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Property Journal

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# NZ Property

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 lfagship 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 \$15,000 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, BBQ's 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) PRRES (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

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# 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 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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# *Property* INSTITUTE 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
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   excellence
- Provides networking opportunities
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- Provides The PROPERTY Business 6 times a year in partnership with AGM Publishing
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- 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
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# EDITORIAL

If people continue to be our most important asset then the built environment, and its management, are among our greatest tools. This is so often underestimated by many in management and the business sector.

Property is often the biggest item on the balance sheet. The employment and retention of skills is often the biggest item in the Profit & Loss, followed by the operational costs of property. The two are so connected

With intense competition for skills, exponential technology change, a drive for productivity and new and very challenging attitudes coming into the work force from the next generation, the importance of the work environment and its management has never been greater.

Expectations have skyrocketed, which has not only created challenges for relationships at all levels, for work life balance, but also the built environment and its management.

Through all of this we should not forget the simple fact that if humans were trees, they would want to be part of a forest. We don't like to be isolated.

Whatever the virtual world may offer us, my generation still want built environments within which we can come into contact with real human beings. While this may change over time, we still need to ensure that we adapt and manage our built environments to meet ever changing human needs.

As always this edition of the journal covers a range of topics. From the performance of buildings in use, valuing energy efficiency in New Zealand, the environmental stigma or property value enhancement to an index for investor housing. As always this edition provides something for everyone.

I have been the editor of The New Zealand Property Institute journal since 2000 and it is now time a fresh perspective. I am looking for someone to pick up the torch and continue to develop this publication. Individuals wishing to do so should contact Dixon Opie at the head office of The New Zealand Property Institute.

But for now I hope you enjoy this edition, and as always, any feedback, suggestions or contributions are most welcome.

Kindest regards

Conor English

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# Valuing energy efficiency in New Zealand

#### Abstract

A number of recent legislative and policy initiatives by the New Zealand government will require more attention to energy efficiency in housing and commercial property development. Those initiatives are more likely to be embraced if they are perceived to add value. We surveyed the opinions of valuers throughout New Zealand, in order to gain an understanding of current problems when attempting to value energy efficient design and construction. Potential issues include the impact of district plan provisions, identification of those add-ons most likely to increase value, and changes to valuation practice that could arise if energy efficiency becomes more regulated in the building industry. We conclude by discussing legislative initiatives elsewhere in the world that provide for mandatory disclosure of energy efficiency ratings in the sale of residential housing, and the applicability of a similar approach to the New Zealand housing market.

## Introduction

Although the approach adopted by the New Zealand government has so far favoured a mix of voluntary incentives and other economic instruments, there is little doubt that there will be stricter regulation in the very near future to further promote energy efficiency and conservation. A tighter regulatory regime is clearly signalled by proposed amendments to the *Resource* Management Act 1991, as well as by a complete revision of the Building *Act 1991*. The changes will provide much greater power for local authorities to consider the effects of energy efficiency when granting resource and building consents.

It is very easy to over-regulate environmental protection, however. If undertaken without sufficient planning, it can result in undesired effects, including the risk of inefficiency when imposing uniform standards, a race to the bottom within those standards, and the strong possibility that compliance will be resisted if control or abatement costs are perceived to be too high (Warren 1999). This is especially so in the building industry, where the costs of energy efficient add-ons will be heavily scrutinized, and possibly produce adverse effects on market prices.

An alternative, more pragmatic view is that energy efficiency represents an opportunity to enquire about the value that it may bring to the property market. This paper is an attempt to frame and narrow issues associated with that enquiry

## Current energy efficiency initiatives

The government appears to recognise that imposition of an early regulatory approach is likely to result in the emergence of the difficulties mentioned above. Consequently, it has adopted an initial approach to energy conservation that emphasises business selfregulation and voluntary agreements (discussed in more detail by Richardson 1999). The main initiatives undertaken so far that relate to energy efficiency in building construction include the following:

National Energy Efficiency and Conservation Strategy ("the Strategy")

The Strategy was launched in September 2001, pursuant to the National Energy Efficiency and Conservation Act 2000. Its key policy directives, as set out in the 2000 Energy Policy Framework, are to continue to improve energy efficiency (including a national goal of 20% improvement in economy-wide efficiency by 2012), as well as a progressive transition to renewable forms of energy. The only direct reference to building form in the goals that accompany the policy directives is the desirability of promoting energy efficient homes so as to "reduce energy deprivation and improve occupant health and welfare" (www. eeca. govt.nz/default2. asp). This is almost certainly a leftover provision from the "leaky buildings" scandal that rocked the New Zealand building industry when the problem first emerged in 2001.

The Strategy contemplates integrating sustainable energy outcomes into local and regional plans, as one of five "action plans" that outline how the

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Strategy goals are to be achieved. Local councils will be informed by best practice design standards that will apply to new buildings and building operations, as well as by amendments to the Building Act and Building Code. These are contained in another action plan that relates to the EECAs Building and Appliances Programme.

Housing New Zealand insulation upgrade programme

According to Housing New Zealand (www.hnzc. co.nzlaboutus/inititatives/energyhtm), this programme resulted during 2002-3 in the retrofit of more than 2600 homes constructed before 1977 with a variety of insulation upgrades. The programme aims to complete energy efficient upgrades in all remaining pre-1977 HNZC homes during the next decade, sourced primarily via Work and Income New Zealand. EnergyWise Solar Water Heating Grants This was a cash-back scheme that was floated in February 2004 to allow home purchasers to take out a loan (minimum term 12 months) to purchase a solar panel between 2 and 7 sq. in. The panel must cost at least \$2,500 and needed to be installed before 30 June 2004 (www.solarsmarter.org.nz).

EnergyWise Home Grants

The government set aside \$3 million dollars in 2003/4 for residential retrofit projects. Grants are available to organisations or individuals for insulation upgrades in homes currently occupied by lower income groups. In the past, similar schemes have been claimed to improve health and reduce illnesses, including asthma and arthritis linked to cold, damp houses (www.beehive.govt.nz/viewdocument. cfm?documentID=16674).

ZALEH (Zero and Low Energy Housing) A programme funded by the Foundation for Research, Science and Technology, ZALEH's aims include identifying those technologies that can take New Zealand towards zero energy housing. The research is coordinated by the Building Research Association of New Zealand (BRANZ), and involves other educational and commercial service providers (www.arch.vuw ac.nz/students/scholarships/research\_proj ects\_ examples\_2004.pdf).

## HEEP

A project run by BRANZ, the Household End-use Energy Project is an on-going investigation into how energy is actually used in households. Future studies will include commercial buildings, with an overall goal of determining benchmarks for performance standards (www eeca.govt.nz/content/EW\_news/79oct/HEEP.htm). WHEC

The Warm Home Energy Check is an assessment mechanism operated by Environment Canterbury within its Clean Heat Project, to give effect to that regional council's policy of promoting efficient energy use. The CHP was initiated to address particular air pollution problems in Christchurch caused by burning solid fuel. A WHEC assessment is available to the general public at a cost of \$99. It consists of an inspection to assess house orientation, construction, type and extent of insulation, draught proofing, glazing area and type, as well as hot water heating and cylinder type. A certificate is issued that includes a points total for the property and an energy rating.

# Survey of valuer opinions

In theory, there is nothing to prevent the valuation of energy efficiency in residential or commercial buildings. Hedonic pricing or other multivariate approaches can be used to tease out the value of an environmental good from the underlying matrix of attributes that collectively drive the ultimate selling price (see, e.g. Schechter 1995). The problem with this approach is that it is costly, time consuming, and assumes that buyers are rational. This means that they see perceived value in the environmental good for which they are paying. However, rational decision making about energy efficient features may be difficult, in the absence of a level playing field regarding the ability of consumers to obtain good working knowledge about current energy technologies and standards.

Because no purchaser is likely to pay more for energy efficient features merely because it makes them feel good about the environment, we were prompted to consider what sorts of factors *could* enter into a decision-making matrix. To answer this question, we prepared a survey questionnaire that asked a number of questions about energy efficiency valuation, and sent it in April 2004 to 39 valuers in the five largest New Zealand urban centres. The major themes emerging in the 16 surveys that were returned are presented below.

Planning documents are not yet a factor None of the valuers we surveyed referred to any provisions in regional or district plans that guided their decisions about valuing energy efficiency. This contrasts with a study commissioned by the Ministry for the Environment (Allan & Campbell 2003) which found that a number of key regional councils have well-developed policies in place related to energy efficiency and the development of renewable sources of energy. Energy efficiency policy is lacking in most district plans, with the exception of a few plans identified in the study by Allan & Campbell (2003) that include provisions for energy efficiency in new subdivision layouts. This view was supported by our survey of valuers' opinions. The situation may change as the EnergyWise Councils Partnership Program develops, which aims to liaise EECA objectives with local authority programmes.

Energy efficiency is rarely considered when valuing residential and commercial properties.

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Actual examples that were reported include saleability of residential dwellings with double glazing, and new versus old air conditioning in commercial buildings. Although of peripheral interest to energy efficiency, one valuer pointed out an example of possible valuation in an environmental context. It concerned a valuation survey of housing near a municipal airport, where district plan rules require that new houses have extra sound insulation. That survey provided anecdotal evidence demonstrating how a rule in a district plan that is related to the environment (i.e. noise) could impact on increased valuation for new residential dwellings built in accordance with the environmental rule. Extra sound insulation in this case did not result in any increase in value.

Energy efficient add-ons can be a factor in valuation, although they are context sensitive Such features include double glazing, insulation in excess of that required by building law, passive solar design, photovoltaic solar panels, and solar heating systems (particularly for swimming pools). Valuers' opinions were equivocal. Double glazing might or might not increase value, for example, because it is location dependent. In particular, residential valuation seems to be focused on purchasers' individual comfort, and is valued accordingly by them. In addition, while one would expect features that result in greater energy conservation to be valued more highly in colder climates, we were unable to find any evidence that such is the case in New Zealand.

# Add-ons increase value 1-5%

All but one of the valuers indicated that investment in energy efficiency would result in an increase in value of no more than 5%, although they were reluctant to provide a firm answer in the absence of other particulars. One valuer went so far as to ballpark a 50% value of the cost of any item. Solar panels to supply a hot water system that cost \$4000 would therefore fetch added value of \$2000 on re-sale. The most problematic feature to value appears to be passive solar design. It tends to occur in high-end housing, where it is difficult to differentiate the value of energy efficient add-ons, versus the amenity values in more expensive housing that prompts a purchaser to consider buying one in the first place.

# Energy efficiency is problematic for tenanted properties

The majority of commercial/industrial properties are built and purchased for tenants. The general principle regarding commercial buildings is that the income stream drives the value. Although one would therefore expect a higher rent if tenants value energy features, in fact most such buildings are constructed to minimum specifications. Because tenants are motivated by price, they are likely to be reluctant to pay any extra rent to cover superior amenities.

#### Other factors

We asked valuers whether any changes to current valuation practices would be necessary in order for more attention to be given to energy efficient design. A consistent theme in responses was that valuers act as commentators on the market. The market needs to pay a differential before there can be any added value for additional features. Any price differential will depend on whether the perceived benefits of improved design can be shown to have a material effect on value.

# Regulatory approaches to valuation

None of the valuers in our survey referred to the desirability of changing current valuation practice. The majority believed that education and experience will eventually result in a balance between those energy features desired by buyers in a rational market system, and those that sellers will be willing to provide. The uncertain cost of future energy remains problematic, however, as do any energy conservation commitments that the New Zealand government will develop under its Kyoto Protocol obligations.

At the end of the day, it is the market that drives valuation. To provide an impetus for market rewards for energy efficiency, which is after all largely an invisible attribute, it is not surprising to find that some countries have adopted a regulatory approach to encourage the use of energy-efficiency rating systems. One model used is the Home Energy Rating System (HERS). Florida, for example, has adopted the Florida Building Energy Efficiency Ratings Act 1993. The law was enacted in response to research that showed that new buildings in Florida were being consistently constructed to bare minimum energy efficiency standards. The law applies a voluntary rating system to all public, commercial, and residential buildings in the state constructed since 1995, so as to provide a uniform rating's scale of the efficiency of buildings based on annual energy use. The rating system determines a building's energy efficiency by comparing its projected energy use with a variety of similar buildings that range from optimally efficient to non-efficient, so as to provide a sliding scale of ratings for a number of specified energy uses, including heat, lighting, stove, etc.

Closer to home, the Australian Capital Territory has enacted the *Energy Efficiency* Ratings (Sale of Premises) Act 1997. It applies to all residential house sales in that state. The five star rating system, known as "FirstRate", captures both newer and older residential buildings under ACT's Territory Plan, created under the authority of the Land (Planning and Environment) Act 1991. Newer home designs must achieve a minimum of four "stars", which are dollar values of combined heating and cooling costs (ranging, in the case of a 150sq m home, from \$1,350AU for a zero star dwelling to \$310 for one with five stars: www.actpla.act.govau/gsd,'acthers/eer\_sell.htm). While

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existing homes don't have to meet any prescribed minimum energy efficiency rating, the legislation requires mandatory disclosure of the energy efficiency of a house in any sale advertisements. Disclosure is also required in agreements for purchase and sale. While there is some scope for vendors to provide their own disclosure details about energy efficiency, the fear of being stung with penalties as high as 0.5% of the house price in the event that they can be shown to have gotten it wrong will no doubt drive many of them to use the services of accredited assessors. Energy rating reports provide basic rating information, as well as ways of improving energy efficiency in the event that homeowners wish to seek a higher rating sometime later on.

Would a mandatory energy rating's system be desirable in New Zealand? It seems to be working in Australia. It is claimed that within a year of operation, houses in the Australian Capital Territory with 3 to 3.5 stars fetched an increase in value of \$80,000 AU, while similar houses with 2 to 2.5 stars fetched considerably less (\$37,000 AU: www.energysmarthomes.com.au/89.htm). The results of our study suggest that a rating's system, particularly the ACT model as it applies to both new and old homes, could assist in kick-starting energy efficiency measures in buildings which valuers in this country consider to be largely a moribund collection of poorly insulated, older building stock.

- Unanswered questions remain, including:
  to what extent would a HERS rating qualify homeowners for an energy improvement mortgage so as to allow them to undertake energy improvements?
- how would industry objectivity be assured, whereby energy improvement companies taking advantage of the new niche market could sell energy efficient appliances, as well as providing qualified energy raters?
- can a HERS model be extended successfully to commercial buildings?
- what would a rating cost, and would it really improve energy efficiency?

The ACT and Florida experiences suggest that there are early teething problems as rating's systems, training and certification of individuals to do the actual rating are established. There is also the risk of "fly by night" operators if certification isn't carefully monitored. The current cost in Australia, for example, ranges from \$80-180 for a typical sized home, with concomitant variability in the reliability of the results (NSW Report of Proceedings 2003).

# Conclusions

Fuelled by historically inexpensive energy bills, a relatively benign climate, and a "she'll be right" attitude, New Zealanders appear unlikely to be in the vanguard of any worldwide movement towards energy

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conservation and efficiency. As one survey participant commented, "If we can't fix leaky buildings, how can we improve on energy savings?" Another, in acknowledging that New Zealand houses are notorious for their poor insulation and dampness, wondered what most New Zealanders would think if they were forced to compare the cost in monetary terms of heating or making comfortable a standard home for its full economic life (say 100 years), versus the upfront capital cost of ensuring that the house was fully insulated to North American standards.

Because it has been shown that regulatory approaches result in a race to the bottom in terms of minimum requirements for energy efficiency (Bradbrook 2001), the government may be forced to tread a fine line between regulating to minimum standards, and relying on softer incentives that may be too weak to promote any real savings. Even with the advantages of a regulatory approach, problems remain. In particular, disclosure favours purchasers rather than vendors, as there is no requirement to obtain a rating until the owner is prepared to sell. This may place a burden on vendors otherwise uninterested in energy savings at the point of sale, an issue flagged by New South Wales lawmakers as they contemplate following ACT's example. An additional concern is that, while a higher rating should lead to lower energy use, there may in fact be an inadvertent increase in expectations of comfort levels as homeowners warm (literally) to the benefits of energy savings, such that predicted energy levels are not achieved.

Additional regulatory measures that go beyond rating schemes have been adopted elsewhere in the world, in order to encourage more than a minimum standard in savings. They include, according to Bradbrook (2001):

- mandatory disclosure of information on the type, thickness, and R-value of insulation
- disclosure of previous fuel and utility bills
- legislative provisions permitting landlords to raise rents upon completion of energy efficient upgrades in tenanted properties

Additional regulation could assist in promoting energy efficiency in commercial buildings, which are vexed with the twin problems of the pressures of commercial exigency in their construction, and the leases that generally drive their occupation. The best guess as to what mix will be adopted by the New Zealand government can be gleaned from the EECA National Strategy and its associated programmes. They include a mix of market-based initiatives, mandatory measures and targeted assistance, with a focus on improving existing housing and commercial building stock. It is likely, therefore, that some kind of mandatory ratings system will emerge, as EECA consider that that the technology for improving energy efficiency already exists, and that it is only a matter of choosing those implementation measures that will best result in its adoption.

About the authors: Richard Fisher PhD LI\_B, is a qualified Bartister and Solicitor of the High Court of New Zealand, and of the Supreme Court of Nova Scotia. He is presently a Senior Lecturer and Coordinator of the Master of International Studies (Environment) at the International Pacific College in Palmerston North. Xhin Loui Lau is a Malaysian graduate student in the MIS programme at IPC.

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# GOLD MINING ENVIRONMENTAL STIGMA OR PROPERTY VALUE ENHANCEMENT

# Abstract

Waihi Gold Company has been operating the Martha mine at Waihi, New Zealand since 1987, firstly under a licence approved on 16 July 1987, issued under the Mining Act 1971 and then under an extension granted in 1998 by the Environment Court, approved under the Resource Management Act 1991. Surface mining activities at Martha are due to cease in 2007. An application for underground mining known as Favona Project at Waihi is in the final stages of approval. That application is to extend mining activities at Waihi until 2015.

Opponents to mining activities, particularly surface mining at Martha, have argued a decrease in property values as a result of environmental stigma, among other adverse environmental effects.

Case study research on comparative residential property sales activity was undertaken to test the veracity of opponents' claims that real estate property values have been influenced by environmental stigma.

The authors compared the sales data for houses and vacant residential land at Waihi with the two neighbouring towns of Paeroa and Te Aroha over a 22.5 year period from December 1980 to June 2003, concluding that there has been a positive property value effect, a 'value enhancement', valenhance' on housing and vacant residential land values at Waihi as a direct result of the gold mining activities. Their findings support the conclusions of TelferYoung(Auckland) Limited (TelferYoung), property advisors and registered valuers. Peter Young of TelferYoung gave evidence at hearings in support of Waihi Gold Company. The positive overall effect on residential property values at Waihi may also have exceeded any potential detrimental environmental stigma effects on properties immediately adjacent to the mining.

#### Introduction

The Waihi Gold Company mine is part of the Hauraki Goldfields, a total residual resource estimated in 2004 to be 20 million ounces of gold and 87 million ounces of silver valued at \$23,863 million (Environment Court 2004). Historically, Waihi's gold strike began in 1878 and a year later William Nichol pegged out a five-acre claim and named it 'Martha' after a relative. By the mid 1880's the mine was thriving and, over its life until 1952, produced 5.5 million ounces of gold and 38 million ounces of silver by underground mining. Martha closed in 1952.

Waihi Gold Company re-established surface mining activities at Martha in 1987 and has become a significant economic contributor to the Waihi community and New Zealand (Wheeler 2003). The original application for a mining Licence under the Mining Act 1971 was approved on 16 July 1987 with mining operations commencing in 1988 and due to cease in 2000. A second application in 1997 was made under The Resource Management Act 1991 to extend mining activities until 2007. Environmental Court approval was obtained in 1998.

Opponents of mining applications at Waihi since the 1980's have cited property value loss among environmental concerns. The most recent opposition has been to Favona Project at Waihi. However, submitters in support of Favona Project also stated that the positive effects of mining would outweigh negative impacts. Favona Project will extend activities in the Waihi area until 2015/2016, and is anticipated to maintain employment levels in excess of 200 persons from 2002, as Martha diminishes in importance. Numbers will decline from 2005 to an approximately 140 person workforce at the lower level of output by 2015, when Favona Project ceases operations (Wheeler 2001). The location of the mine is shown in Figure 1.

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A detailed historical consideration of the effects of gold mining activities on residential property values at Waihi is relevant given that there is the possibility of future gold mining applications at other locations within the Hauraki Goldfields, notably on the Coromandel Peninsula 40 - 50 kilometres north of Waihi. The interim decision of the Environment Court on 30 July 2004, under appeal, required amendments to the Thames Coromandel District Council (TCDC) Proposed District Plan 'Decisions Version' to allow gold mining to be reclassified as a discretionary activity or a non complying activity in certain zones, where formerly it was a prohibited activity (TCDC 1999). The interim decision overturns the absolute prohibition on mining activities in most locations on the Coromandel Peninsula, a result successfully achieved for the Coromandel Peninsula community in the 1980's by environmental groups referred to as 'Coromandel Watchdog' or

Figure 2

Figure 1

'Peninsula Watchdog'. Their notable success in the 1980's, was the prohibition of mining on Crown land north of Kopu, near Thames.

The authors have examined the environmental effects of the Waihi Gold Company activities as measured by residential property value movements at Waihi over the 22.5 years period from 1980 to 2003, being 7 years prior to recommencement of mining activities and the 15.5 years since 1987. Residential sales data for established housing and vacant residential sites were studied over the 22.5-years period, comparing Waihi to Paeroa and Te Aroha f

- two nearby residential towns unaffected by the mining activities. The geographical location of these towns in relation to one another is shown in Figure 2.

Although prospecting recommenced in 1979 the more important dates to note possible changes in the data were 16 July 1987 when the first mining licence was issued and 1988 when the Martha mine operations recommenced, although as operations built up the effect on residential property values would likely have occurred over a longer period. The approval of the mining extension in 1998 might also be considered an important date, as the mining activity was otherwise to cease in 2001.

# Research Objectives

The overall objective by case study analysis was to determine if gold mining activities at Waihi created environmental stigma to its surrounding residential community, as measured by changes in residential property values that did not apply at the two nearby towns of Paeroa and Te Aroha.

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There were two aims of the study:

Firstly, to identify and if possible draw conclusions from the trend in residential property prices for Waihi, Paeroa and Te Aroha over a 22.5 years period from December1980 to June 2003.

Secondly, to determine whether environmental stigma applied at Waihi as measured by changes in residential property values.

Null Hypothesis. H.

The Null hypothesis to be tested is:

Environmental stigma has occurred at Waihi as a result of gold mining activities as measured by an adverse effect on residential property values.

In the event that the Null hypothesis is not supported by the case study research then there is good evidence to support the alternative Hypothesis Ha.

The mining activity which recommenced at Waihi in 1987 has had a positive impact on residential property values Or,

'Environmental valenhance' has occurred at Waihi as a result of gold mining activities as measured by a positive effect on residential property values.

# Background

R. Peter Young, of TelferYoung undertook an assessment of sales data over time and concluded that values in Waihi had increased and at a greater rate than at Paeroa and TeAroha since the mining operation recommenced in 1987, compared with the movement in property values for all three residential communities prior to 1987. A study was also undertaken by Wheeler (2001) who concluded that mining operations are an integral part of the local surrounding economies, with economic dependence on these operations and their spin-off being relatively high. Young considered that with the economic effects of mining on the Waihi urban area, it was no surprise that residential values within the Waihi urban area have increased, and that economic benefits to Waihi are likely to extend beyond 2007 when the Waihi Gold Company mine is projected to close and Favona Project continues.

The subject research has involved a detailed consideration of all residential sales data for the three towns since 1980. Independent data collation and verification was undertaken on population and dwelling occupation statistics. Personnel of Matamata Piako District Council and Hauraki District Council were interviewed to identify, and if possible confirm, economic events that might have negatively or positively influenced residential property values. The hard copy and electronic archived files of TelferYoung were made available to undertake the research.

Attempts were made to extend the study by an analysis of building permits/consent applications for new dwellings and property improvements, as measured by number and value for all three towns, but this could not be completed on a rigorous basis.

The available data did not provide an accurate match over the entire time frame.

# Literature review

Planning

The TCDC in its Proposed District Plan, Decisions Version, classified mining in all zones of the Coromandel Peninsula as either a prohibited or a noncomplying activity (TCDC Proposed District Plan 1999). This was appealed by the Ministry of Commerce (1998) and The New Zealand Minerals Association (1998). The interim decision of the New Zealand Environment Court, requiring gold mining to be reclassified as a discretionary activity or a non complying activity for certain zones of the TCDC Proposed District Plan may encourage applications for gold mining activities on the Coromandel Peninsula (Environment Court Interim Decision 2004, Kiriona New Zealand Herald 2004). The interim decision is under appeal to the High Court (TCDC 2004) and will be heard in 2005.

# Stigma

Stigma in its most literal original sense arises from the Christian reference to the characteristic distinguishing marks "...corresponding to those left on Christ's body by the Crucifixion ... " (Oxford Concise English Dictionary 1995) and the term was not necessarily intended to be a word considered only as a negative or adverse effect. Such a definition allowed a positive connotation, which in modern parlance no longer applies. Stigma has no antonym. Stigma in a general sense, may be referred to as: "...something that is to be shunned or avoided not only because it is dangerous but because it overturns or destroys a positive condition, signalling that what was or should be something good is now marked as blemished or tainted" (Kunreuther et al 2001).

When used in relation to property, the term stigma is not used consistently. Various definitions have emerged relating to types of stigma. Chalmers and Roehr, (1993) in extending the work of Pachin (1992) refer to stigma as "...the impacts on value stemming from the increased risk associated with the property and the effect of this on marketability and financeability" Examples of stigma, likely to have an impact on property value, include noise, soil contamination, dust, water contamination, aesthetics and land stability.

Public perception is recognised as an important factor in the assessment of property value. "...all the factors that have an influence on a property's desirability and therefore its value are traced back to the market's perceptions ... "," ... needs, tastes, fears, sensitivities, desires and anticipations..." (Bell 1999).

Chan provided a definition that reinforces the `risk' and 'market perception' elements of stigma: "Stigma is a value loss to property value due to the presence of a risk perception-driven market resistance" (2001)

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Bond deals with measurements and remediation of stigma and provides the following detailed explanation in a footnote to a paper on ex-contaminated land: "Stigma' is the blighting effect on property value caused by perceived risk and uncertainty. Uncertainties relate to negative intangible factors such as: the inability to effect a total `cure'; risk of failure of the remediation method; risk of changes in legislation or remediation standards; difficulty in obtaining finance, or simply a fear of the unknown." Bond provides terminology relating to 'Post-remediation stigma': "Post-remediation stigma' is the residual loss in value after all costs of remediation, including insurance and monitoring have been allowed for. It equates to the difference in value between a remediated site and a comparable 'clean' site with no history of contamination" (2001).

A commonly applied definition of stigma as it relates to property value effects is that outlined in the discussion on Leaky Home Stigma by Hargreaves & Shi citing a number of references: "A residual loss even after the completion of necessary repair as a result of increased risk or uncertainty regarding future events" (2004).

Although these descriptions of stigma relate to effects on `an environment' in one sense or another they do not specifically refer to `the environment'.

Hofbauer & Ryan (2004) examine cases, focusing on stigma damages in situations involving construction defects and environmental contamination, where diminished value caused by a negative perception of a site results in compensation for the stigma - thereby satisfying the fundamental concept that an 'injured' party must be made whole. A noteworthy early case concerning the environment was reported on by Conger (1968). The case involved damages being sought for such factors as noise and lights, resulting from the effect of air flights over residential areas surrounding an airport.

Hofbauer & Ryan also note that the public perception underlying the stigma may be unsubstantiated or unreasonable and formed purely in reaction to publicity (2004). Specific terminology has emerged, such as `technological stigma' - with the modern world's concerns about human health and ecological risks, the press and other successful communications media assist to `spread the word' about such risks, thereby imposing demands on societal decision makers (Kunreuther et al 2001).

The term 'environmental stigma' has received considerable attention in the Appraisal Journal of the American Society of Real Estate Appraisers, centring around contaminated property valuations, including reference to case study analysis, the 'detrimental conditions Matrix' and 'proximity stigma' (Jackson 2004, 2003(2), 2002, Wilson 2004, Siemens 2003, Anderson 2001, Roddewig 2000). A consideration of environmental stigma in valuation terms inevitably leads to analysis, to determine if there is a residual loss expectation.

Jackson quotes from the Standards Board (ASB) and advisory opinion (AO-9) of the American Society of Real Estate Appraisers, Table 2:

> "The Real Property That May Be Impacted by Environmental Contamination". Table 2 includes a recital of 'Specialized Terms and Definitions' including: Environmental Stigma, defined there as: "An adverse effect on property value produced by the market's perception of increased risk due to contamination. (See Environmental Risk, above.)"

Environmental Risk is defined as: "The additional or incremental risk of investing in, financing, buying and/or owning property attributable to its environmental condition. This risk is determined from perceived uncertainties concerning: (1) the nature and extent of the contamination; (2) estimates of future remediation costs and their timing; (3) potential for changes in regulation requirements; (4) liabilities for cleanup (buyer, seller, third party); (5) potential for off-site impacts; (6) other environmental risk factors, as may be relevant" (Jackson, 2003). On the matter of environmental stigma

determination the ASB is cited in Jackson:

"AO-9, Line 177 opinion cautions that the analysis of the effects of increased environment risk and uncertainty on property value (environmental stigma) must be based on market data, rather than unsupported opinion or judgment..." Methods of consideration include 'paired sales' analysis, multiple regression, control area analysis and proximity analysis, noting the possibility of multiple adverse influences and scoring (2003).

The most recent definition of stigma that tends towards bringing these considerations together is: "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" (Chan 2004)

The discussion on stigma and what it means or could mean has been outlined in some detail to indicate that the terminology as it affects property is in a state of flux but, understandably, has a wholly negative connotation. Absent from any of the definitions or terminology is an admission of the possibility that an enhancement in property values may arise from an environmental activity. The definitions of `stigma', `environmental stigma' and `environmental risk' do not admit of a positive outcome. An alternative definition of a beneficial

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outcome from activities that effect the environment is therefore appropriate. Effects based considerations should be neutral and admit of both negative and positive outcomes. In the absence of a definition the authors postulate the, admittedly, inelegant phrase `environmental valenhance' in the event that the research indicates that gold mining activities are capable of creating positive residential property value environmental effects.

`Environmental valenhance' as outlined in this paper means:

"A beneficial residual effect on property value produced by the market's perception of reduced risk due to a change to the environment causing economic benefits that outweigh the negative impact of environmental stigma"

Such a definition is akin to but not the same as the term betterment that may apply as a result of public works (Public Works Act 1981) defined as "...enhanced value (of real property) arising from local improvements" (Oxford English Dictionary, 1995). There are no local improvements with a mining activity such as those contemplated as a public work.

Mining Activity Research

Information has been readily available to the public over the years, by way of Council commissioned reports, newspaper reports and publications. An example of the information available is set out in Newmont mine commissioned economic and valuation studies, a web site with information, (Newmont, 2004).

Negative publicity may cause a sharp fall in the value of the property (Siemens 2003, McCluskey & Rausser 1999). One example of the role of the press providing particularly good reason to be wary of stigma damage is the unsupported article in the Jakarta Post (Indonesia) which reported on the government launching an investigation into `gold mining giant Newmont Mining Corporation' following reports that its operation had caused Minamata disease. A distinction must be made between scientifically assessed risk and perceived risk. The Waihi Gold Company case study is an example where the general perception by residents initially was that the mine would have detrimental

effects, whereas market based research may indicate the opposite.

Limited research has been accessed from the World Wide Web on environmental stigma having a possible negative effect on property values and the employment rate (Panhandle Health District, 1997, Coffin 1997, Hopey 2002).

Research carried out by Coffin & Sherwood for potential inclusion within an Environmental Impact Statement (EIS) highlighted the distinct lack of information on the issue of mining and its effects on property values. Supporting this claim, they describe how a number of real estate agents were contacted and none were able to identify a clear example of a mining operation having measurable effects on residential property values. Likewise, a consulting geologist, someone involved as a consultant with numerous mining operations, has never had a clear-cut case of existing or proposed mines having a measurable effect on residential property values. Coffin & Sherwood also report there being no evidence found in the marketing of homes in the residential area known as Fryeland, which is in close proximity to a mining operation, that the existence of this active mining operation had an effect on residential property values. A lake was constructed and the mining operation was not found to have a discernable effect on property values, but rather the presence of the lake appeared to have enhanced the marketability of the area (1997). This may be of significance at Waihi in the future, as a lake is the final restoration process for the Martha mine site covering an area of 29 hectares. The lake should be filled by 2012. Figure 3 conceptually illustrates the post-mining Martha Lake.

Figure 3

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Some extent of the current mining activities can be gauged from the photo in Figure 4 showing the extent of the open pit mine as it existed in December 2004. On completion of mining activities it is intended that the pit will have a depth of 150 metres.

Figure 4

Research Methodology

Data Collection and Demographic Effects Mining activity recommenced at Waihi following the Licence granted to Waihi Gold Company on 16 July 1987. Data on sales of residential properties were

Regression of sales data is recognised as a valid method of determining if environmental stigma applies (Jackson 2003, Chan 2004).

The literature discussion has identified the lack of consistency in definitions of stigma and environmental stigma as it affects property and their imprecision in the field of real estate research. The referenced terminology for stigma and environmental stigma presuppose a residual adverse outcome for research on environmental effects, which is scientifically an unreasonable position without admitting the possibility of a residual positive effect, however unlikely this may be from an intuitive perspective. Rather than add a further definition of stigma the authors propose an inverse definition to the terminology of the Standards Board of the American Society of Real Estate Appraisers, the terminology of Environmental Valenhance that recognises a potential positive outcome, noting that there is no conclusive evidence that mining has a negative impact on surrounding residential property values.

collated at 6 monthly interval over a 22.5 year period from 1980 to 2003, a time period that includes 7 years sales data prior to mining recommencing and 15.5 years since recommencement, approximately 16 years after the activity would have been in the `market perception'.

Sales data were accessed through TelferYoung who retained original sales records data obtained from Valpak and Headway Systems accessed from the Local Authorities, who have an obligation to collect and record all sales transactions. The data collected included both single unit dwelling prices and vacant residential section prices for all properties sold over the 22.5 year period. House purchases and sales made by the Waihi Gold Company were identified, and where possible excluded from the analysis. Any sales involving Waihi Gold Company which have remained in the sample have been so small that their inclusion does not affect the overall results.

Demographic data on populations, population change and the number of occupied dwellings was accessed from Statistics New Zealand for each location, in order to identify the suitability of the comparisons

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in terms of population size and trends for each town. Attempts were made to access building construction and building improvements data that could be an indicator of local economic activity but this proved inconclusive. Full records of data on a consistent basis were not readily available.

Events that may have contributed to changes in residential property values other than the Waihi Gold Company activity were identified for all three towns over the 22.5 year period. One event identified was the close of the Phillips (Pve) Television factory in September 1996 at Waihi. That closure preceded the recommencement of mining activity. The major restructuring of the Public Sector from the mid 1980's under Government initiated economic restructuring, generally referred to as 'Rogernomics', was another event that affected many large and small residential communities. The Finance

Minister, Roger Douglas, was the prime instigator of economic restructuring in New Zealand under the 1984 Labour lead Government

Examples of relevant economic restructuring were the closure of the Social Welfare Department at Paeroa and the relocation of the Inland Revenue Department (IRD) from Te Aroha to Hamilton. Other examples at Te Aroha included the progressive closure of the Hauraki Drainage Board and the loss of Power Board New Zealand. At Paeroa the loss in employment was believed to be 50 100 persons, with a proportionately lower number at Te Aroha. Although the reduction in employment numbers in each of these two locations was not large their market perception effect would have been reasonably significant. With respect to Te Aroha, the impact of the IRD closure was reduced as a consequence of employees retaining their homes and commuting to Hamilton.

The most notable economic event over this period was the closure of the Phillips (Pye) Television factory at Waihi, with progressive declining employment numbers from a maximum of 450 in the 1970's to approximately 120 employees by March 1986, many of whom then took voluntary redundancy.

One would have expected this single event at Waihi to indicate a more severe adverse `public perception' effect on property values than the economic restructuring that affected employment opportunities in Paeroa and Te Aroha. However, this does not show up as a significant factor in the residential property sales data for the three towns between 1980 and 1986.

The population data does, however, indicate that a population rebound occurred at Waihi between the 1986 and 1991 census, almost all of which would be attributable to the Waihi Gold Company activities that directly employed 135 persons from 1987, with that

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number increased to 227 by 2002 (Wheeler 2001). The following figures show the changes in

Waihi, Paeroa and Te Aroha population and occupied dwellings over time (Statistics New Zealand 2004). There is a clear indication of a jump in population numbers for Waihi between 1986 and 1991. This was almost certainly as a result of the Waihi Gold Company activities.

The three towns are similar in size - with the provisional populations as at the 2001 census date being as follows (slightly varied in final data): Waihi: 4,368 people

- Paeroa: 3,810 people
- Te Aroha: 3,612 people

All three towns have experienced a population decline in the five years between the 1996 and 2001 census, this decline being slightly greater in Waihi than the other two towns. However, the figures which reflect the period between 1986 and 2001 indicate that Waihi has grown in population by 7.53% compared with declines in Paeroa (-4.66%) and Te Aroha (-3.22%). The year 1986 was approximately one year prior to mining activity recommencing in Waihi in 1987 and coinciding with the closure of the Phillips (Pye) Television factory.

The occupied dwelling numbers show a similar pattern, with Waihi experiencing a decline in the number of occupied dwellings (-0.28%) between 1996 and 2001 compared with slight increases in Paeroa and Te Aroha. The trend between 1986 and 2001, shows that Waihi's occupied dwelling numbers have increased 21.36% compared with 12.64% and 13.79% in Paeroa and Te Aroha respectively.

Table 1 is the collated data of average house and vacant residential land prices in the three towns, analysed in six-monthly periods from the six months to 31 December 1980 up to the six months concluding 30 June 2003.

In examining the prices listed in this table pre 30 June 1987 and post 30 June 1987, there is an unmistakable difference or `jump' in price at Waihi, relative to price movements that occurred at Paeroa and Te Aroha. For analysis purposes this jump has been considered over a 2-year period from the end of 1986, which preceded recommencement of mining activities up to December 1988, by which time the mine was operational.



Table 2 illustrates the same information in graphic form, as the 6-monthly increase for average house prices in each of the three towns over a 22.5-year period, highlighting the change of prices pertaining to Waihf in the 1987-1988 period.

The graph is useful as a picture in a number of ways. Primarily, it visually identifies the jump that occurred in house prices at Waihi for the period

Table 2

Property Value Increases for Waihi, Paeroa & TO Aroha <u>over the past twenty</u> three years -- Waits <u>Paeroa</u> - Te Aroha

from 1986, just prior to recommencement of mining activities, up to the end of 1988 by which time the mine was operational.

Later, around 1993 1995 there was a tailing off of property value increases for Waihi that may have indicated the onset of the uncertainty that the economic activity enjoyed by Waihi as a result of the mining activities was due to cease in 2000. However, the resource consent application applied for in July 1997 and granted in 1998 to extend the mine appears to have already been anticipated by a rebound in public confidence from 1996.

> Regression Analysis The relative increase in price from 1980 baseline for each town was analysed using linear regression. It was found that increases in Te Aroha and Waihi were significantly greater than in Paeroa (p<0.0005 in each case) and there was a significant additional jump in price in Waihi during the approximately two-year period 1987-8 (p=0.001). Due to the uncertain price dynamics of that two-year period, those two years were dropped from

the analysis. There was no evidence of change in rate of increase after 1988 in Waihi: after the jump, the rate of increase was the same as before 1986. There was

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no evidence that the rate of increase in Te Aroha or Paeroa differed after 1986 compared to before 1987. The R2 for the model was 96.8%, meaning the model with three slopes and one jump (for Waihi) accounted for 96.8% of the variation in prices relative to 1980 baselines.

The results that follow for each town can be summarised as follows:

For Paeroa the estimated increase was 5.53% (s.e. 0.09%) per six month over the 22.5 years.

For Te Aroha the estimated increase was 7.35% (s.e. 0.12%).

For Waihi the estimated increase was 9.67% (s.e. 0.56%) with an estimated jump of 50.3% (s.e. 18.3%) over the two year transitional period.

From December 1986 to June 1989, combining the jump and trend, this corresponds to an overall increase of 98.65% of the baseline price: in other words an estimated increase over 2.5 years of \$20,285. The actual price change was almost identical at \$20,514. (Table 1)

Review of Single Unit Dwelling Sales Data An `eye-balling' of the data in Table 1 identifies that a jump did occur at the time mining activities recommenced. Prior to that event the average house price at Waihi was \$45,922, clearly a lower price than the average house price at Paeroa \$52,107 and Te Aroha \$61,090.

At the end of the jump the average house price at Waihi was \$66,436 and at each of Paeroa and Te Aroha, \$63,236 and \$65,766. Relativity has been maintained up to 2003.

Another way of expressing the jump is by the increase in price of the average house at Waihi, that in one year moved upwards by 23.4% or over 2.5 years by 44.7% compared to Paeroa and Te Aroha movements over the 2.5 year period of 21.4% and 7.65% respectively

Throughout the entire seven-year period prior to 30 June 1987, the average single unit dwelling price in Paeroa and Te Aroha was considerably greater than the average single unit dwelling price in Waihi. Over most of that period, the average Paeroa and Te Aroha prices exceeded the Waihi prices by in excess of 20%, although the gap was narrowing.

In the 16-year period between 30 June 1987 and 30 June 2003, the average single unit dwelling price in Waihi exceeded the average price in Paeroa over most of that period, i.e. in 23 of the 32 six month periods. In the case of Te Aroha, prices consistently exceeded the average Waihi price from 30 June 1980 through to 30 June 1987. The 16-year period from between 30 June 1987 and 30 June 2003 continued to show average single unit dwelling prices in Te Aroha exceeding those in Waihi in all but 9 of the 32 six monthly periods. However, the Waihi house prices

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have been much closer to the Te Aroha prices since mid-1987 when mining activity commenced, rather than prior to that time.

There is no other event that would explain this movement other than the commencement of mining activities by the Waihi Gold Company. TelferYoung concentrated on the movement over one year but the jump influence is apparent over a 2.0 or 2.5 year period, there being no change in the rate of increase when the 2 years are dropped from the analysis. Regression data is printed below:

Regression Analysis: Increase-1 versus Sixmonth\_1, TeArohaSlope,...

# The regression equation is

Increase-1 = 0.0184 + 0.0577 Sixmonth\_1+0.0185 TeArohaSlope + 0.0466 WaihiSlope 0.0093 Waihichange - 0.000093 TeArohachange 0.0029 Paeroachange + 0.463 WaihiJump

Predictor	Coef	SE Coef	Т	Р				
Constant	-0.01841	0.06965	-0.26	0.792				
Sixmonth 1	0.057684	0.008663	6.66	0.000				
TeArohaSlope	0.018473	0.006820	2.71	0.008				
WaihiSlope	0.04662	0.01067	4.37	0.000				
Waihichange	-0.00932	0.01332	-0.70	0.485				
TeArohachange	-0.0000933	0.0001857	-0.50	0.616				
Paeroachange	-0.00288	0.01126	-0.26	0.798				
WaihiJump	0.4631	0.1547	2.99	0.003				
S = 0.230183 R-Sq = 96.8% R-Sq(adj) = 96.6%								

No significant change in slope once the jump is factored in

Analysis of Variance

Source Regression Residual Error Total	DF 7 123 130	SS 195.718 6.517 202.235	MS 27.960 0.053	F 527.70	P 0.000
Source Sixmonth_1 TeArohaSlope WaihiSlope Waihichange TeArohachange Paeroachange WaihiJump	e	DF 1 1 1 1 1 1		Seq SS 144.239 1.896 48.913 0.149 0.024 0.022 0.475	

# Seatterplot of Increase and Fitted Values vs Date

Variable Town • Increase Paeroa Increase Waihi FITS10 Paeroa FITS10 TeAroha FITS10 Waihi

Regression Analysis: Increase versus Sixmonth\_t, WaihiSlope,...

The regression equation is

Increase = 0.0168 + 0.0548 Sixmonth\_1 + 0.0415 WaihiSlope + 0.0182 TeArohaSlope + 0.501 WaihiJump 131 cases used, 4 cases contain missing values

Predictor	Coef	SE Coef	Т	Р				
Constant	0.01680	0.04062	0.41	0.680				
Sixmonth_1	0.054754	0.001857	29.48	0.000				
WaihiSlope	0.041459	0.004590	9.03	0.000				
TeArohaSlope	0.018173	0.001819	9.99	0.000				
WaihiJump	0.5015	0.1430	3.51	0.001				
S = 0.227952  R-Sq = 96.8%  R-Sq(adj) = 96.7%								

# Analysis of Variance

Source Regression Residual Error Total	DF 4 126 130	SS 195.688 6.547 202.235	MS 48.922 0.052	F 941.49	P 0.000
Source Sixmonth_1 WaihiSlope		DF 1 1		Seq SS 144.239 45.625	
TeArohaSlope WaihiJump		1 1		5.184 0.639	

Regression Analysis: Increase versus Sixmonth

The regression equation is Increase = 0.0553 Sixmonth

Predictor Coef SE Coef T P Noconstant Sixmonth 0.0553079 0.0009331 59.27 0.000

S = 0.165331

# Analysis of Variance

Source Regression Residual Error	DF 1 44	SS 96.036 1.203	MS 96.036 0.027	F 3513.38	P 0.000			
Total	45	97.239						
Results for: to aroha								
Regression Analysis: Increase versus Sixmonth								
The regression equation is Increase = 0.0735 Sixmonth								
Predictor Noconstant		Coef	SE Coef	Т	Р			
Sixmonth	0.07	3481	0.001210	60.73	0.000			
S = 0.214387								

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Analysis of Variance									
Source	DF	SS	MS	F	Р				
Regression	1	169.52	169.52	3688.22	0.000				
Residual Error	44	2.02	0.05						
Total	45	171.54							

Regression Analysis: Increase-1 versus Sixmonth\_1, WaihiJump

The regression equation is

Increase-1 = 0.0520 + 0.0952 Sixmonth\_1 + 0.498 WaihiJump

41 cases used, 4 cases contain missing values

Predictor	Coef	SE Coef	Т	Р
Constant	0.05203	0.09454	0.55	0.585
S ixm o nth_1	0.095188	0.006326	15.05	0.000
WaihiJump	0.4980	0.1851	2.69	0.011
G 0.00 1000 P	a		20/	

S = 0.294902 R-Sq = 96.4% R-Sq(adj) = 96.2%

# Analysis of Variance

Source Regression Residual Error Total	DF 2 38 40	SS 87.672 3.305 90.977	MS 43.836 0.087	F 504.05	P 0.000
Source Sixmonth 1 WaihiJump		DF 1 1		Seq SS 87.043 0.629	

Review of Residential Section Sales Data A similar trend is shown when examining the prices paid for vacant sections in Paeroa, Waihi and Te Aroha. During the period from June 1980 through to June 1987 Paeroa section prices exceeded Waihi section prices. However, the trend changed dramatically thereafter when residential section prices in Waihi exceeded average prices in Paeroa in almost all periods. A similar pattern emerges when comparing the residential sections data for Waihi and Te Aroha.

Repeat sales analysis analysis, was undertaken by TelferYoung over a short time frame between Waihi West and Waihi East, to determine if the mine, closer to Waihi East, was adversely affecting price compared to homes further removed from the mine. Improvements to homes based on data obtained from the Hauraki District Council through building consent approvals were considered to ensure data comparability between sale dates. Research on this data has not been undertaken, but it is worthy of note that TelferYoung concluded that in their opinion the data supported the view there was no overall negative impact of the mine on properties located geographically closer to the location of mining operations. Negative effects were exceeded by positive effects. This would be the subject of a further study

Waihi Gold Company activity commenced on 16 July 1987, the date of the Mining Licence approval, and mining operations commenced in 1988, with a build up of activity over the period 1987 1988.

The residential property values at Waihi showed a jump between December 1986 and June 1989. Linear regression confirmed that the rate of increase for all three towns remained consistent when the sales increases for 2 years of market activity was removed from the Waihi data.

A consideration of average price movements for residential property in Table 1 by 'eye-balling' the increase in property value movements, numerically and intuitively indicated that this would be the logical result.

A similar and potentially more dramatic pattern of residential site vacant land prices could be analysed, utilising the data in Table 1. This was not undertaken.

The null hypothesis HO was:

Environmental stigma has *occurred* at Waihi as a result *of* gold mining activities as measured by an adverse *effect* on residential *property* values.

There is no support for the null hypothesis. The alternative hypothesis Ha is:

The mining activity which *recommenced* at Waihi in 1987 has had a positive impact on residential *property* values

Alternatively, in line with the definition proposed:

`Environmental valenhance' has occurred at Waihi as a result of gold mining activities as measured by a positive effect on residential property values.

# Acknowledgements

This paper could not have been prepared to an acceptable standard without the assistance of TelferYoung and in particular R Peter Young, who made their archive files available for research purposes. The archived data dates from 1980 and includes sales records in hard and electronic copy on improved and vacant residential properties in the three towns over a 22.5 years period, applications for resource consents, approval reports on environmental effects by other experts, submissions by objectors, decisions and a general wealth of data on the Martha Mine/Waihi Gold Company, accumulated over a period of 18 years.

Dr. Barry McDonald, Senior Lecturer in Statistics of the Institute of Information and Mathematical Sciences at Massey University Albany Campus, provided valuable assistance on regression analysis, presentation and interpretation of the data.

Mr Bruce Baker, Senior Planner, Thames Coromandel District Council, provided background information on the planning position of the TCDC

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Proposed District plan on Mining Activities for the Coromandel Peninsula area of the Hauraki Goldfields.

Various personnel in Hauraki District Council and Matamata Piako District Council provided historical data on economic events that occurred over the 22.5 years period of the analysis, including Russell Bierre, Chris Hale, Dennis Bellamy, and Gary Patterson, with building data provided courtesy of Diane Hickford, Noeline Murray, and Jill Steadman. The interpretation of the research study is that of the authors.

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# roost Occupancy Evaluation

# Performance of Buildings-in-Use

Building bloopers are not uncommon; they can be expensive and they diminish the quality of people's working lives and their productivity. Post Occupancy Evaluation provides a process to learn from both strengths and weaknesses of existing buildings and to inform design of the next generation of buildings.

We have yet to find a perfect building, but evaluation recognises design success and helps avoid repetition of similar mistakes on subsequent buildings. This process was established in New Zealand more than 25 years ago and we are now exporting these evaluation services to property managers in Australia and Europe.

# Introduction

Organisations demanding building performance are employing Post Occupancy Evaluation to:

- Check design assumptions about how personnel operate facilities
- Provide accountability for briefing, design and management
- Understand how stakeholders experience buildings
- Repeat success, not mistakes

Post Occupancy Evaluation was established in 1978 in New Zealand, when one of its most prolific architectural practices was asked to help clients to learn from completed buildings and apply the knowledge to future buildings. They engaged local researchers to apply principles from their British and American specialists and developed a system that was piloted in 1981. "the New Zealand Government was bright enough to connect with the most advanced network of thinking on user studies and building evaluation in the world. ...methods are far more sophisticated theoretically than may be obvious at first sight." Dr. Francis Duffy, President of the Royal Institute of British Architects, RIBA Journal November 1992.

# Methods

Constant changes in society, technology, law and management demand clear design objectives and therefore focused informed communication. The evaluation process does this by documenting touring walkthrough interviews of selected focus groups. This "spatial agenda" enables stakeholders to negotiate design and its purposes simultaneously (Joiner and Ellis 1985) to achieve optimum solutions.

Ideally, stakeholder groups will represent all interests in subject buildings. Key among these are:

- Owner/representatives, on-site personnel Visitors/customers/clients
- Project team
- Maintenance team
- Maintenance tea
- Special interests (eg peers, sustainability, ergonomics)

Touring walkthrough interviews are the preferred method. They involve groups of stakeholders, with like interests, (Watson, Beazley and joiner 1995) responding to the building. Findings can include design, operations, construction, marketing and any related issues important to them. Interviews of small groups ensure that all participants have reasonable opportunities to exchange their views. Other instruments we also administer questionnaires, structured discussion forums, project debriefings and observation studies.

# Applications

Post Occupancy Evaluation is generally commissioned by organisations managing large property portfolios or single special buildings. Typical applications of Post Occupancy Evaluation are:

- Briefing for next generation of similar building type
- Fine tuning the subject building
- · Briefing tool for renovation projects
- · Resolving issues on problem buildings
- It is also used to:
- Summarize evaluations of similar buildings inform briefs
- Critique design proposals in terms of previous experience

The majority of evaluations are carried out 6-12 months after completion for quality review In one case a critical building was evaluated two months before opening and results used to make fine tuning adjustments. We have evaluated buildings up to 170 years old as a part of briefing for refurbishment.

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A unique success of the programme is to have proven that users can quickly, economically and constructively contribute to briefing for building alterations and new projects. Indeed, we have observed that people are much more tolerant if they participate in decisions about their built environment.

# Results

Building infrastructure is central to wealth to the extent that it supports the operations within. 128 projects have been evaluated using these techniques and they generally serve needs very well. There are, however areas with room to improve such as the examples noted below.

- Where mechanical ventilation is installed, air quality and thermal comfort are generally the major problems for building occupants in New Zealand. Occupants experience discomfort, poor air quality and illness. In the temperate New Zealand climate, we frequently recommend investment in design for low energy, natural ventilation and thermal control to reduce sick leave and productivity losses.
- Some buildings have abstract design styles that can be unhelpful for wayfinding. We recommend specifying architectural language that assists people to subliminally "read" building features (such as entrances) and other cues to wayfinding and behavioural expectations. The best wayfinding cues are, simply, to make the destinations visible from approach routes rather than attempting to direct people with signs.
- Some organisations' public images are tarnished when their building is presented with shoddy materials and fittings. We often recommend design of durable materials and design styles.
- The industry produces buildings with rainwater leaks and moisture from internal sources. Some of these arise from penetrations in flat roofs and even bathroom/shower floors that are level or even slope away from the floor wastes.
- Design of fenestration and luminaires sometimes causes reflections on computer and white board screens reducing the ability to read them.
- Poor noise control frequently interrupts verbal communications, when workplace enclosure and/ or acoustic design are insufficient.
- When organisations must continue operations during and after emergencies they are vulnerable to services failure and we frequently recommend very efficient buildings to maximise their independence.
- Change in procedures, technology, work groups etc must be accommodated in most built infrastructure. Design strategies need to respond likely changes with flexibility, standardisation and adaptability.

# Summary

Workplaces must support operations with a minimum of bloopers and downstream costs in order to maximise property value. Post Occupancy Evaluation was designed by architects to learn from experience of existing workplaces to improve future buildings.

Many premises owners disperse design control to a variety of consultants rather than engaging architects in the traditional professional role. Managing this production process involves accountability for the workplaces produced. Such accountability needs informed, detailed and explicit communication with stakeholders who can negotiate design in terms of the ways it is used. Post Occupancy Evaluation is a means of efficiently obtaining the information, supportively demonstrating fitness for purpose and constructively managing problems.

## Chris Watson

Chris Watson is an architect registered in Queensland and New Zealand. He directs a New Zealand-based practice serving commercial and government clients. Since 1984 he has evaluated more than 100 building projects. Local client organisations include the Bank of New Zealand, Caltex and Te Papa together with managers for military, education and justice properties. He has been exporting these services since 1995 and advised the Sydney Opera House, OECD (Paris) and the Scottish Executive.

- His practice activity comprises

of:

- Evaluating completed buildings for quality improvement
- Evaluating existing buildings for refurbishment planning
- Demonstrating and training
- · Responding to students' inquiries
- · Attending international forums
- Speaking at industry and university seminars

For further information please see: www.PostOccupaneyEvaluation.com

# wilding a Total Returns Investor Housing

# Abstract

The lack of a total returns index makes it difficult to compare the investment performance of private sector residential rental real estate with other asset classes. As a first step in overcoming this deficiency the authors surveyed a comprehensive sample of New Zealand private sector residential property investors using a mail questionnaire. Information was gathered on the type of property, property value, income and expenditure patterns and the period of ownership. Gross and net yields and the total returns on investment were calculated. Results from the survey were then compared with an existing real estate sales data base to determine if rental housing is typically from the lower quartile or median value grouping. The authors found that on average private sector rental housing sits midway between the lower quartile and the median house price bands. Rental levels from the survey were compared with the Ministry of Housing rental data base to confirm similar median rental levels. Analysis of the data showed that over the last decade rental yields have continued to decline but total returns have increased due to the capital gains in house prices. Regional total returns showed variability with higher yields from slower growing areas being insufficient to offset lower yields from faster growing areas.

## Introduction

Over the last 2-3 years a considerable amount of investor attention has been directed to residential investment property. Returns from investor property comprise income from rents and changes in the value of the property realised when a property is either sold or refinanced. According to Balmer (2004) the value of residential rental property in New Zealand is around \$64 billion and exceeds the capitalised value of the New Zealand stock market. The Economist (2003) (2004) devised an index to track a range of international house price movements, including those in New Zealand. With house prices since 2001 increasing at an annual rate of 15-20 percent per year in many parts of New Zealand, mortgage interest rates close to thirty year lows and positive net migration pushing up rents it is not hard to see why substantial numbers of investors have favoured property investment. Traditionally, residential real estate has been perceived of as a relatively low risk asset class showing returns above bank deposits and bonds but below the more volatile equity market. Recent work by Pellicer and Tyrrell (2004) confirms the place of residential property in the low/medium risk category. However, Helbling and Terrones from the IMF (2004) warn when housing price busts occur they present significant risks to individual investors and national consumer expenditure patterns.

Since 2001 the capital returns from housing have generally exceeded those of most equity markets and capital has flowed out of equities and into housing. The lack of a total returns index makes it difficult to compare the investment performance of private sector residential rental real estate with other asset classes. Unlike the share market, where there is a lot of publicly available information on investment returns, information on the property market total returns is closely held and often not available to the public. There are some exceptions, for example, in the UK the Association of Residential Letting Agents (2003) and the Investment Property Database (2004) provide information on the total returns on buy to let residential investments.

Some components of the data needed to assemble a New Zealand total returns index are currently available. Quotable Value NZ (QVNZ) (2004) has a long running series tracking movements in house prices and The Ministry of Housing (Tenancy Bond Division) (2004) publishes reliable information on residential rents. What has been lacking is research establishing the relationship between gross rents and net income (before taxation and debt servicing).

#### Objectives

The first objective of this research is to provide the reader with a preliminary snapshot of the performance of the market for private sector residential rental properties in New Zealand. This will be achieved

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by reporting the results of a comprehensive survey carried out by the authors in June 2004. This survey will form one of the building blocks for the second objective, the compilation of a residential investment property total returns index.

#### Methodology

Two methods of obtaining data on investment properties were investigated. The first method was to survey professional property managers using face to face interviews. The second approach was a direct approach to property owners. A pilot study was done by a graduate student who used the first approach. Unfortunately this project had to be abandoned when it became apparent many property managers were too busy to spend time extracting data from their files and most did not have the full information required. The second approach was to use a mail questionnaire sent directly to the property owners. As more than 80 percent of private sector rental property is self managed the mail questionnaire method was considered to be the most reliable survey method.

# The Sample Frame

A random sample of 3000 private sector landlords from throughout New Zealand was generated from the Ministry of Housing Tenancy Services Division database. To protect the privacy of the landlords the questionnaire was mailed out by a third party so the researcher could not identify individuals, except where respondents chose to provide an email or physical address when completing the questionnaire.

# The Questionnaire

The main objectives of the questionnaire were to establish the returns on residential investment property, derive the relationship between net and gross income and to assess the capital gains investors have achieved. To encourage people to respond to the questionnaire the authors agreed to provide respondents with a preliminary copy of the results as a way of benchmarking their property's performance against similar properties.

# Response Rate

A total of 907 landlords responded to the survey before the cut off date at the end of June 2004. This represented a 30.2% response rate. A reminder letter was not used due to the complex mailing procedure and additional cost considerations. The 907 landlords represented 1585 separate properties, on average 1.74 properties per landlord.

## Survey Results

 Property Types: The 1585 properties in the survey comprised three main groups; houses (1062), flats (314) and apartments (90). There were a variety of other property types on one title

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including; owner occupied houses and rental flats and owner occupied houses and rented bed sitters. The houses were predominantly 3 bedrooms, detached and located in the suburbs. This paper only reports on the analysis of the houses group because there is currently no reliable time series data on the prices for apartments and flats.

ii. Capital Appreciation: The respondents were asked to provide information on how long they had owned the property, the price paid and their estimate of the current market value. In addition, there was a question on their capital expenditure over the previous year. This information was used to calculate the annual average percentage capital appreciation over the period of ownership. While this analysis relies heavily on the owner's valuation of their property, the figures supplied appear to be in line with the existing QVNZ (2004) housing price indices and the Real Estate Institute (2004) median house price statistics. For example, the QVNZ house price index increased 19.8% in 2003 and Real Estate Institute statistics show the median price of a house increased by 18% in the period May 2003 to May 2004

The data for houses was then analysed by the three main cities as shown in Table 1. Somewhat surprisingly, Christchurch shows the highest percent rate of annual capital appreciation. This result is counter intuitive in the sense that capital appreciation in Auckland has historically outstripped the other main centres.

Table	1.	Average	Aı	nnual	Perce	nt	Capital	Apprec	iation
				1.1	1 337	111		1 1	1

		Auckland	Wellington	Christchurch
Mean		16.9	14.4	20.8
Median		13.1	9.2	15.5
Percentiles	10	4.1	1.5	4.3
	20	6.6	4.2	6.8
	30	8.2	6.2	9.3
	40	10.8	8.3	12
	50	13.1	9.2	15.5
	60	15.3	10.5	20.7
	70	19.2	12.2	25.6
	80	25.3	17.3	37.1
	90	34.9	25.5	49.1

However, the results make more sense when the data is analysed by the length of time the investors have owned their properties as shown in Table 2. Nationally the average period of ownership for houses was 3.37 years. This means because the ownership periods are so short, particularly in Christchurch, investment performance is heavily weighted to the last two years. Also, Christchurch came off a relatively low base because up until quite recently there was an oversupply of sections and this depressed the market. There is also a lag effect whereby Auckland property led the most recent property boom and was followed by Wellington with Christchurch some time later.

	Table 2.	Time	Owned	in	Years
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		Auckland Wellington Christchurch					
Mean		4.14	5	3.04			
Median		1.67	3.6	1.17			
Percentiles	10	0.42	0.6	0.5			
	20	0.67	1	0.58			
	30	0.92	1.8	0.78			
	40	1.25	2.3	1.08			
	50	1.67	3.6	1.17			
	60	2.83	4.7	1.53			
	70	5	6.1	3.33			
	80	7.33	8.6	4.98			
	90	10.33	14.5	8.78			

iii. Income to Value Relationships

Information on the income to value ratios for residential investment property is not publicly available so investors were asked to specify the income and expenditure associated with their properties as well as their properties value.

a) Gross Income Multipliers (Gross Yields): The gross income multiplier is the number, when multiplied by gross income, that gives the value of the property. The gross yield is the inverse of this, or number when divided into gross income that gives us the value. Smith (1964) argued that, for certain classes of relatively homogeneous residential investment properties, gross income was a more reliable estimate of value than traditional valuation methods. Ratcliff (1967) and Shenkel (1969) tested this assertion using US data and generally supported Smith's contention. Wendt (1974) concluded that gross income multipliers are readily understood by investors, real estate sales persons and mortgage lenders. Wendt explained the gross income multiplier approach represented a blending of the sales comparison and income approaches to valuation, but cautioned against the application of this valuation tool for heterogeneous property types in thin markets.

Table 3 shows the gross yields for Auckland, Wellington and Christchurch houses. This result is as expected with the market perceiving future capital growth prospects are highest in Auckland, followed by Wellington and then Christchurch.

		Auckland	Wellington	Christchurch
Mean		5.8	6.7	6.8
Median		5.7	6.1	6.6
Percentiles	10	3.9	4.5	5
	20	4.7	5	5.8
	30	5.1	5.3	6
	40	5.4	5.6	6.5
	50	5.7	6.1	6.6
	60	6	6.4	7.1
	70	6.4	6.9	7.7
	80	6.8	7.2	8
	90	7.9	8.6	9

b) Net Returns: The net returns are the gross returns less an allowance for vacancy less the annual expenses of operating the property. The annual expenses normally comprise rates, insurance, repairs and maintenance, management, other expenses (such as travel and accounting) and body corporate (if applicable).

The net yield rates for houses as shown in Table 4 follow the same trends as shown in Table 3 for gross yield rates. Auckland has the lowest net yield rate and Christchurch the highest.

# Table 4. Net Yields for Houses by Percent

		Auckland	Wellington	Christchurch
Mean		4.76	4.76	5.45
Median		4.70	4.75	5.50
Percentiles	10	3.06	3.09	3.92
	20	3.68	3.67	4.53
	30	4.09	4.20	4.82
	40	4.42	4.46	5.14
	50	4.70	4.75	5.50
	60	4.92	5.24	5.79
	70	5.37	5.58	6.38
	80	5.90	6.00	6.87
	90	6.55	6.36	7.25

One of the characteristics of the residential investment market in New Zealand is that most investors self manage their properties. In this survey around 95 percent of the respondents owning rental homes self managed. The comparable figure for flats was 91 percent and apartments 81 percent. This raises the issue of the need to factor in management costs to take account of the opportunity cost of the investor's time. Management costs do need to be factored in when the returns from residential rental property are compared with other types of investments. Table 5 shows the adjusted ratio of costs to gross income for houses in Auckland, Wellington and Christchurch with management charged at 7.5 percent of gross income for all properties.

# Table 5. Adjusted Cost Ratios for Houses by Percent

		Auckland	Wellington	Christchurch
Mean		25.06	30.31	30.42
Median		22.31	27.52	23.49
Percentiles	10	15.29	18.96	17.55
	20	16.93	20.85	18.73
	30	18.37	23.35	20.25
	40	20.40	24.19	21.49
	50	22.31	27.52	23.49
	60	23.76	30.31	25.31
	70	26.78	34.55	27.69
	80	31.19	36.85	32.20
	90	36.87	42.68	37.70

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The ratios of costs to gross income are possibly lower in Auckland because overall rents in this region are the highest in the country.

Table 6 adjusts the net yields for houses, flats and apartments where management costs have also been charged at 7 percent of gross income.

# Table 6. Adjusted Net Yield Rates by Percent

		Auckland Wellington Christchurch									
Mean		4.39	4.80	4.97							
Median		4.32	4.44	5.01							
Percentiles	10	2.85	2.74	3.45							
	20	3.33	3.34	4.12							
	30	3.82	3.79	4.39							
	40	4.10	4.04	4.64							
	50	4.32	4.44	5.01							
	60	4.61	4.82	5.41							
	70	4.94	5.16	5.87							
	80	5.41	5.47	6.30							
	90	6.01	6.04	6.71							

c) Total Returns: The overall return being achieved by investors is the net cash return from the property divided by the value of the property, plus the capital gain less capital expenditure.

Table 7 compares the overall returns for houses, lfats and apartments. Readers should note this snapshot of overall returns almost certainly overstates the medium run performance of rental property because the returns are so heavily influenced by the capital appreciation from the recent property boom. For example, over the 10 year period 1994-2004 the average annual compound growth of housing values was around 7 percent.

Table 7. Total Returns (	(Average Annual Percent)
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		Houses	Flats	Apartments
Mean		26.42	26.93	17.33
Median		18.48	17.44	15.31
Percentiles	10	5.81	6.48	3.52
	20	9.29	9.57	6.83
	30	12.35	12.23	8.93
	40	15.03	14.15	12.38
	50	18.48	17.44	15.31
	60	22.66	22.33	16.82
	70	28.35	30.34	19.09
	80	36.61	40.16	22.54
	90	54.98	48.82	39.64

What stands out is that the capital appreciation in rental houses appears to be considerably higher than single investment flats and apartments. This is probably because there are more options available to house owners including, conversion back to owner occupation, redevelopment of the site to more intensive usage and selling off part of the land. Historically the land component normally appreciates faster than the improvements. Houses have a

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higher ratio of land to improvements than flats and apartments. Another reason why flats and apartments may be increasing in value at a slower rate than houses is there is a greater chance of oversupply when large developments with more than 100 apartments are brought onto the market. Also, there is likely to be a higher level of profit on multi-unit developments since individual buyers do not have the option of dealing directly with a builder and reducing/eliminating developers profits.

# Property Indices

The total annual returns (before tax and debt servicing) from property investments comprise the cash flows from income (rent less vacancies) less the annual operating expenses (rates, repairs and maintenance, insurance, managements etc), plus changes in the value of the property less capital expenditure.

Thus

$$\frac{GI \ ham'}{Cam'} x100) \ l, \left(\frac{CM \ V \ P}{MV} - CE \right) x100 \ ((CM \ V \ PMV) - CE) x100 \ ((CM \ PMV) - CE) x100 \ ((CM \ V \$$

when

- TR% = Total return for the period (before tax and debt servicing) as a percent of the current market value of the property
- GI = Gross income (potential rent less vacancies and bad debts)
- EXP = Annual expenses associated with operating the property (rates, insurance, management, repairs and maintenance and other expenses such as accounting)

CMV = Current market value of the property

PMV = Previous market value in last period

CE = Capital Expenditure in current period

A property index can be constructed by aggregating the returns from individual properties using the above methodology and then chaining the total returns per period over time.

The most difficult component to estimate with property indices is the changes in market value from one period to the next. The methodology used with this survey was to ask the investors to value their own properties. It can be argued that investors typically do not have valuation skills and this method may be unreliable. On the other hand the self valuations were inexpensive and since most investors had only owned their properties for a short period it was easy to check the valuations against the price paid and subsequent movements in the QVNZ house price indices.

More typically, as in the case of the IPD index, qualified valuers using the RICS guidelines are used to assess the investment value of a sample of representative properties used in the index. The main disadvantage with professional valuations is the valuation smoothing effect as pointed out by a variety of academic writers including Newell and MacFarlane (1998). This means the valuations tend to lag the market. Another method used to construct property indices is the portfolio approach as used by the Property Council of New Zealand (2004) for commercial property The portfolio approach uses actual cash flows to track income and expenditure from a weighted portfolio of buildings and valuations to compute property values. This approach works well in thin markets where there are insufficient transactions to use property sales to establish property values.

Intuitively, the best approach to use in the construction of a property index is a transaction based index. Using actual sales and income information simulates market behaviour and it does not suffer from valuation smoothing influences. Transaction based indices for changes in the residential property value component or a total returns index fall into three main types. Firstly, hedonic indices as described by Pendelton (1965) and Case et al (1991) where multiple regression analysis is used to control for quality differences and dummy variables are used for the time variables. Secondly, indices based on repeated sales as developed by Bailey, Muth and Nourse (1963) and Case and Schiller (1987). Thirdly, hybrid indices from Case and Quigley (1991) combining aspects of repeated sales and hedonic methodology

In New Zealand the most commonly used property price indices are the QVNZ indices based on comparing sale prices with the periodic rating valuations and chaining these over time. The QVNZ rating valuations make extensive use of regression analysis methodology to set the rating valuations. Although Lum (2004) has some reservations about this type of approach it is transaction based, inexpensive to compile and accepted in the New Zealand residential market. In an unpublished report Singleton (2003) found Palmerston North City house price models based on rating valuations were generally more highly correlated to sale prices than repeated sales models and regression models that did not use the rating valuation as a variable. This is possibly because rating valuations are an important consideration for New Zealand residential property investors when they are formulating their bid/ask prices.

The constant quality issue is a problem for most property indices. Hedonic indices attempt to adjust for the most obvious variables but unless each property is physically inspected it is difficult to capture quality upgrades that might be reflected in a new bathroom or new kitchen. Typically this type of upgrading is expensive but not recorded on sales data bases because it does not require a building consent. The repeated sales methodology eliminates the adjustment process by chaining repeated sales of the same property However, in the absence of property inspections the repeated sales method has no way of adjusting for quality upgrades such as in the bathroom and kitchen upgrade examples. Analysts using this method normally assume that the amount spent on upgrades is equal to the amount lost in building depreciation. This may not be a realistic assumption because there is a very significant home improvement industry in New Zealand, particularly with older houses in desirable localities.

Rossini et al (2002) discuss the dangers in using average or median house sales data to construct property indices. They show considerable variations between individual and aggregated yield estimates and put this down to rental property comprising mainly cheaper properties. Average and median data sets also disguise the fact that New Zealand houses are continuing to get larger and contain more elaborate fittings. This aspect of the constant quality argument needs to be viewed in the context of a housing stock where the annual number of new houses is only around 1 per cent of the total housing stock and most new houses are owner occupied with private sector rental houses coming from the cheaper existing older housing stock. This reduces, but does not eliminate, the constant quality problem.

The QVNZ indices used in the construction of total returns index described in this paper should in theory at least, eliminate the constant quality problem because quality differences between houses are reflected in the rating valuation assessments. However, Singleton (2003) found some inconsistencies in the relationship between sale prices and rating valuations due to averaging tendency found with computerised mass appraisal methods.

# Validating the Questionnaire

When building a residential rental total returns index a decision has to be made about which set of house price data typifies private sector rental properties. This is important because price has a direct influence on the yields. The most obvious alternatives are the median price or the lower quartile median, both published regularly by QVNZ. Figure 1 compares the median prices reported from the survey with the QVNZ median and lower quartile prices for the main cities and for all New Zealand. This chart shows the survey median lying between the QVNZ figures for most cities, particularly the larger cities with more robust data sets. A decision was made to average the QVNZ median and lower quartile prices and use this figure in the indices. On average this figure was within 3% of the median prices shown in the survey.

Another way of looking at the where private sector rental housing sits in the overall house price spectrum is to consider the percentage of rental housing and the proportion of this that is government social housing. By 2001 rental housing comprised around 28% of the housing stock and was increasing at about 0.6 percent per year so by 2004 rental housing comprised around 30 percent of the national housing stock. Private sector rental housing comprises around 80 percent of the rental housing stock. Ownership rates are lowest in

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the cities, particularly Auckland City which will have

50 percent rental housing within the next 5-7 years. In general the housing values are lower with social housing due to the stigma associated with some of the state housing neighbourhoods. Private rental housing can usually be switched in and out of the owner occupier market, depending on market conditions.

Where the percent of rental properties is high as in Auckland City (44 percent in 2001) it is not realistic to assume rental houses are confined to the less expensive suburbs. Analysis of data from the 1991-2001 censuses shows rental housing increasing across all established suburbs and the same is true across all cities.

An additional test to see if the responses from the questionnaire are reflective of the rental market as a whole is to compare the median rental levels for houses from the Ministry of Housing (Tenancy Bond Division) data base with the median rents reported in the survey. This comparison is reported in Figure 2 and shows a strong correlation. Nationally the median rent for houses from the survey was \$245 per week and from the Ministry of Housing data \$260. On average, across all the locations shown in Figure 2, the two sets of data are within 1.7% of each other.

Figure 3 compares the gross yields derived directly from the survey respondents with theoretical gross yields derived from the Ministry of Housing median rents and both QVNZ lower quartile and median house prices. As expected from the results from Figure 1 the survey data generally falls between the two QVNZ statistics.



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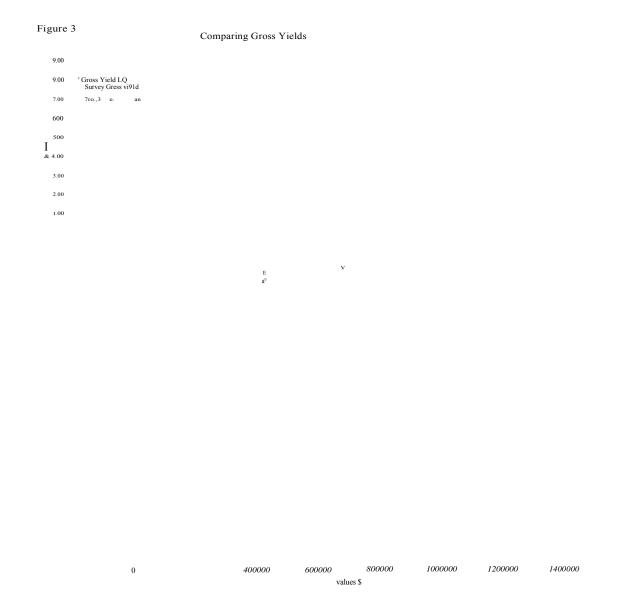


Figure 4 is a scatter plot showing the gross yields for a sample of houses in the Auckland region against the value of individual properties.

There is a clear pattern of yield rates decreasing as the value of properties increase. This relationship does not appear to be linear and curve that best fits the data is logarithmic. A similar pattern showed up in the data for Wellington and Christchurch houses. This may be because at the more expensive end of the market renters are unwilling to pay additional rent for some of the features that add value to a house. For example, extra bathrooms, additional land and views may be less important than extra bedrooms. It was unclear how much of the difference in yields was driven by capital gain considerations. The average annual capital appreciation expressed by percent from the survey did not appear to favour the more expensive properties, but this may be because most investors had only been in the market for a short time.

#### New Zealand Total Returns Indices

The net rental yields from June 1994 to June 2004 for the main cities and all New Zealand are shown in Table 12 below The net yields have been calculated by using the Ministry of Housing rental data making an allowance of 1.5 week's vacancy and taking the costs at 23 percent of gross rentals. This figure was then divided by the average value of lower quartile and median houses and expressed as a percentage.

# Table 12. Net Percentage Rental Yields

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
North Shore	6.02	5.93	5.23	4.90	4.59	4.59	4.64	4.68	5.07	4.91	3.99
Waitakere	7.34	7.13	6.18	5.64	5.54	5.49	5.40	5.52	5.60	5.51	4.68
Auckland	6.48	6.22	5.43	5.27	4.88	4.70	4.97	5.13	5.18	4.82	4.11
Manukau	6.92	7.15	6.74	5.84	5.56	5.28	5.38	5.27	4.67	5.00	5.12
Papakura	6.76	6.43	6.14	5.77	5.23	4.85	4.99	5.06	5.09	5.12	4.66
Hamilton	6.25	6.22	6.00	5.82	5.23	5.25	4.97	4.43	5.38	5.57	5.06
Tauranga	6.28	5.38	5.45	5.30	4.46	4.70	4.67	4.49	4.44	4.85	4.13
Napier	5.58	5.62	5.78	5.84	5.84	5.86	6.01	5.85	5.52	5.50	4.47
Palmerston North	6.51	6.45	6.78	6.89	7.13	6.82	6.31	6.51	6.48	6.12	5.72
Porirua	6.59	6.37	6.73	7.74	6.46	6.28	6.04	5.67	5.29	4.98	4.48
Upper Hutt	7.66	7.62	7.78	7.44	7.61	7.01	6.43	6.55	6.39	5.79	4.91
Lower Hutt	6.42	7.26	7.17	7.07	7.68	7.09	6.84	6.02	6.47	5.62	5.16
Wellington	6.53	6.70	6.67	6.58	6.00	5.68	5.25	5.13	4.90	4.77	4.20
Nelson	6.03	5.60	5.69	5.81	5.76	5.56	5.26	5.60	5.92	4.49	4.08
Christchurch	6.51	6.34	6.43	6.23	5.68	5.56	5.46	5.48	5.98	6.73	5.18
Dunedin	7.38	7.41	7.07	6.81	6.86	7.28	7.50	7.68	7.55	8.45	5.84
Invercargill	7.78	9.05	8.36	8.71	8.72	8.05	8.48	9.63	10.51	10.37	7.13
All NZ	6.67	6.31	6.30	5.94	5.83	5.50	5.56	5.59	5.59	5.85	5.36

This calculation aligns closely with the net yields derived from the survey data for June 2004. It is more difficult to verify the net yields prior to 2004 and this data should be treated with caution.

The net yield data is characterised by yields decreasing over time in all localities and yields being highest in slow growing localities and lowest in fast growing areas. Net yields are now below the market rate of interest on bank deposits and government bonds for most localities. This means that investors are increasing reliant on capital gains in the value of housing to offset the increased risks associated with rental housing investments.

Table 13 utilises QVNZ house price indices to show the annual percentage change in house prices over the period June 1994 June 2004. This data illustrates the fact that house prices don't always go up, they can come down.

# Table 13. Annual Percentage Changes in Property Values

	-	-									
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
North Shore	9.90	18.70	16.60	5.00	-1.70	-0.70	-2.80	6.30	6.10	13.00	20.20
Waitakere	12.50	18.70	22.50	9.70	-0.50	-3.70	-2.50	-2.05	4.10	9.00	22.00
Auckland	17.10	22.10	16.90	8.20	-2.20	-0.70	-0.20	0.53	9.50	16.70	12.30
Manukau	4.60	14.40	20.10	12.50	1.70	-1.60	0.00	-1.09	4.70	10.50	13.80
Papakura	4.20	13.30	23.10	17.70	2.60	-4.30	-1.20	-8.36	-1.30	7.40	16.70
Hamilton	9.20	8.50	11.60	8.20	4.10	-3.40	-2.50	-6.76	3.20	7.90	15.20
Tauranga	10.10	11.70	10.60	11.50	8.30	-5.20	0.50	1.64	2.60	9.30	28.10
Napier	13.00	5.10	3.40	2.10	0.70	-0.80	2.30	5.46	4.60	13.80	28.30
Palmerston North	3.00	2.90	0.20	-0.80	-1.20	-0.30	3.10	3.53	2.20	7.20	16.30
Porirua	2.10	2.90	1.60	2.60	9.60	11.40	6.30	14.78	4.50	6.10	18.70
Upper Hutt	-0.90	3.30	-1.30	0.90	9.30	7.00	5.30	6.22	4.30	7.20	16.90
Lower Hutt	0.20	3.00	4.60	5.00	10.90	5.30	6.50	7.49	4.50	6.60	18.10
Wellington	2.40	7.40	12.30	10.70	14.00	2.30	9.30	8.87	2.20	12.10	16.30
Nelson	6.50	4.30	2.10	2.00	0.90	-2.30	1.40	0.86	9.70	31.10	20.30
Christchurch	4.90	9.30	8.30	7.40	2.10	-2.50	-0.40	-4.77	1.10	6.90	25.70
Dunedin	3.20	4.60	3.00	-2.40	-6.80	-1.40	1.70	-0.19	3.90	15.20	25.90
Invercargill	5.90	0.90	-1.00	-2.10	-10.00	-4.40	-6.10	-3.43	11.80	15.50	27.20
All NZ	8.20	11.50	11.80	7.30	2.30	-1.00	1.10	0.27	4.70	11.80	20.20

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The changes in house prices over time are largely related to demographic trends. Internal migration trends show a drift to warmer climates and jobs. This has meant significant growth in the Auckland region and slow growth in the South Island and on the western side of the North Island. Immigrants are mainly from Asia and prefer to live in Auckland.

#### Table 14. Total Percent Returns

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
North Shore	15.92	24.63	21.83	9.90	2.89	3.89	1.84	10.99	11.17	17.91	24.19
Waitakere	19.84	25.83	28.68	15.34	5.04	1.79	2.90	3.47	9.70	14.51	26.68
Auckland	23.58	28.32	22.33	13.47	2.68	4.00	4.77	5.66	14.68	21.52	16.41
Manukau	11.52	21.55	26.84	18.34	7.26	3.68	5.38	4.18	9.37	15.50	18.92
Papakura	10.96	19.73	29.24	23.47	7.83	0.55	3.79	-3.31	3.79	12.52	21.36
Hamilton	15.45	14.72	17.60	14.02	9.33	1.85	2.47	-2.33	8.58	13.47	20.26
Tauranga	16.38	17.08	16.05	16.80	12.76	-0.50	5.17	6.13	7.04	14.15	32.23
Napier	18.58	10.72	9.18	7.94	6.54	5.06	8.31	11.31	10.12	19.30	32.77
Palmerston North	9.51	9.35	6.98	6.09	5.93	6.52	9.41	10.04	8.68	13.32	22.02
Porirua	8.69	9.27	8.33	10.34	16.06	17.68	12.34	20.45	9.79	11.08	23.18
Upper Hutt	6.76	10.92	6.48	8.34	16.91	14.01	11.73	12.77	10.69	12.99	21.81
Lower Hutt	6.62	10.26	11.77	12.07	18.58	12.39	13.34	13.51	10.97	12.22	23.26
Wellington	8.93	14.10	18.97	17.28	20.00	7.98	14.55	14.00	7.10	16.87	20.50
Nelson	12.53	9.90	7.79	7.81	6.66	3.26	6.66	6.47	15.62	35.59	24.38
Christchurch	11.41	15.64	14.73	13.63	7.78	3.06	5.06	0.71	7.08	13.63	30.88
Dunedin	10.58	12.01	10.07	4.41	0.06	5.88	9.20	7.50	11.45	23.65	31.74
Invercargill	13.68	9.95	7.36	6.61	-1.28	3.65	2.38	6.20	22.31	25.87	34.33
All NZ	14.87	17.81	18.10	13.24	8.13	4.50	6.66	5.87	10.29	17.65	25.56

Table 14 combines the net yield and house price data to show the total returns for rental housing over the years ended June 1994 to June 2004. The higher net yields in the slower growing cities were not enough to offset the higher total returns in the faster growing cities.

The total return figures shown are unleveraged returns before tax. As the interest rate on borrowed money has generally been well under the total returns shown in Table 14 many investors will be exceeding these returns. However, it is important to consider unleveraged returns when making comparisons with the total returns from other asset classes and because the degree on leverage is something personal to the risk/return profile of individual investors.

Table 15 shows the percent average returns over the eleven year period June 1994 to June 2004 as well as the percent standard deviation of these returns and the risk ratio. The risk ratio is simply the standard deviation divided by the average return. While the city of Palmerston North has the lowest average total returns it is not necessarily the worst investment locality because it is considerably less volatile than a number of other cities, including Invercargill. Thus it depends on the risk/return trade off. On the other hand Wellington shows both high returns and low volatility giving it the lowest risk ratio and making it an attractive investment locality

Past returns give some guidance to likely future returns as they include the long term demographic trends of internal migration being characterised by a population drift both North and East and external immigration focusing on the Auckland region. The cyclical fluctuations in national net migration figures are thought to account for part of the volatility of total returns, particularly in the Auckland region.

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#### Table 15. Volatility of Returns

	Standard			
	Average	Deviation	Risk Ratio	
North Shore	13.20	8.35	0.63	
Waitakere	13.98	10.17	0.73	
Auckland	14.31	9.01	0.63	
Manukau	12.96	7.78	0.60	
Papakura	11.81	10.46	0.89	
Hamilton	10.49	7.20	0.69	
Tauranga	13.03	8.66	0.66	
Napier	12.71	8.03	0.63	
Palmerston North	9.81	4.59	0.47	
Porirua	13.38	5.14	0.38	
Upper Hutt	12.13	4.47	0.37	
Lower Hutt	13.18	4.38	0.33	
Wellington	14.57	4.78	0.33	
Nelson	12.42	9.62	0.77	
Christchurch	11.24	8.21	0.73	
Dunedin	11.50	8.91	0.77	
Invercargill	11.91	11.08	0.93	
All NZ	12.97	6.53	0.50	

A detailed comparison of the total returns from rental housing with the total returns from other asset classes is beyond the scope of this paper and requires further research on aspects of risk and return.

#### Summary and Conclusions

The snapshot of the private sector residential market compiled from the survey provided the authors with baseline information that enable them to combine the Ministry of Housing rental and QVNZ house price data bases. Results from the survey showed on average private sector rental housing values sit midway between lower quartile and median house prices. Analysis of the survey also established that median net income is around 77 per cent of gross income.

The total returns index developed in this paper is a transaction based index utilising actual rents and property sales data. This index does not rely on periodic property valuations and suffer from valuation smoothing effects. The index attempts to overcome the constant quality problem by utilising QVNZ house price indices, which include all house sales. Further research is needed to determine if changes in the value of rental housing occur at a similar rate to the total population of houses and if the relationship between gross and net income is consistent over time.

Net rental yields have continued to trend down over the last decade as increases in house prices have not been offset by similar increases in rents. Currently net rental yields are below the market rate of interest and total returns are increasingly reliant on capital appreciation. The history of property cycles in New Zealand suggests that either rent increases or reductions in property values will be needed to bring net yield rates back into line with the long run average net yield rates.

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In comparison with other asset classes, over the last decade, investors in rental housing generally achieved good, but not spectacular, returns. Residential rental property is typically self managed and this does allow investors to increase their cash lfows by substituting their own labour for outside management. Self management also gives investors the chance to further control the expenditure items such as repairs and maintenance by utilising their own labour to minimise the use of outside contractors.

There are significant differences in the total returns being achieved between cities and the higher yields in the slower growing cities are not enough to offset the higher total returns in the faster growing areas. The total returns in Auckland and wellington cities are roughly the same but Wellington has an appreciable lower standard deviation of returns.

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# HIGH COURT OF AUSTRALIA

12 November 2004

Public Information Officer

HTW VALUERS (CENTRAL QLD) PTY LTD v ASTONLAND PTY LTD

Damages of \$406,194.60 for negligent real estate advice awarded to a couple who bought a shopping arcade were not excessive, the High Court of Australia held today.

After moving to Mackay in central Queensland Lyn and John Foster decided to sell their Brisbane house and invest the proceeds and borrowings in commercial property with a better return. Astonland was the investment vehicle. Mrs Foster was the sole director of Astonland and she and her husband were the sole shareholders. Before buying Central Street Plaza, an arcade of eight shops in Sarina south of Mackay generating nearly \$60,000 rent a year, the Fosters sought advice from Barry Deacon of HTW Valuers about the retail rental market in Sarina, including demand for tenancies and availability of tenants. Based on Mr Deacon's advice that current rental levels were maintainable, Astonland entered a contract to buy the Plaza for \$485,000 in April 1997 and completed the purchase in July At this time the Beach Road Shopping Centre, a supermarket and 10 speciality shops, was under construction. It opened in mid-1998. Rentals for the Plaza collapsed from about March 1999, dropping to less than \$16,000 a year later. Four shops had been vacant for up to 12 months, rent on another was heavily in arrears and rents on another two had fallen sharply Astonland has been unable to sell the arcade.

Astonland sued HTW Valuers in the Queensland Supreme Court. Justice Peter Dutney found the collapse in rentals was almost solely due to the opening of the Beach Road Shopping Centre. He found that Mr Deacon negligently failed to qualify his opinion by cautioning that the effect of the new shopping centre was uncertain. The duties breached were those created by the contract under which HTW was paid \$250, by the law of tort in relation to negligent advice, and by section 52 of the Trade Practices Act in relation to misleading and deceptive conduct. In March 2000, Jeffrey Dodds, retained by Astonland, valued the Plaza at \$130,000. Justice Dutney awarded Astonland \$355,000, the difference between the price paid and the value it reached due to the effect of the Beach Road Shopping Centre, plus another \$51,194.60, consisting of trading losses, additional purchase costs, refurbishments and interest. The Court of Appeal dismissed an appeal from HTW against the \$355,000 component of the damages award.

HTW appealed to the High Court, which held that in assessing damages courts are not limited to assessing the risk as at April 1997 but are entitled to take account of how those risks later evolved into certainties. The cause of the decline in the value of the Plaza was not independent, extrinsic, supervening or accidental but lay in circumstances crucial to the value of the Plaza when Astonland acquired it, that is, the impending opening of the Beach Road Shopping Centre. The Court held that the damages figure was appropriate in all the circumstances. It unanimously dismissed the appeal.

 This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.

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# Case Notes

#### High Court

WerTibee Trust Ltd v Santa Rosa Developments Ltd 28/6/04, Yenning J, HC Auckland *CIV2003-404-007208* Caveat

Caveat removal by HC upheld - Purchaser's claim of promissory estoppel (when late with deposit) despite precise contractual obligations between the parties rightly rejected HC also correct that also fatal to the purchaser's case was that the cheque tendered was a personal one and for \$1000 less

#### High Court

Garland v Dixon 9/12/04, Associate Judge *Faire, HC* Hamilton CIV2004-419-1222

Property - Real - Encumbrances Caveats Unsuccessful application by G to discharge caveat - G and D entered into agreement concerning sale of G's land to D D agreed to pay deposit on signing of formal Sale and Purchase Agreement agreement never signed and D lodged caveat against title to G's property D took no steps to enforce caveat and G lodged application to have it dismissed issue was whether there was agreement to contract when agreement signed.

Held, there was enough evidence of intention to be bound to cause matter to be subject of trial, justifying conditional order under s 143(2) Land Transfer Act 1952 - application provisionally declined, to be granted in event proceedings to enforce agreement not filed - application declined.

#### High Court

Ryall v Dangen, 29/11/04, Heath J, HC Auckland CIV2004-404-5433

Property - Real - Choses in action Successful application by Rs for order that a caveat did not lapse; Rs entered into agreement with interests associated with D to sell part of their land; parties then entered into agreement "to perform subdivisional works and an option to purchase"; second agreement would allow reconfiguration of boundaries; term in second agreement purported to replace restrictive covenant in first agreement with covenant intended to mitigate visual effects of further dwelling; agreement did not specify what would happen if required resource consent not obtained; Rs sought to argue that failure to obtain resource consent constituted failure of consideration and earlier restrictive covenant subsisted;

Held, there is an arguable case that words of agreement intended to be used to substitute one restrictive covenant for another only if new regime carried into execution; seriously arguable that parties would not have concluded agreement if possibility of resource consent refusal contemplated; no countervailing considerations justifying refusal of relief; order made that caveat does not lapse; application granted

#### High Court

Body Corporate 319327, Re; Ethan Investments Ltd & Ors v Gabrielle's Trustee Co Ltd & Anor, 10/12/04, Sargisson J, CIV-2004-404-003030

SUMMARY JUDGMENT - application for summary judgment by some of proprietors of Body Corporate - plaintiffs sought orders for declaration that certain rules of the Body Corporate rules were ultra vires the Unit Titles Act 1972 and order appointing an administrator to Body Corporate 319327 under s40 together with consequential orders and costs apartment and retail complex at Gulf Harbour known as Gulf Harbour Town Centre was administered by Body Corporate 319327 - plaintiffs were owners of lodge units in Town Centre - 1st defendant was registered proprietor of various units on ground floor of Town Centre and 2nd defendant acted as secretary to Body Corporate 319327 - plaintiffs submitted that the amended rules governing the Body Corporate permitted the 1st defendant complete control over the running of the development for an indefinite period to the exclusion of the remaining registered proprietors - they also sought replacement of the secretary, owing to its alleged failure to carry out its role diligently, by an appointed administrator - relevant rules considered - HELD: the combined effect of provisions of the Act was to confer certain voting rights on each registered proprietor, following Beckingham the rule which effectively allowed defendant to monopolise voting rights and rendered nugatory voting rights conferred on other registered proprietors was ultra vires similarly, the rules which effectively guaranteed that the defendant would always have a majority on the committee and gave the defendant sole power to elect and remove members of the committee were also ultra vires - having thus found, Court was not required to appoint an administrator declaration made by way of summary judgment, costs reserved

#### High Court

Westmed Finance Ltd v Wilson Parking New Zealand (1992) Ltd 8, 4/04, Keane J, HC Auckland *CIV2003-404*-5913

Civil procedure - Appeals Arbitration Award Property Real - Valuation Objections and appeals Unsuccessful appeal by WFL against decision of an arbitrator; arbitrator decided the rent payable for WPNZL for the following three years for 400 leased carparks; WFL held the unit titles to the 400 carparks; arbitrator when fixing the rental amount deducted \$55,000 for WPNZPs occupancy expenses; WFL asserted that expenses allowed for were never incurred by WPNZL in that capacity; WFL argued that when the lease and the building management agreement ("agreement") were read together all operating expenses of the building were covered by management fee; no costs could be properly deducted from the assessed rental under the lease; WFL contended that the arbitrator erred in law in two ways; firstly, in not attributing all operating expenses with the operation of the building to the agreement; secondly, in not giving reasons for deducting from current market rent assessed under the lease the specific sum yearly of \$55,000 for operating expenses;

Held, how the lease and agreement are to be understood individually or together is a question of law; what method an arbitrator uses to reach a value is normally a question of fact; lease and the agreement are to be read together; where a duty is imposed exclusively by the lease or by the agreement is where the expenses are to be attributed; where same duty is imposed by both a sensible attribution has to be made by the arbitrator; this attribution is an issue of fact for the arbitrator alone; arbitrator understood the lease and agreement correctly; however, arbitrator could have set out his reasoning more extensively than he did; however he did set out the essential basis for it; WPNZL will have costs on scale 2B; application declined

#### High Court

Smeaton v Christiaans, 26/11/04, John Hansen J, HC Dunedin, CIV2003-412-000251

- Family law De facto property Property claims - Equal sharing
- Property Real Interests in land (see also Property - Real - Access rights; Property Real

Easements) - Beneficial interests Acquisition Unsuccessful claim by S relating to properties held by him and C at end of their de facto relationship; S sought greater share of proceeds of jointly owned property in Kauri Road and share of property in Gibbston Valley in C's sole name; whether S had reasonable expectation of interest in Gibbston Valley property; Ss company put into liquidation and S set up second company Smeaton Construction Ltd ("SCL") to complete work for creditors' benefit;

Held, S failed to provide reliable records of the time he or SCL had spent working on properties; although S dealt with some of the correspondence relating to purchase of Gibbston Valley property claim to contribution unrealistic; at no stage did S have the funds to contribute to expensive exercise of developing vineyard property; C obtained option on land before parties had fully committed to relationship; S's cash contribution to Gibbston Valley was equivalent to half share of Kauri Road property which he owed to C; payment made from SCL account and has been noted as a directors' withdrawal; no credibility to argument that Gibbston Valley property in C's sole name because of difficulties with creditors; S's indirect contributions could be balanced against use of property he had during relationship; if parties had turned their minds to property issues during relationships duration S could not have reasonably expected interest in Gibbston Valley property; S has failed to establish extra contributions to Kauri Road property; proceeds to be divided equally; claim rejected

#### High Court

Weston-Webb v Vargo22/4/04, Rodney Hansen J, HC Whangarei, CIV-2003-488-354

Civil procedure - Injunctions Property - Real - Interests in land (see also Property Real -

Access rights; Property Real - Easements) Unsuccessful application by V to restrain distribution of proceeds of sale and funds held in joint bank account; WWB and V had jointly purchased property and agreed to build on it, each contributing to cost of construction generally in proportion to their interest in the property; V claimed to have contributed greater amount and wanted proceeds of sale held until dispute resolved;

Held, parties agree in general that each entitled to proportionate share of funds in account; therefore it is possible to calculate approximate current account balance of each partner which should be distributed, subject to the as yet undetermined claims and need to provide for security for costs; six of V's causes of action have a realistic prospect of success; W's have good arguable case on substantive claim, which related to recovery of a loan; funds to be distributed subject to amount the subject of claims and counterclaims, and provision for security for costs; costs to lie where they fall; application declined

#### High Court

Public Trust v Whyman 17/12/04, CA76/04 Family law Matrimonial property Division Wills, probate and administration - Executors and administrators - Administration Wills, probate and administration - Family protection - Breach of moral duty

Successful appeal against High Court ("HC") decision granting letters of administration to W; W was defacto partner of John Russell ("R"), who died intestate in 2003; R's assets were comprised primarily of three residential properties; these were owned jointly with W and passed to W by survivorship; R had life insurance cancelled it a year before his death; as a result R's two children from previous marriage were left with nothing; HC proceeded on the basis that W had prior right to grant of administration arising out of her status as surviving de facto partner of R; also that PT was only entitled to administration in exceptional circumstances; PT submitted special circumstances existed because R's estate could be augmented by a successful claim under Property (Relationships) Act 1976 (PRA) or Family Protection Act 1955 (FPA) which conflicts with W's personal interests; W submitted Court cannot entertain application because there is no possibility of claim; on grounds that her choice of option B meant PRA had no application

Held, key issue of case is whether there is a credible claim by estate of R against W under PRA; if so there is clearly conflict of interest and appointment of PT as administrator is warranted; proposed claim on behalf of estate of R is not precluded by W's choice of option B; if legislature thought that, where option B has been chosen, there could be no claim by personal representatives of spouse, it is difficult to see why s 88(2) PRA would have been enacted at all; appropriate to exercise discretion under s 88(2) PRA; HC's application of "Serious Injustice" test too stringent; level warranted need not be intolerable; if there were funds in estate of R it is likely his children would have substantial claim under FPA; R appears to have structured his affairs to avoid what would otherwise have been statutory rights of his children as well a moral duty to them; these circumstances appear to be those envisaged by legislature when it enacted s 88

(2) PRA; grant of letters of administration to W is set-aside; letters of administration are granted to PT; appeal allowed

#### High Court

Wakatipu Environmental Society Inc v Queenstown Lakes D C20312004

Environment and natural resources - Conservation Resource management - Plans - District

Determination as to whether specified landscape was outstanding natural landscape ("ONL") under Resource Management Act 1991 (RMA) and proposed district plan The Remarkables ("TR") ONL under RMA question arose about where on northern face of TR and Ben Cruachan (falling down to Kawarau River) to locate line dividing ONL of Wakatipu Basin ("WB") from visual amenity landscape ("VAL") - in earlier proceeding Environment Court ("EnvC") reserved leave for any party or concerned landowner to apply to move ONL in respect of land in WB - OLDC lodged and served brief of evidence from landscape architect Ms Kidson ("K") - Signature Investments Ltd ("SIL") owned land on southern side of Kawarau River, including flood plains and terraces above that river, as well as nearby fans SIL contended that

river flats, terraces and fans were not part of ONL, but were self-contained VAL - EnvC considered landscape(s) description and categorised it or them - K presented evidence that SIL land was part of ONL of TR K applied Pigeon Bay criteria as suggested in earlier EnvC landscape decision namely by assessing geomorpology, topography, ecology, aesthetics, legibility, transient and recognised values and cultural and historical values of relevant landscape - Mr Craig ("C"), landscape architect, presented evidence for SIL C argued that where TR ended and WB ended constituted VAL therefore area of flats, terraces and fans of over 4 kms long on SIIs land were VALs.

Held , K's simpler evidence preferred to that of C - C's evidence was problematic as his VAL was sandwiched between two ONLs - C also seemed to work backwards from objectives and policies of proposed district plan as to what was outstanding and what was not - at its widest C's VAL was one kilometre wide - SILs strip is not large enough to be a landscape - SIL land is inside ONL, and that ONL/VAL boundary should be drawn on QLDC's planning maps - if QLDC seeks sealed order to give effect to this decision it should lodge draft by 28 February 2005 - costs reserved orders accordingly.

#### High Court

ASB Bank v Whelan, 23/12/04, Associate Judge Faire, HC Auckland, C1172004-404-1225

Property, Civil procedure

Successful application by ASB for summary judgment for \$224,376.58 plus interest outstanding under mortgage after mortgagee sale; WEL as trustee company obtained loan from ASB to build town houses using 21-year leasehold interest as security; Ws as trustees provided personal guarantees to support replacement loan; Ws signed waiver declining independent advice; WEL defaulted under loan; whether personal guarantees obtained under duress; whether Ws given reasonable opportunity to decide whether independent advice needed; whether ASB negligent in failing to preserve mortgaged property and causing it to be sold at undervalue;

Held, no evidence produced to support allegations of duress, coercion and undue influence; Ws appeared to have been driving force behind arrangements; solicitor's certificate on behalf of WEL did not support Ws' contention; no obligation on ASB to freehold property before sale; such obligation inconsistent with general obligation on mortgage not to take steps making redeeming of mortgage impracticable; property damaged before ASB took possession; Ws as guarantors not covered by s 103A Property Law Act 1952; Ws had waived any right they may have had regarding failure to maximise realisable value of security; no evidence of sale at undervalue; application granted

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### High Court

Ballance Agri-Nutrients (Kapuni) Ltd v The Gama Foundation 2111 /04, Chisholm J, HC Christchurch CIV20044091118

Contract - Parties - Privity Property - Real - Lease

Tenancy law Landlord Unsuccessful appeal by B against arbitrator's finding that The Gama Foundation ("TGF") had standing to bring arbitration claim and could enforce covenants in lease - B held rolling six-month tenancy of property following expiration of lease - Original lessors Donjon Properties Ltd transferred property to Gama Holdings Ltd ("GHL") - B gave notice in April 2001 of intention to vacate property in September 2001 - in June 2001 GHL transferred property to major shareholder TGF - TGF due to take possession under agreement in August 2001 but only did so in December 2001 - B vacated premises by end of October 2001 - parties referred issue of responsibility for repairs to arbitrator - whether arbitrator correctly held that s 112 Property Law Act 1952 (PA) gave TGF standing to bring claim - whether arbitrator correctly held that TGF entitled to enforce covenants in lease - whether TGF entitled to rental income from 1 August 2001.

Held, possession date, 1 August 2001, key date for entitlement to rents and profits - no formal variation of possession date and delay in taking possession not material - TGF clearly entitled to benefit of s 112(1) PA unless notice to tenant essential prerequisite - s 112(1) PA intended to define person entitled to take advantage of covenants under lease - Parliament could have made any duty of notice to tenant explicit - nothing in statutory test requires notice to be implied - TGF clearly "permitted assignee" of GHL appeal dismissed.

#### High Court

Stohesay Holdings v Walker, 30/11/04, Associate Judge Lang, HC Blenheim, CIV-2004-406-147

Civil procedure, Property- Judgments - Summary Tenancy law Tenancy agreements - Lease

Successful application by W for order setting aside summary judgment; SHL obtained summary judgment in sum of \$91,325.88 against W on grounds of unpaid rent in respect of building it owned; W applied to have summary judgment set aside arguing lease entered into with company and not him personally as evidenced by lease and subsequent assignment;

Held, whether defendant has substantial ground of defence, whether delay has been reasonably explained, and extent to which plaintiff may suffer irreparable damage if judgment set aside are not prerequisites but merely factors relevant to enquiry which will determine where justice of case lies; assertions made after event need to he measured against other undisputed evidence together with

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contemporaneous documentary material; sufficient independent documentary evidence to suggest that W was not lessee of premises; W would therefore have had reasonable defence to application for summary judgment; SHL would not suffer irreparable harm if judgment set aside, not having altered its position in reliance; application granted

#### High Court

Yu v Yu 30/11/04, Associate Judge Gendall, HC Wellington CIV-2004-485-1974

Civil procedure - Judgments - Summary Property - Personal Ownership and possession - In common

Successful application by CY for summary judgment for sale of property under s 140 Property Law Act 1952 (PLA) - mother ("M") of CY and PY transferred property to both as tenants in common in equal shares - M lent purchase price to parties, then forgave part of mortgage - CY claimed that M intended to progressively release mortgage interest under unsigned will - however M's last signed will left mortgage interest to PY although this resulted in unequal division of M's estate CY sought to pursue her legal remedies as owner of half share in property CY claimed PY occupied property and denied her access - PY claimed that M had transferred property to him and CY to avoid clawback of rest-home fee subsidies - PY claimed he had proposed joint ownership to keep property in family as M intended - PY claimed subsistence of vendor mortgage showed property held on trust for M PY claimed cultural expectations of honouring M's wishes affected understanding regarding ownership.

Held, no formal trust documentation exists and no acknowledgement by PY or CY that property held on trust - when co-owner with a 50 percent or greater interest in land seeks sale Court must so direct unless good reason to contrary - s 140 PLA mandatory and residual High Court discretion concerning summary judgment cannot override application parties agreed giving PY first option to buy CY's share best solution - orders made for valuation application granted.

### High Court

Hickey v Puhoi Holdings Ltd 29/4/04, Randerson J, HC Auckland CIV-2004-404-1761

Property Real - Lease

Unsuccessful application by H for relief against forfeiture under s 120 Property Law Act 1952 (PLA); H was party to a lease from PHL; H did not exercise her right of renewal within the specified three month period; H sought relief against forfeiture and an order to grant her a new lease; counsel for H responsibly informed the Court that there were two jurisdictional

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problems with the application; firstly there was no unequivocal refusal by PHL to grant a renewal in term of s 120(3)(c) PLA; secondly, even if there was an unequivocal refusal by the letter of 14 April 2003, the letter was well outside the specified time limit; counsel for H submitted that the Court should instead make an order under r 458D High Court Rules authorising the bringing of a specific performance application; counsel referred to Vince Bevan v Findgard Nominees Ltd [1973] 2 NZLR 290

Held, not persuaded that Vince Bevan v Findgard Nominees Ltd is of assistance to H; s 120(3) PLA has been amended since that case and any way it does not support proposition contended for by counsel; only supports the case where there has been a refusal but no reasons given for refusal; application should be refused on the grounds that there is no jurisdiction in the absence of an unequivocal refusal to renew; if there had been a refusal to renew by virtue of the letter of 14 April 2003, then the application is out of time; application declined

#### High Court

Hildred v Strong 19/5/04, France J, HC Wanganui CIV-2003-485-218

Civil procedure - Application

Family law De facto property - Property claims Unsuccessful application by S for pre-trial determination under r 418 High Court Rules (HCR); following end of their ten-year relationship, H and S entered into written settlement agreement dividing their property; after some disagreement, H commenced proceedings seeking orders setting aside settlement agreement; critical part of the proceeding was that the settlement agreement did not include assets held by Ss company Outlook Resources Ltd ("ORL") and that those assets were part of the relationship property; S asked for the determination of the following questions before trial; what were the assets of ORL at the time the settlement agreement was entered into: whether H was entitled to a share of any of the assets at the date of the agreement; whether or not ORL and its assets formed part of the relationship property;

Held, in order for H to succeed, she will have to have settlement agreement set aside, which will focus on ORL; this application was seeking to establish answers to questions which would amount to a "substantial minitrial" in advance of main trial and therefore not suitable for resolution using r 418 HCR; application declined

High Court Lal v Round *Tower* West Ltd 28/4104, Williams J, HC Auckland, *CIV20034045960* Equity - Assignment Property - Real - Lease

Unsuccessful application by L to retain possession of property leased from RTWL; L had leased a property for his business; L sold this business to his friend Mr Pillay ("P") and Mrs Kumar ("K"); agreement allowed for P and K to pay installments to L based on takings; P had trouble meeting rent payments; RTWL bought property from previous landlords; L retook possession of property shortly before RTWL re-entered property, claiming arrears of rent and other payments; RTWL submitted L's agreement to assign coupled with passing of possession of premises is effective assignment to P and K, therefore RTWL had right of re-entry; L submitted occupation and payment of rent by P and K did not amount to assignment of L's lease; assignment was not to occur until full purchase price received; L asserted he had right to relief from forfeiture and refusal to renew lease as there was no indication to L of arrears and L was ready to pay arrears on quantification;

Held, contract between L and P and K was for sale and purchase of business, partly financed by vendor, and with sum owing being secured by lien over lease and chattel security; superficial reading of contract might suggest assignment only occurred after full payment of loan; however, correct position is that by entering agreement L transferred his entire interest in business and lease to buyers; clearly an act of assignment from L giving up entire possession of leased premises to buyers and P and K, and thereafter making no payments of rent and outgoings himself; application declined

#### High Court

Brogan v Bayou Apartments Ltd 24/11/04, Rodney Hansen J, HC Auckland CIV2004-404-5023

Civil procedure - Injunctions

Property Real - Encumbrances

Successful application by Bs to extend ex parte interim injunction restraining BAL from disposing of property - Bs entered into agreement with BAL's predecessor to purchase building on condition it was refurbished for use as delicatessen/cafe - agreement contained "sunset clause" which on literal reading allowed either party to cancel agreement, but which was inserted at Bs' request and assured BAL would not use it BAL twice purported to cancel agreement causing Bs to lodge caveat and obtain ex parte interim injunctions - issue whether ex parte interim injunction should be extended.

Held, sufficient evidence to establish representations and conduct by BAL which could provide foundation for defence based on waiver or estoppel - B' proceeded on basis that sunset clause would not be invoked serious question to be tried as to whether either purported notice of cancellation effective to bring agreement to end usual for specific performance rather than damages to be awarded in

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contracts relating to land because land not readily substitutable - balance of convenience favoured maintaining status quo - application granted.

#### High Court

Cox v Young 20/10/04, Associate Judge Lang, HC Rotorua CIV-2004-463-240

Civil procedure Costs - Security for costs Tenancy law Tenancy agreements Lease Successful application by Ys for security for costs Ys terminated lease of motel units to C for non-payment of rent C conceded substantial arrears but alleged collateral agreement after lease signed that C would meet cost of renovating units in return for rental being paid only as she could afford to do so C sought damages of \$3.7 in - Ys denied agreement and applied for security for costs C submitted security should not be ordered as she would be able to meet any costs from income and otherwise had history of repaying indebtedness.

Held, real likelihood that C would not be able to meet any adverse award of costs in short to medium term - case described as weak in earlier proceedings no delay in bringing application for security C's impecuniosity not caused by Ys' actions in terminating lease no element of oppression no suggestion that order would prevent C from continuing with claim modest security of \$6,000 ordered application granted.

### High Court

Westpark Village Ltd v Waitakere Properties Ltd 2/11/04, Associate Judge Lang, HC Auckland CIV-2004-404-4573

Civil procedure Judgments Summary Property Real Lease

Unsuccessful application by WVL for summary judgment in form of declarations - WPL, trading enterprise of Waitakere City Council, owned reclaimed land leased to WVL in perpetuity WVL proposed to erect marine workshops on leased land WPL refused to consent on grounds proposed use not permitted by lease, which only allowed buildings that conformed with permitted purposes in definition of "boat harbour" in s 2 Waitemata City Council (West Harbour) Empowering Act 1979, for use and convenience both of boating and general public.

Held, withholding approval solely on basis that proposed use outside range of uses permitted by lease not arbitrary WPL did not withhold consent unreasonably "amenity" is factor or fixture, whether tangible or intangible, that enhances, or provides advantage to, environment within which it is located - proposed activities must be for use and convenience both of general and boating public while each proposed use could potentially be viewed as amenity, insufficient evidence put to provide definite conclusion - application declined.

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#### High Court

*Perfect v* Dittmer 2/2/05, Ellen *France J*, HC Wellington CIV-2004-485-1659

Property Real Encumbrances - Restrictive covenants

Contract Breach Liability Determination Unsuccessful claim by Ds against their draughtsman Mr Nicholson ("N") for alleged breach of contract in design of plans for new house - Ds claimed N breached contractual duty of care by planning house which breached height restriction in sale and purchase agreement for section height restriction to form restrictive covenant on certificate of title - N denied he was given sufficient information about height restriction to trigger reasonable inquiry N claimed house prepared according to instructions and builder Mr Lyons ("L") also not given *sopy* of agreement for sale and purchase - whether subsequent information given to N altered situation.

Held, unclear why early plans not drawn to include height restriction if N had this information - similar problem arising with L supporting N's view of confusion and lack of coordination on Ds' part - N dealt with height restriction without apparent difficulty when he received relevant information after proceedings issued Ds failed to prove they gave initial instructions concerning height restriction and N not responsible for clarifying later situation Ds contracted N to develop plans from fairly well advanced drawings so reasonable N not to take matters further than he did - claim rejected.

#### High Court

Cleary v Sellen 2/12/04, Associate Judge Gendall, HC Wellington CIV-2004-485-2148

Civil procedure - Judgments Summary Trusts Trustees - Duties and liabilities Preservation of trust property

Unsuccessful application by C and fellow plaintiff Mr Goldman, ("G"), for summary judgment order for sale of trust property under s 140 Property Law Act 1952 (PLA) - C, G, and S registered proprietors of \$600,000 property as trustees for family trust - C and S formerly married and relationship property dispute still before Courts C and G applied for order for sale of property - issues being whether they had "one moiety" and whether majority of trustees able to bring application under s 140 PLA.

Held, trustees must act unanimously for benefit of beneficiaries unless trust deed provides otherwise - property being held as a whole for benefit of beneficiaries - majority of trustees cannot be said to be entitled to one-half share and therefore have less than one moiety application dismissed.

#### High Court

Waipa District *Council v* Widdowson 27/1/05, Harrison J, HC Auckland CIV-2004-419-001561

Building Regulation Compliance

Civil procedure Jurisdiction Courts High Court Unsuccessful appeal by WDC against determination in favour of Ws by adjudicators under Weathertight Homes Resolution Services Act 2002 (WHRSA) - adjudicators ordered WDC to pay Ws \$181,985 - Ws claimed WDC should have filed appeal in District Court ("DC") and High Court ("HC") had no jurisdiction to determine appeal -'WDC filed appeal in HC as it anticipated that duty of care issue on appeal would require originating determination there.

Held, s44(3) WHRSA provides clear and unambiguous regime for determining "amount at issue" and hence venue of appeal - appeal falls within s44(3)(a) WHRSA as WDC is clearly liable party and appealing party amount payable under adjudication is "amount at issue" for purposes of legislation despite original claim exceeding \$200,000 - notice of appeal struck out - application by WDC to DC merits favourable consideration - WDC may then apply for transfer if appropriate - appeal dismissed.

#### High Court

Warbrick v Ferguson

Real - Use - Limitations Property Successful appeal by Ws from decision of District Court ("DC") Judge ordering reduction in height of boundary trees from 3.6 m to 2.8 m; Ws maintained boundary trees at height of 3.6 m, which obstructed or had potential to obstruct, view of St Heliers Bay from neighbouring townhouses; Fs and others application for order that trees be removed amended at DC Judge's invitation to application for order that trees be trimmed; DC Judge stated in course of hearing that trimming to height of 3.3 m would suffice, but final order stated, without explanation, that trees should be trimmed to 2.8 m; on appeal Ws adduced further evidence in form of consent issued by Auckland City Council to construct screen wall to height of 3.6 m; Ws argued, among other things, that Judge erred in holding that construction of boundary wall to height of 3.6 m could equally be reviewed under s 129C Property Law Act 1952 (PLA), as s 129C PLA only applies to non-permitted structure;

Held, s 129C PLA contains discretion that must be exercised conservatively; any order must be "necessary" to remove only that part of any obstruction which is "undue"; jurisdiction under s 129C PLA confined to structures erected without building consent; to reduce trees to height of 2.8 m would go beyond s 129C PLA, giving wholly unobstructed view at expense of Ws privacy; however, maximum height of trees still needs to be identified; consensus of parties, along with building consent for reasons; Ws ordered to trim and maintain trees to average maximum height of 3.5 m at own cost; that being height suggested by arborist, and most nearly supplies balance required by s 129C PLA; costs to lie where they fall; appeal allowed

#### High Court

Thai Holdings Ltd v The Mountaineer Ltd Property Real - Lease

Successful application by THL for renewal of deed of Sub-Lease ("SL"); SL commenced on 14 May 1998; lease was for two years with five rights of renewal for two years each; in May 2004 ML wrote to THL claiming there was no longer an HL because it was terminated by a merger; prior to that, THL had accepted an increase in rent by ML; also, ML had ensured THL that SL was safe; ML submitted that, regardless of whether there was merger, SL did not survive as lease had not been renewed; THL submitted there was obligation on ML as head-lessor to apply for renewal; THL asserted s 120 Property Law Act 1952 (PLA) was clearly intended to apply in such situations; THL also submitted letter from ML setting rent gave rise to separate cause of action in estoppel;

Held, representations and assurances by ML give rise to action in estoppel; Court has wide and unfettered discretion where there is clear estoppel; ML ordered to grant renewal of rent for two year period at rental assessed by ML and accepted by THL; obiter, merger issue falls on whether there was intention; merger dependent on intention of parties; no intention by parties to merge; tho obligation on ML within the SL to take all reasonable steps to obtain renewal; s 120 (2) PLA does not help THL's case; that section only concerned with expiry of sublease; application granted

#### High Court

Castro v Thompson 10/2/05, Wild J, HC Wellington CIV20044851421

Family law De facto property - Property claims Successful appeal by C against District Court ("DC") decision DC Judge dismissed C's claim for share in T's residential property parties had lived in residential property for most of their 11 year de facto relationship - C appealed on following two grounds - DC Judge wrong to find that C's contributions to relationship and property did not entitle him to share in the property DC Judge failed to appreciate that recent case law placed less emphasis on contributions to property instead recent case law placed more emphasis on length of relationships and contributions to it - DC Judge held that C did not have such an expectation.

Held, DC Judge did not err in his factual findings nor in application of legal principles to the facts each of the recent relevant case law submitted were distinguishable on the facts - however, DC's Judge's rejection of award given in Mangham v Smith 11/7/03, Heath J, HC Tauranga CP2/02 could have led C to have some justification to feel he was unjustly treated - appellant Court role is simply to detect any error in law or fact in lower Court decision - none have been found in DC Judge's decision - appeal dismissed.

#### High Court

Copland v Queenstown Lakes District Council 12/1/05, Judge Sheppard, Commissioners Catchpole and Manning, EnvC Christchurch C3/2005

Resource management - Consents Considerations - Adverse environmental effects - Visual

Resource management - Consents - Type -Discharge - Subdivision

Unsuccessful appeal by Cs against QLDC's refusal to allow subdivision Cs sought to divide 8.7-hectare parcel of land on north-eastern side of Wanaka-Luggate highway into two lots - site in question part of visual amenity landscape (VAL) - Cs recognised potential visual effects of subdivision and sought to mitigate them with height and other restrictions - Cs also suggested conditions preserving existing planting and preventing further subdivision.

Held, no evidence provided about orientation of future house or other buildings on building platform - plantings unlikely to mitigate visual effects to point of being minor - ability of site to absorb change without being inconsistent with policy on effects on landscape values at threshold - existing and permitted development has already changed landscape of immediate vicinity further development would produce unacceptable level of cumulative effects - partly operative District Plan refers to district-wide objectives of preserving visual coherence of VALs by screening C's proposal affects general density of built development - effects significant enough to weight against grant of consent - appeal dismissed.

#### High Court

#### Asmussen v Hajnal 15/2/05, Wild J, HC Nelson CIV2004442148

Property Real Easements Rights of way Unsuccessful application by A for order under s 129B Property Law Act 1952 (PLA) requiring H to grant right of way to landlocked property A and H owned adjoining properties (142 and 136, respectively) abutting steep slope - houses built in 1940s and contemplated vehicular access to 142 across right of way over 136 granted in 1948 - separate driveway access never formed and successive owners of 142

- Judge then divided land 2:1 between C and H in terms of s 13 PRA. Held, finding that all land is family home was

wrong focus of judgment was on block as economic unit and adequacy of its income to sustain the family - this approach cannot justify conclusion that entire block is family home, ignoring homestead provisions - not possible to impose decision on appeal in circumstances - statute requires factual finding of extent of curtilage surrounding family home which can properly be regarded as land used for purposes of household, with focus on use of land surrounding home, rather than on land's economics and production income - further valuation of resulting homestead needs to be undertaken judgment set aside and proceeding remitted back to FC appeal allowed.

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continued to use existing formed access over different part of property both H and A wished to develop properties - H gave notice to A of pending termination of use rights over existing access A applied for order that 142 landlocked H and A provided 13 engineering options for new driveway whether options feasible.

Held, property will be "landlocked" if there is no reasonable access while "reasonable" access will not invariably mean "vehicular access", pedestrian access will not usually amount to reasonable access in case of properties developed after advent of motorcar - if existing right of way withdrawn there would be no vehicular access to 142, making it landlocked - expense of creating legal vehicular access not "significant hardship" - grant of legal access across existing driveway would cause considerable hardship to H discretionary relief under s 129B PLA to be refused provided A able to obtain resource consent for one of four feasible options - application declined with leave reserved to renew.

#### High Court

#### Cole v Horton 23/12/04, Priestley J, HC New Plymouth CIV2004443313

Family law Matrimonial property Homestead Successful appeal by C against decision of Family Court ("FC") concerning division of property following relationship breakdown C and H married in 1996, and separated in 2001 - parties lived on small rural property consisting of home and 18 hectares of land that had been owned by C's family since 1927 - Judge held that all land was land used principally for purposes of household, therefore dwelling-house, appurtenant buildings and all land was family home, and rejected argument that homestead provisions of Property (Relationships) Act 1976 (PRA) applied respectively, having found extraordinary circumstances

## High Court

Neil Construction Ltd v Rodney District Council 28/1/05, Judge Newhook, EnvC Auckland A01112005

Civil procedure - Time - Extension Resource management Consents Type

- Subdivision

Successful application by NCL for waiver of time limit for appeal against RDC's refusal of subdivision consent - Notices of appeal and applications for waiver of lateness received outside 30-working-day time limit in s 274 Resource Management Act 1991 - NCL claimed that service copy of appeal went to community law office which had offered legal assistance however

NCL heard nothing further and lodged own notices. Held, NCL should not be penalised in

circumstances where community law office appears to have overlooked lodging notice - second and third applicants' claim they had been misled over time limits normally not persuasive - however they had lodged detailed applications and lived close to site - parties had only recently reached agreement to mediate - costs reserved - application granted.

#### High Court

Payne v Payne 17/2/05, CA239104 Civil procedure - Judgments - Stay Family law Matrimonial property Matrimonial home

Unsuccessful application by Mr P for stay of order made by High Court ("HC") for sale of a property for which Mr P and Mrs P were registered proprietors - HC orders were to enforce Family Court's order for sale in matrimonial proceedings - Mr P submitted HC judgment wrong for relying on earlier Court of Appeal ("CA") judgment in relation to whether, by paying a sum into Court, Mr P had acquired interest of Mrs P's property - Mr P argued CA was wrong and that he had live application for recall of that judgment.

Held, test is a balance of the prospect of Mr P's success in proposed appeal with Mrs P's right to be paid her entitlement under judgment - Mr P has no prospect of success - recall of earlier CA judgment not available to Mr P, as judgment has been perfected - CA judgment is final word on issues it canvassed and no lawful basis on which it can be challenged Mrs P's right to be paid her entitlement is not capable of further dispute - application declined.

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Construction Details					
(If insufficient space please continue on separate sheet)					
Areas					
Contract Price (Excluding GST)					
Analysis					
Element	Floor Area	Cost/M2	Modal	Multiple	

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# wostings

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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.

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.

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# 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.

#### Northwood, Christchurch April 2004

Contributed *by Property Technology Ltd* Construction: Residential House, currently 27% completed. 4 bedrooms (Con fdn for floor), 2 bathrooms (Est walls Rockcote cladding and Linea boarding), Double Garage (Interior walls plaster board). Roof Long Run Colsteel, Joinery: D/S Alum. 7 year Masterbuild guarantee. Site works: driveway (col concrete) patio same concrete service Board. Landscaping: ready lawn & basic shrubs, boundry line 2 sides lh share. Internal fence 1.5 & 2, clothesline (fence mounted), 1 mailbox (brick plaster) Areas: House area 191.48m2 (PC Sum \$8,500) Contract Price: House \$216,400 (excl GST) Siteworks: \$15,420 (excl GST) Rangiora, Canterbury WestlandMay 2004Contributed by Denis J Milne, North CanterburyValuationsConstruction: Superior hip roofed bungalow with<br/>dual bathroom and integral double garage in a new<br/>subdivision Hamner Springs.Areas: 37.65m2Contract Price: \$177,464 (excl GST)<br/>Analysis:<br/>Net Modal Rate: \$827.43

#### Canterbury Westland - October 2004

Contributed by Denis J Milne, North Canterbury Valuations Construction: Hip roofed 3 bedroom bungalow with dual bathrooms and integral double garage, situated on a flat section at Sefton. Private builder whose price is very competitive. Areas: 35.34m2 Contract Price: \$156,254 (excl GST) Analysis: Net Modal Rate: \$720.89

#### cowrler6at Castings

Birmingham Dr Area, CHCH April 2004 Contributed by *Property Technology* Ltd Construction: Commercial Factory Warehouse 5 meter stud, Concrete Fdn and floor (wodden top), Ext walls 120m precast concrete slabs - office Hardiflex on TW frame & Rockcote. Roof Trimdele Col steel. Joinery Alum, Lininap Plaster (office) & D/side sisalation on netting (roof). Steel portal frame, Suttering Butynolan 18m CPd plywoods P+ Para/xl wall. GIFI reception & Office top office & (A Hachect's side of building) Areas: Ground floor 561m2 + Deck 11.16m2 + Upper Floor 58m3 = 619m2

Contract Price: \$340,5000 (excl GST) + \$5,000 plans + \$5,500 Council RC.

Analysis: Office GF 63.8, Top 58.0, Ablution 7.0 Notes: Warehouse 503.67, Roller Door 4.8 x 4 hand operated.

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