involved in this process has in some cases reaffirmed the status quo (with a stronger

rationale) while in other situations quite dramatic changes have been put into effect.

By considering these full lifecycle costs over a 100 year time frame and discounting all costs back to present values, the equivalent level of rent required to be charged could be determined. This level of rent we have called the "Cost of Consumption" rent. The following graph shows the expenditure on the housing service in yellow (assumes modest inflation of 2%) while the dark blue line indicates the Cost of Consumption rent required to meet these costs. The light blue line indicates the end of year balance of the H.D.F investment fund (in effect a sinking fund), while the pink line shows the income from this fund. The model assumes various cyclic renewal works and an average life expectancy on the portfolio of 90 years (average residential house mortality in NZ).

The future forecast expenditure is lumpy primarily due to 51% of the housing stock being built in the 1970 - 1980 period, shown previously. Without discounting this expenditure to PV rates (in essence smoothing the funding requirements) future tenants would need to pay rents that are inequitable in comparison to their counterparts today.

Cost of Consumption addresses this issue, referred to by us as intergenerational equity. In part, these issues have historically been accounted for through depreciation, however it became evident that current depreciation allowances were not sufficient to replace assets in the future, due to inadequate componentisation, rigid forms and lag inherent in market based depreciation methodology.

While the model ensures adequate funding for all future expenditure it also achieves a level of rental that

is "affordable" to tenants. This affordability is based on international and national research on affordability that establishes a target range of rental between 25% and 30% of net income, for the lowest quartile of income. As the criteria for access to the Council's social housing is similar to the WINZ criteria for benefits (a large proportion of our tenants are in fact beneficiaries) we have used these benefit levels as a base on which to assess affordability. On average the resulting rental happens to equate to 70% of market rents in Christchurch.

This levelling of intergenerational inequity provides a fair and long term affordable rental mechanism for the future. As a result Council have recently agreed to the re-structuring of the housing portfolio to align rental levels with the long term cost of delivering different types of accommodation and rental increases and adjustments to put the new structures into effect and avoid cross subsidisation. They also adopted an annual rent review concept that links future rent increases to inflation, market rents, cost of consumption reviews and changes in levels of service. The resulting mechanism is also benchmarked against "affordability" for tenants, thereby ensuring an appropriate match - the avoidance of "gold plated" levels of service.

The challenge of managing the decision making process in a highly emotive and political environment has in the past been fraught with difficulty. Levels of Service have often been reactive to site specific issues and on occasions driven by political expediency. Once adopted at one site these often spread across the portfolio. As a result a \$5000 fix can become a \$500,000 cost. Over many years these unplanned

additions to the service have added layer on layer of cost without cognisance of the impact on the viability of the service. The AMP clearly documents and quantifies levels of service and measures the cost implications.

The decision making diagram above evolved to ensure the gap analysis takes into account a variety of stakeholder contributions and moves site specific issues to a portfolio wide context. Decision making to modify or amend existing levels of service now accounts for the impact it will have on the long term financial viability of the service and therefore ultimately on the rental level charged to tenants or future services provided. The derivation of a sustainable service as outlined is an example of a "closed circuit performance management framework". The potential for "look good" expenditure now, at the expense of future generations, is significantly reduced by virtue of better information and clarity over the likely impact of changes to specific levels of service.

Various stakeholder groups had an interest in City Housing as shown on the following page. With a myriad of interests that more often oppose one another, the formulation of a platform for long term prudent management was problematic. Surveys and feedback on various issues were received from the many different stakeholders. In order to reach a consensus view long term forecast implications were developed for a range of management scenarios. These were presented back to the stakeholders to illustrate the implications on the long term viability of the City Housing fund given their various interests, see previous page. This resulted in a trade off of levels of service and a focus on prioritisation of expenditure, shown opposite. Fundamental to achieving this prioritisation was a huge amount of benchmarking of existing costs, trends and data. Only two years ago Christchurch, like many Council property teams, had a primarily operational focus. The manager of the Property Asset

Team, Peter Wills, identified his core business as becoming strategic under recent legislative changes. The process of change was a very significant challenge and fraught with hard but required decisions. Careful consideration of required skills and experience resulted in a small largely new team of well qualified and experienced property professionals being formed.

10 Year Budget
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To move to a strategic focus involved the maintenance and capital works being outsourced to a Facilities Maintenance Management (FMM) contractor. This also resulted in lower costs through economies of scale and reduced administration - invoices reduced by 95%.

The process re-engineering that companies made in the 1990s corporate world made them "leaner & meaner", but left a trail of outsourcing devastation. This "reduction" approach was focused on reduced costs, headcounts, overheads & improved surpluses. Primary criticisms of outsourcing strategies revolved around inferior customer responsiveness, lost control and acrimony over contractual obligations. Christchurch City Council saw the many advantages contracting out could provide but was cautious given the relatively modest experience it had as an "outsourcing" client. The opportunity existed to use an existing Council owned maintenance contractor (City Care) to "grow" into an FMM provider of some considerable size. In this respect the risks associated with an external provider taking advantage of the council's relative inexperience were mitigated and City Care were given the opportunity to develop its business into an FMM provider. This strategy is a transitional one in that the contract will go out to tender in time with the Council having in place FMM contract management processes and procedures and having gained the skills required to effectively manage the risks. Both parties are very cognisant that the success of outsourcing relies heavily on building good relationships, focusing on the customer, increasing efficiencies by the specialist contractor adding value and both parties being committed to superior communication. Again key to the success of these tactical activities revolves around benchmarking costs and performance both of the assets and service delivery.

Asset management planning should focus Local Authorities on the continuum of demand for given services, quantifiable social outcomes, long term strategic planning and consideration of full lifecycle costs for different assets. This enables informed decision making in terms of optimised renewal decision making (ORDM), exit strategies, risk management, funding and an appropriate alignment with demand. We believe that while it may be easier to start with more tangible tactical planning (5-20 year works programmes) best practice in Local Authority

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portfolio management will move the focus to long term lifecycle and strategic considerations, as the forerunner to that tactical planning. While the benefits of our modelling are dependent on the effectiveness of tactical plans, currently being developed, we are confident that the optimisation resulting will drive a more efficient service and therefore either result in lower cost to our primary stakeholders or allow value creation by way of improved amenities and services provided.

While AMPs for infrastructural assets have been in existence for a number of years their application in the wider context of Council services and properties is relatively new. Benchmarking and performance management is a core and essential component of both the operational and planning aspects of portfolio management. Businesses that don't devote effort to these do so at their peril.

About the author: Rob Hawthorne, *B.Com.(VPM)*, SNZPI, *Registered Valuer* is a Strategic Property Analyst for the Christchurch City Council. A long standing member of the Valuers Institute, Rob held various roles within PLEINZ, prior to amalgamation, and currently sits on the Education Committee of the NZPI. Rob is a dual recipient of the Innovation In Property Award 2003 for the Asset Management Plan for City Housing. This paper presented at the 2003 Facilities Management Conference, summarises the rational behind the development of this business plan.

Establishing Future Demand and Geographical Allocation of City Housing Units

- A Blueprint For Future Development

1.0 INTRODUCTION

Demand for owner occupier or rental housing is influenced by a number of interrelated demographic, social and economic factors. In this report an analysis of both geographical and future demand for social housing is undertaken. The theoretical geographic demand assessed is then compared to current housing locations in order to determine areas of unmet need.

In order to determine geographical demand, Cluster analysis is used as a means to determine submarkets across the City that contain similar characteristics of demographic, property and economic variables. This is important for the purposes of ascertaining a theoretical allocation of social housing across the city Cluster analysis is a common methodology used by economists and in marketing research to determine divergent market characteristics.

The methodology used in economics and applied to real estate markets for forecasting is econometrics. Econometric models consider a range of causal factors influencing a dependent variable. The dependent variable can be anything such as demand, rent, price or vacancy. Historic data is used to develop and fit models that simulate changes in the dependent variable. These models provide reasonable short to medium term forecasts but are limited to other influences not considered by the models. For example, economists could not have built into their forecasts of office rents for Manhattan, the effects of September 11 because of the size of its impact and its randomness.

The combination of these two areas of research will provide a future strategy for preferred development locations and the likely number of units that are required to be built to meet future demand.

2.0 GEOGRAPHICAL ANALYSIS

A representation of the existing level of service provided by City Housing in terms of current geographical locations is shown by the Radar graph in figure 1.0 below Each axis of the graph represents a Census Area Unit (CAU) of the city and the area

shaded blue represents City Housing's share of the total rental market within each CAU.

Figure 1.0 indicates a high weighting of *City* Housing units to Avonside with 32.19% of the rental market then reducing representation in a anticlockwise direction in Waltham, Opawa, Styx Mill, New Brighton, Spreydon, Middleton, Marshlands, Halswell South, Sydenham and then to the lowest representation of 3.05% in Parklands. In over half the CAUs across the city there is no representation of City Housing Units. This does not necessarily mean that representation is needed in those areas unless there is underlying demand.

Figure 1.1 shows the same representation but by number of units in each CAU rather than the percentage of the total rental housing market. The area outlined in black represents a theoretical allocation of the same number of units based on the underlying demographics and economic characteristics.

The theoretical allocation is determined by examining the total number of superannuitants and other beneficiaries in each CAU, then accounting for a wealth factor for each CAU. For example, the number of superannuitants could be the same for different CAUs however the elderly in one CAU have much more equity due to that neighbourhood having higher home ownership rates and higher incomes historically. In this case the allocation of social housing to wealthier suburbs is reduced via a weighted average method. Conversely, the allocation to less wealthy CAUs will be proportionately more. As can be seen the theoretical allocation is much more evenly spread across the city than the current allocation.

2.1 CLUSTERING OF CAU's

Using cluster analysis groups of 'like' CAUs are determined. These clusters have similar underlying demographic and economic characteristics. The CAUs that form a cluster do not necessarily all have to be co-joined. For example the hill suburbs of Westmorland, Cashmere, Kennedy's Bush, Mt Pleasant, Monks Bay

Figure 1.0

CCC % share of rental market in CAU'

have similar underlying demographic and economic characteristics to Yaldhurst and McLean Island. Some clusters do have co-joined CAUs however. From an elderly persons perspective clustering tends to determine neighbourhoods that are familiar to someone who has lived there for some time, who is familiar with their local surroundings such as parks, community facilities, bus stops, shops and their local Doctor. Matching City Housing's units to these clusters should make it an easier transition, particularly for elderly, to access City Housing units in a neighbourhood that is familiar to them. Nine clusters are determined across the city by examining differences in incomes, unemployment, occupancy rates, rents, home ownership, and source of income.

These clusters are summarised as follows:

Cluster 1

Higher rate of home ownership, higher than average income, low dependency on benefits, higher than average income from investments, slightly older demographic, more superannuitants than average, lower unemployment and average rental rates.

Cluster 2

Higher rate of home ownership, higher household income but lower personal (young couples?), low dependency on benefits, high level of investments, high rent, superannuitants, older demographic and slightly lower unemployment.

Figure 1.1

City Housing rental No's per CAU versus ideal

Cluster 3

Lower rate of home ownership, higher personal incomes, lower household income (students), higher family income, low dependency on benefits except students, lower superannuitants, younger age demographic and average unemployment.

Cluster 4

Slightly lower rate of home ownership, lower personal, household and family incomes average age demographic, higher numbers of superannuitants, high levels DPB, sickness/invalids beneficiaries, lower levels of self employed and higher rate of unemployment.

Cluster 5

Lower rate of home ownership, lower than average

age demographic, high student numbers on allowance, higher average rent, higher unemployment, average superannuitants, lower than average personal, household and family income.

Cluster 6

Higher rate of home ownership, higher age demographic, lower superannuitants, lower dependency on welfare, very high family and household income but low personal (both parents working), high numbers of self employed, lower rate of unemployment and higher rent.

Cluster 7

Extremely low rate of home ownership, higher unemployment benefits and sickness, younger

demographic, low household and personal incomes, low investments, average family income, higher than average rent, lower numbers superannuitants, high student numbers and high unemployment rate.

Cluster 8

Lower home ownership rate, lower age demographic, higher level of dependency on welfare especially DPB, low level of investment income, lower rent, lower levels of superannuitants, low level of household family and personal income and high unemployment.

Cluster 9

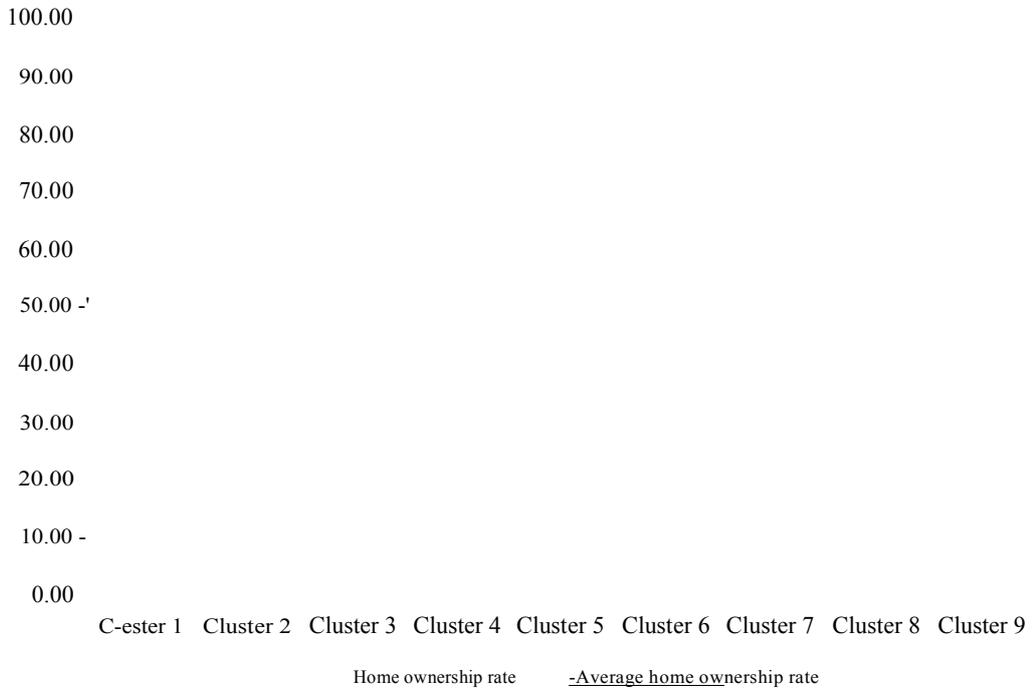
Slightly lower level of home ownership, lower age demographic, higher level of dependency on welfare, lower incomes, lower rent, lower number of superannuitants, lower income from investments and average unemployment.

2.2 VARIABLE TABLES

The following figures 1.2 to 1.9 show the divergence between clusters in the home ownership rates, incomes, age, income from superannuation, income from investments, rents, unemployment and source of benefit income.

Figure 1.2

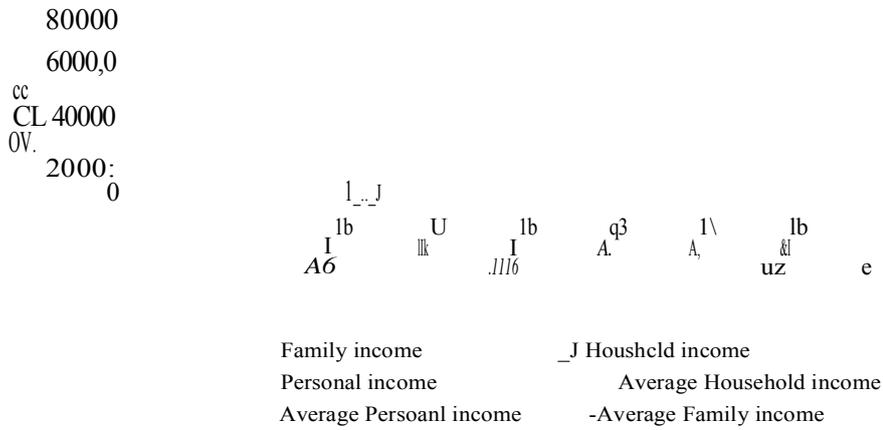
Home Ownership rates within Clusters



Home ownership rates are the least in the inner central city areas of Avon Loop, Cathedral and Hagley Park. Home ownership rates are highest within Cluster six.

Figure 1.3

Family, Household and Personal income within Clusters

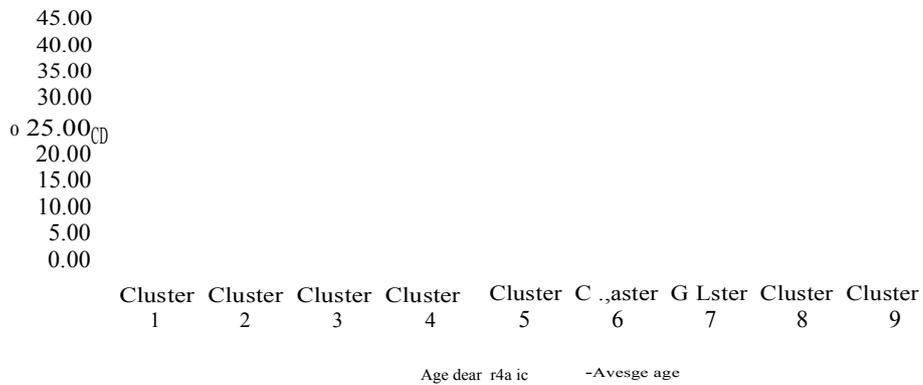


Statistics New Zealand define families as two or more people living in the same household that comprises either a couple, with or without children, or one parent and their children. Their definition of a household is either one person who usually lives alone, or two or more people who usually live together

and share facilities, such as eating and cooking facilities. A household may contain more than one family, or other people in addition to a family. Cluster eight has the lowest household and family income levels. Cluster six has the highest income levels as well as home ownership rates.

Figure 1.4

Age demographic within clusters



Cluster six has the highest age demographic but a below average number of superannuitants. This may be because people move from the hill suburbs and the lifestyle block areas of Yaldhurst and McLeans Island when they become elderly.

From figure 1.5 it is evident that the percentage of persons earning income from superannuation is greatest in cluster 4.

Figure 1.5

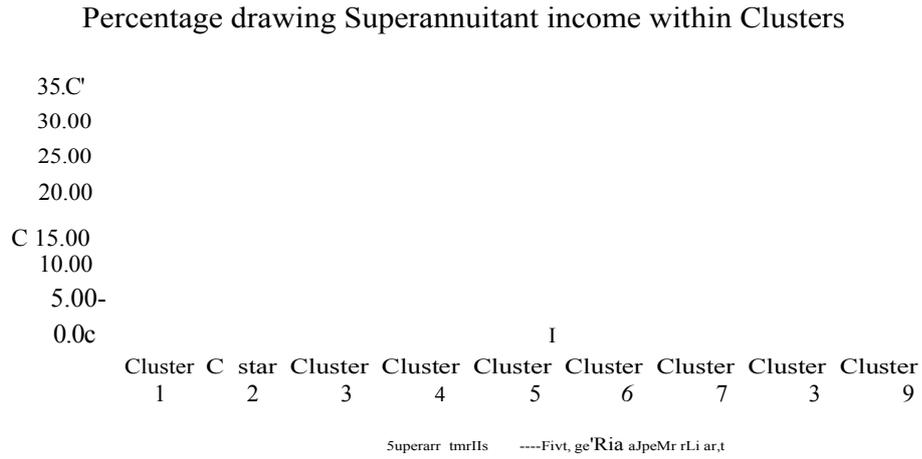
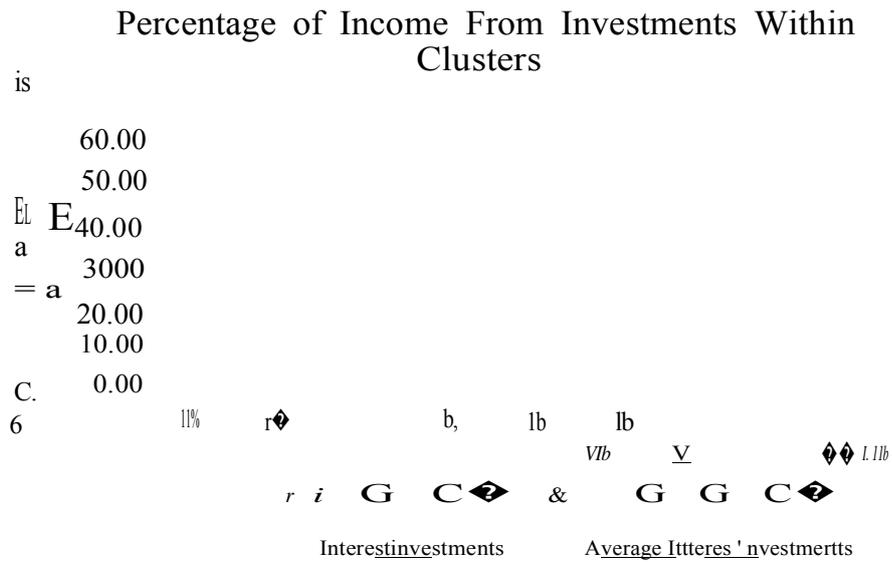
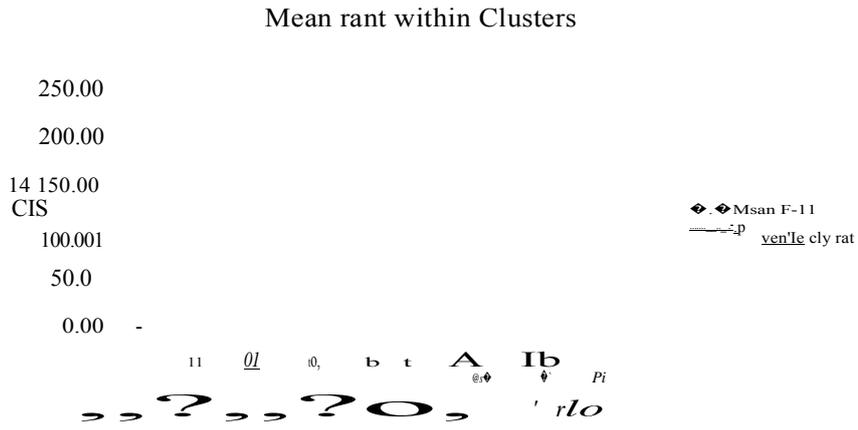


Figure 1.6



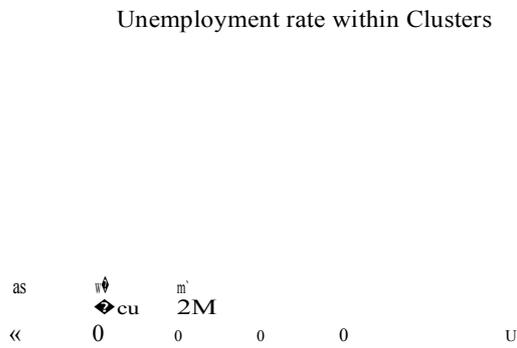
The proportion of people earning income from investments is greatest in cluster six and lowest in cluster eight.

Figure 1.7



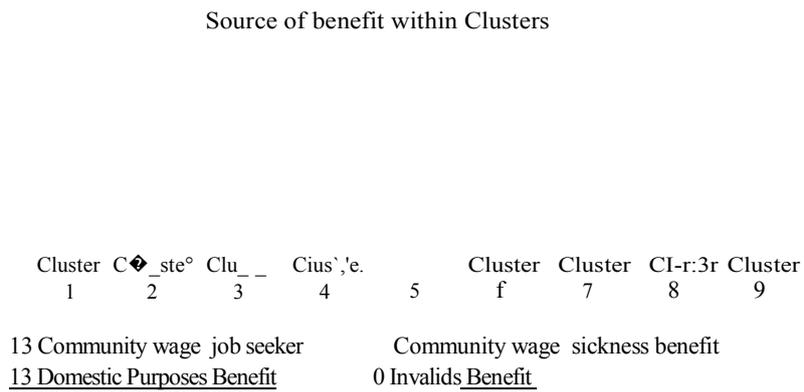
Mean rent is lowest in clusters four and eight, and highest in clusters two and six.

Figure 1.8



Unemployment rates are the highest in cluster seven (inner city) and lowest in cluster six which also has high home ownership rates and incomes.

Figure 1.9



Source of benefit income other than superannuation indicates that cluster seven (inner city) has high rates of unemployment beneficiaries matching the unemployment data but also relatively high sickness beneficiaries. The greatest proportion of domestic purposes, invalids and sickness beneficiaries are in cluster eight.

Figure 2.0 shows City Housing's share of the rental market within each of the nine clusters. This shows a much more even spread of housing but there are still some clusters that appear over and under represented.

Figure 2.0

Market Share of Cluster (% of rental market)

Cluster 2

Figure 2.1

Actual No.'s of CCC Rentals Versus Theoretical

Cluster 2

Cluster 3

Cluster 4

Actual #CCC rentals 13 Ideal revised CCC rentals

Figure 2.1 shows the number of City Housing's units in each cluster as shaded in blue. A theoretical allocation is then applied by examining the total number of super annuitants and other beneficiaries in each cluster, then accounting for a wealth factor for each cluster. This theoretical allocation is outlined in black. Clusters two, three, four, five, seven and

eight appear under represented whereas clusters one and nine appear over represented. This does not mean that units in clusters one and nine should be rationalised immediately but this should form part of a performance analysis and decision making process for future replacement and renewal decisions.

The theoretical and actual allocations to each cluster are as follows:

Clusters one to nine across the city are shown in figure 2.2. Figure 2.3 shows areas that are in general over represented in green, areas that are underrepresented in orange and areas where the theoretical allocation matches actual (Cluster 6). Note that the theoretical allocations could be applied to social housing providers in general including Housing New Zealand with the exception of low income families which is not the focus of this project.

Cluster	Theoretical allocation	Actual allocation
Cluster 1	9%	20%
Cluster 2	6%	1%
Cluster 3	12%	6%
Cluster 4	20%	12%
Cluster 5	15%	5%
Cluster 6	0%	1%
Cluster 7	11%	5%
Cluster 8	15%	4%
Cluster 9	12%	46%

Figure 2.2

Cluster 1
Cluster 2
Cluster 3

Cluster 4
Cluster 5
Cluster 6

Cluster 7 *ELL*
Cluster 8
Cluster 9

Figure 2.3

In interpreting the above map, there appears to be a central corridor of affordable housing needs running east to west from New Brighton, Rawhiti, North Beach to Sockburn and Broomfield. Figure 2.4 shows the location and sizes of existing housing complexes in relation to figure 2.3.

Within the theoretical allocations there are allocations to each CAU making up a cluster. These are detailed in Appendix 1.0. It is unlikely that these allocations to each CAU can be achieved across Christchurch due to the nature of property as an asset class. Property assets are lumpy, illiquid and it may be difficult to find suitably sized and zoned land in many areas. These factors make it difficult to achieve a shift in allocations to certain areas of the city in the short to medium term. However future expansion of the portfolio should take account of the theoretical allocations. Similarly future rationalisation, expansion, renewal, and replacement decisions should take account of this geographic demand analysis.

2.3 OTHER AFFORDABLE RENTAL HOUSING PROVIDERS

Understanding the geographic allocation of low rent housing provided by Housing New Zealand and third sector organisations is important as it will have an impact on where Christchurch City Council develops further housing. Housing New Zealand have the greatest impact providing 13.7% of all rental housing as at 2001. Traditionally they have built three and four bedroom family homes but more recently have built several two bedroom units in response to demand for smaller units. The type of housing stock supplied by Housing New Zealand is made up as follows:

1 bedroom	515	9.16%
2 bedroom	2106	39.2%
3 bedroom	2405	44.8%
4 bedroom	323	6%
5 bedroom	22	0.4%
<u>6 bedroom</u>	<u>3</u>	<u>0.1%</u>
	5374	100%

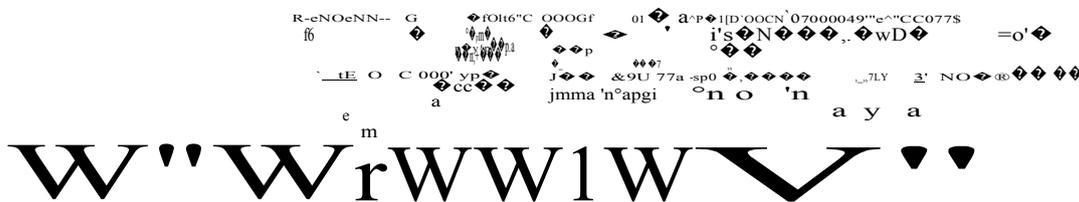
Over the next four years Housing New Zealand will provide by way of leasing and building net gains of 465 houses. Most of the provision will be made by way of leases from private sector landlords and sublease arrangements to Housing New Zealand tenants. Thus, there is no increase in total housing stock as a result of conversion from private to state rental.

Of interest to City Housing are the current locations of Housing New Zealand's smaller units and their proposed locations for smaller units yet to be built. These are the types of units that City Housing have traditionally supplied and will serve a similar clientele. It is important for the future development plans of both City Housing and Housing New Zealand to be co-ordinated and intentions well communicated. Housing New Zealand have provided a table showing the location preferences of prospective tenants.

Housing New Zealand aim to provide a housing solution in catchment areas as close to the preferred location as possible. These preferences are shown below in figure 2.5.

Figure 2.5

Location Preferences of Prospective HNZN Tenants



3.0 FORECASTING FUTURE DEMAND FOR CITY HOUSING SERVICES

The purpose of this analysis is to develop a guide of the likely numbers of units that need to be built to meet future demand growth and also to establish the timing of future supply.

Isolating the affordable rental market from the rest of the housing market does not allow for consideration of the wider dynamics and structural changes to the Christchurch housing market. For example changes in the home ownership rate will impact on the size of and demand for rental accommodation. Isolating City Housing from the dynamics of the broader housing market could lead to imbalances relative to the private sector rental market or home ownership market.

Some important structural changes to the Christchurch housing market have occurred in recent times. These include a reducing home ownership rate from 73% to 66% in ten years to 2001. Over the same period the private rental market has increased by 19% whilst the social housing market has decreased due to Housing New Zealand selling off some of their housing over this period. City Housing's portfolio size increased in number but decreased as a percentage of the total rental market over the same ten year period. Home ownership rates may have declined for a variety of reasons such as follows:

Mobility people are more transitory than they used to be. They desire the freedom to move to other locations in New Zealand or overseas for work.

Affordability housing costs represent the largest component of household expenditure. This is impacted by changes in house prices, incomes, interest rates and rental rates. The ability to raise a deposit, job security and lingering student debt will impact the decision to rent or buy.

Family break ups - the splitting up of families leads to demand for alternative accommodation be it homeownership or rental options.

Lifestyle - there is a possible shift in thinking of young New Zealanders away from the traditional ideal of owning you own quarter acre paradise to one where all their equity is available to travel and partake in other activities or investments and not have all their equity invested in a home.

Couples forming families later Couples are getting married and creating families later in life than previous generations. Given this there may be an increased number of young adults renting.

3.1 SIMULATING CHANGES IN HOUSE PRICES

In order to gain an understanding of the future of home ownership rates future house prices need to be forecast as this is the major factor impacting affordability. A model of house prices has been developed by Di Pasquale, D and Wheaton, W (1994). Their model is based on the theory that house prices fluctuate as a function of the costs of owning a home, household income and the home ownership rate. The cost of owning a home takes account of interest rate changes, purchase costs, down payment required and capital appreciation/depreciation. They apply this model to the City of Boston, MA and obtain good results. The model specification is as follows:

$$H_t = a_0 + a_1 Y_t + a_2 \frac{S_t}{H_t}$$

Applying this model to the Christchurch housing market also provides good results as shown in figure 2.6.

Figure 2.6

Predicted Real House Prices Versus Actual Real House Prices

The measure of fit between the actual house price changes and predicted house prices using the above model is 87 %. Lag structures are determined for housing costs (C), household income (Y) and the

home ownership rate (S/H) of one period (six months). This means that changes to these variables today have an influence on house prices in six months time. The results of the regression are as follows:

Variable	Coefficient	t-stat	Durbin-Watson 2.18
Constant	208460		
Household income (t-1)	4.8951	1.172	
Costs of owning (t-1)	-0.39716	-1.828	
Ownership rate (t-1)	-2931.3	-3.232	

The t statistic indicates the level of significance of each variable. The t-statistic on household income is low meaning that the variable is not significant at a 95% level of confidence. Also the cost of owning a house is slightly below the 95% level of confidence. All coefficients have the right expected signs, that is, a rise in median household income lagged six months of \$1 has a positive effect on house prices of \$4.89, a rise in the cost of owning a home of \$1 reduces house prices by only \$0.39, and home ownership declining 1% has resulted in average house prices rising \$2931.3.

Changes in the home ownership rate at first glance appears to be the result of an increasing gap between real house prices and real household incomes. In 1991 the average real house price was approximately four times the real median household income and in 2003 it is marginally less than six times the real median household income. This indicates an affordability problem that may be forcing more people to rent property as opposed to purchasing a property. In fact there is something more sinister explaining the reducing home ownership rate from an affordability perspective. Badcock, B (2003) sights increasing inequality of incomes as a contributing factor to declining home ownership. He states that "since the early 1980s, New Zealand has led the OECD countries in the widening of income dispersion. And top rung and bottom rung jobs have increased disproportionately, there are fewer middle income earners who have always made up the bulk of home buyers". The effect of this inequality is that those that can afford it (those who earn higher income) will compete in the home ownership market driving up prices and further compounding the problem for those with median to low household income so they must rent and probably from landlords with higher income brackets. The long term result is that home owners create wealth through home ownership and renters don't create as much wealth unless they are

exceptionally lucky with other investment vehicles that they can afford. This problem can only be compounded further with the return of ex patriots and the arrival of immigrants with more wealth and purchasing power than the domestic population.

There are a number of ways that home ownership can be encouraged however, most incentives of a financial sense are in danger of being capitalised into higher prices as a result of increased demand. Until this decline in home ownership is arrested more demand for market and social rental accommodation will arise. Fortunately the Centre for Housing Research Aotearoa New Zealand (CHRANZ) has commissioned a study on the decline of home ownership and the future of home ownership in New Zealand. This may prompt some intervention by Government.

3.2 FORECASTING HOME OWNERSHIP RATES

A forecast of house prices can be developed using the above model. Pessimistic, optimistic and most likely scenarios are produced by varying household income. The model is essentially rearranged to determine home ownership rate forecasts. These are detailed in table 1.0 below

3.3 FORECAST RENTAL MARKET

The quantum of the rental market can be calculated as the inverse of the forecast home ownership rates. The above tables indicate that the home ownership rate is likely to decline further and conversely the size of the rental market will increase. City Housing's share of the rental market is 7.3% or 2597 rental units. In order to maintain this same share in the future the number of units that may need to be built are detailed in table 2.0:

Table 1.0

Table 2.0

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3.4 EMERGING DEMAND FOR CITY HOUSING UNITS
 Meeting the above supply requirements merely maintains our share of the rental market in the future. What is important is to review whether this share is needed to be increased because of the disproportionately growing numbers of elderly and any other disproportionate growth in numbers of other people in need of social housing. Figure 2.7 shows the population projections for people aged 65 or older for Christchurch City.

The Retirement Commission have recently published the results of a survey that examines in detail the net worth of New Zealanders. The surveys were sent to and completed by a wide range of age groups and ethnic groups across New Zealand. Of interest for this project is the net worth by age group and more specifically the change in numbers of New

Zealanders in the lowest quartile net worth by age group. The statistics are conglomerated to a national level but it is likely that Christchurch has similar proportions of net wealth differences. Figures 2.8 and 2.9 show the Retirement Commission results of these two statistics.

When the non-partnered individual and couple's figures are combined the graph is indicative of the bell curve where wealth steadily increases to the peak age group of 50-59 and then steadily declines. There is a small aberration around the 65-69 age group when net wealth drops, however, this coincides with the age that the majority of New Zealanders are retiring and their employer paid salaries and wages cease.

There appears to be relative low net worth for non-partnered individuals aged 55-59, however the percentage of individuals aged 55-64 that have the

Figure 2.7

Population Growth Projections for Persons Aged 65+ Years

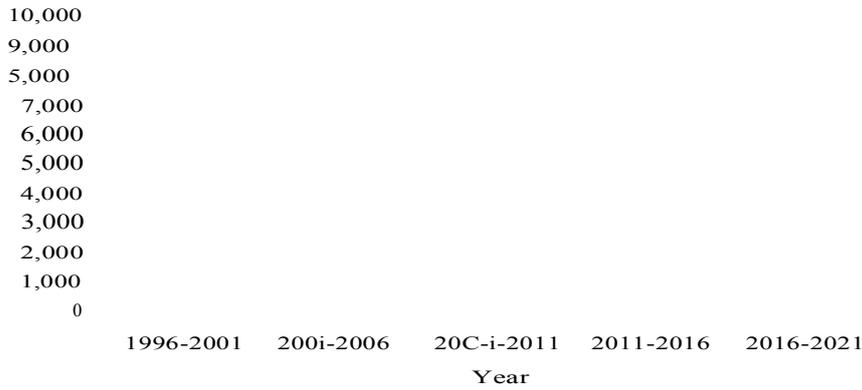


Figure 2.8

Median Net Worth By Age

Source: *The Net Worth of New Zealanders: a report on their assets and debts.* Retirement Commission. Statistics New Zealand pg 20

Figure 2.9

Proportion of age group in each net wealth quartile for non-partnered individuals

lowest quartile of net worth is very low The age group 65-69 also have relative low net worth and also around 6% of individuals fall within the lowest quartile of net worth which is higher than the 75-84 age group and 55-64 age group. This is demand that is likely to be evident now The age group 45-49 also represents potential future elderly demand due to the relatively low net worth and a relatively high proportion of individuals in the lowest quartile net worth.

For people with serious ongoing mental illness, the DHB state that the rate of illness is around 3% of the population. For unemployed the future projected unemployed is a function of the health of the economy. The New Zealand Economic Institute of Economic Research (NZIER) do produce forecast of unemployment for approximately 3 years. These are accounted for in the forecast demand figures. Divorce

Source: *The Net Worth of New Zealanders: a report on their assets and debts.* Retirement Commission. Statistics New Zealand pg 21

rates have been static at around 12 divorces per 1000 population for 15 years. It could be argued that this rate is the equilibrium rate and that it is unlikely to change significantly and lead to a change in demand for more rental accommodation than the demand already present. Similarly, the marriage rate has been around 15 in 1000 people since 1997. This marriage rate trend may be altered with more people living in de facto relationships, however this is more of a terminology issue as for the purpose of this report we are interested in people living together as couples as opposed to alone.

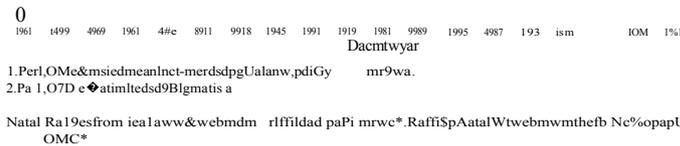
Of interest are the differences that are displayed between non-partnered individuals and couples. The Retirement Commission results in table 3, show that

the mean net worth of couples is 3.3 times that of non-partnered individuals or 16.5 times the median net worth. This raises concerns about the future net worth of individuals. When we combine the net worth figures with the marriage and divorce trends in figure 3.0, this suggests that the level of non-partnered individuals will not decline over the foreseeable future and therefore the disparity of income will remain.

After assessing the disproportionate growth and likely change in need from the emerging elderly population, considering unemployment rate forecasts, and applying assumptions about the rate of mental illness, marriage and divorce trends, the forecast number of units that may need to be built are adjusted as shown in table 4.0.

Figure 3.0 Marriage and Divorce Rates

St Pai papfdlm



Source: <http://www.stats.govt.nz>. Demographic Trends 2002. Part 3 Marriage and Divorce

Table 3.0 Mean and Medium Net Worth

Economic Unit	Median net worth	Mean net worth
Non- Partnered individuals	10,300	97,900
Couples	172,900	322,300

Source: *The Net Worth of New Zealanders: a report on their assets and debts*. Retirement Commission. Statistics New Zealand pg 20

Table 4.0

These are the total number of units (not low income family rental homes) that are likely to be demanded for affordable rental accommodation based on the assumptions we know today. Housing New Zealand Corporation are supplying an estimated 418 (one and two bedroom) units over the next four years by way of lease arrangements and some building. They have stated that they are likely to provide predominantly two bedroom units to cater for demand for smaller units from mainly elderly. Therefore there appears to be a deficit of 61 units over the next 4 years to be supplied that City Housing or other third sector organisations could supply. Thereafter substantial demand will need to be met by Housing New Zealand, City Housing and other third sector housing organisations. The demand is a result of increased affordability issues created by a widening gap between real average house prices and real median household incomes which forces people into rental accommodation. The forecasts are dependent on a number of assumptions including future household income, house prices as well as net worth differences between age groups. For this reason these forecasts should be reviewed on an ongoing basis especially given that the Local Government Housing Fund is available for four years and Housing New Zealand's future development plans are unknown beyond 2006/07.

The net worth statistics are represented at a national level rather than by Territorial Authority area. A special request for information from Statistics New Zealand on Christchurch citizens net worth would be more beneficial than the national statistics for this study.

4.0 SUPPLY ISSUES

Providing supply of new housing to meet demand by way of constructing new units is slow especially in the current building boom where builders are difficult to secure for projects. Material costs have also risen in response to demand. Supply needs to be met in different ways, by building, by purchasing existing stock from the private sector, by leasing and by joint venture arrangements.

4.1 AVAILABILITY OF LAND

Land holdings currently owned and held for future development purposes includes the following:

Gowerton Place in Richmond is a large block of L3 zoned land that could easily accommodate a 25 unit development. From the geographic analysis Richmond appears to be an area with underlying demand within reasonable proximity to the CBD. It is also well located for shopping and transportation links.

Weaver Place in Sockburn is also a well located block of land that could accommodate 10 units. It is also well located to shopping malls and transport links as well as the Sockburn Recreation Centre.

The Hornby land is currently undergoing a registration of interest process for the future development of it as a mixed development of affordable/social housing.

54 Avalon is a small site that could accommodate two units and provide additional parking to the adjoining complex. The small amount of land adjoining Knightsbridge Courts is zoned L1.

There are several sites where existing City Housing is located that is under utilised from a site density perspective. These blocks are expensive to maintain in terms of grounds maintenance, many contain housing that is approaching the end of its useful life and would be potential sites for redevelopment in the future.

4.2 PURCHASE OR BUILD

Building new does provide an opportunity to design right first time and to supply new quality housing stock to the portfolio and to tenants. One downside to building can be the construction lag in getting to the finished product. With a well planned strategy that predicts forward demand this mismatch between supply of new housing and demand can be reduced. The second disadvantage relates to cost relative to market value. In Christchurch there are areas of the city that you can purchase existing units for less than the building costs and provided the housing is suited it is financially beneficial to purchase units from the private market. The third disadvantage relates to location constraints. Purchasing may allow for greater flexibility in providing housing in locations where no land is held by City Housing for development.

To purchase from the private market can provide housing solutions much faster than constructing from new, it can also be economical especially when building costs are rising.

The decision will depend on the economics of the day and the speed at which new housing is to be acquired.

4.3 SALE AND LEASEBACK

For complexes where the built assets are nearing the end of their economic life it may be beneficial to realise the value of the land by sale and leaseback arrangements. Such arrangements involve the sale of land and buildings to investors and Council in turn lease the land and buildings back from the purchaser for a period of time (probably the remaining economic life of the built assets) The benefits of this are the raising of capital from sales and still being able to utilise the built assets by way of the lease back arrangement. The issues and practicalities of this option have yet to be examined in detail but it has some appeal.

4.4 LEASING

Housing New Zealand Corporation have been leasing houses from private landlords at market rents and in turn sub-leasing these homes to their tenants at rents equivalent to 25% of tenant income. Leasing has advantages over building new stock because the time frame to deliver new supply is reduced. Housing New Zealand are reimbursed the difference between the market rents and sublease rents by Central Government. This is a luxury that the City Housing does not have. The cost implications of this option are likely to be inhibiting.

5.0 FINANCIAL ASSESSMENT OF MEETING FUTURE DEMAND

5.1 REVISED COST OF CONSUMPTION

The cost of consumption methodology developed to determine equitable and sustainable levels of rent allowed for only a modest level of development after year five. At year five a 1% development program commenced allowing for just 26 units a year. This was based on the assumption that no alternate source of funding would be made available to support the costs of development. Given that Central Government have since created the Local Government Housing Fund to support Local Authority housing and third sector housing organisations there is a possibility that the development plan may be able to be bought forward subject to funding applications being successful.

Analysing the most likely demand requirement detailed in table 4.0 and assuming that capital funding support would be met 50/50 by the Innovation Fund the likely numbers that could be supplied from City Housing are detailed in table 5.0. The assumption is that these units would be built on land owned by City Housing.

Beyond 2006/07 City housing cannot build all required stock based on the most likely forecast without significant financial detriment. The supply will need to be met by Housing New Zealand, City Housing and other third sector housing organisations. As the Governments funding support mechanisms for Local Authority Housing beyond four years are unknown it is too difficult to hypothesis beyond this timeframe.

Table 5.0

About the author: Callum Logan, *MProp* (Hons), MNZPI, is a *Strategic Property Analyst* within the *Facilities Asset Unit of Christchurch City Council*, Christchurch, New Zealand. Callum was a dual recipient of the *Innovation In Property Award 2003* for the *Asset Management Plan for City Housing*. This *paper represents improvement work recognised* in the *Asset Management Plan* to advance the level of understanding of *future demand* and *geographical allocation profiles for City Housing accommodation needs*. *City Housing* is a non rates *funded service* and carries a *Council policy objective* of remaining financially self sustaining in perpetuity.

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lilr4 iie hull!

David Reid Enthusiastic Valuer, Gliding Champion and Wine Buff

David died flying his beloved glider in an accident not far from the Matamata Aerodrome at Waharoa.

Prior to establishing his valuation practice in Matamata in the mid 1980s David was farming in the south Waikato. In late 1980s David, along with John Darragh and Andrew Honeyfield, established Darragh Honeyfield and Reid Registered Valuers and Farm Consultants.

David was always very involved in valuation/valuers issues having spent time on the local Waikato branch committee where he was Chairman. He was a very capable and very well respected multi disciplined valuer. David had recently been elected as Northern Zone Councillor for the NZ Institute of Valuers. His special interest was in the education field. David was enthusiastic in giving back to the valuing profession.

David had a passion for gliding. He joined the Piako Gliding Club in 1986 and was a past president and former chief flying instructor. In 1999 David represented New Zealand in Poland at the World Championships and again in 2002 when he traveled to Spain for the same event.

David won the Auckland Provincial Gliding Championship twice and throughout the years gained numerous trophies at NZ Gliding Nationals.

David was involved in a vineyard development on Waiheke Island that began in 1985 and he retained a strong interest in all aspects of wine including acting as a judge at National level. David was an instigator of a farm building construction company in the Matamata area.

David was also a very experienced snow skier and passed on this love of his sport to his sons.

David will be well remembered for his contributions to the valuation profession in the Waikato and to the wider Matamata business community which he had been involved in for the last 20 years.

David had a great sense of humour and a "get on with it" attitude. He will be missed around the NZIV Council table for his common sense and straight talking.

David is survived by his partner Julia and his two sons Nick and Michael.

Summary Case Law

High Court

- Commercial law
- Guarantees
- Liability of guarantor
- Real property

NZHB Holdings Ltd v *Peters*, 20/08/2003, Baragwanath J, HC Auckland CP348-SDO2

Successful application for summary judgment by NZHB against P on an instrument described as a "Deed of Indemnity & Right to Mortgage"

- P approached NZHB for funding in relation to a development property which Caravelle Holdings ("CHL"), of which P was sole director, had already contracted to buy it was proposed that CHL would on-sell property to P's brother ("S") who would develop property NZHB granted S a bond for \$356,000 for a period of six months at a fee of \$37,380 - NZHB confirmed with P that if S were unable to settle NZHB would look to P for payment under his indemnity after NZHB became concerned about repayment, it lodged caveats on properties belonging to S NZHB wrote to P asking him to acknowledge his indemnity liability and P wrote back asserting that indemnity had expired P denied liability on grounds that instrument was a contract of guarantee which was unenforceable because NZHB did not require S to comply with his obligations under transaction P submitted as guarantor that he was discharged from his obligations to NZHB as creditor.

Held, plain meaning of deed is to safeguard NZHB against loss arising from transaction, in their mutual dealings parties spoke of indemnity and not of guarantee - it is in public interest that commercial lending be performed in knowledge that common form documents entered into between parties under no disadvantage will be duly enforced Court finds deed is an indemnity application granted.

High Court

- Real property
- Tort
- Nuisance
- Private

Fujiyama Teppanyaki Japanese Restaurant Ltd v *John* 8/8/03, Hammond J, HC Wellington CIV2003-485-15966

Successful application by FTJRL for an interlocutory injunction arising out of breach of covenant for quiet enjoyment of a lease FTJRL, owned by T, operated a restaurant which leased premises on ground floor of building owned by defendants J and M lease contained a provision of quiet enjoyment which entitled T to enjoy premises without hindrance or interruption by lessor second and third floors of building were to be converted

from commercial premises to residential premises

- significant structural work was undertaken and T was informed that front of his restaurant would have to be pulled out to accommodate changes T found work on building increasingly intrusive and disruptive, front of building was heavily disturbed, footpath and entranceway were taken up, restaurant sign and outside lighting were removed, pipes were redone which caused flooding restaurant was closed after flooding which was approximately three weeks before proceedings began T argued that he suffered considerable loss and damage due to building renovations and that restaurant had lost considerable good will - T's application for an interlocutory injunction sought cessation of work within, adjacent to, or affecting premises of FTJRL until a further order of Court.

Held, to grant an interlocutory injunction Court must be satisfied there is a serious question to be tried

- there is an arguable case of a breach of covenant for quiet enjoyment and principle of non-derogation from grant - duration and extent of interruptions have dispossessed FTJRL of its interest for very purpose for which it contracted J and M have failed to minimise disturbance to FTJRL effect of an injunction on third parties is a relevant consideration evidence does not suggest other lessees in building will not be able to function or that an injunction will adversely affect their businesses - Court grants an injunction in favour of FTJRL orders accordingly.

High Court

- Wills, probate and administration
- Testamentary promises
- Claims

Re Stewart; *Alt cit Stewart v New Zealand Guardian Trust* 14/8/03, Harrison J, HC Hamilton CIV2002-470-93; CP4/02

Successful application by S S was one of four adult children of late Ronald and Mary Stewart

- former died in 1981 and latter died in 1998 in intestate S is aged 63 years and has two brothers, W and D, and one sister, C in 2002 S issued present proceeding against NZGT claiming that his late mother breached a promise to leave to him in her will her one third interest in a farm run-off block of which W owned remaining two thirds S also alleged that his mother failed to make adequate provision for his proper maintenance and support - estate had two major assets including one third interest in Cutwater Road and 25% shareholding in R W & M D Stewart & Son Ltd which owns a 72 hectare farm property at Maketu - W had run farm for at least 20 years following judicial settlement conference parties struck

agreement on terms - parties agreed that W should acquire rights or interests held by R and D in claims against their late mother's estate and in their father's 25% shareholding in company together with title to remaining one third interest in Cutwater Road in exchange S should pay them \$187,000 each.

Held, agreed terms make reasonable provision for claims of all three sons under Family Protection Act 1955 and W's separate claim under Law Reform (Testamentary Promises) Act 1949 - Court is satisfied that NZGT's interests will be protected by terms of proposed orders - parties are otherwise to bear their own costs application allowed.

High Court

- Local Government
- Duties and powers
- Liability
- Tort
- Negligence
- Breach of duty of care

Mullen v Rodney District Council 29/8/03, judge Williams, HC Auckland CP31/SD-00; CIV2000-404-001512

Unsuccessful claim by M for damages - M appealed to High Court ("HC") for damages against RDC and her lawyer, second defendant ("T") - M alleged RDC had been negligent and breached its statutory duties in relation to advising her of effect proposed road and bridge might have on her property - M had subsequently been unable to sell property and it had been subject to mortgagee sale - RDC argued that M had assumed risk and contributed to her losses by failing to take appropriate legal advice - M's claim against T was in negligence and breach of contract of retainer for failure to advise her of her right to apply to Environment Court for compensation under s 185 Resource Management Act 1991 ("RMA") or of other potential remedies.

Held, Court accepts that indicative proposals for road and bridge had made property extremely difficult to sell - however formal notice of requirement or designation had not been publicly notified at time M needed to sell her property because of her dire financial position therefore rights of affected property owners to apply for relief under s 185 RMA had not been triggered and M had no accrued rights - claim in negligence against RDC has not been established claims against T also fail because his actions and advice had been correct and had not caused M any loss due to fact there had been no right to compensation at time - claims were dismissed and leave was granted to apply for costs if necessary - orders accordingly

High Court

- Civil procedure
- Costs
- Security for costs

Chin v Ghana 13/8/03, Master Gendall, HC Wellington CIV-2000-485-00881

Successful application by C for security for costs against G - G occupied premises owned by C C claimed for rent, rates and mesne profits against G as tenant - G disputed claim and counterclaimed alleging misrepresentation, breach of quiet enjoyment clauses, and breaches by landlord of repair covenants under lease agreement - C applied for security for costs under r 60 High Court Rules (HCR) against G in respect of counterclaim in sum of \$15,000 - whether there is reason to believe that G, if unsuccessful will be unable to pay C's costs - whether Court should exercise its discretion to make an order for costs.

Held, it seems clear G's acknowledgment to Court that she does not have \$15,000 meets threshold test of impecuniosity under r 60(1)(b) HCR Court's discretionary considerations include merits and bona fides of G's counterclaim, conduct of parties, and whether C used application for security for costs oppressively G's claim for misrepresentation is outside six year time limit under Limitation Act 1950 and her arguments for breach of covenant are weak and substantially lacking in merit in terms of G's impecuniosity, there is no explanation for causes of G's impecuniosity and Court does not think it can be said G's impecuniosity was caused by C at an early stage in proceeding's history C offered to discontinue claim and as such Court does not find C is using application for security for costs oppressively application granted.

High Court

- Civil procedure
- Judgments
- Recall
- Maori affairs
- Land
- Leases

The Proprietors of Hiruharama Ponui Block Inc v Attorney-General 13/8/03, Rodney Hansen J, HC Auckland

Successful application by PHPBI to have a High Court ("HC") judgment recalled - HC declined to make declarations sought by PHPBI which would have permitted a residential development of Maori freehold land to proceed without need to obtain approval of Maori Land Court under Te Ture Whenua Maori/Maori Land Act 1993 (TTWMA) - HC found that a lease granted by PHPBI had not been authorised by special resolution under s 254 TTWMA an amendment to TTWMA required PHPBI to apply to Maori Land Court for a subsequent variation of lease - PHPBI submitted that it was not necessary for Maori Land Court to approve lease on grounds HCs attention was not directed to a legislative provision and authoritative decisions of relevance to issue, and that justice required decision to be recalled.

Held, in cases such as this there is room for a more liberal approach to admission of new evidence than is normally adopted when further evidence is sought to be adduced on appeal - in this case there is no adverse interest affected, no question of possible prejudice, application is not opposed, and there is no risk of injustice if it is considered new evidence makes it clear lease was precisely kind contemplated by resolution - land was alienated before amendment to TTWMA came into force and subsequent variation and assignment of lease does not need approval of Maori Land Court - Court is satisfied lease was granted pursuant to special resolution there is no requirement for PHPBI to apply to Maori Land Court for confirmation of an assignment or variation of lease - orders accordingly

High Court

Real property
Boundaries
Encroachment

Tram Lease Ltd v Croad 28/8/03, Salmon J, HC Auckland CL16/02

Determination of issues relating to previous decision as to encroachment by C onto TLL's land - C held perpetually renewable 21 year lease of land - C's shop wall encroached on adjoining land of TLL - TLL also owned C's land - High Court and Court of Appeal found it appropriate to grant C relief under s 129 Property Law Act 1952 (PLA) - Court of Appeal also held that any action by TLL which damaged buildings on land leased by C would substantially interfere with C's business and could amount to derogation from grant - whether given finding on derogation any other relief should be granted - if relief available, what form it should be.

Held, s 129 PLA provides a separate remedy to derogation principle - no reason for rights available to C in other circumstances to affect discretion under s 129 PLA - any relief should reflect ongoing encroachment - compensation should be appropriate rental for land encroached upon, adjusted in accordance with lease - this rental is assessed as at time of last renewal - orders accordingly

High Court

- Civil procedure
- Orders
- Declaratory
- Real property
- Lease

Feary v Commissioner of Crown Lands 20/8/03, Panckhurst J, HC Christchurch CIV-2002-409-000127

Unsuccessful application by F for declaratory orders - F farmed property pursuant to pastoral lease and licence - CCL determined to forfeit lease and licence - following dispute between parties, mediation deed of settlement was signed - F sought orders under

Declaratory Judgments Act 1908 with reference to construction of deed - first declaration sought related to confidentiality - second declaration sought related to CCL meeting F's reasonable legal costs - CCL argued there was no basis for declaration in relation to confidentiality.

Held, it is evident that CCI's advisors consistently maintained confidentiality - question of confidentiality is no longer live issue - whether costs incurred are reasonable will depend on their quantum and necessity of work involved - questions raised in relation to second declaration are only suited to declaratory relief to very limited extent - Court does not propose to make declaratory orders in terms sought - application dismissed.

High Court

Real property
Caveats
Beneficial interests
Rights attached
Lease

Sarten v Long, 29/8/03, Master Yenning, HC New Plymouth CIV-2003-443-000209

Unsuccessful application by S to sustain caveat - S leased land of L and lease agreement included right of first refusal for S to purchase land if it was to be put up for sale before expiry of lease - L intended to subdivide land after expiration of lease and entered into sale and purchase agreement with B and J Goble Farms Ltd ("BJGFL") for part of land leased by S and another forestry block never included in lease - S submitted that by entering contract with BJGFL without first offering land to S, L breached right of first refusal in lease agreement - S claimed she was entitled to specific performance and continuance of caveat pending final determination of parties' rights in substantive proceedings - L denied right of first refusal had been triggered as land sold was not land subject to lease - alternatively L submitted S had no caveatable interest as BJGFL had equitable interest that took priority over whatever interest S may have had.

Held, to be successful S must satisfy Court that triggering event has occurred in terms of right that requires offer to be made to S - right of refusal in lease makes no reference to sale of part of land, right refers to all land - right of refusal does not apply when land sold is more than land referred to in agreement - S does not have interest substantial enough to sustain caveat - application declined.

High Court

- Civil procedure
- Costs
- Security for costs
- Real property
- Easements
- Rights of way

Wratt v Harnett, 25/8/03, Priestley J, HC Auckland
CIV20004042.588; MI 706100

Unsuccessful application by H to dispense with security for costs - dispute between parties was complex and involved access to land on Great Barrier Island - previous hearing lasted 19 days and decision was reserved - H claimed litigation had catastrophic effect on his and his family's lives and land he owned might have to be sold to meet legal costs - H applied for security for costs to be dispensed with - H was employed in Japan and had to travel for litigation, thus incurring large expense - H also claimed he had to obtain mortgage loan to carry on with proceedings - W opposed application on grounds H had over \$300,000 equity in his property and his income exceeded \$85,000 per annum - in event application was declined counsel agreed that costs should be fixed and applied for appropriate order.

Held, H has not brought himself within normal criterion for dispensing with costs - any party who is prepared to litigate matter for 19 days, who still owns land in question, and who is employed, would have obvious difficulties in contending that he was impecunious - it is difficult to see what exceptional circumstances are present for H to be granted his application - H must pay \$4,000 by way of security for costs - application declined - Editor's note: it appears that the Court issued judgment for this proceeding has mistakenly attributed W to the role of appellant, when in fact it was H who was applying to dispense with security for costs.

High Court

Contract
Breach
Remedies
Promissory estoppel
Real property
Title
Transfer
Gift

Welch v Fraser 9/09/03, Ronald Young J, HC Hamilton
CIV2003419491

Unsuccessful appeal by W against District Court decision - successful cross-appeal by F - W former long-standing employee of F - F told W she would buy him a house - house purchased using F's money - purchase structured through loan to W family trust, to be forgiven annually to avoid gift duty - Deed of Acknowledgment of Debt signed by W - shortly after first year's gift was made the working relationship ended - F advised W to refinance and Court proceedings resulted - W also borrowed \$30,000 from bank using house as collateral - W claimed that rather than receiving house promised, he received a mortgage commitment - Judge found that there was a misunderstanding as to F's obligations but that case fell outside promissory estoppel - on appeal W

submitted that judge overlooked basic promise of F to give him a house and that Judge erred in finding case fell outside promissory estoppel - F cross-appealed on grounds judge misconstrued detriment to be receipt of mortgage instead of house.

Held, no obligation on F to continue forgiveness - this risk was knowingly born by W - not unconscionable to stop forgiveness even if W had misunderstanding as to F's obligations because misunderstanding was not F's failure - detriment must be independent to failure to obtain expected benefit - here little or no detriment which promissory estoppel would ameliorate - Ws appeal dismissed - F's cross-appeal allowed.

High Court

Civil procedure
Appeals
Arbitration
Award
Review
Real property
Lease

Milverton International Investment Ltd v Watpat Nominees Ltd 26/8/03, Priestley J, HC Auckland CIV2003404746; M287/IM03

Unsuccessful appeal by MIIL against an arbitral award - WNL was a service company of a law firm which leased premises in MIILs building - WNL alleged air conditioning system was not performing satisfactorily and that MIIL was in breach of its obligations as lessor - WNL argued MIIL failed to discharge its obligation to use its best endeavours to provide and maintain air conditioning plant over a stipulated period and breached covenant for quiet enjoyment contained in lease - arbitrator determined MIIL was obliged to do all that a determined person would reasonably do to keep air conditioning plant in such a condition as to enable it to continue to serve its purpose - arbitrator found damages to be 4% of rent WNL were required to pay under lease over relevant period - whether leave should be granted to MIIL under cl 5(1)(c) Arbitration Act 1996 (AA) to appeal arbitral award.

Held, cl 5(1)(c) AA permits a party to appeal to High Court ("HC") on a question of law arising out of an award - under cl 5(2) AA HC will not have discretion to grant leave if rights of one party are not substantially affected - inherent weakness in proposed question of law, limited value of issue beyond interests of parties, modest importance of dispute to parties, arbitrators expertise, and fact arbitrator found there had been a derogation of grant leads Court to decline discretion to grant leave - appeal dismissed.

High Court

- Real property
- Title

Joint
Transfer

Atkinson v Registrar-General of Land 419/03, Heath J, HC Whangarei CIV2003-488-90

Successful application under s 132 Land Transfer Act 1952 (LTA) for authority to settle and transfer property by A adjourned application under s 64 Trustee Act 1956 (TA) - Alan Atkinson ("AA") settled Atkinson Family Trust ("Trust") - AA died remaining trustees, A and B, owned two properties when A and B acquired properties, "no survivorship" was entered against each certificate of title A and B entered into sale and purchase of one of properties - "no survivorship" notation meant authority of Court was needed before property could be settled and title transferred - trustees made application under s 132 LTA to obtain Court authority they also sought order varying terms of trust deed under s 64 TA.

Held, registration against land titles of transmission to A and B noting death of AA is authorised registration of memorandums of transfer executed by A and B in favour of purchasers of land is authorised proceeds of sale will remain with Trust - Court does not have information as to independent means of A therefore, Court is not disposed to make orders under TA orders granting authorisation made - application under TA adjourned while counsel confer and file additional evidence if appropriate orders accordingly.

High Court

- Civil procedure
- Injunctions
- Contract
- Performance
- Real property
- Lease

Southern Community Laboratories Ltd v Radius Health Ltd 1119/03, Randerson J, HC Auckland CIV2003-404-2422

Successful application by SCL for interim injunction restraining RHL from referring medical samples to pathology services providers other than SCL SCL provides pathology services RHL operated medical clinics - SCL claimed it sub-leased rooms in clinics from Accident and Medical Centres Investments Ltd ("AMCIL") - SCL also claimed it was orally agreed that AMCIL would refer medical samples collected at clinics to it for analysis ("agreement") clinics were later bought by RHL SCL claimed RHL has taken assignments of sub-leases, but had refused honour the agreement - SCL sought interim injunction to restrain RHL from sending medical samples to other pathology providers whether there was an arguable case for existence of agreement - if so, issue was balance of convenience and where overall justice of case lay.

Held, it would make no sense for SCL to rent laboratories at clinics unless they were able to derive

income from analysing samples collected under arrangement there is a strongly arguable case that agreement was entered into between SCL and AMCIL - Court is satisfied, on evidence, that SCL has ability to meet any damages sustained by RHL in interim period should it be later found that interim injunction was wrongly granted balance of convenience favours grant of interim injunction overall justice also favours grant of interim injunction injunction granted.

High Court

- Real property
- Mortgages
- Civil procedure
- Application to strike out

Wylex Ltd v Elworthy (No 2) 18/9/03, Heath J, HC Auckland CIV2000-404-1773; CP554-SDOO

Unsuccessful application by KL and KIs solicitors ("RSM") seeking orders striking out parts of WIs statement of claim R owned property in Symonds Street R entered into an all obligations mortgage in favour of the National Bank ("NB") to secure a loan made to her by NB priority figure inserted into the NB mortgage was \$1,300,000 R's sister ("E") entered into an all obligations mortgage with WL to secure a loan for \$600,000 in which R was a covenantor E's loan was secured against the Symonds Street land - WL mortgage was registered as a second mortgage against the Symonds Street land WL called up its loan but repayment was not made - NB transferred its first mortgage over the Symonds Street property to KL - KL sold land for \$2,200,000 and the net proceeds of the sale were held by RSM WUs statement of claim sought orders determining the way in which the funds held by RSM ought to be applied whether the sum of \$1,300,000 stated in the mortgage document is inclusive or exclusive of interest and costs whether RSM as solicitors ought properly to have been joined as defendant in this proceeding whether four types of expenses incurred are capable of being deducted from the funds held as expenses of the mortgage sale in accordance with s 104(a) 104(a) Land Transfer Act 1952.

Held, questions of priority between mortgagees is governed by s 80A Property Law Act 1952 or any contract entered into between mortgagees to record alternative priority arrangements - it is open to any mortgagee to state that interest and costs of enforcement are claimed in addition to the sum stated - where that formula is used the subsequent mortgagees of the priority are claimed in addition to the sum stated NB elected not to take that precaution - priority sum stipulated in the first mortgage is inclusive of interest and costs of enforcement in terms of RSM's involvement in proceedings, the only reason advanced to the Court to justify solicitors' involvement is WIs' concern KL might misappropriate

funds to its detriment as a cautionary measure, the Court is not prepared to strike out the solicitors as a party to the litigation s 104 Land Transfer Act 1952 ("LTA") sets out the priorities in which proceeds realised from a mortgagee sale must be distributed - provided the two registered valuations were obtained for the purpose of the mortgagee assessing the value of the property for sale, they prima facie fall within s 104(1)(1) LTA costs incurred in the caveat proceedings are likely to be regarded as an expense occasioned by the sale given the need to pass clear title - the Court is satisfied that expenses incurred in this proceeding were occasioned by the need to resolve doubts as to the correct legal position rather than by the sale itself the issue as to mortgagee sale expenses is resolved in favour of WL application dismissed.

High Court

- Civil procedure
- Orders
- Declaratory
- Real property
- Caveats

Dennehy v Kitchener Homes Ltd 10/9/03, Salmon J, HC Auckland CIV20034043703

Successful application for order of Court - parties were unable to reach agreement as to whether applicants O and D should provide signed undertakings as to damages.

Held, an undertaking to pay damages should be given - there is prima facie evidence to suggest that if caveat is ultimately not sustained then KHL will suffer damages - O and D are ordered within seven days to file an undertaking to pay such damages as this Court may see fit to award to KHL if it is ultimately held that O and D's caveat should not have been filed by reason of fact that O and D will not have succeeded in its substantive proceedings orders accordingly.

High Court

- Administrative law
- Judicial review
- Real property
- Compulsory acquisition

Te Runanga o Ngati Awa v Attorney-General 30/9/03, Goddard J, HC Wellington CP21/02

Partly successful application by TRONA for judicial review of decision by Chief Executive of Land Information New Zealand ("CE") to sell Whakatane District Council ("WDC") land land had been identified as asset for inclusion in fiscal redress package to be offered by Crown to TRONA in settlement of historical grievances s 40 Public Works Act 1981 (PWA) provides that land must be offered back to person from whom it was taken for public work or their successor when it is no longer required for public work purposes TRONA alleged WDC was not successor of person from whom land was

taken - land was formerly part of bed and foreshore of Whakatane River and was reclaimed by Whakatane Harbour Board ("WEB") prior to 1919 - when reclamation was completed, Crown vested land in WHB in three titles: Areas 1, 2 and 3 - in 1953 Crown took land for defence purposes in 1999 Defence declared land surplus to its requirements land was offered back to WDC in 2001 - first ground for judicial review was that CE took account of irrelevant considerations in concluding land should be offered back to WDC second ground was that CE failed to take into account relevant considerations, namely that land was public works land when owned by WHB and that WDC was not successor to Area 3 - issue is when and by whom land was first acquired and held for public work.

Held, land has been held by series of public owners, including Crown, WHB, and New Zealand Defence Force - land was acquired and held by Crown for public work purpose - land was vested in WHB by Crown once vested, land could be utilised by WHB for any purpose specified in Whakatane Foreshore Reclamation Act 1908 - these were public work purposes - WHB acquired and held land for public works - s 50 PWA provides for transfer of existing public works to local authority at Minister's discretion offer-back under s 40 PWA is subject to s 50 PWA WDC is entitled to have consideration given to transferring land to it, if it requires land for another public work CE is to reconsider his decision to sell land to WDC in light of finding that WHB held land for public works and in relation to effect of s 50 PWA - WDC is successor in title to Area 3 - application partly successful.

High Court

- Civil procedure
- Injunctions

Eide v Huxford Holdings Ltd 1/10/03, judge Chisholm, HC Dunedin

Unsuccessful application by E for interim injunction to restrain sale of four properties by HHL and second defendant Camerfield Holdings Ltd ("CHL") to fifth defendant Southwest Developments Ltd ("SDL") - E believed that transactions which followed initial agreement for sale and purchase to which she consented were not bona fide and that breaches of trust by HHL and CHL and breaches of fiduciary duty by third defendant JE and fourth defendant S were involved E and JE had unresolved matrimonial property issues which were waiting to be heard - Family Court restrained HHL and CHL from disposing of any properties owned by them without prior consent of E.

Held, E has an arguable case but it is necessary to weigh implication of injunctive relief against alternative of E being denied injunctive relief there are factors that weigh against interim injunction

including strength of E's claim and fact that E is unlikely to receive a substantial award if she succeeds given that she is a discretionary beneficiary - there is no indication that current primary target FS would not be able to meet damages if a claim could be made against him there is an underlying matrimonial dispute fuelling this matter and it is undesirable that such a dispute should be allowed to spill over and injure innocent parties - factors overwhelmingly swing balance in favour of refusing interim injunction - application for interim injunction refused.

High Court

- Real property
- Caveats
- Land settlement

Minaret Resources Ltd v McLellan 30/9/03, Chisholm J, HC Dunedin CIV200341247

Successful application by MRL for declaration that M was not entitled to cancel agreement for sale and purchase of property - MRL and M entered into contract for sale and purchase of land - one provision of agreement was due diligence condition where contract was to be fulfilled within certain time limit - M entered into back up contract for sale and purchase of land in case agreement with MRL was not confirmed in time - there was confusion over time limit and MRL did not confirm contract until after M believed deadline had expired - MRL unsuccessfully sought extension of deadline from M and contract was cancelled - MRL lodged caveat over property MRL pleaded promissory estoppel as they had relied on mistake as to confirmation date made by M in fax - M argued that fax could not constitute clear and unequivocal assurance that date for due diligence was what MRL contended - M submitted that solicitor for MRL was under obligation to check dates in fax in case of miscalculation and he had failed in that duty

Held, in terms of contract due diligence provision was to be completed within 10 working days and MRL failed to fulfill this provision in isolation fax does not give rise to representation capable of founding estoppel, however it should not be read in isolation, and taking into account other communication date that MRL argued for, date in fax is precise and unequivocal it is clear that MRL relied on fax as there had been specific discussion with M's solicitor regarding that piece of communication M should have provided reasonable notice to MRL that he was resiling from position communicated in fax, and he failed to do so - MRL is entitled to declaration and order for specific performance is made - orders accordingly.

High Court

- Contract
- Breach
- Tenancy law

- Tenancy agreements
- Rent

Governors Ltd v Anderson 22/9/03, France J, HC Wellington CIV-2000-485-744; CP211/00

Successful claim by GL that re-entries into premises by landlord were not lawful - GL leased property from A in October 2000 GL was evicted from property for non-payment of rent - GL obtained High Court injunction and resumed occupation until A again re-entered in June 2001 - GL sought damages for lost profits during periods of eviction A denied re-entry was unlawful, claiming GL agreed to pay equivalent of three months' rent from December 1999 and this was not done - first hearing was on question of liability with hearing for damages to follow if necessary.

Held, considering all evidence, there was no agreement that GL would pay equivalent of three months' rent from December 1999 - formal lease reflects true position and any other scenario is inconsistent with terms of lease - it follows that re-entry by A in October 2000 was not lawful - as there was no agreement that GL would pay equivalent of three months' rent, and if \$2,000 given to A was for rent, then there would be no arrears in June 2001

evidence shows \$2,000 given to A was for rent

Court finds that both re-entries were unlawful - determination accordingly with damages hearing to follow

High Court

- Equity
- Forfeiture
- Real property
- Lease

Walsh v Utting 10/9/03, Hammond J, HC Wellington CIV2003-485-1329; CIV2003-485-1530

Successful application by W for relief against forfeiture under s 120 Property Law Act 1952 (PLA) - unsuccessful application by U for possession of his premises - W leased U's property and had three rights of renewal each of three years - U informed W he was due to give written notice renewing lease - when W did not respond and lease expired U leased premises to a third party W sought relief against forfeiture - U submitted he did not endeavour to forfeit term of W's lease but that term of lease came to an end by effluxion of time.

Held, it is accepted W wanted to renew but acted in an imperfect way which contributed to present situation - furthermore W did not know a third party was contending for lease - W had been in premises for a long time, this was last renewal, W been excellent tenant, and to forfeit lease was to estreat business - U was unwise not to make sure that he was distinctly off with old tenant before he committed to new tenant - order for relief against forfeiture under s 120 PLA granted - order for renewal of Ws lease on same

terms and conditions as are contained in lease - orders conditional upon W paying Us solicitor and client costs on s 120 PLA application - application for relief against forfeiture granted - application for possession of premises dismissed.

High Court

- Real property
- Possession

Smith v Maori Trustee 2/10/03, Heath J, *HC Rotorua* CP8/02

Order made relating to yielding of vacant possession of land to MT - this proceeding was initiated by Estate of S which sought relief against forfeiture of a lease under s 118(2) Property Law Act 1952 - Estate of S also sought damages - MT was lessor proceeding had been subject to case management by Master Lang Master issued a Minute indicating that a consent order had been put before him to enable vacant possession of land to be yielded to MT - for jurisdictional reasons associated with powers of Masters to make such orders Master Lang was reluctant to enter judgment and referred issue to a judge - parties have since reached a mediated settlement - not only were funds owing to MT under that agreement but there were further arrears which had accrued which is why MT sought an order for vacant possession Estate of S wished to settle and expected to be in a position to bring arrears up to date - there were difficulties in dealing with application of present nature in course of a telephone conference - therefore Court indicated to MT's counsel that Court was minded to consider possibility of making an order which would lie in Court for a specified time to enable payment of arrears to be made - MT's counsel indicated that MT would not oppose such a course - Estate of S's counsel could not contest that an order of that type was likely to act as an incentive for Estate of S to finalise matter if it could.

Held, Court makes an order granting vacant possession of land specified in Statement of Claim in favour of MT - that order will lie in Court until 31 October 2003 - if sum of \$115,451 is paid to MT by that time order will be vacated - otherwise it may then be sealed - if payment is made before 31 October 2003 Court directs an affidavit from Estate of S to be filed and served specifying when moneys were paid and to whom unless such affidavit is filed and served Registrar will be at liberty to seal judgment on request after 31 October 2003 should payment be made by stipulated time - costs will lie where they fall - if it is necessary for MT to seal order Court has made, costs associated with obtaining and sealing that order are reserved if any application for costs is made, counsel for MT shall apply to Registrar for a telephone conference so that a timetable can be established for exchange of memoranda in relation to costs - orders accordingly.

High Court

- Real property
- Caveats

Reeves v Rawlings, 8/10/03, Master Lang, *HC Auckland* CIV-2003-404-5407

Unsuccessful application by plaintiff Re for order that caveats not lapse - Re lodged caveats over properties owned by first defendant Ra and Wirega Investments Limited ("WIL") to protect legal fees and personal loans - Ra was sole director of WIL Ra wanted to remove caveats to deal with properties - Re adduced limited evidence in support of claim of caveatable interest - whether it was arguable that Ra intended to grant Re equitable charge over property to secure legal fees.

Held, insufficient factual basis to establish caveatable interest - on evidence presented it is impossible to say Ra intended to give equitable charges - no indication Ra signed agreement allowing charges - no evidence as to whether legal fees had nexus with properties - application dismissed.

High Court

- Real property
- Mortgages
- Title

McCord v Afele 22/9/03, Salmon J, *HC Auckland* CIV20034044426

Unsuccessful application by M for interim injunction to prevent sale of her house by second defendant Westpac Banking Corporation ("WBC") as mortgagee - M sought help from Toi Te Atatu which later changed its name to ICMG Group ("ICMG") to pay her mortgage and expenses - ICMG told M they would pay her bills by extending her existing mortgage if M redirected her repayments on mortgage to ICMG - M received a letter from WBC stating mortgage payments were significantly in arrears and it wished to sell her property by mortgagee sale - M discovered her mortgage repayments had not been paid for five months and her house was in fact owned by BA and PA ("A") - A submitted they had been told they had a good credit rating and could help people purchase a home by accessing funds from banks A argued they signed what they thought was a mortgage document but was in fact a sale and purchase agreement solicitors acting for ICMG ("HSL") falsely informed WBC they acted for M, that M had sold her property to A, and settlement would follow settlement took place and HSL paid outstanding amount on mortgage to WBC's solicitors M claimed signature on sale and purchase agreement shown to her was a forgery M argued she lost her home through fraudulent actions of agents of A and WBC, and that transfer to A and mortgage to WBC came within statutory exceptions of indefeasibility of title under s 63 Land Transfer Act 1952 - A argued they were liable for a mortgage on a property which they were pressured into purchasing

by ICMG WBC argued any knowledge solicitors had acquired of fraud committed by ICMG was acquired outside limited scope of authority conferred by WBC - whether ICMG's fraud or actions of HSL should be imputed to WBC.

Held, both WBC and A are protected by principle of indefeasibility of title unless actual fraud can be proved - in order to succeed it is necessary for M to impute against WBC fraud of WBC's agent - if HSI actions in relation to deposit and in settling without obtaining full payment of purchase price are established, it will be found those actions were undertaken as solicitor for ICMG and A actions alleged to constitute fraud cannot be imputed to WBC as arising out of actual or apparent authority given by WBC in connection with its instructions in relation to mortgage - M cannot show a serious question to be tried in relation to WBC however evidence suggests A knew they were purchasing a property and would obtain a mortgage in respect of it - there is a serious question to be tried in relation to A because actions of ICMG and HSL said to constitute fraud were arguably within scope of authority given by A an interim order is made for an injunction restraining A from seeking to dispose of property and land - order does not prevent mortgagee sale - application dismissed.

High Court

- Local Government
- Legal proceedings
- Tort
- Liability
- Misfeasance in public office

Otago Regional Council v Court 4/9/03, Hansen John J, HC Dunedin CIV2003-412-00213

Unsuccessful claim by C alleging misfeasance in public office against ORC and second respondent M - C had an ongoing dispute with neighbours over a drain C argued ORC breached a contract entered into between C, neighbours and ORC which effectively settled dispute - District Court ("DC") found ORC should have resolved dispute more promptly, that its failure caused considerable stress and tension to C, and that ORC should pay compensation to C a council member of ORC ("M") told C that he would support C's claim for compensation and that C did not need to attend meeting at meeting M proposed and voted for a resolution that C's claim be declined C argued M's actions were in breach of his obligations as a councillor and were carried out knowing decision was likely to cause harm to C in circumstances where ORC was reckless as to whether harm would result which constituted misfeasance in a public office.

Held, vicarious liability will be found if authority is given or responsibility conferred by a principal who becomes liable for any tortious misconduct of agent acting within general scope of that authority or responsibility M was not carrying out a function, a

power or a duty that was or could be entrusted to him by ORC - M simply exercised rights of an individual elected member of authority given to him and created by statute - necessary relationship to create vicarious liability is not present - in absence of any allegation against all or majority of councillors pleading cannot succeed - appeal dismissed.

High Court

- Civil procedure
- Costs
- Real property
- Caveats

Eisen v Eisen 10/10/03, Master Lang, HC Auckland M34-03

Successful application by plaintiff EE for costs - EE applied for an order that his caveats would not lapse pending trial - order was not required as first defendant BE consented to caveats remaining pending trial - issue to be decided was determination of costs - EE contended that BE should pay costs on category 2C basis - EE submitted ordinary rules should apply, costs should follow event, and it was appropriate to fix costs now rather than at end of substantive hearing BE submitted costs should await outcome of substantive trial and this was a matter which needed to be resolved in a family context.

Held, applications for maintenance or removal of caveats often leave underlying issues unresolved and further proceedings are required Courts almost invariably award costs in favour of a successful party notwithstanding fact decision may not have finally resolved all outstanding issues - while issue of costs is within Court's discretion firm guidelines set out how that discretion is to be exercised in relation to caveat proceedings two principles are clear party who fails with respect to a proceeding should pay costs to successful party and determination of costs should be predictable and expeditious - costs in relation to caveat proceedings should be fixed as soon as they have been brought to a conclusion there are no special circumstances in present case - EE is entitled to costs against BE - costs to be calculated on category 2C basis - orders accordingly.

Court Of Appeal

- Administrative law
- Judicial review
- Procedural fairness
- Maori affairs
- Land claims
- Waitangi Tribunal

Ngati Apa Ki Te Waipounamu Trust v Attorney-General 22/10/03, CA192/02; CA198/02; CA201/02

Unsuccessful appeals by three iwi ("Iwi") against High Court ("HC") decision refusing to grant judicial review of decision by Maori Appellate Court ("MAC") - Waitangi Tribunal ("WT") faced overlapping land claims from various South Island iwi WT

recommended MAC resolve disputes - MAC decision determined tribal ownership and boundaries for purpose of claim by Ngai Tahu ("NT") - MAC ruled favourably to NT - Iwi contended MAC breached natural justice in reaching its decision HC refused to grant judicial review Iwi appealed HC decision - grounds for judicial review were procedural impropriety and failure of natural justice - Iwi submitted funding disparity led to unfairness Iwi also submitted they were not given reasonable opportunity to be heard.

Held, obligations imposed by Treaty of Waitangi are encompassed within requirements of natural justice - Court's ability to supplement powers decision maker has under legislation must not be used so as to frustrate purpose of legislation power cannot be used to require decision maker to exercise power it does not have - MAC had no power to assist funding of parties only power to meet unfairness was power to adjourn Iwi have not established they did not have fair hearing they had reasonable opportunity to be heard - appeals dismissed.

High Court

- Civil procedure
- Judgments
- Recall
- Real property
- Caveats

Kawau Bay Estate Ltd v Xarus Ltd 14/10/03, Master Lang, HC Auckland M71/02

Unsuccessful application to recall a judgment of High Court ("HC") - KBEL and second applicant Seventh City Finance Ltd ("SCFL") made an unsuccessful application to HC for orders removing two caveats registered by XL KBEL and SCFL contended they were suffering loss on grounds they were unable to complete their agreement for sale and purchase - application for recall was made on grounds that conditions should be imposed if caveats were to remain - KBEL sought a condition that XL be expeditious in its claim and that XL give an undertaking to abide by orders as to damages which it ought to pay by reason of its retention of caveats - whether it is appropriate that HC judgment be recalled so that stipulated conditions can be imposed.

Held, a recall of judgment will normally be made only when there has been a statutory amendment or judicial decision of relevance in high authority, if counsel failed to direct Court to an authority of relevance, and where justice so requires - Court does not consider justice requires judgment to be recalled - in terms of conditions sought XL holds a valid caveatable interest and has been conscientious in prosecuting its claims - it is not appropriate for Court to impose conditions sought application dismissed.

High Court

- Contract
- Breach
- Loss of bargain
- Real property
- Land settlement

Horgan v Thompson 14/10/03, Denning J, HC Auckland CIV-2003-404-002197

Unsuccessful claim for damages by H relating to breach of contract by T - H became interested in T's property and entered into negotiations with T for its purchase - parties drafted sale and purchase agreement and made amendments until they were satisfied with it parties signed agreement - H sold another property on reliance of sale and purchase agreement T communicated to H that he did not wish to go ahead with sale and did not confirm contract in accordance with clause of agreement - H registered caveat against property and when it became apparent that T was not going to settle, H purchased another property H submitted that it was not open to T not to confirm contract - H argued that T wrongfully cancelled contract and was accordingly in breach H sought damages for loss of bargain, rent expenses incurred, storage fees incurred, loss of rental for additional dwelling that was sold, and legal and general expenses - in alternative H argued that clause should be severed and contract cancelled in accordance with Contractual Remedies Act 1979 (CRA).

Held, parties made bargain that included condition that had effect that neither was obliged to complete agreement unless they both confirmed contract - T was entitled to rely on clause to avoid contract between parties by giving notice to that effect T did not cancel contract, he merely exercised his right not to confirm it, therefore CRA has no application in relation to loss of bargain, what H actually argued for was inflationary increase in land value, however to that extent they obtained benefit of inflationary increase in land they actually bought - orders accordingly.

High Court

- Maori affairs
- Land
- Transport offences

Nga Uri o Te Ngahue/Te Kupenga Maori v Wellington City Council 24/9/03, Wild J, HC Wellington AP107/03

Unsuccessful application for leave to appeal to Court of Appeal - car owned by NUTN was parked in Abel Smith Street area reserved for resident's parking, breaching WCC's by-laws - NUTN did not accept it breached any law binding upon it - NUTN argued that it did not accept by-law or jurisdiction of Courts as it was part of an aboriginal people which had never divested ownership of New Zealand - High Court dismissed appeal and NUTN applied for leave to appeal to Court of Appeal.

Held, High Court is bound by R v Miru and similar decisions, which are squarely against argument NUTN seeks leave to make - none of three criteria in s 144(2) Summary Proceedings Act 1975 are met here - application dismissed.

Court Of Appeal

- Civil procedure
- Application to strike out
- Education institutions
- Powers and duties
- Real property
- Lease

Trustees of K D Swan Family Trust v Universal College of Learning 23/9/03, CA255102

Partially successful appeal by KDSFT against High Court's ("HC") refusal to grant it a defendant's summary judgment and refusal to strike out proceeding brought by UCOL. UCOL sought declaration that transaction for development and lease of sports centre by KDSFT to Wanganui Regional Community Polytechnic ("WRCP") was illegal - KDSFT was family trust - trustees were Mr and Mrs S and another party. Mr S was approached by T, chief executive of WRCP, in relation to transaction involving land owned by Wanganui District Council - T sought KDSFT's assistance with acquisition of land and redevelopment to create sports facility ("Polysport") - agreement involved purchase or leasing of land by KDSFT, purchase of buildings, and funding of redevelopment. WRCP would lease completed facility with option to buy land and buildings at end of period. WRCP was disestablished and incorporated into UCOL. concerns were raised regarding validity of Polysport lease following audit of WRCP's affairs - WRCP was an "institution" as defined in s 159 Education Act 1989 (EA) - under s 159(4) EA, written consent of Secretary for Education ("SE") was necessary for institution to exercise certain powers there had never been written consent for transaction. KDSFT contended no written consent was necessary for this transaction - UCOL sought declaration that transaction was illegal or void - KDSFT's counterclaim sought relief validating transaction. HC accepted UCOIs arguments as possible and held that it was unable to find UCOIs possible causes of action were so untenable that they could not succeed.

Held, s 159 EA creates prohibition against exercise of specified powers of sale without requisite consent - although, consequences of breach are not spelt out in EA, contracts entered into without requisite consent are illegal. however in some instances public interest may require contracts to be validated - transaction was not a raising of money there may have been series of advances of money to WRCP when it anticipated progress payments on buildings works - however pre-payments were not done in accordance with arrangement as originally agreed upon. lease by itself

would not have required consent - however it was part of a transaction which arguably required consent - there was transfer of land to WRCP which would have contained receipt for purchase price - obligation to pay price was on settlement replaced by mortgage which fell within s 159(4)(b) EA. UCOL's claim cannot succeed in relation to transaction as whole and, importantly, in relation to lease - pre-payment to WRCP of installments of progress payments was arguably illegal. claim of illegality is also arguable in relation to vendor mortgage and must be allowed to continue against KDSFT - because in these respects two causes of action pleaded against KDSFT could succeed, summary judgment cannot be entered on KDSFT's defendant's application. however summary judgment is entered in respect of KDSFT's first counterclaim. there will be declaration that lease is valid and binding on parties - Keith J agrees with result reached - Keith J also agrees with reasons except on one matter. Keith J does not agree that failure of WRCP to obtain written approval of Secretary for Education to Polysport lease made lease void and illegal - appeal partially allowed.

High Court

- Real property
- Interests in land
- Beneficial interests
- Lease

Phillips v Ottema 3/11103, O'Regan J, HC Rotorua CIV2003463110

Unsuccessful claim by P against O for breach of covenant of quiet enjoyment of land - successful counterclaim by O for damages resulting from breaches of lease - P leased motel off O however relationship was disastrously dysfunctional - parties entered lease in 1994 and in 1995 O sent letter to P outlining requirements for repairs and maintenance. O believed P should be responsible for there was dispute as to who was responsible for some of maintenance work that needed doing - parties agreed to refer matters to arbitration however P was unsatisfied with some aspects of arbitration and unsuccessfully sought leave to appeal to Court. O re-entered possession of motel property in 2002 and terminated lease - this was done in circumstances where it had been arranged by parties' lawyers and where P would be allowed back into possession on without prejudice basis - P filed claim for breach of covenant of quiet use and enjoyment of land in amount of \$120,000 and \$20,000 for exemplary damages - O filed counterclaim for breaches of lease by P.

Held, to sell lease P would need consent of O and due to O's unremedied demands it does not look likely that consent would have been given. even if P could establish breach of covenant P could not prove they have suffered any loss because they would

not have been able to sell lease - exemplary damages are designed to punish conduct which is outrageous and therefore not appropriate in these circumstances - video evidence was presented which proved there was breach of lease covenant to yield up premises with interior in good repair and condition there was \$22,000 shortfall between net proceeds of sale and what property would have been valued at if proper maintenance had been kept up to date - 0 is awarded \$22,000 for loss for breaches of lease - orders accordingly.

High Court

- Real property
- Land settlement
- Taxation
- Goods and services tax
- Sale and purchase agreement

Taylor v Mack 8/10/03, Wild J, HC Palmerston North CIV2003454179

Successful appeal by T for GST penalties and interest - T sold property to M for \$83,000 - T later advised M that she was registered for GST and issued M invoice - M did not pay amount and penalties and interest were incurred on amount - T filed proceedings to collect amount allegedly owed by M, however District Court ("DC") Judge rejected claim on grounds there was no evidence to prove allegations - T appealed.

Held, Judge was wrong to hold that because T had not proved her claim for GST, he did not need to interpret condition of sale and purchase agreement which gave her right to recover any GST owed to Inland Revenue Department, including penalties and interest - evidence relied on by T was admissible as documentary hearsay pursuant to s 3 Evidence Amendment Act (No2) 1980 - Judge erred when finding T's claim failed on evidence, as letter was in hearing bundle of documents and was referred to in earlier proceedings, thus properly becoming part of evidence - that evidence was not challenged in cross-examination, therefore Judge should have considered it - judgment for \$10,375 is quashed, instead judgment is entered in T's favour for \$24,931 - appeal allowed.

High Court

- Tenancy law
- Tenancy agreements
- Rent
- Interim injunction

Governors Ltd v Gold 3/11/03, France J, HC Wellington CIV-2003-485-914

Successful application by G to amend interim injunction GL was tenant of a property owned by G - GL established liability for damages brought against previous landlord of building on grounds a staircase added to premises by that landlord was in an area leased to GL G claimed staircase could not be

removed because it would affect rights of tenant on top floor - G offered to accept rental at a lower rate to account for fact GL did not have access to stairwell area - GL argued addition of stairwell constituted a partial eviction from premises which suspended GL's obligation in law to pay rent - GL obtained an interim injunction restraining G from re-entering premises, ordering G to deliver up possession.

Held, GL paid rent to previous landlord and did not treat erection of staircase as a basis for non-payment of rental but rather sought damages - GL furthermore paid rental to G it is unreasonable for GL to assert occupation of premises should now be on rent free basis especially given G's willingness to accepted an abated rent - G's approach of an abated rent is a reasonable one - interim injunction is amended by adjustment of property's rental and GL paying its solicitors outstanding adjusted rental owing on property - application granted.

High Court

- Real property
- Restrictive covenants
- Tort
- Nuisance

Luzon v Hockey 29/10/03, John Hansen J, HC Christchurch CIV2002-409-000782; CP37/02

Partly successful application by L seeking injunction restraining H from breaching covenant on H's land - unsuccessful application by L seeking mandatory injunction requiring demolition of buildings erected by H unsuccessful counterclaim by H for order modifying covenant under s 126G Property Law Act 1952 (PLA) - L and H were neighbours on rural-residential properties which had been subdivided from a large farm both properties had restrictive covenants stipulating parties were not to use land for any purpose other than private residential purpose and parties were not to erect buildings for commercial use - previous owners of H's property operated an accommodation lodge and obtained resource consent in 1993 which limited number of guests to 20 and imposed restrictions on sale of liquor H built extensions to accommodation lodge in 2000 and held a wedding with 250 guests and a live band in contravention of 1993 resource consent and restrictive covenant - H successfully sought an extension on 1993 resource consent in 2001 which permitted H to hold conferences, garden tours, weddings and receptions for up to 12 people - H argued Court should modify covenant on grounds intensity of subdivisions in neighbourhood had changed nature and character of neighbourhood - L argued there had been some development in area but submitted character of area remained one of rural ambience and general absence of commercial activity - L argued H's actions furthermore led to a diminution of L's property value.

Held, this is not an appropriate case for an injunction for demolition of H's buildings on grounds building could be used for non-commercial purposes - in terms of restrictive covenant, enforceability of covenant and fact of its breach are accepted under s 126G(1)(a)(ii) PLA Court may modify or partially extinguish a covenant if it is satisfied there has been a change in character of a neighbourhood since creation of covenant on evidence there has been no relevant change in character of neighbourhood since creation of covenant - loss of value to I's land combined with other detriments including noise, visual effects, and increase in traffic substantially injure L in terms of modification, H accepted she was aware of restrictive covenant when she purchased property and proceeded to ignore and operate outside terms of resource consent Court is not prepared to exercise discretion in favour of H where H has knowingly breached covenant in past however Court exercises discretion to allow H to operate business premises in terms of 1993 resource consent application for injunction restraining H from further breaching covenant granted - application for injunction to demolish building dismissed - application to modify covenant dismissed.

High Court

Professions and trades
Lawyers
Rights and privileges
Discovery

Nathan v Dollars & Sense Finance Ltd 10/11/03, Master LANG, HC Auckland M15-IM02

Successful application by N for non-party discovery against solicitor T - N's son forged N's signature on a mortgage and thereby provided security over N's property to D&SFL son used those funds to purchase a shareholding in a company SHL which owned and operated a tavern business N sought orders that mortgage be reopened and that it be set aside pursuant to Credit Contracts Act 1981 and that an order be made removing mortgage from title to her property loan monies were paid to trust account of Auckland solicitor T and were held to credit of D&SFL thereafter funds were transferred by way of journal entry to credit of company called Further Developments Limited ("FDL") - FDL directed sum of \$35,000 be credited back to trust account of D&SFL N submitted that documents held by T would assist her in her endeavour to obtain a complete understanding of circumstances surrounding disposition of loan monies - T submitted that documents were covered by legal professional privilege and that even if they were discoverable Court would not require them to be produced for inspection on that ground alone - T submitted that Court should not make order requiring him to list documents because such an order would be pointless as they were not required to be produced T submitted that no order

should be made unless he could be assured that his reasonable costs and disbursements in complying with order would be met by N.

Held, documents would clearly be relevant because they relate directly to manner in which funds were disbursed immediately after they were advanced by D&SFL documents are also necessary on basis that T is realistically only person who can provide them there should be discovery of all categories of documents - any claims relating to legal privilege can be considered once list of documents has been filed - however in order for issue of T's costs to be considered both by counsel and Legal Service Agency application is adjourned part-heard application adjourned.

High Court

- Civil procedure
- Injunctions
- Real property
- Lease

Lal v Round Tower West Ltd, 10/11/03, Laurenson J, HC Auckland CIV5960-03

Successful application by L for interim relief pending substantive hearing of application for relief against forfeiture of lease - L leased premises and entered into agreement of sale and purchase of its fruiterer's business with third party ("P") - agreement provided L would leave \$75,000 in business which was to be repaid by 103 weekly payments of \$500 - agreement was varied orally so lease was not assigned and remained in I's name - lease was to be assigned when P had repaid advance of \$75,000 - lessor of premises sold to RTWL and provided RTWL with copy of lease - RTWL visited P and ascertained P had purchased business and had taken assignment of lease - RTWL concluded P was a monthly tenant when P said lease had not been assigned P's solicitors wrote to RTWL's solicitors denying there was monthly tenancy and confirmed P's right to renew lease as purchaser and assignee of business - I's solicitors wrote to RTWL's solicitors confirming sale of business to P and indicated an intention to formalise lease document - L's solicitor's wrote to RTWL's solicitors advising P had cancelled purchase agreement and L was running business same day RTWL went to property with intention of re-entering on grounds P was in rent arrears of \$9,000 - RTWL denied L was lessor on grounds it understood P had taken an assignment of I's lease - L sought immediate possession of property when he was prevented from entering premises in which there were shop fittings and rotting produce - RTWL was due to sell property on condition tenancies on property were monthly.

Held, Court is unable on evidence to make realistic assessment of relative strengths of each case - RTWL's difficulties in relation to its purchaser will not be compounded if L is granted interim relief against forfeiture - RTWL is to grant L immediate possession

of premises and RTWL is to refrain from interfering with Is business - application granted.

Court Of Appeal

- Insolvency
- Debts
- Real property
- Mortgages
- Taxation
- Goods and services tax

Rob Mitchell Builder Ltd (in liquidation) v National Bank of New Zealand Ltd, 26/11/03 CA16/03

Unsuccessful appeal by RMBL against High Court ("HC") decision that full sale price be paid to mortgagee NBNZL. RMBL entered into conditional agreement to sell property for which it had a mortgage with NBNZL. Liquidators completed sale when RMBL was placed in liquidation and amount secured exceeded sale price. NBNZL took no steps to enforce its security whether all proceeds of sale should be paid to NBNZL, or RMBL should retain GST component of sale price to pay GST owed despite sale agreement occurring before liquidation. RMBL submitted supply was after liquidation and decision to proceed with sale was not only obligation because Court had discretion to refuse to make decree of specific performance in favour of purchaser. RMBL also submitted s 98(2) Property Law Act 1952 (PLA) required GST liability of company to be treated as expense of sale.

Held, supply occurred before liquidation, there was no new supply when liquidators decided to proceed with sale as they were merely recognising obligations - if discretion of Court was relevant to when supply occurred there would never be supply before vendor's decision to settle - s 98(2) PLA does not require that GST liability be treated as expense of sale for number of reasons including fact it does not operate until moneys in dispute are received by mortgagee. appeal dismissed.

High Court

- Real property
- Caveats

Haycock v Robinson 11/11/03, Master Faire, HC Hamilton CIV20034191344

Adjournment of application by H for order that Caveat lodged against Certificate of Title not lapse - R had made application to Registrar of Lands for caveat to lapse but Registrar had not lapsed caveat. R submitted that caveat had lapsed because application was not filed in Court within prescribed period.

Held, whether or not caveat is lapsed by effluxion of time cannot be determined on material placed before Court - no precise evidence of receipt of notice by caveator from District Land Registrar for purposes of s 145A Land Transfer Act 1952 has been presented - it is not possible to conclude that this caveat has

lapsed as it remains on the title - order is made that caveat B53118.1 not lapse pending further order of Court - application adjourned orders accordingly.

High Court

- Civil procedure
- Real property
- Caveats

Re Silverwood Forest Corporation Ltd; Alt cit Silverwood Forest Corporation Ltd v Registrar-General of Land 10/11/03, Master Gendall, HC Wellington CIV-2003-485-1658

Successful application by SFCL preventing a caveat lodged against seven certificates of title owned by second respondent Whitby Coastal Estates Ltd ("WCEL") from lapsing. SFCL and WCEL owned adjacent areas of land near Wellington and in 2001 agreed to co-operate to provide reading and other infrastructural services for proposed future subdivisions on both parcels of land. SFCL lodged a caveat in March 2003 after becoming aware WCEL intended to sell land - SFCL submitted it had a caveatable interest in land and caveat was lodged to protect that interest if a purchaser from WCEL who was not a party to contract with SFCL attempted to deny access arrangements - WCEL submitted that SFCL agreed not to lodge any caveats against WCEPs titles, that delay in lodging caveat had resulted in WCEL being materially prejudiced in subdivision and marketing of its land, and that in exercising its discretion Court should let caveat lapse.

Held, SFCL has a legitimate and critical interest in preserving its agreed rights to long term access to land over portions of WCEIS land and this justifies continuation of caveat - there was no specific agreement that no caveat be lodged nor can that be implied - there are no time requirements for lodging of caveats and WCEL has failed to show it has suffered material prejudice as a result of either delay or lodging of caveat - SFCL has provided release from caveat and caveator's consent when requested and has met all related costs - an order for removal of a caveat will only be made where Court is satisfied that legitimate interests of caveator will not be prejudiced - in these circumstances any exercise of Court's discretion must be in SFCLs favour. application allowed.

High Court

- Real property
- Unit titles
- Use
- Private rights

World Vision of New Zealand Trust Board v Seal 12/11/03, Heath J, HC Auckland M1299-SD02

Unsuccessful application by WVNZTB seeking order cancelling unit plan in 1979 WVNZTB purchased section of land and made decision to erect office building on land and six residential apartments - office building was no longer suitable for WVNZTB

- WVNZTB sought to change status of land so it could deal with building free of ability of residents to veto any future development on site - residents were not prepared to yield rights of veto - WVNZTB submitted it should have autonomy to deal with its interest in land - WVNZTB also submitted that unit title structure constrained "saleability" of building residents submitted order WVNZTB sought would amount to inappropriate interference with private property rights.

Held, under Unit Titles Act 1972 (UTA) proprietors of estates have right to enjoy exclusive occupation of area, which is delineated both in horizontal and vertical terms however Court is empowered to cancel unit plan - WVNZTB can only deal with land subject to restrictions imposed by UTA in effect, application seeks to change status of WVNZTB's interest in land to enable it to obtain best possible price for land that is not sufficient justification to override interests of other proprietors - it is not just and equitable for residents to be required to comply with unilateral desires of WVNZTB - application dismissed.

High Court

- Real property
- Caveats
- Interests in land

MacMillan v Covic 25/11/03, Baragwanath J, HC Auckland CIV2003-404-5643

Partially successful application by M for a discharge of a caveat against title of his property - partially successful application by C seeking an injunction restraining M from disposing of his property without first offering C first right of refusal - matter concerned meaning and effect of a "first right of refusal" in relation to M's house property M and C owned immediately adjacent properties, occupying same certificates of title, and with long-term leases for their respective dwellings - C's argument was that a right of first refusal entailed contractual restraint on property owner from making any sale unless and until there was a third party offer competing argument was that C and M would not be concerned about presence of a third party as a primary consideration - third party offer would be machinery triggering property owner's duty to offer property to option holder at price offered - instead what option holder sought by contracting was opportunity to purchase at a fair and reasonable or market price.

Held, it would be wholly unreasonable to attribute to M and C an agreement that property would be frozen in hands of an owner prepared to take a fair and reasonable price simply because no third party purchasers are about - if price offered to C by M was a fair and reasonable one at time it was made, M was free to sell - Court orders issue of an interim injunction restraining M from disposing of property until that issue is tried order made excluding right

of refusal from caveat which will continue in force in relation to part of property required to create C's new deck - parties directed to provide memoranda as to form of injunction and other orders by way of timetable - costs reserved orders accordingly.

High Court

- Civil procedure
- Interlocutory injunctions
- Real property
- Mortgages

Grieve v City Developments Palliser Ltd 14/11/03, France J, HC Wellington CIV-2003-485-176

Partly successful application by G for interim injunction against second defendant Roseneath Holdings Ltd ("RHL") - effect of relief sought would be to prevent RHL from undertaking a mortgagee sale - G entered into an agreement for sale and purchase of part of property from CDPL who was to build a car deck extension on land and undertake other work before reselling property - property was subject to mortgage from Westpac to CDPL G took possession of land paying rental of \$400 a week - dispute arose between G and CDPL over plans for subdivision - CDPL purportedly cancelled agreement for sale and purchase three times - G remained in possession of property and had a caveat over part of property subject to sale and purchase agreement - G commenced separate proceedings against CDPL seeking specific performance of agreement for sale and purchase in which G applied for and obtained injunction to restrain CDPL from undertaking any building or excavation work or interfering with G's right to occupy property CDPL experienced financial difficulties but eventually found RHL to be an assignee - after mortgage was assigned to RHL CDPL stopped paying penalty interest - letter of default was served on CDPL by Westpac and subsequent to this RHL advised G that it would not be taking steps to prevent mortgagee exercising its right to have mortgagee sale - first claim of action in statement of claim is for an injunction to enforce remedy of default or transfer of mortgage in relation to CDPL's breach of contract and interim orders - alternative cause of action seeks a pre-judgment charging order based on CDPL's alleged failure to remedy default - G submitted that matter is to be approached on basis of whether there is a serious question to be tried and secondly on where balance of convenience lies - G submitted that there was a serious question to be tried - G submitted that there was an express term of contract that subdivision plan would comply with contract and CDPL had not provided a plan that so complied - G submitted that it was not necessary to establish a serious question to be tried against RHL if G has established a serious question against CDPL and balance of convenience requires orders sought to also bind RHL G submitted that balance of convenience strongly favoured grant of

relief sought and that there were special circumstances that justified grant of a mandatory interim injunction - CDPL submitted that relief sought was inappropriate because not only would it improve G's position, it would also amount to order which was final in nature - CDPL and RHL submitted that property was not exceptional for area, and other houses in area are available, therefore damages would be an adequate remedy for G, just as they are for other disappointed purchasers from mortgagors.

Held, there are specific problems which make some of relief sought unavailable or inappropriate - it is not appropriate for Court to make a mandatory injunction requiring CDPL to remedy its default under mortgage before a specified date - pre-judgment charging order is not available primarily because effect of G's caveat means there cannot be any "making away with property" while caveat is in place - balance of convenience is even and matter is to be determined on overall justice - position should be preserved in interim largely because of existing interim orders which were intended to preserve application for specific performance and defendants' - knowledge of orders - CDPL and RHL should have opportunity of bringing this matter back to Court at short notice and G needs to act so as to have specific performance proceedings brought on for hearing promptly - additional order is made restraining RHL from exercising any mortgagee powers of sale, entering into any contracts for sale of property whether conditional or unconditional, entering into possession of property or other similar steps pending further order of Court - application allowed in part.

High Court

Civil procedure
Joining parties
Real property
Lease

C Gibbons Holdings Ltd v Wholesale Distributors Ltd 6/11/03, France J, *HC Nelson CIV-2003-442-19*

Successful application by CGHL to review a Master's decision to adjourn application for joinder - issue in substantive proceedings is whether a sub-lease was extended to include ahead lease, if not the solicitors who acted on transaction were at fault and it was on that basis joinder was sought - current issue is whether Master was correct to adjourn joinder application until after substantive fixture - application for review was made in three grounds but only one of those, namely Master's decision, was substantively pursued - WDL submitted that application for review should not be made on grounds that Master did not decide application but merely adjourned it and that was within Master's discretion - WDL submitted that adjournment of joinder application ensured just and speedy determination of proceedings - WDL submitted that application for review was invalid as it was not

signed by either solicitor or counsel of CGHL and a fresh application would be out of time.

Held, concerns prompting Master's decision and WDLs opposition to application for review are real ones - concerns were not such that CGHLs application should be disposed of - best course of action is to remit matter back to Master for rehearing - application allowed.

High Court

Contract
Formalities
Real property
Caveats

Thomas v Winger 12/11/03, Master Lang, HC Auckland *CIV-2003-404-5784*

Unsuccessful application by T for order that caveat not lapse - T rented property from landlord ("W"), who came to rely on T's support and friendship while he was dying - W left provision for T in his will which directed W's trustees to permit T to reside in one of properties in complex for rest of T's life or until estate was distributed - when it became apparent W's trustees wished to sell property, T entered into negotiation to buy property - after extensive correspondence between trustee ("S") and T's lawyer ("DT"), S emailed DT stating trustees "are prepared to accept the price of \$910,000" but pointed out parties were still some distance apart from agreeing to value of life tenancy which was to be deducted from purchase price - trustees of W's estate entered into agreement to sell property with third party but were prevented from completing sale because T had a registered caveat against title - T argued he was entitled to maintain caveat on grounds email created binding agreement with trustees for sale and purchase of property whether it is arguable that a binding agreement came into existence.

Held, S's email response to DT's offer was not an unequivocal acceptance of terms of offer in writing but was expressly limited to an acceptance of market value being set at \$910,000 - offer did not mention important issues including proposed settlement date or amount of deposit - S did not accept terms contained in offer and binding agreement was not created - evidence suggests DT and trustees proceeded on basis neither would become bound until each had signed written agreement setting out terms of sale - T did not have caveatable interest in property and caveat should not be permitted to remain on title - application dismissed.

High Court

- Real property
- Joint title

Clouston v Cocker 5/12/03, France J, HC Nelson *CIV-2003-442-17*

Successful application by plaintiff CI for an order for partition or sale of a property - CI and respondent Co were each owners of an undivided half share in property - in an earlier judgment CI obtained judgment against Co - CI was entitled to a three quarter beneficial interest in value of property - CI now applied under s 140(1) Property Law Act 1952 (PLA) for an order for partition or sale of property and an order for division of proceeds of sale - Co stated that he would like to buy property - Co argued he should be entitled to use process under s 140(3) PLA which foreshadowed another interested party in purchasing property and allowed Court to order a valuation of property for that purpose.

Held, Us argument that s 140(3) PLA is inapplicable is correct for two reasons - s 140(3) PLA is "independent" of s 140(1) PLA and s 140(2) PLA - a party, like CI, may apply under s 140(3) PLA but where they have not done so, s 140(3) PLA is not relevant - no good reason for not ordering a sale and an order will be made accordingly - this is a situation where an order should be made giving one party first option to purchase within a set time frame and then, if not exercised, giving same option to other - best means of balancing interests is to order sale on open market to be conducted by Registrar of High Court, which is stayed for one month to allow parties to attempt to negotiate a purchase of property in meantime - as requested, no order is made at this time as to distribution of proceeds of sale of property - costs are reserved in part - orders accordingly.

LEGISLATION

Acts

Ngati Tama Claims Settlement Act 2003 (Assent No 2003-126)

This Act was assented on 25/11/03.

Regulations

Land Transfer Amendment Regulations (No 2) 2003 (Sr2003/274)

These regulations, which come into force on the 30 October 2003, amend the Land Transfer Regulations 2002 to enable deposit documents under the Land Transfer Act 1952 to be lodged with the Registrar electronically.

The amendment effectively provides for the electronic lodgement of territorial authority approvals of survey plans. The requirements are that the deposit document:

- has been prepared in an electronic workspace facility approved by the Registrar; and
- is in a form acceptable to the Registrar; and
- contains or is associated with any required certification or approval given under the Resource Management Act 1991 or the Unit Titles Act 1972 by the relevant territorial authority.

Real Estate Agents Audit Amendment Regulations 2003 (SR2003/282)

These regulations, which come into force on 1/01/04, amend the Real Estate Agents Audit Regulations 1977 to permit more flexibility in the way that money may be withdrawn from the trust account of a real estate agent. Currently, withdrawals may be made only by means of a cheque. The amendment permits withdrawals to be made by direct transfer to a bank account, by cheque, or by crediting the trust account of another client of the real estate agent. If a withdrawal is made by electronic transfer to a bank account, the real estate agent must retain a bank record of the transfer.

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Contributors Name & Firm

Location of Costing

Date

Type of Costing (please circle)

Residential

Rural

Commercial

Industrial

Type of Construction (i.e. House/Flats/Office/Shed etc)

Construction Details

(If insufficient space please continue on separate sheet)

Areas

Contract Price (Excluding GST)

Analysis

Element Floor Area

Cost/M2 Modal

Multiple

Notes

Costings

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Waitarere Beach, Manawatu - October 2002

Contributed by John Timmer-Arends, TA Valuation
Construction: 2 bedrooms, 2 bathrooms, lounge, kitchen and hallway Exposed ceilings of internal grade ply Treated ply walls with zincalume highlights over doors and windows. Treated timber piles and Coloursteel roof. Aluminium windows.
Areas: 140.9m²
Contract Price: \$109,480 (excl. GST)
Analysis:
Total: 140.9m² \$777/m² Modal Rate: \$925
Multiple: 0.84
Notes: Price excludes front steps. Golden Home.

Rangiora, Canterbury Westland Hip Bungalow, August 2002

Contributed by Denis J Milne, North Canterbury Valuations
Construction: 4 bedroom, 2 bathroom with integral double garage on a flat site. Construction of concrete floor, BV walls, double galvanized joinery and Monier tile roof.
Areas: 147.90 m²
Net Contract Price: \$137,292 (excl. GST)
Analysis:
Total: 147.90m² Net Modal Rate: \$656.40
Notes: Country build factor 1% of contract price per 10km. The factor from the main centre is 30km and is 4,097. House is constructed by Golden Homes.

North Shore, Christchurch Executive Dwelling, August 2002

Contributed by Denis J Milne, North Canterbury Valuations
Construction: 2 storey executive dwelling, 4 bedroom and study with integral double garage on a flat site. Construction of concrete floor, Hebel and Linea exterior cladding with Monier tile roof. Include tiling and 3 WCs.
Areas: 221.27m²
Net Contract Price: \$247,191 (excl. GST)
Analysis:

Total: 221.27m² Net Modal Rate: \$793.26 Notes:
Country build factor 1% of contract price per 6km. The factor from the main centre is 30km and is 1,410. House is constructed by Golden Homes.

Southbridge, Canterbury House, October 2002

Contributed by Bill Patterson, Canterbury/Westland
Construction: Concrete foundation and floor; brick veneer; Coloursteel tile roof; Coloursteel spouting; aluminium joinery; Gibraltar lining.
Areas: 207.057 m²
Net Contract Price: \$149,689 (excl. GST)
Notes: More detail on some costs and list of materials used in construction available from NZPI head office.

Rangiora, Canterbury Westland December 2002

Contributed by Denis J Milne, North Canterbury Valuations
Construction: Basic 3 bedroom single bathroom, hip roofed bungalow with attached double garage having internal entry. BV with Coloursteel roof, lacks any fixed heating.
Areas: 113.68 m²
Net Contract Price: \$105,801 (excl. GST)
Analysis:
Total: 113.68m² Net Modal Rate: \$659.91
Notes: Country build factor 1% of contract price per 10km. The factor from the main centre is 30km and is 4,199 including architect/draughting fees. Built by Versatile Buildings.

Waihi, Waikato August 2002

Contributed by Maria Stables-Page, Jim Glenn Valuers
Construction: Concrete piles, fibrolite exterior cladding, Dutch gable iron roof. Open plan kitchen/living area, 2 bedrooms, 1 bathroom, separate WC, laundry and hall.
Areas: 82m²
Contract Price: \$81,334 (excl. GST)
Analysis:
Dwelling: 82m² \$933.34/m² Modal Rate: \$925
Multiple: 1.01
Deck: 3.6m² 180/m²
Notes: Keith Hay Homes. The Buchan (Classic) design. Contract price excludes carpet and vinyl.

Ngatea, Hauraki Plains May 2002

Contributed by Maria Stables-Page, Jim Glenn Valuers
 Construction: Concrete pad to brick veneer exterior cladding, multi hip Monier tile roof. Open plan kitchen/dining area, family room, formal lounge, 4 bedrooms, bathroom, ensuite, hall and garage.

Areas: Living 163.2m2
 Garage 43.8m2

Contract Price: \$155,480 (excl. GST)

Analysis:

Total: 207m2/ 845m2 Modal Rate: \$925

Multiple: 0.81

Notes: A Golden Home Danya. Above average quality kitchen, two ranch sliders, lounge and dining area have bay window style walls. Automatic garage door with 2 remotes.

Kerepehi, Hauraki Plains November 2002

Contributed by Maria Stables-Page, Jim Glenn Valuers
 Construction: Concrete pad to brick Coloursteel weather board pre-painted Superclad 300 exterior cladding and a split gable pre-painted 6 rib galvanized iron roof. Open plan kitchen/living area, laundry! bathroom, 2 bedrooms and additional living area.

Areas: Dwelling 56.2m2
 Verandah 5.4m2

Contract Price: \$53,600 (excl. GST)

Analysis:

Dwelling: 56.2m2/ 957m2 Modal Rate: \$925

Multiple: 1.03

Notes: Riverside Versatile Cottage. No interior painting in price.

Ashley, Canterbury Westland Ranch Style Hip Bungalow, December 2002

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 4 bedroom, 2 bathroom bungalow with integral double garage on a small rural residential block. Well-appointed dwelling of BV walls and C/S roof.

Areas: 190.38 m2

Contract Price: \$208,225 (excl. GST)

Analysis:

Total: 190.38m2 Net Modal Rate: \$733.74

Notes: Included in the contract price is the country build factor 1% of contract price per 10km which is 6,597 and the architect/draughting fees are 1,833.

Belfast, Canterbury Westland Hip Roof Bungalow, November 2002

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 4 bedroom, 2 bathroom with integral double garage on a level site. Concrete floor, brick veneer cladding and concrete tile roof.

Areas: Total 147.91 m2

Contract Price: \$148,058 (excl. GST)

Analysis:

Total: 147.91m2 Net Modal Rate: \$708.53

Notes: Included in the contract price is the country build factor 1% of contract price per 10km which is 1,650 and the architect/draughting fees are 2,750.

Built by Jennian Homes. Standard plan by Group builder with gas heating, as appliances 5,500 kitchen.

Rangiora, Canterbury Westland December 2002

Contributed by Denis J Milne, North Canterbury Valuations

Construction: Superior 4 bedroom dual serviced hip bungalow with integral double garage situated on a farmlet. Brick veneer walls with corona shakes roof.

Areas: 238.9 m2

Contract Price: \$241,482 (excl. GST)

Analysis:

Total: 238.9m2 Net Modal Rate: \$704.98

Notes: Included in the contract price is the country build factor 1% of contract price per 10km which is 6,855 and the architect/draughting fees are 4,570.

Costs include septic tank. Private builder.

Canterbury Westland Executive Gable Bungalow, February 2003

Contributed by Denis J Milne, North Canterbury Valuations

Construction: Zinalume and Rockote walls with Zinalume roof. 4 bedroom, 3 bathrooms and superior fittings, double-glazing and gas/electric. Attached double garage.

Areas: Total 153.71 m2

Net Contract Price: \$173,631 (excl. GST)

Analysis:

Total: 153.71m2 Net Modal Rate: \$715.27

Notes: Country build factor 1% of contract price per 10km. The factor from the main centre is 30km and is \$5,110. Architect and draughting costs are \$4,259. Both the country build factor and architect/draughting costs are included in the net contract price. House is constructed by Golden Homes.

Christchurch, Canterbury Westland Hip Bungalow, March 2003

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 3 bedroom dual bathroom with integral double section, set on a flat site. Constructed of brick veneer and Monier tile roof.

Areas: Total 114.60 m2

Net Contract Price: \$124,600 (excl. GST)

Analysis:

Total: 114.60m2 Net Modal Rate: \$697.91

Notes: Country build factor 1% of contract price per 10km. The factor from the main centre is 4km and is \$480 and is included in the net contract price with the

draughting and architecture fees of \$1,200. Built by Stonewood Homes to the Da Vinci design.

Northwood, Christchurch- Hip Roofed Bungalow, February 2003

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 4 Bedroom, dual bathroom, Hip roofed Bungalow with integral double garage, BV walls with double-glazing and tiled roof.

Areas: 143.98m²

Contract price: \$152,169 (excl. GST)

Analysis:

Total: 143.98m² Net Modal Rate: \$725.01

Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 10km, and the allowance for architecture/draughting fees is \$1,541. The contractor was Homcastle Homes- "Ludlow".

Fernside- Hip Roofed Bungalow, July 2004

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 4 Bedroom, 2 Bathroom, Hip roofed Bungalow with integral double garage situated on a level site at Woodend. Brick veneer with conc. tile roof and double-glazed.

Areas: 146.40m²

Contract price: \$148,150 (excl. GST)

Analysis:

Total: 146.40m² Net Modal Rate: \$699.72

Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 28km. The allowance for architecture/draughting fees is \$1,476. Golden Homes Building were the Contractor.

Rangiora- Hip Roofed Bungalow, October 2003

Contributed by Denis J Milne, North Canterbury Valuations

Construction: Hip roofed bugalow with Integral double garage to be built on a level site just outside Rangiora. Concrete floor with Insulclad wall and concrete tile roof. Areas: 180.93m²

Contract price: \$200, 717 (excl. GST)

Analysis:

Total: 180.93m² Net Modal Rate: \$782.83

Notes: Country build factor 1 % of contract price per 10km. The distance from the main centre is 32km, and the allowance for architecture/draughting fees is \$2,034. House constructed by Stonewood Homes and modified by Dallington Design.

Fernside- Hip Roofed Bungalow, January 2004

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 4 Bedroom, 2 Bathroom, Hip roofed Bungalow with internal access double garage. Situated on a flat site at Fernside. BV and C/Steel roof.

Areas: 146.66m²

Contract price: \$172,271 (excl. GST)

Analysis:

Total: 146.66m² Net Modal Rate: \$778.52

Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 35km, and the allowance for the architecture/draughting fees is \$1,718. House constructed by Builder Today Homes.

Waikuku- Hip Roofed Bungalow, January 2004

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 4 Bedroom, dual bathroom Hip Roofed Bugalow with integral double garage. Constructed of concrete floor slab, Rockote walls and Coloursteel roof.

Areas: 163.54m²

Contract price: \$173,537 (excl. GST)

Analysis:

Total: 163.54m² Net Modal Rate: \$745.73

Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 30km, and the allowance for the architecture/draughting fees is \$1,852. House constructed by Stonewood Homes.

Woodend- Hip Roofed Bungalow, January 2004

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 3 bedroom, dual bathroom, Hip roofed Bungalow with integral double garage erected on a flat site at Woodend. Conc. Floor 70 series BV and Col. Steel roof.

Areas: 154.98m²

Contract price: \$150,771 (excl. GST)

Analysis:

Total: 154.98m² Net Modal Rate: \$709.00

Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 26km, and the allowance for the architecture/draughting fees is \$1,591. House constructed by a private builder.

Ohoka- Superior Dwelling, February 2004

Contributed by Denis J Milne, North Canterbury Valuations

Construction: 1 1/2 storey superior dwelling with integral double garage, situated on a flat rural residential block at Ohoka. Concrete floor, hebel walls, metal tile roof and double-glazed ext. joinery.

Areas: 260.27m²

Contract price: \$324,030 (excl. GST)

Analysis:

Total: 260.27m² Net Modal Rate: \$916.27

Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 26km, and the allowance for the architecture/draughting fees is \$3,047. House constructed by David Reid Homes Ltd.

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