

VALUER-GENERAL *v.* MANNING.

LAND VALUATION COURT. Auckland. 1952. May 27 ; August 4. ARCHER, J.

*Valuation of Land—Value for Death-duty Purposes—Residential Property—Fair Market Value to be ascertained—Replacement Cost merely Factor in assessing Fair Market Value—Costs—Order for Payment by Valuation Department of Part of Objector's Costs—“ Price ”—“ Capital value ”—Death Duties Act, 1921, s. 70 (5)—Valuation of Land Act, 1951, s. 2—Land Valuation Court Act, 1948, s. 32.*

The definition of “ capital value ” in s. 2 of the Valuation of Land Act, 1925 (now 1951), which relates capital value to saleability at a hypothetical sale, is not intended to create a new standard of valuation for rating and duty purposes, but is intended to apply to valuations made for those purposes the established conception of “ fair market value ”, which is assessed by reference to a hypothetical sale between a willing seller and a willing buyer.

*Duthie v. Valuer-General* ( (1901) 20 N.Z.L.R. 585), *Thomas v. Valuer-General* ([1918] N.Z.L.R. 164), and *Valuer-General v. Wellington City Corporation* ([1933] N.Z.L.R. 855) followed.

*In re Oriental Hotel, Muir to Niall* ([1944] N.Z.L.R. 512) and *Spencer v. Commonwealth of Australia* ( (1907) 5 C.L.R. 418) applied.

The “ replacement cost ” method of valuation should be regarded, not as an alternative to market value, but as a factor to be considered in the assessment of a fair market value.

*Valuer-General v. Wellington City Corporation* ([1933] N.Z.L.R. 855) followed.

*D. to E.* ( (1944) (No. 1) 20 N.Z.L.J. 155) and *R. Estate to B. Co., Ltd.* ( (1947) (No. 103) 23 N.Z.L.J. 183) referred to.

Sales at excessive prices, and appearing to be attributable only to the whim, extravagance, or compelling needs of individual purchasers, should be disregarded in the assessment of market value. There is, however, a distinction between an individual case where an excessive price is paid for personal reasons (since the price paid is out of line with market prices) and a general situation where the prices of houses are found to exceed replacement costs in consequence of an insistent and unsatisfied demand for homes (the price level being constituted by actual sales and following naturally from an excess of demand over supply). Supply and demand are factors in the determination, not only of price, but also of value; and the effect of demand upon the property market is not to be disregarded merely because it reflects in varying measure the needs of prospective buyers.

In 1940, a house was built at a cost of £1,134 9s. 5d., the section costing the further sum of £425. It was occupied by the owner and her family until her death on May 13, 1951, when the existing Government valuation was £1,760. The property was valued on a special valuation for death-duty purposes by the Valuation Department at £3,125.

The value, for the purposes of s. 70 of the Death Duties Act, 1921, was found by the Land Sales Committee to be the "replacement value" of the property—namely, £2,980 (allowing £840 for the land): *sub nom. In re Manning* ((1952) 7 M.C.D. 479). That figure, merely as "replacement cost", was upheld by the Land Valuation Court.

The Valuer-General appealed from the Committee's decision, on the ground that the amount so found was not the true value of the property, and was not, in the circumstances, in conformity with the value required to be found under the Death Duties Act, 1921. More comprehensive evidence as to the selling value of the property at the date of the deceased's death was given before the Court than was given before the Committee.

*Held*, 1. That, although at the material date the replacement value of the property was £2,980, it could have been sold at that date at £3,125.

2. That the replacement value could not be accepted, as the evidence showed that a higher figure could have been obtained at the relevant date in the open market, since, both on principle and by virtue of the definition of "capital value" in s. 2 of the Valuation of Land Act, 1925 (now 1951), market value must take precedence over replacement value where there is shown to be a divergence between them.

3. That the unanimous agreement of the valuers that the deceased's property could have been sold at the date of death for £3,125 was conclusive evidence that that was the capital value of the property for the purposes of s. 70 of the Death Duties Act, 1921.

4. That, in view of the Valuation Department's method of assessment, and of its unusual course in presenting its case, the estate of the deceased should be reimbursed in part for its costs.

APPEAL by the Valuer-General against a decision of the Auckland No. 2 Land Valuation Committee upon an objection lodged by one Cecil Howard Manning against a special valuation made under s. 70 of the Death Duties Act, 1921 (7 M.C.D. 479). The property concerned was situated at 18 Masons Avenue, Herne Bay, Auckland, and was part of the estate of Agnes Robina Manning, who died on May 13, 1951. It comprised a dwellinghouse and the usual amenities, with 22 perches of land. The special valuation fixed a capital value of £3,125, comprised of unimproved value £840 and value of improvements £2,285.

The facts and a summary of the evidence appear in the judgment.

*Rosen*, for the Valuer-General.

*S. C. Clarke*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by

ARCHER, J. At the hearing before the Committee, Mr. I. McIndoe gave evidence for the Valuation Department and Mr. C. H. Webb for the

objector. These witnesses were both experienced valuers. They agreed on an unimproved value of £840, and, in valuing the improvements, both used the method of "replacement cost less depreciation", and with a considerable measure of agreement. By reason of his greater deduction for defects in construction, however, Mr. Webb's final figure for improvements was £2,130, as against Mr. McIndoe's figure of £2,285. The Committee accepted Mr. Webb's assessment with one small adjustment, and reduced the Department's valuation to :

Unimproved value	£840
Improvements ..	£2,140
	_____
Capital value	£2,980

On the hearing of the appeal from this decision, the value of the improvements on a replacement basis was again traversed by both parties, but upon this aspect of the case we are not persuaded that the Committee's decision should be amended. We accordingly hold that the "replacement value" of this property (allowing £840 for the land) is £2,980.

The substantial ground of appeal, however, was that the amount so found was not the true value of the property, and was not, in the circumstances, in conformity with the value required to be found under the Death Duties Act, 1921. By subs. 5 of s. 70 of that Act, it is provided as follows :

In this section the term "land" has the same meaning as in the Valuation of Land Act, 1908, and the term "value" means capital value as defined by that Act.

In s. 2, the relevant section of the Valuation of Land Act, 1925 (now 1951), we find :

In this Act, if not inconsistent with the context—

"Capital value" of land means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to require.

It is acknowledged that at the relevant date for this valuation, May 13, 1951, there was a grave shortage of houses, and very high prices were commonly being paid, particularly where vacant possession could be given. The notes of evidence show that Mr. Webb said to the Committee :

I am not suggesting that £3,125 could not have been got for it on the open market. Prices are well up in the air. If I had been asked what price to put on this property, I would have said £3,200 to £3,300, and would expect that figure to be obtained.

Mr. McIndoe's evidence before the Committee included :

If advising a purchaser as to what to pay for the property, I would say : " My valuation is £3,125. Go and look at it. If you like it, pay up to £3,500, because, " if you don't like it, someone else will . . . " Judging by prices being paid, I would say a purchaser would be making quite a good purchase at £3,500 by comparison with other places.

It was on this evidence that the Department invited the Committee to confirm its valuation of £3,125, though it will be noted that its valuer arrived at this value by the replacement cost method, and, apart from the expression of opinion quoted, gave no evidence as to market value or as to actual sales as a basis for market value. The Committee held that its duty was to ascertain " the true value of the property for sale purposes ", and that :

the method best calculated to show the correct value under conditions such as exist to-day would be to assess the market value of the land (unimproved) and add to that the reasonable cost (less depreciation, &c.) of the improvements.

It found confirmation of this view in the fact that both valuers had used the method described and that the Department had placed no higher value on the property than its valuer's assessment of its replacement value. In rejecting the Department's contention, the Committee said: "It would not be equitable . . . in a case such as this to abandon conscientiously prepared replacement cost estimates, which may be made the subject of careful check, for the vagaries of mere 'opinion' evidence unsupported by factual data" (1952) 7 M.C.D. 479, 482).

Before the Court, the issue of "market value" was developed on behalf of the Valuer-General with much greater care. Mr. McIndoe said that in May, 1951, the property would have brought £3,500. He acknowledged the discrepancy between this figure and his valuation of £3,125, and admitted that, in making his valuation, he had relied entirely on the replacement method. He maintained, however, that selling value was at the time in excess of replacement value, and that an amount for "saleability" should be added to replacement value, in order to arrive at market value. Why Mr. McIndoe had not done this when making his original valuation was not adequately explained, but he professed to have been wrong in failing to add something for "saleability".

Mr. J. D. Mahoney, a senior officer of the Valuation Department, elaborated the contention that the market value of house properties was, at the relevant date, above replacement value, and assessed the difference at from 10 per cent. to 12½ per cent. Mr. Mahoney valued the property at £3,325, a figure arrived at by valuing it by the replacement method and adding 10 per cent. to the replacement value of the improvements. In support of his views as to the relationship between market value and replacement value, Mr. Mahoney submitted an analysis of sales of untenanted houses in Herne Bay and the adjoining district of Westmere, to show that the value of properties as indicated by actual sales was substantially higher than if calculated by the replacement method.

For the estate, evidence was given by Mr. E. L. Whelan, of the State Advances Corporation, and by Mr. C. H. Webb. Mr. Whelan said his Department had recently sold a large number of houses as mortgagee in possession. He said that these houses had first been valued by the replacement method, but he agreed that, in the Corporation's experience, houses in average residential areas, in fair repair, and with vacant possession, were generally saleable at from £200 to £300 in excess of their replacement value. Mr. Webb confirmed his evidence before the Committee, and his valuation of £2,970. He added, however:

The property would probably bring £3,200 in the open market at that time. If asked in May, 1951, what the property should have been sold for, I would have given that figure.

When asked to elaborate this statement, he said:

I am asked to make what I consider a fair valuation of this property. To arrive at that I must adopt a fair replacement value less depreciation. That is a fair value of that property. The question then comes up: What would a purchaser pay for it? That is where I have the other set of figures. In my view, the true value is shown by replacement cost, and any additional money is by way of premium. There is a general tendency to pay more than replacement value.

It will be seen that, as to the relationship between replacement value and selling value, these witnesses were substantially in agreement with the valuers called by the appellants.

More comprehensive and convincing evidence as to the selling value of the property at the date of death was thus before the Court than that which the Committee rejected as " ' opinion ' evidence unsupported by " factual data ". The Department had been in difficulty before the Committee, when, depending on a witness who had relied solely on the replacement method, it sought to sustain his valuation by a belated reliance upon selling value in the open market. In these circumstances, it is little wonder that the Committee rejected its plea for a higher value than that which it found to have been established by the replacement method.

In accordance with the practice of this Court, however, we have to decide this appeal upon the evidence as presented at the hearing of the appeal. On that evidence, we are in agreement with the Committee that, at the date of death, the replacement value of the property was £2,980. We find, however, that the property could have been sold at that date at a higher figure. All the valuers and Mr. Whelan were in general agreement with that proposition, the respective estimates of selling value being: Mr. McIndoe, £3,500; Mr. Mahoney, £3,325; Mr. Webb, £3,200. Mr. Mahoney's method was to add 10 per cent. to his replacement value of improvements, and his analysis of actual sales appeared to indicate that 10 per cent. was not an excessive allowance. The addition of 10 per cent. to the Committee's valuation of the improvements would increase its total valuation from £2,980 to £3,194, a figure very close to Mr. Webb's assessment of selling value of £3,200, and higher than the valuation of £3,125, which is the subject of this appeal. On the evidence, we are bound to hold that the property could have been sold in May, 1951, for £3,125.

As appellant, the Valuer-General contends that a finding that the property was saleable at the relevant date for £3,125 is conclusive in his favour. The estate nevertheless maintains that the true value of the property at that date was its replacement value of £2,980. We have now to consider which is the correct basis of valuation, having regard to the definition of " capital value " contained in s. 2 of the Valuation of Land Act, 1925 (now 1951).

It is to be remembered that Mr. Webb qualified his evidence as to selling value by saying that, in his opinion, the true value of the property was shown by its replacement cost, and that any additional amount paid by a purchaser would be by way of " premium ". Mr. McIndoe also appears to have regarded his assessment of replacement value as the true value of the property, and appears to justify a higher selling price only on the ground that a prospective purchaser who offered only the replacement value would lose the property to someone prepared to pay more.

It is in reliance on these expressions of opinion that the estate claims that replacement value is the true value, and that any sum offered in excess of replacement value is not added " value ", but is a " premium " paid in consequence of the scarcity of houses and of the dire needs of prospective purchasers.

It is, of course, elementary that we must give full effect to the statutory definition of " capital value ". As was said by *Sir Robert Stout*, C.J., in *Duthie v. Valuer-General* (1901) 20 N.Z.L.R. 585: " This definition is clear and specific, and it should be followed, whatever the " results may be " (*ibid.*, 589).

It is true, moreover, that in terms the definition relates capital value to saleability at a hypothetical sale. *Hosking, J.*, said in *Thomas v. Valuer-General* ([1918] N.Z.L.R. 164): " The saleability of the estate

“ or interest to be valued must be assumed as the basis ” (*ibid.*, 173). And *Kennedy, J.*, said in *Valuer-General v. Wellington City Corporation* ([1933] N.Z.L.R. 855): “ The sale is a hypothetical sale and the buyer “ is likewise fictional, because no person actually does buy ” (*ibid.*, 866).

It is equally true, however, that the definition envisages by implication, not only a reasonable and *bona fide* seller, but also a willing and informed purchaser, and that the sum which a property may be expected to realize at any given date is dependent as much on what purchasers may be prepared to pay as on what a vendor may be inclined to ask. We conceive that the definition is not intended to create a new standard of valuation for rating and duty purposes, but is intended to apply to valuations made for those purposes the conception of “ fair market value ” long established in English law and assessed by reference to a hypothetical sale between a willing seller and a willing buyer. Dicta as to “ fair “ value ” for the purposes of the Servicemen’s Settlement and Land Sales Act, 1943, and as to the valuation of property for the purposes of compensation claims are accordingly relevant, in many cases, to the issue now before us.

Thus, as to “ fair value ” under the Servicemen’s Settlement and Land Sales Act, 1943, in *In re Oriental Hotel, Muir to Niall* ([1944] N.Z.L.R. 512) *Finlay, J.*, held: “ ‘ value ’ means what, with all its advantages and “ disadvantages, the premises were worth to the owner on the critical “ date, assuming him to have been, at that date, a man of ordinary pru- “ dence and foresight, not anxious to sell for any compelling or private “ reason, but willing to sell as one businessman would to another, both of “ them being alike uninfluenced by any consideration of sentiment or “ need ” (*ibid.*, 516).

In the Australian compensation case, *Spencer v. Commonwealth of Australia* ( (1907) 5 C.L.R. 418), there are numerous passages which appear apposite to the issue in the present case. *Barton, J.*, said: “ And I should say in view of the many authorities cited and upon the “ sense of the matter, that a claimant is entitled to have for his land what “ it is worth to a man of ordinary prudence and foresight, not holding his “ land for merely speculative purposes, nor, on the other hand, anxious “ to sell for any compelling or private reason, but willing to sell as a “ businessman would be to another such person, both of them alike “ uninfluenced by any consideration of sentiment or need ” (*ibid.*, 436, 437). *Sir Samuel Griffith, C.J.*, said: “ In my judgment the test of “ value of land is to be determined, not by inquiring what price a man “ desiring to sell could actually have obtained for it on a given date, “ *i.e.*, whether there was in fact on that day a willing buyer, but by “ inquiring ‘ What would a man desiring to buy the land have had to pay “ ‘ for it on that day to a vendor willing to sell it at a fair price but not “ ‘ desirous to sell ? ’ It is, no doubt, very difficult to answer such a “ question, and any answer must be to some extent conjectural. The “ necessary mental process is to put yourself as far as possible in the “ position of persons conversant with the subject at the relevant time, “ and from that point of view to ascertain what, according to the then “ current opinion of land values, a purchaser would have had to offer “ for the land to induce such a willing vendor to sell it, or, in other words, “ to inquire at what point a desirous purchaser and a not unwilling vendor “ would come together ” (*ibid.*, 432). And *Isaacs, J.*, said: “ the “ ultimate question is, what was the value of the land on January 1, “ 1905 ? All circumstances subsequently arising are to be ignored. “ Whether the land becomes more valuable or less valuable afterwards

“ is immaterial . . . Prosperity unexpected, or depression which  
 “ no man would ever have anticipated, if happening after the date named,  
 “ must be alike disregarded. The facts existing on January 1, 1905,  
 “ are the only relevant facts, and the all important fact on that day  
 “ is the opinion regarding the fair price of the land, which a hypothetical  
 “ prudent purchaser would entertain, if he desired to purchase it for  
 “ the most advantageous purpose for which it was adapted . . .  
 “ To arrive at the value of the land at that date, we have, as I conceive,  
 “ to suppose it sold then, not by means of a forced sale, but by voluntary  
 “ bargaining between the plaintiff and a purchaser, willing to trade,  
 “ but neither of them so anxious to do so that he would overlook any  
 “ ordinary business consideration. We must further suppose both to  
 “ be perfectly acquainted with the land, and cognizant of all circum-  
 “ stances which might affect its value, either advantageously or pre-  
 “ judicially, including its situation, character, quality, proximity to  
 “ conveniences or inconveniences, its surrounding features, the then  
 “ present demand for land, and the likelihood, as then appearing to  
 “ persons best capable of forming an opinion, of a rise or fall for what  
 “ reason soever in the amount which one would otherwise be willing to  
 “ fix as the value of the property ” (*ibid.*, 440, 441).

Numerous authorities have justified the use, in the valuation of improvements, of the replacement cost method. Thus, in *Valuer-General v. Wellington City Corporation* ([1933] N.Z.L.R. 855), *Kennedy, J.*, delivering the judgment of the Court, held: “ the Assessment Court  
 “ is entitled to take into consideration . . . the cost of erecting the  
 “ buildings upon the lands assessed. This does not mean that the Court  
 “ should necessarily fix capital value at costs, less proper allowances for  
 “ obsolescence and suchlike, but only that cost is a factor which may be  
 “ considered ” (*ibid.*, 872, 873).

In the Land Sales Court, where frequently there was little evidence as to sales on or about the relevant date for valuation, December 15, 1942, the replacement method was commonly relied on. In *D. to E.* (1944) (No. 1) 20 N.Z.L.J. 155), *Finlay, J.*, said: “ The safer and better  
 “ course is to employ the basis of replacement costs, paying due regard  
 “ to the fact that a calculation of such costs is necessarily only approx-  
 “ imate and is at most an indication of the value which the Court has to  
 “ determine ” (*ibid.*, 155). In *R. Estate to B. Co., Ltd.* (1947) (No. 103) 23 N.Z.L.J. 183), the Court held: “ It is perhaps desirable to reit-  
 “ erate that the duty of the Committee, and now of the Court, is to ascer-  
 “ tain the value of the property as at December 15, 1942, subject in a  
 “ proper case to increases or deductions which, however, do not appear  
 “ to be applicable to this case. It has been held that a vendor is en-  
 “ titled to the full value of his property and this is in general synonymous  
 “ in other than farm land with ‘ market value ’ and is the sum which the  
 “ vendor if willing but not over anxious to sell at the relevant date might  
 “ reasonably have expected to obtain in the open market for his property.  
 “ In the absence of a well defined ‘ market ’ for real property the market  
 “ value in any particular case must of necessity be arrived at by valu-  
 “ ation, which in turn may be based upon one or more of several recog-  
 “ nized and accepted methods of valuing. Of these methods none can  
 “ be claimed to be conclusive and it is conceived that where two or more  
 “ methods of valuation can properly be applied to a particular property,  
 “ the true value is most likely to be found by a critical comparison of the  
 “ results obtained by the application of all such methods as appear  
 “ appropriate. These general considerations are relevant to the present ”

“ appeal as it would seem that all of the valuers called before the Committee relied entirely on what has been called the ‘ replacement cost ’ method of valuation—namely, that they first assessed the value of the land, then the replacement cost for the building at December, 1942, and by adding the two together and making deductions for depreciation purported to arrive at the value of the property. For reasons which will be later referred to, the Court is satisfied that this method in the present case is not an accurate guide to the ‘ market value ’, which is what is to be determined ” (*ibid.*, 183).

It follows that the replacement cost method is not conclusive or infallible. It should be regarded, not as an alternative to market value, but as a factor to be considered in the assessment of a fair market value. Its advantages arise from the facility with which it may be examined and checked, and from its availability when it is impracticable to assess values by reference to actual sales. Its validity depends on the assumption that a prospective purchaser will not pay more for premises than it would cost him to build similar premises elsewhere. That assumption holds good only when the building situation is such as to give prospective buyers an effective choice as to whether to buy or to build.

It is well recognized that “ price ” is not synonymous with “ value ”, and that sales at excessive prices, and appearing to be attributable only to the whim, extravagance, or compelling needs of individual purchasers, should be disregarded in the assessment of market value. The estate invites us to disregard the high prices generally paid for houses in 1951, on the ground that they were induced by the pressure of compelling need. We think, however, that a distinction must be drawn between an individual case where an excessive price is paid for personal reasons and a general situation where the prices of houses are found to exceed replacement costs in consequence of an insistent and unsatisfied demand for homes. In the former case, the price paid is out of line with market prices, and it is for that reason that the sale is disregarded. In the latter, the price level is constituted by actual sales, and follows naturally from an excess of demand over supply. We conceive that supply and demand are factors in the determination, not only of price, but also of value, and that the effect of demand upon the property market is not to be disregarded merely because it reflects in varying measure the needs of prospective buyers.

The estate’s case appears to envisage two contemporaneous standards of value—namely, an intrinsic value determined by replacement cost, and a selling value dependent upon the state of the property market. Thus, its valuer, Mr. Webb, speaks of a “ fair value ”, which he assesses on a replacement basis at £2,980, and of “ what a purchaser would pay ”, which he assesses by reference to his knowledge of the market at £3,200. We can find no justification for such a distinction in the definition contained in the Valuation of Land Act, 1925 (now 1951). The definition limits our consideration to one thing only—namely, the amount which the property, if offered for sale on reasonable terms at the relevant date, might have been expected to realize. It follows that we are not entitled to give weight to certain factors which were mentioned in argument, and which may have weighed with the Committee. We are not concerned with the views or methods of the Valuation Department, save as to its method of assessing the market value of this particular property at the relevant date. Nor are we concerned with public policy, or with the incidence of death duties, and we are not entitled to take into account



the possibility of hardship which may result from the basing of a death-duty valuation on current selling prices.

The substantial issue in this case is whether the replacement value may be accepted notwithstanding that the evidence shows that a higher figure could have been obtained at the relevant date in the open market. The answer to this question is "No", for, both in principle and by virtue of the statutory definition, market value must take precedence over replacement value where there is shown to be a divergence between them. The unanimous agreement of the valuers that the deceased's property could have been sold at the date of death for £3,125 affords, we think, conclusive evidence on which we must hold that £3,125 is the capital value of the property for the purposes of s. 70 of the Death Duties Act, 1921.

In so holding, however, we wish it to be understood that it is the amount of the appellant's valuation which we confirm, rather than his Department's method of assessment. The association of the Valuation Department with these proceedings has been by no means a happy one. Before the Committee, it relied upon Mr. McIndoe to support a valuation of £3,125 based solely upon replacement cost. When the Committee reduced this valuation by the comparatively small sum of £145, the Department conceived that its original figure might be restored by the addition of a suitable sum for "saleability", and it appealed to test the validity of this somewhat novel proposal. Mr. Mahoney then advanced for the first time the theory that a percentage should be added to the replacement value. Mr. Mahoney's valuation of the property was £3,325, but the appellant asked no more than that Mr. McIndoe's figure of £3,125 should be restored. The appeal is entitled to succeed, because the evidence establishes a market value at the date of death of not less than £3,125. In fairness to Mr. Mahoney, we must acknowledge that his investigation of actual sales was comprehensive and thorough, and that it gave confirmation to the view that sale prices were, at the relevant date, above replacement cost. It has not been necessary, however, for us to consider whether Mr. Mahoney's method was acceptable for general use in the valuation of residential properties, and it should not be assumed that the Department could have sustained a valuation of £3,325.

The amount in issue in this appeal is small, and it is questionable whether an appeal would have been justified, save as a test case upon some point of law. The essential issue was not adequately presented before the Committee, and was in substance raised for the first time at the hearing of the appeal. In these circumstances, we think the estate should be reimbursed in part for the costs which it has incurred as a result of the unusual course followed by the Department.

We accordingly allow the appeal and restore and confirm the appellant's valuation, dated September 26, 1951, of £3,125, but we direct the Valuer-General to pay to the objector Cecil Howard Manning the sum of £10 10s. towards his costs.

*Appeal allowed.*

Solicitor for the Valuer-General: *Crown Solicitor* (Auckland).

Solicitors for the respondent: *Clarke, Burns, and Lowe* (Auckland).

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