NEW ZEALAND INSTITUTE - OF VALUERS

Incorporated by Act of Parliament

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Waikato	J. T. Findlay, Box 9598, Hamilton North.
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PAST PRESIDENTS:

1938-1940-N. H. Mackie, Palmerston North.
1940-1943-G. B. Osmond, Auckland.
1943 - 1947 -A. W. A. Sweetman, Auckland.
1947-1949-0. F. Baker, Christchurch.
1949-1950-J. A. Wilson, Dunedin.
1950- 1951 - O. Monrad, Palmerston North.
1951 - 1952-L. E. Brooker, Wellington.
1952 1953 - L. A. McAlister, Wellington.
1953 - 1954 W. G. Lyons, Palmerston North.
1954 - 1955 S. E. Bennett, Auckland.
1955 - 1957 R. J. Maclachlan, Wellington.
1957 1958 - V. W. Cox, Napier.
1958 1960 G. C. R. Green, Dunedin.
1960-1962-J. W. Ge!latly, Wellington.
1962-1964-S. Morris Jones, Wellington.
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1966 1968 - D. G. Morrison, Whangarei.
1968 1970 A. R. Wilson, Napier.
1970 - 1971 - J. M. Harcourt, Wellington.
1971 - 1974 R. S. Gardner, Auckland.
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1976 1977 L. M. Sole, Rotorua-Bay of Plenty.
1977 1978 - E. J. Babe, Wellington.
1978 - 1979 P. G. Cooke, Nelson-Marlborough.
1979 1981 -- P. E. Tierney, Tauranga.

LIFE MEMBERS:

S. Morris Jones (1968)	R. J. Maclachlan (1970)	J. D. Mahoney (1977)
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The New Zealand Valuer

VOLUME 25 NUMBER 4

DECEMBER, 1982

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Published Quarterly as the official journal of
THE NEW ZEALAND INSTITUTE OF VALUERS.
Council Office: Westbrook House, 181-183 Willis St..
P.O. Box 27146, Ph. 847-094.
Wellington.

The New Zealand Valuer is issued to all members and Institute students, and is available otherwise by subscription.
Articles, Research Papers and letters are welcomed. They should be typewritten, and addressed to the Editor. Biographical notes of the author(s) should be sent with the manuscript. Opinions expressed by the Editor and contributors are not necessarily endorsed tn the New Zealand Institute of Valuers. The Editor reserves the right to accept, reject or abbreviate material at his discrerior. Business letters, subscriptions and advice of changed address, should be sent to the General Secretary.
Registered in New Zealand at P.O. H.Q. as a magazine.

Publications of the New Zealand Institute of Valuers

(OBTAINABLE FROM THE GENERAL SECRETARY,
BOX 27-146, WELLINGTON, N.Z.)

URBAN LAND ECONOMICS	$4.00
SCALE OF CHARGES	$2.00
N.Z. VALUER (Back copies)	$3.00
N.Z. VALUER (Full year Non-Members)	$12.00
INSURANCE PADS	$8.00
VALUATION OF UNIT TITLES	$2.50 member $2.00 student
METRIC CONVERSION TABLES	$5.00
LAND TITLE LAW	$3.00 $2.50 student
VALUERS' HANDBOOK	Being revised and reprinted.
PROCEEDINGS OF THE 8th PAN PACIFIC CONGRESS OF REAL ESTATE APPRAISERS AND VALUERS	$2.50
MODAL HOUSE SPECIFICATIONS MODAL HOUSE QUANTITIES	j Being revised and reprinted.
STATISTICAL BULLETINS	$15.00 per year (to Bureau Members)
SALES INFORMATION (Microfiche Lists $175 per calendar year. Additional sets at reduced rates.)	(To Bureau Members)
SUBSCRIPTION FOR BUREAU MEMBERSHIP	$15.00 per year
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URBAN VALUATION IN N.Z. - Vol. 1 (Bulk Orders of 10 copies or more $25.00 per copy)	$28.00
FINANCIAL APPRAISAL	$35.00
INDEX TO VOLUMES 20 to 23	$1.00
PAST EXAMINATION PAPERS (One Paper Subject) (Sets of approx. 5 years) (Two Paper Subject)	$1.50 set. $3.00 set.
GUIDANCE NOTES ON VALUATION OF PROPERTY ASSETS FOR CURRENT COST ACCOUNTING (C.C.A.)	$10.00 per copy
VALUATION CERTIFICATES FOR PROPERTY ASSETS (pad)	$8.00

Editorial Comment

"Computers And You"

To borrow the introduction of the Institute's recently appointed Executive Officer at the Computer Awareness Course, held at Lincoln College in August:

"Whether?

What?

When?"

The question "Whether?" was answered emphatically for the public practising valuer during the computer awareness workshop seminar. Very simply, the answer is `yes'. For departmental and Housing Corporation valuers, as well as those employed in some private finance institutions, this will come as no surprise as *they have been familiar with computer technology now for some time.*

Until recently, valuers who fall into the small business category might justifiably have *claimed that the cost was too high and the benefits unproven. However, the advances in technology and the continuing reduction in the real cost of computers renders this attitude no longer a tenable one.*

The "What?" and "When?" must be considered in the light of recommendations from the Institute's New Technology Committee. The range of computer hardware and software, the incompatibility of different systems and the distinct possibility that sales data will he available from a centralised bureau computer makes it imperative that public practising valuers tread with caution in this highly technical and - to some - alien field.

It is important that members give *careful consideration to the information contained in the articles prepared for your benefit by the Chairmen of the New Technology Committee and the Statistical Bureau Committee.*

In what areas do the benefits to the public practising valuer lie?

The answer may well depend on the location of your practice, the size of your practice, your range *of work, your working relationship* with *valuers in other centres, and whether you are involved with non-valuation activities. Clearly, the answer will not necessarily be the same for any two practices.*

It is abundantly clear that valuers must soon have a working knowledge of computer applications. Within the next five years, many valuers in public practice will be using computers, firstly as a storage and retrieval system, secondly for word processing, thirdly for the statistical analysis of the data stored and finally for internal account- ing.

This "new" technology is *with us now. Those who are familiar with it will be able to take advantage of the Institute's advice at an early date. Those who are familiar with the range of options will be in a position to make a well-researched decision. Others could well make what might ultimately prove expensive mistakes. The Institute can* investigate *and advise on available computer hardware and software, providing a lead for Mr Average Valuer. This does not relieve the valuer of the responsibility to carry out his own investigations and self-education.*

Will you know what you *are buying when the time comes? Will you be familiar with bits and bytes, floppy disks and tapes, roms and rams?*

It is very probable that the more you know about the subiect, the happier and more satisfied you will be about your final decision.

Book Review

"PRINCIPLES AND PRACTICE OF RATING VALUATIONS"

By J. A. B. O'Keefe.

After a great deal of research and preparation Byron O'Keefe has produced the text of a new book on the subject of rates. He has generously presented the manuscript to the Institute and dedicated the book to R. J. Maclachlan.

Printing is underway and copies for sale will be available shortly. The price will be $22.00 per copy ($23.00 posted).

Orders for copies may be sent to:-The Statistical Bureau, N.Z. Institute of Valuers, P.O. Box 27-146, Wellington.

Twelfth Pan Pacific Congress of Valuers

The Twelfth Pan Pacific Congress of Real Estate Appraisers, Valuers and Councillors will be held in Kuala Lumpur from 21st to 26th August, 1983. Members of the Institute have been invited to participate in the Congress. The Congress theme is "Land Resources - Challenges Ahead" and will be held at the Hilton Hotel. Tentative bookings have been made for accommodation at the Hilton and all first class hotels in the vicinity. The registration fee (which is inclusive of all lunches and most dinners) is fixed at M750 (US$290) and M500 for spouses.

The preliminary programme is outlined below.

To date, final travel arrangements for a New Zealand contingent have not been made. All members will be advised when details come to hand.

It may be of interest to members that the Asian Valuers Congress will be held in Singapore from the Monday following the Twelfth Pan Pacific Congress.

Congress Programme

Sunday, August 21, 1983

10.00 - 16.00	Registration (CongressCentre, Hilton Hotel, Kuala Lumpur).

Monday, August 22, 1983

08.00 - 09.00	Registration.
09.30 - 10.30	Opening Ceremony.
10.30 - 11.00	Refreshments.
11.00 - 12.30	Key Note Address: "Land Resources - The Challenges Ahead".
12.30 - 14.00	Lunch.
14.00 - 15.00	"The Computer Challenge" (U.S.A.).
15.00 - 15.30	Tea.
15.30 16.30	"Real Estate Taxation in the Context of National Economy" (Australia).
19.30	Congress Dinner.

Tuesday, August 23, 1983

09.30 - 10.30	"The Green Revolution" (Malaysia).
10.30 - 11.00	Coffee.
11.00 - 12.30	"Value in Wasteland" (Australia).
12.30 - 14.00	Lunch.
14.00 - 15.00	"Land Use Control (Korea).
15.00 - 15.30	Tea.
15.30 - 16.30	Workshop Sessions.
19.30	Hospitality at Home Night.

Wednesday, August 24, 1983

09.30 - 10.30	"What Price Industralisation" (Japan).
10.30 - 11.00	Coffee.
11.00 - 12.30	"Building Efficiency - Cost and Value" (Canada).
12.30 - 14.00	Lunch.
14.00 - 15.00	"Inflationary/Recessionary Economy - Effect on Real Estate Investment" (New Zealand).
15.00 - 15.30	Tea.
15.30 - 16.30	Workshop Sessions..
19.30	Dinner by courtesy ofthe Institution of Surveyors (Malaysia).

Thursday, August 25, 1983

FULL DAY TOURS

Friday, August 26, 1983

09.30 - 10.30	"Current Valuation Techniques - A Review" (U.S.A.).
10.30 - 11.00	Coffee.
11.00 - 12.30	"Squatting on Values" (Philippines).
12.30 - 14.00	Lunch.
14.00 15.00	Workshop Sessions.
15.00 - 15.30	CLOSING CEREMONY.
15.30 - 16.30	Tea.
19.30	All Nations' Night.

Institute Appointment of Executive Officer

By the President, R. M. McGOUGH.

Kevin M. Allan, A.N.Z.I.V., Registered Valuer, is the recently appointed Executive Officer of the New Zealand Institute of Valuers, Head Office, Wellington.

As indicated to those who discussed the white paper with all branches it was the wish of the membership that no appointment to this newly created position be made unless a suitably qualified person was available.

The Institute has appointed Mr Kevin M. Allan to fill the position of Executive Officer at the Institute's head office in Wellington. Following publication and discussion on the White Paper in 1981 which examined the needs and direction of the Institute, Council resolved to engage a person to undertake the increasing work loads previously handled largely by members of the Institute Committees.

Kevin Allan, who took up appointment in early December, is a Registered Valuer, an Associate member of the Institute and has spent nearly seventeen years in the Valuation Department. Qualified in urban valuation through a cadetship in the Department he spent almost all his service in the greater Wellington area, broken by some eighteen months at Gisborne in the early 1970's. He later filled the position of District Valuer at Wellington before moving to Head Office as Supervising Valuer in 1976. Following a period of six months on an exchange programme with the Valuer-General's Department in Queensland in 1979, he was appointed to the post of Assistant Chief Valuer which he left to assume his new role.

During the past several years he served on Branch Committees, undertook newsletter editorship, tutored and examined in valuation studies and served on the publicity committee of the Institute. He has been a member of Executive since 1979 and more recently has chaired the New Technology group. This involvement in current Institute affairs together with a background in the public sector should equip him in handling issues which face the profession.

Responsibilities of this new position involve working for the promotion of the profession, improvement of services to members, the continued provision for ongoing valuer education, inter-professional relationships and representation on legislative and other matters. An early task is to assist in the formulation and review of the governing rules, which have not undergone any major revision since the early days of the Institute.

Members will no doubt be well pleased that their wishes have been met, in that Kevin Allan is obviously well qualified to carry out the task required on their behalf.

Report on the Half-Yearly Council Meeting

By the Editor.

The half-yearly Council meeting of the N.Z.I.V. was held on 3rd and 4th October at Wellington. At the direction of the President, the Council meeting was extended from a day to a day and a half, as there had been difficulty in the past in covering the large number of items to be discussed.

The President opened the meeting by advising councillors and invited guests that Mr Kevin M. Allan has been appointed as the Executive Officer for the Institute and commences his duties in December.

The publication "Financial Appraisal" by Squire L. Speedy was tabled and has been published under the name of the Institute. A vote of thanks was passed to Squire. There were no apologies and the minutes of the previous meeting were taken as read and passed as a correct record.

UNDER MATTERS ARISING:

Indemnity Insurance - Mr McAlister outlined further discussions of the sub-committee with an alternative brokerage firm and further investigations are in hand. The report and recommendation of the sub-committee was appoved in principle. A report covering the 1980-1981 and 1981-1982 years from Messrs Bowring Burgess. the Institute's present insurers was received.

Formation of Companies - It was agreed that the question of formation of valuation companies be fully considered by the committee being formed to review both the Valuers Act and the Institute rules, with a recommendation that the rules be altered to include valuation practice companies similar to the rules of other professional bodies.

EDUCATION:

The Chairman, Mr Ralston reported that the standard of papers presented and pass rates for the practical and oral examinations in 1982 were comparable with previous years. Entries for this year's examinations have closed. Fifty-four student members have entered for 92 papers. The student roll is now reduced to 180 excluding students attending universities. The publication "Financial Appraisal" by Squire L. Speedy has been printed and is now available to members in accordance with the leaflet included with the September issue of The Valuer at a special introductory price to members and bona fide students only, of $30.00. A preview copy of the publication was available at the meeting and was well received by councillors on behalf of the membership.

The publication "Urban Valuation in New Zealand, Volume II" is in the advanced planning stages with authors having accepted commitments for 14 of the 18 or 19 chapters. Substantial progress should be made by the next Council meeting. A grant of $6,000 towards the production of this work has been offered by the Valuers' Registration Board.

University Scholarship The three universities have been formally advised of the Institute's post-graduate scholarship. Applications for the first award close on 1st February, 1983. This closing date will be brought forward to the 1st October for future years.

The President asked that the Education Committee bring down a report in April 1983 as to its future role with particular reference to co-ordinated future education.

Mr Ralston advised that the Auckland University has just advised the Board that the Diploma in Urban Valuation will be discontinued and a new course awarding the degree of a Bachelor of Land Economy will replace it. It is understood that this proposal is yet to be ratified.

Council passed a resolution instructing Executive to review the price of publications on an annual basis.

STATISTICAL BUREAU:

The Chairman of the Statistical Bureau Committee presented a written report. Arising from further discussions with the Chairman of the Registration Board a sample of the Valuation Department's plans is now available on microifche and it is expected that a national coverage will be available in the near future. This should assist the rural practices in particular in identifcation of sales at a relatively nominal cost.

There is difficulty in obtaining unanimity on the grouping of sales for microfiche. Not all branches have replied but it would appear that the present system may suit the majority.

A motion was passed requiring the Statistical Bureau to provide a report as to the way they see their future in the Institute.

NEW TECHNOLOGY:

The Chairman indicated that following the survey results published two months ago a publication "A Computer Usage Survey of Valuers in New Zealand" gives a clear indication that members now subscribing to the microfiche system are keen to move into the electronic age, and see computers being used for a variety of functions, including storage and retrieval of sales, word processing, accounting and statistical functions.

The New Technology Committee report was adopted in its entirety with the initial finance for investigation work to be made available from funds generated by the Statistical Bureau. It was further approved that an appropriate report be forwarded to the Valuers' Registration Board.

The Councillor for Canterbury/Westland, Mr R. E. Hallinan, then gave a brief verbal report on the success of the computer course held at Lincoln College in August. Ninety-one people, mostly valuers, attended.

PUBLICITY AND PUBLIC RELATIONS:

The Chairman, Mr G. Horsley, presented a verbal report and stressed the need for all branches to provide market research information, to be released as a national statement.

Executive recently approved a page advertisement in the proposed "INFO" magazine under the heading "House and Home - When you should consult a registered valuer". This magazine is aimed at people in the 20's and 30's age group and has a target audience of approximately 40,000. Many will be distributed free and others will be on sale through book sellers.

Other activities include papers written for the Consumers Institute and a radio appearance.

CURRENT COST ACCOUNTING - Assets Valuation Standards Committee

There were 12 members of the International Assets Valuation Standards Committee as at 31st May, 1982 with a further nine awaiting ratification or approval of application. The final constitution of the committee has been drafted.

NEW ZEALAND VALUER:

An integrated index covering volumes 20-24 from March 1967 to December 1981 should be available by December 1982. It covers all volumes printed in the quarto size.

The cost of publication was discussed. The question of increasing the subscription rates to non-members was held over in view of the current price freeze.

PAN-PACIFIC CONGRESS:

The Twelfth Pan-Pacific Congress is to be held at Kuala Lumpur from 21st to 26th August, 1983. New Zealand has been allocated three papers, which at the request of Executive the President has allocated to Mr R. M. Donaldson, Senior Vice-President, (Plenary) and to Mr P. Tierney and Mr R. P. Young (Workshop).

EXECUTIVE COMMITTEE:

Discussions have been held with the Earthquake and War Damage Commission with the intention of obtaining an amendment to the definition of indemnity value.

FINANCIAL:

It was passed that the subscriptions for this year be set at the same level as for the previous year. A motion was also passed that the basic grant and capitation remain at the same level as for the previous year.

It was also approved that the service currently being provided for valuers be maintained.

1983 A.G.M. AND COUNCIL MEETING:

This will be held in Invercargill over the period 16th-19th April, 1983 in accordance with the programme published in The Valuer. The 1984 A.G.M. and Council meeting will be held at Rotorua from 14th to 17th April, 1984.

PERMANENT JOINT LAND INSTITUTE COMMITTEE:

The President provided a brief report on the continuing monthly discussions between representatives of the six institutes.

TARIFF:

The amendments to the Scale of Charges were not approved in view of the Price Freeze Regulations.

A working party is to be set up to review the Institute's rules and the Valuers Act with representation from the Valuation Department, Valuers' Registration Board and the Institute. Mr R. J. McLaughlan, and Mr K. Cooper (subject to his availability), were approved by the meeting as the Institute's representatives.

ARCHITECTS INSPECTION REPORT:

The recently publicised Architects Inspection Report service was discussed. The report form does not provide for valuation or cost figures and relates more to structural aspects.

Publications Received and Noted

By the Editor.

Financial Review

Vol. 1. No. 1. February 1982. Page 13. Carpet Clauses. Landlords are tending in some cases to include a clause which protects their interests and demands more of a lessee. On this subject see also

Property

Vol 10. No. 6. December 1981. Page 5. Who pays for the carpet? Generally, new tenants take over old carpeting but are expected to replace it. Carpeting is a marketing tool and it appears that owners in general will normally only provide new carpet at the commencement of a lease.

News Bulletin

No. 54 - Town and Country Planning Division Ministry of Works and Development December 1981. This news bulletin provides brief information on planning related legislation. Of interest to valuers is the summary of the Public Works Act 1981, Water and Soil Conservation Amendment Act 1981 and the Local Government Amendment Act (No. 2) 1981.

Chartered Surveyor

May 1982. Page 581. Article "Do property investors allow for depreciation?" by Norman Bowie. Mr Bowie suggests that real growth lies in land - not depreciated buildings. He canvasses the question of depreciation and compares the merits of one type of investment with another and differentials in yields.

The Valuer

The Australian Institute of Valuers Quarterly. April 1982. Vol. XXVII, No. 2. Professional Liability of a Valuer. A paper delivered by R. J. Connolly to an Australian valuers' group.

Chartered Surveyor

March 1982. Page 447. Making video programmes for estate management. The report discusses the uses of video as an aid to teaching and practice of estate management.

Chartered Quantity Surveyor

January 1982. Page 157. Mr D. Waring presents a formula for the calculation of irregular shaped surace areas using radial measurements. He contends that the method is accurate within 1%.

The Appraisal Journal

April 1982. Page 269. An article headed "Capitalisation in a dynamic environment" by John W. Packer discusses the development of capitalisation and discounted cash-flow capitalislation. Mr Packer contends that DCF techniques enable the appraiser to test the sensitivity of assumptions and by adopting different assumptions, the appraiser can determine their effect on value. In the same publication - "Beware the abusers of IRR methodology", by Robert A. Steele and John R. White. The writers indicate that the method is open to abuse by such means as the use of overly long projection periods with ambitious income growth rates which inflate the value and the underestimation of the current level of operating expenses.

The Appraisal Journal

July 1982. American Institute of Real Estate Appraisers publication Page 417. Appraisal of time share resort conversions by T. R. Kirby. Fee-simple time share (interval) ownership gives a fee-simple right to a specific time period during the year for a specific unit. Mr Kirby discusses the valuation of such time shares. There was a rapid growth in this form of ownership in the USA from 17,000 in 1975 to over 500,000 in 1980. The valuation method suggested is similar in some respects to the preparation of a home unit block budget.

Property

Vol. 2. No. 2. Page 9. A short article on time sharing, which suggests that time sharing is the purchase of a holiday and not an investment.

Report of the Valuation Department

Report presented to the House of Representatives for the year ended 31/3/1982.

Crown Pastoral Leases and Leases in Perpetuity

A report of the Committee of Enquiry dated May 1982. Submissions to the committee were made by the Institute. Copies of the report are available from Government Bookshops at $4.30 inclusive of postage.

National Housing Commission Research and Information Series

"To Rent or To Buy?" Research Paper 82/1. Summary report by R. B. Chapman. University of Auckland for the National Housing Commission. The report discusses the housing tenure choice in N.Z. between 1960 and 1980 with special reference to the private rental housing market.

National Housing Commission Research and Information Series

Housing Subsidies study, Research Paper 81/7. An investigation by A. R. Young for the public sector and S. Snively for the private sector, being a study to identify the housing subsidies which were being provided by the public and private sectors as at 31st March, 1979. Other studies presented at the same time include a student housing national survey Research Paper 82/2 by Alison Gray and Judith A. Davey plus Rental Housing in the Auckland Region. Research Paper 82/3 by Joy Grant.

National Housing Commission Research and Information Series

Research Paper 82/5 prepared by Katherine Percy of the Auckland Regional Authority. Titled "Homelessness in the Auckland Region".

Chartered Surveyor

August 1982. Vol 115. No. 1. Page 37. A further article on time share valuing. Emphasis on management as the key to time share success.

The Real Estate Appraiser and Analyst

Journal of the Society of Real Estate Appraisers, Winter 1981 Page 10. An article on residual overall capitalisation rates, emphasising the greater need for careful analysis as a result of the demands of a more sophisticated market.

The Real Estate Appraiser and Analyst

Spring 1982. Vol 48. No. 1. Page 5. The author, Mr S. J. Foute, suggests a method of assisting appraisers (valuers) to determine the added value of energy efficient homes.

The N.Z. Farmer

1882-1982 Vol. 103. No. 15. A centennial magazine titled "A Century in Retrospect". Of general interest, presenting articles appearing in the N.Z. Farmer over the past 100 years.

New Zealand Institute of Valuers

1983 Council Meeting, Seminar and A.G.M. Invercargill

16 - 19 APRIL, 1983

VENUE: ASCOT PARK MOTOR HOTEL

Programme:

Saturday 16th and Sunday 17th April, 1983 - Council Meeting.

Assembly of Council and invited guests. Evening free.

Monday 18 April 1983:

9.00 a.m. - 10.00 a.m.	Registration and Morning Tea.
10.00 a.m. - 11.15 a.m.	"The Influence of Taxaticn on Property Investment."
11.15 a.m. - 12.30p.m.	"The Influence of Legislation on the Value of Land."
12.30 p.m. - 1.45p.m.	LUNCH.
1.45 p.m. - 2.45p.m.	"The Influence and Management of Property in Relation to Company Takeovers."
2.45 p.m. - 3.00p.m.	Afternoon Tea.
3.00 p.m. - 3.20p.m.	"The Tax Man Cometh - Profits and Pitfalls in a Modern Practice."
3.20 p.m. - 4.00p.m.	"Professional Possibilities of Taxation Tempering."
4.00 p.m. - 5.00p.m.	Annual General Meeting.
5.30 p.m.	Commencement of Cocktail Hour.
6.00 p.m.	Opening by Rt. Hon. J. Elworthy - Minister of Valuation.
6.30 p.m.	Closure of Cocktail Hour.
8.00 p.m.	Dine and Dance - Waihopai Room, Ascot Park Hotel.

Tuesday 19 April 1983:

7.30 a.m. - 8.30 a.m.	Early Bird Breakfast with Stout and Oysters. "A Professional's Role in Today's Society."
9.00 a.m. - 9.45 a.m.	"Recent Advancements in Technology Affecting Valuation Processes."
9.45 a.m. - 10.00 a.m.	Morning Tea.
10.00 a.m. 12.00 noon	"Effective Management of Resources in a Professional Practice."
12.30 p.m. - 1.45 p.m.	LUNCH.
1.45 p.m. - 2.45 p.m.	"The Future of the Dollar as a means of Exchange and as a Measure of Value."
2.45 p.m. - 3.00 p.m.	Afternoon Tea.
3.00 p.m. - 4.30 p.m.	The Profession in the 1980's - Open Forum. Valuer. Solicitor. Farmer/Consultant. Property Developer.
4.30 p.m.	CLOSING.

Membership

ADMITTED TO INTERMEDIATE:

Allison, A. B.	Wellington.
Barron, G. R.	Otago.
Gerbich, W. N.	Waikato.
Hamilton, M. J.	Auckland.
Hardy, P. C.	Auckland.
Hitchins, D. R.	Wellington.
McClurg, T.	Canterbury/Westland.
Percy, J. S.	Central Districts.
Wilson, D. R.	Canterbury/Westland.
Yong, Ai Sim (Miss)	Overseas.
Brake, E. M.	Auckland.
Campion, R. D.	Otago.
Clark, D. A.	Central Districts.
Clephane, J. R.....	Auckland.
Cunneen, P. J.	South Canterbury.
Ewing, M. B. (Miss)	Central Districts.
Gunn, P. N.	Northland.
Honore, C. E.	Auckland.
Irving, M. P.	Waikato.
Johns, D. A.	Central District.
Johnson, B. L.	Auckland.
Pryde, L. M. (Miss)	Wellington.
Smith, R. D.	Nelson/Marlborough.

ADVANCED TO ASSOCIATE:

Carnachan, R. N.....	Auckland.
Mulcare, M. T. (Miss)	Wellington.
Oxenham, F. W.....	Canterbury/Westland.
Rosevear, J.	Otago.
Shearman, G. J.	Auckland.
Suridge, J. G.	Auckland.
Whittaker, L. M.	Canterbury/Westland.
Hall, A. M. (Miss)	Waikato.
Tubb, B. A.	Auckland (re-admitted).
Bell, R. A.	Auckland.
Dorrington, B. B.	Auckland.
Lee. B. L. (Miss)	Overseas.
Wilkin, P. A. B.	Wellington.
Still, A. J.	Otago.
Townsend, D. G.	Wellington.
Washer, M. J.	Taranaki.
Annett, P. J.	Canterbury/Westland.
Barker, L. W.	Auckland.
Barnsley, D. M.	Waikato.
Barraclough. C. C.	Auckland.
Black. H. B.	Canterbury/ Westland.
Coxon, T. R.	Hawke's Bay.
Giera, M. D.	Canterbury/Westland.
Morton, G. A.	South Canterbury.
Ng Ah Ming	Overseas.
Williamson, R. H.	Central Districts.

RESIGNATIONS:

Holmes, G. N.	Waikato.
Scott, G. M.	Northland.
Smith, A. R.	Auckland.

RETIRED:

Long, A. D.	Central Districts (Rule 14(2)).
Jones, C. L.	Rotorua/Bay of Plenty (Rule 14(1)).

DECEASED:

Thomas, J. T.	South Canterbury.

The Valuer, The Computer, The Situation

By Kevin M. Allan, Chairman of the "New Technology" Committee of the Institute of Valuers.

Kevin Allan is the recently appointed Executive Officer of the Institute.

It is impossible to pick up a trade journal or business magazine nowadays without seeing advertisements for computers, advanced electronic office equipment or some new business system. Even the daily press now carries advertising particularly for small computing equipment and some papers feature regular sections or supplements often containing background articles on systems or new products in this rapidly changing industry.

From whichever angle the subject is examined one must conclude that the valuer, like every other professional and businessman, is being inexorably drawn into this electronic happening. Whether he relishes or resists the computer age, one thing is certain - his competitors and clients will be investing in technology. I suggest that ultimately the speed, accuracy and quality of the valuer's service is likely to be professionally inferior unless he embraces the computer reality. Overseas appraisal and valuer journals now regularly feature articles on computer usage and these are not limited to rating or taxation applications. The average North American appraiser would possess some computing facility in his practice whilst a number of New Zealand valuers have embarked on quite independent computer systems doing a variety of tasks. Evidence to hand would suggest that a considerable number of valuers from all sectors of the profession in New Zealand have either made their own tentative inquiries or been approached by the marketers of computer hardware and systems.

One reason for the visible upsurge in public advertising of computers is probably because the technology is becoming affordable to a wider spectrum of the public including small business, into which sector the average valuing practice would fall. Secondly, wider advertising points to the fierce competition from a large range of distributors who today are retailing nearly 70 brands of micro computer in New Zealand. Thirdly, the market for medium (mini) and large (mainframe) computers has probably reached some saturation point and the suppliers are now having to sharpen their skills to gain a slice of the small business or home computer field.

Now just about everyone can relate an incident that they or an acquaintance have experienced with a computer and these generally revolve around the failure of the infernal machine to accept an instruction or perform some apparent simple task. Furthermore, we are constantly being overwhelmed by claims that the price of computers has fallen dramatically, the performance of the latest models renders yesteryear's equipment obsolete and the speed of the technology is positively mind-boggling. Our attitudes are being formed by what we hear and experience but for every successfully implemented computer system there is probably an equal number of lfops. Failures can result from a wide range of reasons including basically inadequate equipment, failure of the user/buyer to be specific in the tasks to be undertaken, poor communication between the buyer and analyst or data people, poor programming, belated decisions to add options or modify earlier specified procedures, outright false performance claims by equipment manufacturers, incompatible peripherals, maltreatment of equipment by users including incorrect operating environment and so on. The vast majority of failures have a high human element and in many instances a `failure' is recorded when the unrealistically high expectations of the buyer cannot be met. Again, as a generalisation, most new computer installations or programmes take longer and cost more to become operational than either the buyer was prepared for or the E.D.P. people dutifully promised.

In recognising that there was scope for computer technologies in the valuation field the New Zealand Institute of Valuers resolved to support research into and the development of suitable systems for valuers. Co-ordinated investigation has a number of benefits including possible standardisation of equipment, and the fact that the overall cost to the individual valuer and the profession at large could be minimised. In reducing the inevitable duplication of effort that would occur with individuals covering the same investigative ground any efficiencies could be reflected in a lower unit cost to ultimate purchasers. A new technology committee was appointed which has among its terms of reference "the evaluation of computer, word processing, video, communication or any other equipment . . . promoting the exchange and development of suitable computer software". The committee has the advantage of the expertise from those involved in computer valuing applications, including the university input.

A survey was undertaken in mid 1982 which identified the uses where valuers envisaged computer applications. These were -

(a) storage and retrieval of sales data
(b) word processing
(c) statistical analysis of sales
(d) accounting

Other and more specific uses included feasibility studies, risk analysis, plant valuation, replacement cost estimates, storage of rental data, property and farm management,, budgets, current cost accounting. The committee sees (a) above as the most sought-after development and has been examining options to facilitate the storage, transmission and retrieval of the data presently contained on the sales microfiche. Several systems have been explored and whilst each had some

merit e.g. relatively lower cost or earlier on-stream date, they also presented technical problems in expandability or compatability with later developments likely to be required by valuers. The system which is now evolving is one utilising a centralised bureau computer from which the individual valuer could draw pre-selected data for retention and access on his in-house microcomputer.

Before the committee could recommend any particular development a full cost-benefit study would need to be undertaken from both the Institute's point of view and that of Mr Average Valuer. As with most computer studies an important step is actually testing equipment under real operating conditions and this integral part of the development is the time to improve or modify procedures. The end objective is to offer the valuer a comprehensive sales system, with easy to follow procedures, at an affordable price and one which also allows him maximum lfexibility to do his own thing. There is of course no prohibition on valuers going out and buying equipment or software today and devising their own applications. At this stage, however, one would be well advised to proceed with extreme caution in the acquisition of any computer hardware or systems

One of the most important aspects of entering into the computer technology is surely the level and quality of after sales service and support for system upgrading. Again, where a number of computer users have standardised systems the cost and ease of change, growth and servicing can be minimised.

The period needed to introduce a system of the type mentioned above depends on the programming time, independent technical audit, testing, costing and installation of equipment in addition to obtaining approvals. A possible commencing date could be as early as mid 1983 but is, like everything else in the computer world. highly variable.

In conclusion, some general advice to any valuer who believes he should still be around when computers really `arrive' in the valuation ifeld - and that is within a few short years: take some time to scan those adverts, read the articles in business Journals, learn a little of the industry jargon. Think about the time you spend each year in retrieving data, checking indexes, dictating reports, performing lengthy or complex computations - these are all tasks which can be streamlined with the aid of computers. Visit or invite a reputable salesman to show you what a micro computer or main-frame terminal looks like.

Be assured that it is far easier for a valuer to gasp the operating skills of a computer user than to impart the valuing process to a D.P. expert.

Future Supply of Property Sales Technology Progress

By John N. B. Wall.

Statistical Bureau Chairman, delivered at Lincoln College, August, 1982.

Like many of you having attended this Computer Awareness Course at Lincoln College, I believe even more now than I have previously, that computers and associated storage units are here to assist us in our work, but they are best left to the experts to be adapted for us, so that we as valuers can use our expertise in the decision making of practical valuation work.

Although as valuers we should know some of the technical terms associated with the equipment, it is unfortunate that there is a "language barrier" as this has contributed to a suspicion of computers and their use in valuation work except by Government Department computer teams and a handful of Public Valuers.

When you all leave Lincoln I trust that you will continue to consider what has been made available here and apply this knowledge to the future of your work in particular to the use of sales information from the New Zealand Institute of Valuers Statistical Bureau.

You will recall that on numerous past occasions I have sounded a note of caution to those firms who have either become involved with or who have been contemplating capital expenditure of computer use and data storage equipment to defer final decisions until the new Technology Committee of the Institute makes recommendations, as some equipment is not necessarily compatible with the form of sales data that the Bureau may provide.

There have been and no doubt there will continue to be forward thinking firms who wish to progress faster than others and I regret that it has not been possible to accommodate them to date in the manner they have wished. There being many reasons for this, the main one that to do so would have disadvantaged other sales

data subscribers both in an economic sense and to the extent that the form of any unresearched or hurried sales data supply may not have suited the bulk of users.

In order to assist in the decision as to the future of sales data supplied from the Institute it is necessary to consider our present development and how this has been established.

Without going too far into the past, prior to the supply of sales on micro fiche, subscribers received printed sales lists in street order within Territorial Local Authorities, which, because of the number of persons that dealt with the individual sales in the process of compiling and distributing the typed sheets, were essentially of historical benefit only, apart from a record of legal descriptions and the like. Time delays by many solicitors in notifying sales to the Valuation Department that was present then, still exists and will continue to be present in any future sales system.

For some years prior to the micro fiche it was known that the Valuer General was investigating an alternative to supplying the notices of sale to the Institute, but it was not known exactly when and in what form and in fact there was a suggestion at one time that sales lists instead of being supplied by the Institute would be produced by the Valuation Department and sold as a public document with the Institute receiving the same service as any other member of the public.

At relatively short notice in November/ December 1980 the Valuer General produced a policy paper advising changes to the system of providing land sales information for Registered Valuers in public practice. This system was for a sales tape to be sold to the New Zealand Institute of Valuers through the Registration Board with the Institute to enter into a formal agreement with the Registration Board.

This sales tape is similar to the Valuation Department's own tape, but not identical, and upon supply the New Zealand Institute of Valuers, subject to the agreement, could have this tape processed as it wished.

However, under the agreement and I quote "The Institute acknowledges that the Board, in supplying the property sales data to it for use by it and its subscribers, does not give it exclusive rights of public distribution".

In practice this means that an application to the Bureau by any individual or group for the supply of sales on micro fiche must be favourably received if such an application made to the Valuer General would have been granted.

Concern has been expressed in some areas of New Zealand, while there is no concern in others, that other than Registered Valuers are obtaining this sales information and those that are concerned should give some thought to any alterations in the present system also being available to other than Registered Valuers.

Thus, do not look upon any sales information as Registered Valuers' exclusive property. It is supplied to numerous groups and individuals, limited only by the lack of knowledge by many that such a public information service is available through the New Zealand Institute of Valuers.

In the future therefore when a more sophisticated sales supply system is developed through the Institute it may well be that this will be available to other than Registered Valuation practices.

You will be interested to note that as the present system has become established, while there were initially a number o' subscribers that cancelled out, these were more than offset by new subscribers, with the Bureau currently continuing to receive applications to join the system, mainly from other than Valuers.

Back to the development of the present system: over the Christmas holiday period in 1980/1981, after numerous meetings with the Chairman of the Registration Board and the Valuation Department Advisors, and following verbal enquiries of Public Valuers, it was decided that the prime object of the Bureau must be to implement the sales on micro fiche system at the earliest possible date and the decision was taken, with such a decision proven correct by future events to have the information on the micro fiche in a similar form to the previously printed lists which applied to the majority of districts, i.e. alphabetical street order within Territorial Local Authorities.

This sales on micro fiche system was introduced on 1 July 1981.

Events that take place with this system briefly are that a tape is produced for the N.Z.I.V. at twice monthly intervals by the Registration Board, it is taken by courier from the Valuation Department to the Challenge Computer Centre, the micro fiche produced and placed into envelopes prepared and supplied by the New Zealand Institute of Valuers Statistical Bureau and posted from the Computer Centre to the subscribers and the tape then returned to the Registration Board by Courier for re-use.

This tape is not seen or handled at any stage by the New Zealand Institute of Valuers.

Under ideal conditions, and these have not been ideal in the immediate past, from tape pick up to posting of the micro fiche the time is 48 hours.

Costs to the Institute for the 1981/1982 year in obtaining this tape for use were some $8,700.00 and it is essential to note that the Registration Board has already made a substantial offer to Executive to assist with the costs of producing Principles and Practice Volume 2 as a result of this revenue.

At the risk of boring you with information of which you are aware, I remind you of certain clauses in our agreements: that is the agreement between the Valuers Registration Board and the New Zealand Institute of Valuers and the agreement between the New Zealand Institute of Valuers and individual subscribers.

1. The Institute agrees to ensure that neither it nor its subscribers will process or publish the information contained in the sales lists for any other purposes or in any other form

than that agreed to by the Board with the approval of the Valuer General. Unless the Board has obtained the prior approval of the Valuer General in writing the use of the information supplied in the sales lists shall be restricted to the valuation of individual properties and related professional advice and requests to the Board to use the information for other purposes, for example for land use planning purposes or academic purposes shall be referred to the Valuer General.

2. The Institute acknowledges that it may only distribute the sales information to its subscribers in printed form including micro ifche. In no circumstances is it authorised to distribute the sales information on magnetic tape or other electronic medium for subsequent computer processing.

3. The Institute agrees to ensure that any Computer Bureau acting on its behalf will provide a written undertaking not to infringe copyright or use sales lists in any way other than to provide the service required by the Institute to enable it to operate the system and that such Bureau will promptly return the magnetic tapes to the Valuation Department Control Section.

In addition the New Zealand Institute of Valuers - Subscriber Agreement states -

"Either party to this agreement shall have the right immediately by notice in writing to the other party to terminate this agreement.....'

No termination of sales supply has taken place by the Bureau to date, but there have been several instances where such termination has been considered.

Moving away from these agreements to the acceptability of the present system. -

Inevitably changes are not favourably received and will never suit everyone: combine this with say the elimination of the vendors' and purchasers" names in rural sales and we have criticism.

Changes in the system are taking place and you have been informed that the two major additions are:

1. The vendors' and purchasers' names are being reinstated for the rural sales.
2. Certificate of Title references are being incorporated with the legal descriptions and this will not mean a reduction of the present legal description length.

Also the Bureau since the first questionnaire in October 1981 has been attempting to establish the format of sales on micro fiche that is required by the majority of subscribers.

Unfortunately response to the first questionnaire was less than could reasonably be expected and therefore quite inconclusive. Efforts by the Bureau to upgrade the system before the final year's micro fiche were produced were frustrated but arising from the many excellent replies, comments and letters it has been interpreted by the Bureau that the majority of subscribers for urban sales require sales within category grouping, having all improved residential sales within the one group and other categories within their various groups in alphabetical street order in groups of Valuation Department Rolls.

Because the members of each Branch are best suited to select the Roll Groupings at the beginning of April 1982 Branch Secretary was asked for his Branch's preference for these Roll Goupings by the end of May 1982.

Of all the Branches in New Zealand to date only seven replies have been received and these are from -

Canterbury/Westland
Wellington
Hawke's Bay
Rotorua/Bay of Plenty
Whangarei
South Canterbury
Southland

Is it correct for the Bureau to conclude that a `no' reply indicates complete satisfaction with the present system of recording? - I think not. Perhaps Branches having been given the choice can not reach a conclusion that will satisfy their Branch members, a similar situation that the Bureau encountered with its first questionnaire.

In February 1982 the Executive Committee of the New Zealand Institute of Valuers established a new Technology Committee and a questionnaire was recently distributed to survey the current and projected future level of computer usage by valuers and to assist in the identification of those areas where research is required.

A reasonably good response resulted from this survey and the Chairman of that Committee will inform you of the results.

My comments on the processed results are that I find it difficult to reconcile the numbers of valuers that are interested in computers to aid them in their valuation work with the disinterest in the future sales recording system or systems which must be intertwined with computers and data retrieval technology.

Perhaps in addition to this Seminar, for which the organisers are to be congratulated, you will all return to your Branches and continue to think modern technology and how it can work for your profession.

From what I have gleaned from this course it seems to me that what practising valuers should be considering is WHAT LEVEL OF COMPUTER would suit their needs.

A. A large system for say the main centres used by a number of firms on a time sharing basis.

B. A small, individual system or unit for the smaller centres.

C. Continuation of the micro fiche for a proportion throughout the Country.

Once this has been decided by the Members with the recommendations flowing from the New Technology Committee it is a matter of the Institute accommodating the needs of users.

To the extent that this has been a COMPUTER AWARENESS COURSE at Lincoln I consider it has been a complete success because all of those that have attended it have a greater knowledge of computers and of the degree to which they wish to become involved with their use.

The Importance of Farm Adaptability to Commodity Fashion

By L. M. Sole, Dip.V.F.M., F.N.Z.LV.

The speaker is a Past President of the N.Z. Institute ofValuers.

A paper presented at the 11th Pan Pacific Congress of Real Estate Appraisers, Valuers and Counsellors, Melbourne, Australia, October, 1981.

Introduction

The title of this paper seems likely to be accepted by most valuers as a declaration of fact that leaves little room or stimulus for controversy other than, perhaps, the matter of degree. The postulation, however, that the inherent or induced ability of farm land to readily adapt to the production of commodities which. are currently fashionable, is an important factor in determining its relative value, and is unlikely to be seriously challenged.

I propose, therefore, to develop this theme by outlining the factors involved as they relate, in detail, to the New Zealand scene, with which I am more familiar, although the general principles should be applicable on a much wider basis.

New Zealand would appear to be a particularly appropriate country to use as a model for this exercise as the majority of its farming development has occurred in the last 100 years or so, and it possesses an almost infinite range of land classes, within its temperate zone, able to respond to the pressures and demands of "commodity fashion" and a very brief summary of its relatively short agricultural history will, I am confident, illustrate clearly that it has, perhaps because it has had to, reacted readily to changing fashions and demands in the world's market places. I mention "because it has had to", for the very simple reason that New Zealand relies almost entirely on the products derived from its land resources for its overseas earnings and hence, for its prosperity, its standard of living and its way of life.

The agricultural products which it exports are produced by many other countries, all closer to the world markets, providing a highly competitive trade situation where it is forced into the position of being a price taker, and the customer is always right.

It can be seen therefore, that the ability of land to adapt to commodity fashions is not only important, but critical to New Zealand's survival.

The Track Record

A brief summation of New Zealand's track record in meeting the challenge for diversification and in adapting to commodity fashions, identifies many of the factors involved. The essential prerequisites to meet such a situation are:

1. The availability of land suitable for diversified production. This will be determined by such aspects as soil type, climate, contour, accessibility, water supply and may require modification in the form of clearing of existing cover, provision of shelter, drainage, irrigation, lfood protection, levelling, etc.
2. The availability of men with the ability and judgement to recognise the pending change in fashion or demand, and the expertise, the sense of adventure and the determination necessary to implement the change in land use.
3. The availability of risk capital for investment in the enterprise, which can be substantial both in terms of initial capital requirements for development, and lead time to profitable production, e.g. Kiwi fruit, forestry.

By 1810 the main stimulus in New Zealand's development, gold, was getting scarce and production of exportable commodities was restricted to kauri spars, kauri gum, whale oil, hides, wool and bones.

A small band of men with the necessary capital, enterprise and courage developed a steam fired refrigerating plant, put it aboard a sailing ship and successfully exported 5,000 carcases and some butter to England, in 1881, thus accomplishing, technologically, the step which opened up the vast potential for land produced, exportable commodities. This initial breakthrough allowed the development and exploitation of overseas markets in the form of meat, animal by-products, dairy produce, fruit, vegetables, etc., which last year accounted for 40% of New Zealand's exports. Further developments have included:

- Exotic forests
- Shearing machines
- Milking machines
- Artificial fertiliser
- Herd testing
- Improved varieties and strains of pasture plants and crops
- Identification of trace element deficiencies and soil testing
- Bulldozers and earthmoving plant
- Drainage, irrigation and flood control
- Aerial topdressing
- Selective weed killers
- Improved pasture management
- Improved breeding techniques
- Pulp and paper mills
- Veterinary advances in parasite and disease control
- Diversification into new fields such as deer, rabbits, goat and opossum farming, new fruits, such as kiwi fruit, blue-berries,

blackcurrants and sub-tropicals, asparagus and other horticultural crops.

It thus becomes clear that besides the basic prerequisites of appropriate land, men, money and markets, the ability and incentive to adapt to changing fashions at the market place is encouraged, and aided by advances in science, technology and social attitudes, often completely unrelated to their future application. It is also crystal clear that, rarely, if ever, except in cases of extreme emergency, such as war, has any encouragement or assistance been offered by bureaucracy in the form of Government and major financial institutions, and the markets have had to rely on individuals and small groups of individuals, adventurously risking their own capital, resources and reputations, until the new fashion has become firmly enough established to be accepted by "the club", as an approved industry or enterprise.

Two Examples

Kiwi fruit is probably the glamour industry of New Zealand and its development is adequately summed up by Mr Haines when addressing the producers:

> "You have achieved much and you can achieve a lot more. In fact what you have achieved is quite staggering and it is not the increase in export returns that is most impressive. What is impressive is that you have taken an unknown product and marketed it internationally to a very wide consumer acceptance. Something which happens in the produce world once every 100 years."

The actual and projected increase in exports is, however, quite staggering as the following ifgures indicate:

1970	$600,000
1980	$30,000,000
1990	$175,000,000

The increase in bare land values in favoured localities is almost as staggering:

1970	$1,000 (per acre)
1980	$20,000 (per acre)
1990	? ? ? (per acre)

Deer-farming is also a very recent development increasing from the first licensed farm running a few head, in 1970, to several hundred farms running 100,000 head in 1980 and exporting venison, velvet, tails, skins, pizzles, sinews and eye teeth. The effect on land values directly attributable to deer-farming has been negligible, probably because deer can be farmed on almost any type of land and require no special attribute in terms of land quality, but rather personal expertise, structural improvements and stock.

The Effect of Farm Adaptability on the Valuation Process

The previous two examples were chosen to highlight the two extremes in effects on land values and valuation and in demands on the valuer and the profession.

In the latter example, deer-farming, the valuer is rarely required to exercise any more professional skill or knowledge than to ensure he is familiar with a slightly different type of structural improvement.

In the valuation of kiwi fruit land, actual or potential, however, he must equip himself with a wide range of new skills and expertise, many of which are similar to other horticultural applications, but many of which are either unique to, or have a special importance to kiwi fruit farms and their value.

Climate, soil type, soil and sub-soil drainage, air drainage, shelter, aspect, vine variety, age health and vigour, pruning efficiency and techniques, disease and pest control, all play critical parts in the current and potential profitability and value and there are often sophisticated structures peculiar to the industry.

When it is appreciated that similar but unsuitable land may be worth $4,000 per acre, whereas a favourable combination of all of the above factors may sell a kiwi fruit farm for $80,000 per acre, then their individual and collective importance in the valuation process falls into perspective. The value of individual vines may range from $50 to $500 according to age and productivity.

Conclusion

The ability of farming interests to recognise changing trends in markets and fashions, and to respond quickly and effectively, has always been one of the traditional strengths of the industry, and a situation which the valuation profession has been able to "take in its stride", partly because the impact on land values has not usually been immediate or dramatic.

The influence of changing patterns in world trade, tax, export incentives, inflation, the example of high profits for innovators and developers of successful new industries, and the ability of large enterprises to generate sufficient funds to divert large amounts of risk capital to new ifelds for the sake of glamour, profit or spread of risk, is changing the traditional approach and the valuing profession must be prepared to change with it.

The profession has responded adequately to challenges in the past and, I firmly believe, it is now better equipped than ever to meet new ones, providing it never loses touch with the basic principles.

Naming Rights and Naming Rents A First Survey

By W. K. S. Christiansen.

Senior Lecturer in Land Economy, University of Auckland.

Ken Christiansen, a chartered surveyor, has been involved in the property valuation, agency, investment, development, planning, consultancy and management areas for some 36 years in New Zealand and overseas. He was in private practice before joining Fletcher Trust in 1465. He started lecturing at Auckland University part time in 1978 and joined the fulltime staff in 1981.

SYNOPSIS

THERE IS VIRTUALLY NO REFERENCE MATERIAL, OR EVEN CONCENSUS, ON NAMING RIGHTS AND RENTS. THIS ARTICLE PUTS FORWARD SOME VIEWS, SOME RESEARCH AND SOME SUGGESTIONS.

PART ONE - THE BACKGROUND

1.1 Introduction

It appears to be a general assumption that `naming rights' is (or are) a very grey area! Few practitioners are prepared to offer any very firm views on the subject. Valuers, property managers, real estate agents, developers, investors, all convey differing impressions and opinions on the relevance and application of naming rights and rents in the market place.

In fact, paying an annual rent for the privilege of having one's company name on a central city office block is a transaction which is at least ten years old in New Zealand. The writer was directly involved with the development and leasing of a major office building in Wellington which was completed in 1970. It was named by the major lessee. A rent has been payable from the date of occupancy. This was an early, but not necessarily the first, example of this practice in New Zealand.

It is observable in leasing brochures and advertisements and on leasing boards in the main centres of New Zealand and Australia that `naming rights' are on offer.

The challenge which led to this research being undertaken was the general lack of precise knowledge about the prevalence of naming rights and the basis upon which naming rents had been, and were being, assessed. The survey was centred mainly in Wellington and Auckland. The hope that sufficient naming rents existed for a useful analysis has been fulfilled.

Part One sets out the writer's understanding of naming rights and what they entail for lessor and lessee. Part Two deals with the gathering of information. Part Three is the analysis of naming rents. Part Four explains the results and conclusions.

1.2 Naming Rights Defined and Explained

`Naming rights' is an expression usually used in connection with substantial central city office buildings. Naming rights can apply to virtually any type of commercial building in more or less any location. Nevertheless, naming rights as a recognised, definable and quantifiable aspect of office accommodation leasing is generally associated with some degree of prestige inherent in the building, its location, or the lessee seeking the naming rights.

hTat Distinguishes Naming Rights?

It is a right granted by a building owner, to a lessee in a building, to name that building.

It is the right which a head lessee or a major lessee in a building may expect or require of the building owner.

As a privilege or right additional to the right of occupancy, the right to name a building should have an added, and assessable, value.

What Specific Rights Are Usually Conferred?

The lessee will be granted the right to select a name for the building. The expectation is that the building will generally become recognised and known by that name and that it will therefore achieve some sort of local landmark status. By thus entering into the everyday geography and language of those who use the building and frequent the area in which the building is situated, its name becomes a form of subliminal advertising, while at the same time enhancing the status of the organisation to which the name belongs.

The lessor should of course retain the right to approve the name proposed by the lessee. An unfortunate choice of name could adversely affect the lettability and the value of the lessor's building.

The name will be prominently displayed over or near the main entrance to the building and on the tenant directory board in the main lobby.

The lessee company's name or trade brand or logo or whatever will be at the top of the building on one or more elevations.
The lessee will be able to display the building name, as its address, on its notepaper and all its promotional literature.

All the other lessees in the building will have to use the building's name as their address on their notepaper and the like, thus providing further free publicity.

Who Wants Naming Rights?

Some lessees, more than others, will be interested in naming rights. Those most likely to be interested will be the large national, international and multi-national companies. Among these will feature:

* Airlines
* Oil companies
* Banks
* Finance houses *

Life offices

* Insurance companies
* Building societies
* Industrial concerns
* Conglomerates .. .

Such lessees will be particularly interested if the building houses the head office or principal New Zealand office.

Financial institutions will often erect and own the building they themselves occupy. These will bear their owners' names. This is not `naming rights': the owner/occupier of a building owns the naming rights as of right and can do what he likes about naming his own building. This is, of course, one of the motivations for a lessee to seek naming rights. It is easy for the public to assume that the organisation whose name graces a building is also the owner of that building: this impression can provide added credence to the financial strength and stability of the lessee organisation whose name is on a building.

The name selected in terms of a naming right will invariably be a commercial or industrial name. There is unlikely to be any value in a name which may be chosen for sentimental, political, locational or other such reasons. There are lessees such as the State Services Commission whose clients see no commercial value in naming the buildings they occupy.'

Naming rights are not the same thing as advertising rights. Some less than prestigious buildings have large blank walls which lend themselves to the painting or placing of advertisements on the surfaces. Some buildings are suitable for illuminated sky signs. These forms of display may have no relationship to any occupancy of the building. Naming rights must attach to an occupational lease in the building which is to be named under a naming rights arrangement.

How Are Naming Rights Formalised?

Modern leasing techniques will cater for naming rights within the office lease document either as additional provisions within the body of lease clauses or as a special schedule at the end of the lease. It is not particularly appropriate to print all the relevant provisions into a standard lease for a building when there can be only one beneficiary in respect of naming rights in any one building. For example, the "SOMA Standard Office Lease" is silent on naming rights but there is a blank schedule labelled `Special Provisions'. Whatever method is adopted, it is certainly essential that the respective rights and obligations of the lessor and lessee be carefully spelt out in legally enforcement documentation.

This should cover such things as:

* Name selected for building and/or lessor's right to approve name yet to be chosen and any subsequent changes.
* Locations of the name/logo/signs in, on and around the building.
* Who pays for all the signage and any changes.
* Duration of the naming rights - usually tied to the lease term.
* The link between occupancy and naming - it may be desirable to specify a minimum space occupancy below which the right to name may revert to the lessor.
* Maintenance and repair of signs - they

have to be kept up to scratch if the building's image is not to suffer.

* Cost of power and the like for any illuminated signs.

* Insurances.

* Provisions for review of naming rent.

1 SATHERLEY, 0., "The Naming of Buildings", Property Management Institute Newsletter, Auckland, March 1979, pp 2 and 3.

How is a Naming Rent Reviewed?

This can be a very simple and straightforward matter which should not raise any problems. Once the initial rent for naming rights is agreed upon only two aspects require to be covered. The first is a provision for its review at the same time as each review of the office accommodation rent. The second is that the naming rent shall increase by the same percentage as does the office accommodation rent.

One further aspect which may need to be considered and perhaps catered for is that of building outgoings. If the special provisions relating to the naming rights have been adequately drawn up they will cover the special operating costs attributable to signage. In this event no further outgoings should arise. There would seem to be doubtful justification for the application of full service charges such as those payable under a `net' lease. Certainly the net lease principle can be applied to the naming rent, but a naming rent is not on all fours with an occupancy rent.

PART TWO - THE SURVEY

2.1 How the Survey was Carried Out

The method adopted to obtain the information contained in this paper was, first, to issue a general questionnaire intended to identify buildings which carried a name for which a rent might be payable and, second, a further more detailed questionnaire in respect of those buildings successfully identified. The initial questionnaire was distributed to those persons the writer believed most likely to know of examples of naming rights. To cover as much ground as possible. general requests for information were placed in professional journals, but these did not produce any response.

The main thrust of the survey was Wellington and Auckland and to a lesser extent Christchurch. Some of those questioned had knowledge of more than one city and several replies also provided details of naming rights in places other than the three main centres.

Fifty-six initial questionnaires were distributed as follows:

35 in Auckland
19 in Wellington
2 in Christchurch

56

The occupational groups covered were:

22 property managers
18 valuers
8 developers
8 real estate agents

56

Of these, 29 were in private practice firms and 27 were employed in mainly property ownership and development concerns.

There were only eight who failed to reply. Grateful thanks are due to the 48 who did respond. Ten respondents could offer no details or comments. The balance of 38 provided specific details of naming rights in respect of specific buildings or useful comments or both. The survey identified a total of 29 buildings with a quantifiable naming rights history. These are situated in the following areas:

Wellington	16
Auckland	7
Christchurch	3
Palmerston North.....	2
Hamilton	1
	29

While the list to which the initial questionnaires was sent was an arbitrary selection, it was based on a reasonable appreciation of those who could provide relevant information. The fact that the same buildings cropped up repeatedly in a number of replies and that no one responded to the general journal invitations would seem to indicate that the survey has uncovered most of the available data.

The survey process commenced towards the end of 1981 and the last details came in during mid 1982. As a preliminary move, enquiries were made as to the existence of any previous papers or articles. These enquiries included the library of the Royal Institution of Chartered Surveyors in London and several Australian, American and local sources. Only one article came to light.'

2.2 Respondents' Comments

The written comments, notes and letters received can be divided into two categories. Those which offered general comments and those which offered suggestions as to the calculation of a naming rent. The general comments are dealt with first and the formulae second.

General Comments

These are pertinent as they represent a cross section of informed opinion as to the relevance and incidence of naming rights as a marketable commodity.

Firstly - there are the comments to the effect that there are no known or discernible rules concerning the negotiation of naming rights and no method of valuing them if they are recognised as

a separate item of worth. If there is to be a monetary consideration it may be a front end capital payment or it will more likely be an annual rental.

Secondly it all depends on the market. If it is a lessor's market a naming rent may be insisted upon; if it is a lessee's market there may be a refusal to pay for naming rights. It is suggested there may be a greater awareness of the value of naming rights in Wellington than in Auckland.

[1] ibid page 3.

Thirdly - there are some low key private sector lessees who may see no merit in advertising their presence. In this type of situation a separate naming rent will not be obtainable by the lessor.

Fourthly - there are numerous suggestions that naming rights are often important in lessor/lessee negotiations but that they are a bargaining counter rather than a separate issue. Naming rights may become the necessary inducement to secure a lessee. Or not worth raising if this is likely to sour or terminate worthwhile negotiations. Naming rights may be offered by a lessor to offset a claim for a bulk discount by a lessee. A longer lease may be obtained by a lessor in return for naming rights. In other words a whole range of bargaining ploys where it is not so much the quantum - which may not even be mentioned - as the opportunity which may be argued across the lease negotiating table.

Fifthly - there is the generally held view that in most cases it does not make much sense to insist upon a naming rent if the alternative is an empty building. The reverse side of that coin is that sometimes a substantial naming rent might make the difference between a viable and non-viable proposition.

Sixthly - it is generally acknowledged that naming rights is a CBD phenomenon. Single occupancy smaller buildings on the periphery and in suburban locations, sometimes with warehousing attached, are usually named by the lessee if he wishes to, or used for advertising, as a matter of course.

Seventhly - there is also a general concensus that naming rights should only be granted to a major lessee: one with the head lease or who occupies a major portion of the building. There are not many suggestions as to what constitutes a major portion. One is that it should be at least 20% to 25%, of the block. Another is that it should be at least two floors in a multi-storey block. In any event the lessee whose name is on the building should occupy at least as much space as the next major lessee.

Eighthly - an opposing view is that any lessee (in Auckland) who leases more than 15,000 square feet should be given any naming rights rent free.

Ninthly - there is, finally, the relevant comment that naming rights can inhibit leasing. A competitor will not want to take accommodation in a building named after a competing company or product.

Formula Comments

These represent the general approaches which have either been adopted, would be adopted, or are thought to have been adopted by others, in order to assess a naming rent.

Most of these see the naming rent as a percentage of an office floor rent. Some prefer dollar amounts. The following lists the percentage approach first, starting with the highest percentage:

Firstly - commence at 20% of the top floor rental, but not necessarily achievable. Applies to Auckland and Wellington; difficult to get anything in Christchurch.

Secondly - 20% of the top floor rental for large well exposed central buildings. Substantial discount for the less well endowed buildings.

Thirdly - believes Wellington valuers are using between 20% and 12% of typical floor rental. One building in Auckland was thought to be worth only 10% of the top floor rental because of the large floor area. Another valuer, considering the same building, assessed the naming rent at -% of total gross rent of the building. Since it has 19 office floors this would approximate to 9 21% of a typical floor rental. In the event the naming rent was thought to be worth between $20,000 and $12,000 per annum but it got lost in the final total lease bargaining.

Fourthly - knows of one Wellington building assessed at 15% of the top lfoor rent.

Sixthly - often 10% of the office rent is aimed for. (It is assumed what is meant is 10% of a top or a typical floor rent. It would otherwise seem totally out of line.)

Seventhly - a summary of the views which do not express any particular proportions nevertheless all suggest quite strongly a preference for the naming rent to be a percentage of either the top floor rent, or of a typical floor rent.

Nobody grappled with the questions whether the rents should he net or gross, or what to do where the top floor is significantly different in size and/or rental rate, or with a definition of a typical floor.

We now turn to the quantum approaches:

Firstly - for feasibility studies in Auckland $10,000 is used for buildings in the 40,000 to 70,000 square feet range.

Secondly $8,000 to $6,000 per annum seems to be appropriate in Wellington. Thirdly - $6,000 per annum seems to be emerging as an arbitrary figure in Wellington.

Fourthly - one view is that a lessee may be more inclined to look at his advertising budget in assessing the value of naming rights.

2.3 Comments from Australia

The endeavour to see what information might be forthcoming from Australia produced the following answers from valuer friends in Sydney, Adelaide and Perth:

Sydney - the reply is quoted in full (dated 16 November 1981):

"In reply to your letter concerning naming rights, from our experience this is very much a `hit and miss' situation.

"Way back in the 1960's 25c per square foot represented some measure with rents then $5.00 or thereabouts.

"Recently it is a question of what the market will stand the most recent negotiation being that of (a building in Macquarie Street where an airline pays) $15,000 per annum for advertising i.e. sky sign rights and $10,000 for naming rights. They only occupy two lfoors totalling 6,600 square feet (out of 12 floors 43,000 square feet).

"We are endeavouring to negotiate naming rights for a former insurance company building and will endeavour to get to tender with the major tenants subject to a minimum disclosed reserve of $10,000 per annum.

"No! There is no relationship between naming rights and rents for accommodation it all depends on your market. Bulk users have traditionally negotiated naming rights free of charge, this no longer being the case."

Adelaide - the reply is quoted in full (dated 17 November 1981)

"I am afraid I can't be much help on a formula for fixing rentals for naming rights on buildings. The third year students have just finished a city office valuation and found that rentals ranged from nil, used as an enticement to tenants in letting a new building, to $20,000 per annum. I understand that in Sydney, rentals of $100,000 are attained. "In the debriefing session following the exercise the general consensus of opinion was that rental as a percentage of gross rental would be an appropriate approach as gross rental would reflect the status of the building in most situations."

Perth - the lengthy reply is summarised (dated 19 November 1981).

"The preliminary comments are that `naming rights have the character of a horse trade'; `the matter of naming rights depends very much on the state of the market at the time'; `the matter of naming rights is virtually an incentive to occupy compared with a measure of value in terms of rental'. There follow specific commentaries on certain buildings:

"building A - owner welcomed substantial head lessee. Naming rights bandied around but in the end were not quantified.

"building B - no incentive for this particular major lessee to require namnig rights but the owners were glad to use the lessee's name as a marketing tool to fill the building up.

"building C - $10,000 per annum paid by a well known finance house which occupied a small portion of a large building.

"building D - an insurance company sold and leased back at a rental which was $20,000 per annum extra to retain the previous building's name.

"building E - naming rights available at $20,000 per annum.

"building F - $25,000 capital sum of $6,000 per annum for six years' naming rights. The transaction was not consummated.

Finally - A New Zealand comment (dated 5 March 1982)

"In an example across the Tasman we negotiated a naming rights rental of 3% per annum of the rental value of the space occupied by that tenant. The tenant occupied about *60%* (40,000 square feet) of the total building. I mention that as a possible formula to throw into the ring."

Brief Summary of all the Comments

Naming rights are recognised in both New Zealand and Australia as having an "identity" and a "worth".

It depends on many factors, not the least being the state of the market, whether the value of a naming right is used, on the one hand, as an inducement by lessor or lessee to secure a lease or, on the other hand, can be expressed as an additional annual rental lessors might require, or lessees might be prepared to pay.

2.4 An Arbitration Award

It is pure chance that an award concerning naming rights should have been issued on 14 May 1982. This relates to Marac House in Albert Street, Auckland. The questions for determination were:

(a) whether a rent, additional to the office rent, was payable for the naming rights

granted in the lease and, if so, -

(b) what the naming rent should be.

The parties were the building owner (National Mutual Life) and the lessee of the entire building (Marac Holdings).

The arbitrator decided as to the naming right which had been granted "there can be no doubt that that right is a benefit, and a benefit which has a value to the lessee". Evidence was given by four registered valuers, two for each side, who submitted base material which was common and not in dispute. The conclusion reached by the arbitrator was that "in so far as any defined practice is discernible, it would seem to he that it is to apply a percentage to a typical lfoor rental". He concluded that the naming rent should be *6%* of the figure arrived at by multiplying what he was led to believe was the top rental rate calculated on a typical floor area. The effective date was 19 July 1979.

Information given to the writer subsequent to the arbitration would suggest that the lfoor area and rental rate are the same for all office floors in the building. It is possible to read into the award the implication that a greater percentage than 6% would have been awarded had the effective date been May 1982, on the strength of the trend towards naming rights becoming more firmly established since 1979. Reference to the table on page 12 will show that 6% is a minimum figure for Auckland.

The writer would go a stage further and suggest that in two areas of the evidence submitted the incidence and quantum of naming rights were understated. It is indicated that naming rights were available for what is now Quay Tower in return for a $25,000 once only lump sum payment. The writer has reason to beiieve that a ifgure as high as $50,000 might have first been mooted and that it was to have been an annual rental. Also, it was contended for the lessee that as at July 1979 there was "no hard evidence" that naming rents were payable. It might be hard to dispute this in resrlect of Auckland in isolation but it would seem clear that in Wellington the nract;ce can be traced back to pcrhans the late 1960's. Satherlev'. writing in 1979. says

"The practice of selling `naming rights' to major tenants is now fairly widespread ..."

ibid page 3.

PART THREE - THE ANALYSIS

3.1 Preamable to the Survey Analysis

What follows are tables in respect of each of the 29 buildings grouped into the five geographical areas and listed, for each area, in order of magnitude of the naming rent. All naming and other rents have been brought up to a common 1982 level by adding a plain 10% for each year since the year the rents were either determined or last reviewed. For example, a naming rent of $6,000 per annum last set during 1979 will have been increased by 30% to show up in the tables as $7,800 per annum.

The analysis of each building, using only the information contained in or calculated from the questionnaires, relates each naming rent to a range of floor areas, office rentals and the number of floors in the building in the manner set out in the tables.

In only a very few instances has there been recourse to the telephone or to the writer's background or local knowledge. Essentially, it is the respondents who have provided the information analysed. The arbitrated Marac House naming rent has been included.

In an attempt at logicality and consistency two basic decisions were made. One was that only the office floors in a building would be taken into account. The other was that office rents would be gross rents, as defined in the questionnaire.

Unfortunately, most respondents specified confidentiality as to the identities of the buildings. They are therefore referred to by a reference number only. Square feet have been used thoughout rather than square metres because nearly every reply was expressed in square feet.

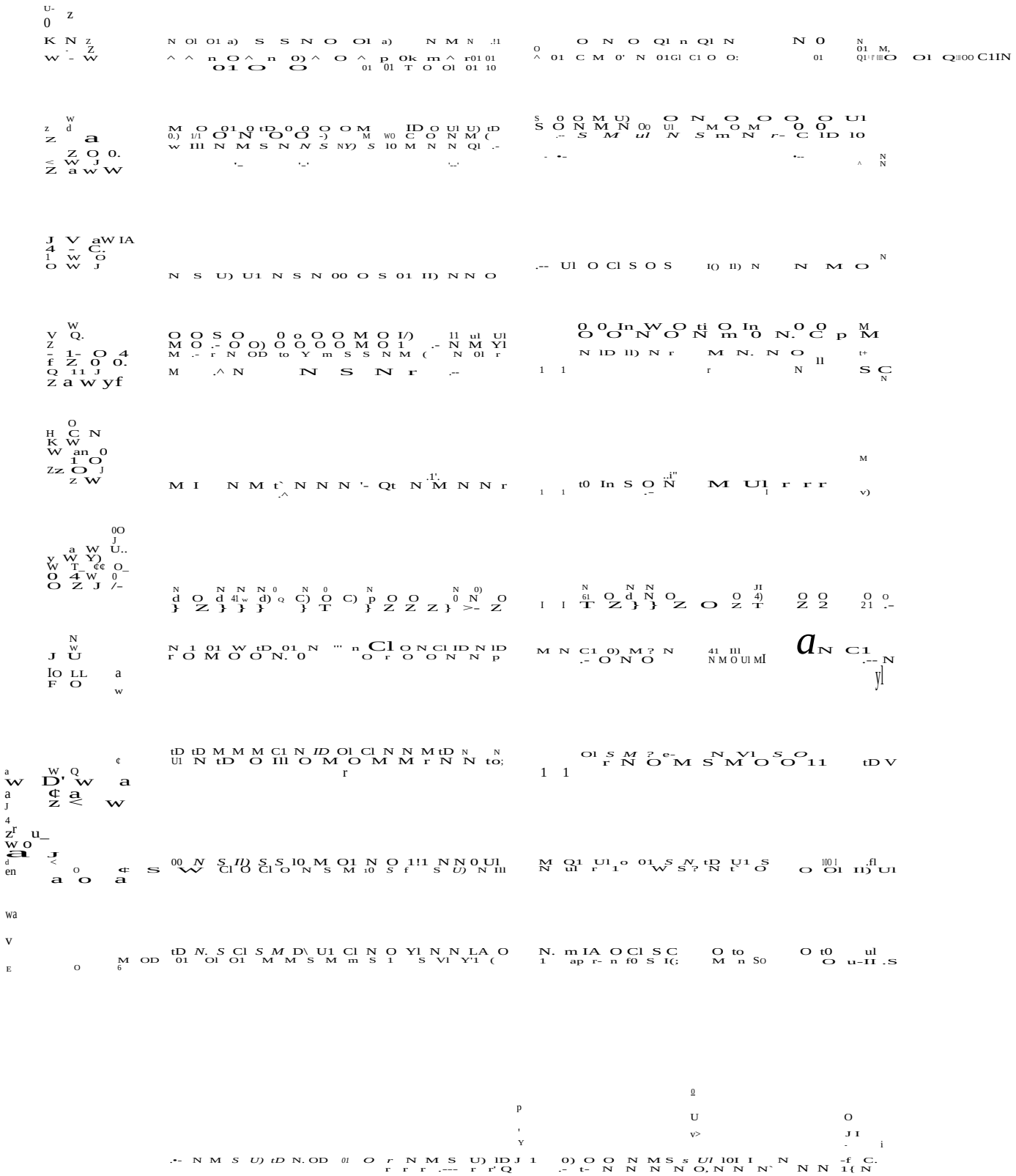
For valuation purposes, the figures in the tables on the following two pages should be treated as illustrative or indicative only.

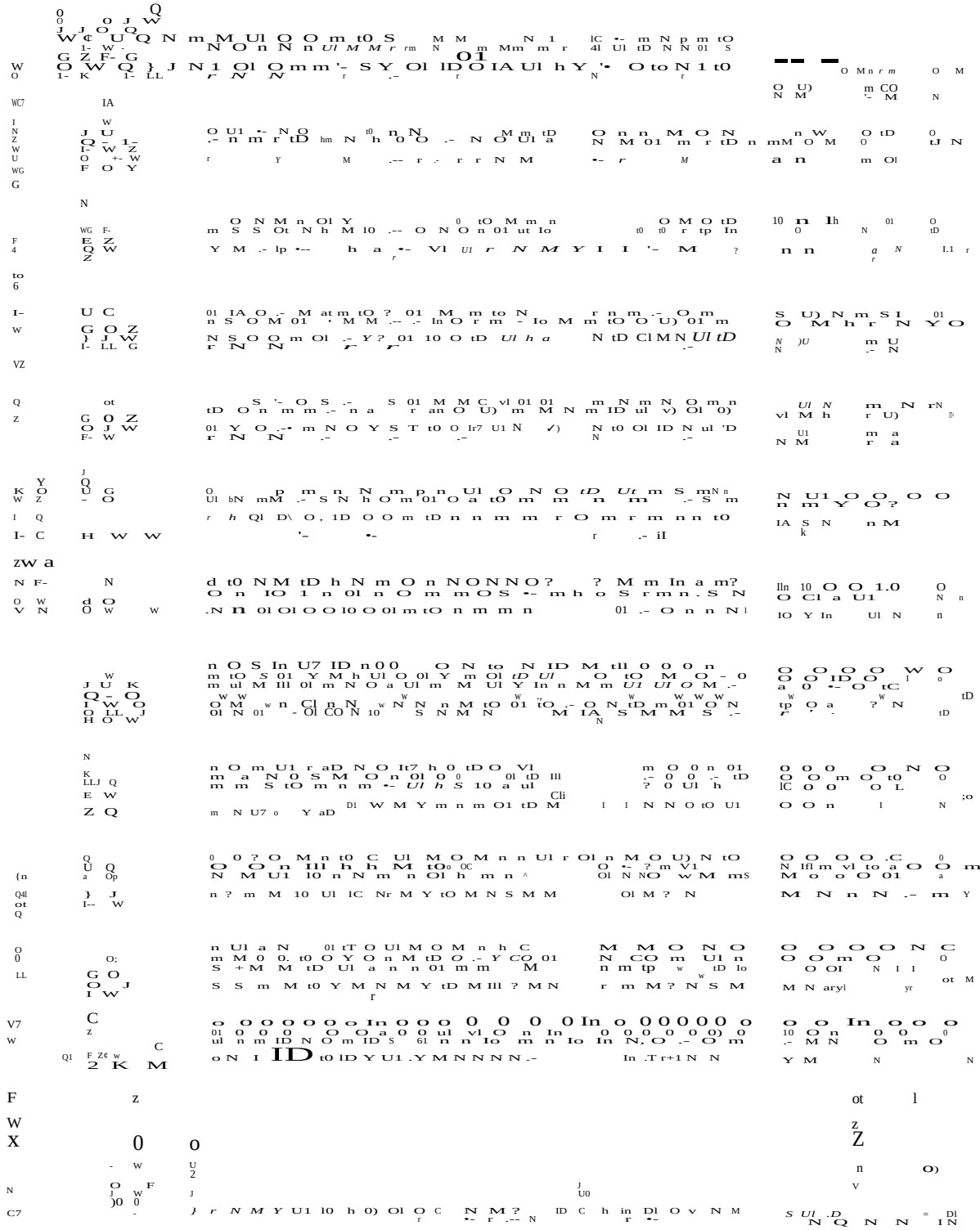
PART FOUR - THE RESULTS

4.1 Commentary on the Survey Analysis

The basic material in the tables was collated from the second issue of questionnaires which were distributed after the buildings had been identified. This questionnaire was designed to obtain sufficient details in respect of each building that its naming rent might be analysed in a wide variety of ways in the search for a rental pattern.

The various percentages should remain constants since all the rent figures used have been current at approximately the same time in each case. The rent figures are shown at approximately 1982 levels and can be extended into the future at whatever annual rate of increase may be deemed appropriate. There are two slight margins for possible error in the figures in that a rent fixed in, say, 1979 will have been increased by 30% to convert it into a 1982 rent, regardless of the month in 1979 in which it was fixed. Under this rule if the rent was fixed on 31 December it goes up by 10% on 1 January. And the 10% is itself arbitrary but sufficiently close to fairly recent experience; only two of the 29 buildings required as much as a 40% upward adjustment, six 30%, eight 20%, eight 10%, and five no adjustment. The greater the number of buildings the less the significance of any minor inevitable statistical discrepancies. The figures in the tables may prove useful for the detailed valuation or cross referencing of a future naming rent negotiation.





The simplest and most consistent patterns seem to emerge from a study of the naming rents as percentages of floor rents. The conclusions which are drawn will therefore elaborate that approach.

The comments received, where these suggest a formula, and the conclusion reached in the arbitration award referred to earlier, all express a preference for the percentage approach. This research supports this concensus as being reasonable. Office rental rates will reflect a building's value to lessees. In adopting the percentage approach, this value factor should automatically be relfected in the naming rent.

In nominating the percentage method some have stipulated the naming rent as a percent of the top floor rent; others as a percent of a typical floor rent. The full range of percentages will be found in columns 9 to 13 of the tables (page 12).

The writer would suggest that there are inbuilt inconsistencies in adopting the top lfoor rent as the datum and accordingly recommends the adoption of a typical office lfoor. In a tall building where the rental rates are scaled upward the higher the floor, then it is suggested that a typical floor will be found approximately mid way up the tower.

The reasons for discarding the top floor are several:

* The top floor is sometimes slightly larger than any of the others except perhaps a podium floor.
* The top floor can be considerably smaller than any of the other floors, especially if it assumes the character of a penthouse suite.
* Quite often the top floor attracts the highest office rental rate per square foot.
* Sometimes there is no differentiation in rental rate for the top floor.
* In the case of a two storey office building the top floor rent may be lower than the ground floor rent.

There are also instances where it is the lessee of the ground floor who is more interested in the building's name than any of the upper office lessees.

4.2 Summary of Results

In arriving at a conclusion the examples from Christchurch, Palmerston North and Hamilton have been disregarded for a number of good reasons, not the least being because they are too few to provide anything other than isolated examples. That naming rents actually exist in these cities is considered significant in itself. A naming rent negotiation in Invercargill has recently come to the writer's attention but the outcome is not known. Further examples would be required in order to establish any reliable valuation patterns.

Wellington and Auckland are the two areas which have provided the builk of the information and it is in respect of these that it is possible to draw conclusions. Many respondents have made distinctions between the two centres with regard to the incidence of naming rights and value of naming rents. The analysis supports the distinction. The two cities are different in character, have different office markets, different lease terms and different office rents. They are therefore dealt with separately here. Wellington first and then Auckland.

It is proposed to look at each of the two groupings of buildings in terms of the naming rents as a percent of two sets of office lfoor rentals. In the first instance: the naming rents as a percent of typical floors areas at the top floor rental rates per square foot. This would seem to have been the arbitrator's preference in the situation he was dealing with. In the second instance: the naming rents as a percent of typical floor areas at the typical office floor rentals. This would seem to the writer to be a more consistent approach of wider and more permanent application.

Wellington

This group will be dealt with in four ways; a form of refinement as the process progresses. There are 16 examples from Wellington. It is proposed to exclude two of these as they are untypical two-storey buildings, leaving a total of 14 buildings:

Wellington - 14 buildings:

Total of naming rents	Total of typical lfoor areas at top lfoor rental rates	Total of typical lfoor areas at typical lfoor rental rates
$ pa	$ pa	$ pa
73,430	766,585	753,096
Weighted percentages	9.58%	9.75%

In this next step it is proposed to eliminate a further five buildings whose naming rents were first fixed prior to 1976. It will be assumed that these rents were initially fixed on the low side and that this has, for these buildings, been perpetuated to the present day. As an isolated case, one of these naming rents is the highest in Wellington in dollar terms though not as a percent. Another of the five buildings has individual lfoor areas significantly larger than in all the other buildings. In respect of another it is known the building managers believe the naming rent to be much lower than it should be. By eliminating these five buildings, because they are early examples, it has been possible to obtain answers which are more relevant.

Wellington - 9 buildings:

	Total of naming rents	Total of typical floor areas at top floor rental rates	Total of typical floor areas at typical floor rental rates
	$pa	$ pa	Spa
Previous totals	73,430	766,585	753,096
Less 5 buildings	30,230	393,457	385,399
Totals 9 buildings	43,200	373,128	367,697
Revised weighted percent.		11.58%	11.75%

The next step is a further breakdown of these nine buildings into two groups: those with 8 or more office floors and those with 5 and 4 floors. There are no examples with 6, 7 and 3 lfoors.

Wellington - 5 high rise buildings:

	Total of naming rents	Total of typical floor areas at top lfoor rental rates	Total of typical floor areas at typical floor rental rates
	$ pa	$ pa	$ pa
Totals 5 buildings	26,550	213,077	210,465
Weighted percentages		12.46%	12.61%

Wellington - 4 medium rise buildings:

	Total of naming rents	Total of typical floor areas at top lfoor rental rates	Total of typical floor areas at typical floor rental rates
	$ pa	$ pa	$ pa
Total 4 buildings	16,650	160,051	157,232
Weighted percentage		10.40%	10.59%

Summary - Wellington

The figures demonstate a discernible pattern. Taking the 14 buildings all of four or more office floors the total naming rights rents settle at between 91 2% and 10%. Extracting ifve of the buildings for the reasons stated, the naming rents then increase to between 11 z % and 12 %. This would appear to be a more reliable result as it applies to naming rents first fixed in 1979 and subsequently. Segregating these 9 remaining buildings into high and medium rise the answers then become around 12;% for buildings of 8 to 14 office floors and around 10[1]% for buildings of 4 [2] and 5 office floors. In summary, for Wellington, naming rights rents, as a percent of office floor rents, have tended to rise over the period since naming rents have been introduced; and the percent payable for the right to name a high profile building is more than for the right to name a lower profile building.

Auckland

For Auckland we have 7 buildings. But one of these was a naming rights opportunity which was not taken up; and another relates to the budgeted figure for a building still under construction and not so far named. Therefore, it is only justifiable that 5 buildings be taken into account.

Auckland - 5 buildings

	Total of naming rents	Total of typical floor areas at top lfoor rental rates	Total of typical floor :areas at typical floor rental rates
	$pa	$ pa	$pa
Total 5 buildings	13,180	168,836	158,738
Weighted percentages		7.81%	8.30%

Summary - Auckland

These 5 buildings are sufficient to produce a result but insufficient to categorise any further. The naming rents are all recent, having been fixed in 1979 and since. The number of office floors ranges from 4 to 10. The results confirm the view that naming rights rents are a more recent introduction in Auckland than in Wellington and that lessees in Auckland are, so far, perhaps not willing to pay as much as in Wellington.

4.3 Conclusion

The weight of evidence as represented by

* the writer's own involvement in several naming rights negotiations;
* the general comments received from survey respondents:
* the recent arbitration; and
* the detailed information received in respect of 29 buildings

would justify a conclusion that naming rights and rents are recognised, in Wellington and Auckland in particular, as having become an independent component of office building leasing and rental arrangements in the appropriate circumstances.

This being so, and accepting the fact that

available data have not, until this survey,

been gathered together and analysed, it is now possible to discern emerging patterns of naming rents.

On the strength of the material in this paper it is suggested that the most appropriate method for determining naming rents is to apply a percentage to the gross rent of a typical (or perhaps average) office floor. The assessment of naming and office rents should both be at values current at a common date.

Finally, and valuation not being an exact science, the writer would suggest that the naming rents should be:

* in Wellington, for the higher buildings around 12 %, and for the lower buildings around 101%
* in Auckland, around 8%.

Effect of Taxation on Property Values

Paper presented to the 1982 Seminar Wellington Branch New Zealand Institute of Valuers by Ian R. Silver, B.Comm., A.C.A., a partner in Wilkinson Wilberfoss, Chartered Accountants.

Mr Ian Silver has had a wide experience in accountancy and taxation matters. He has been involved as a member of the International Tax Committee of Arthur Young and Company, as a past examiner for the New Zealand Society of Accountants Taxation Paper and a past supervising examiner for the Taxation and Trustee Law Examination. He is a member of the New Zealand Society of Accountants National Tax Committee and has presented papers on current tax issues, taxation of mineral mining activities, and on other subjects. He is currently responsible for the overall development of the tax practice of Wilkinson Wilberfoss.

1. INTRODUCTION

A. When considering the content of this paper I have had considerable difficulty in defining the parameters of the topic. There is very little information, either in terms of statistics or dollar values, available to determine the real and day-to-day effect of taxation on property values.

B. It is possible to consider the general effect on property values of changes in tax legislation such as:
- Section 67 of the Income Tax Act 1976 (previously Section 88AA of the Land and Income Tax Act) which has application to many land sales and is still in force.
- Property Speculation Tax - introduced in 1973 and repealed in 1979.
- 1982 Budget announcements concerning the recovery of interest and taxation of more than six persons as a company.

C. In addition it is likely that the effect of certain tax incentives which relate to land has had an effect on the value of land:
- Deductibility of farm development expenditure.
- First year allowances relating to various types of buildings.

D. Property values are affected by a number of factors and I suggest that tax is only one of these and also a relatively minor factor. Our experience to date has been in assisting clients who are contemplating sale and the tax effects thereof. I can think of very few occasions where the taxability of the transaction to the seller would actually lead him to increase the price. This would generally not work because of other market factors.

When advising clients as to the purchase of land, it is generally the type of structure to be used, deductibility of interest on borrowed funds and how long he has to hold the property for a tax free gain that are the significant factors. Again, other market factors tend to dictate the price.

In these situations, I have no suggestions for measuring the effect of these tax issues on property values.

E. Government policy in the form of fiscal control does create variances in property values and the three specific tax areas referred to above, have had (or will have) some effect on property values. This situation is obviously intended by the politicians. However, in view of inflation and price rises in all types of property during the term of these amendments, I suspect that the tax effect works its way out of the economy relatively quickly.

F. All references to section numbers in this paper relate to the Income Tax Act 1976, unless otherwise specified.

2. SUMMARY OF EXISTING TAX LEGISLATION WHICH RELATES TO LAND

A. Income Tax

(1) Income from Property

The following sections relate to the assessment of income where such income is derived by means of ownership or use of land.

(a) Section 65 is the Tax Act's general provision for defining what is included in assessable income. For the purposes of this paper, the most relevant inclusions are:
- Section 65 (2) (a): All profits and gains derived from any business.
- Section 65 (2) (e): All profits or gains derived from the carrying out of any undertaking or scheme entered into or derived for the purpose of making a profit.
- Section 65 (2) (g): All rents, ifnes, premiums, or other revenues derived by the owner of land from any lease, licence or easement affecting the land, or from the grant of any right of taking the profits thereof.

(b) Section 67 expressly deals with profits or gains from land transactions. It sets out six different situations where transactions resulting in profits on the sale of land are assessable. The section is widespread and effectively taxes what have traditionally been held

to be capital profits. I expand on this section later in the paper.

(c) Section 74 deems income derived from the use or occupation of land to be assessable income. This section specifically addresses gains from the extraction, removal or sale of any minerals, timber or lfax. A sale of land with standing timber thereon shall be deemed to be a sale of timber and the consideration attributable to that timber is taken into account in calculating assessable income of the person selling the land.

(d) Trading Stock

Land is expressly excluded from the definition of trading stock by Section 85 (1). Notwithstanding this exclusion, S.91 expressly includes land in its definition of trading stock in respect of sales for inadequate consideration. This is a form of anti-avoidance legislation.

(2) Deductions from Profits from the Sale of Property

The following deductions from assessable income are contained in various sections which relate to the ownship or leasage of land.

(a) Section 104 is the general deductions provision and provides for a deduction of expenditure or loss from the total income derived by the taxpayer in the year such expenditure or loss is incurred. Such expenditure or loss must be incurred in:

(i) Gaining or producing the assessable income for any income year, or

(ii) Is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income for any income year.

The wording of this section is significant in terms of the timing of any deductions. Both paragraphs use the term, "in producing assessable income for any income year". Thus there is no requirement that an expense now, relates to, or produces, income in the same income year. A relevant example of this is farm development expenditure which is specifically allowed as a deduction pursuant to Sections 126 and 127.

Section 104 allows a deduction "in the year in which the expenditure or loss is incurred". Therefore, with the exception of specific provisions enabling the spreading of a deduction (such as SS. 126/127), the expenditure must be deducted in the year it is incurred even though it may relate to some future period. The judicial interpretation of "incurred" does not require an actual disbursement but a deduction may be permitted where the taxpayer is "definitely committed" to the expense.

With respect to paragraph (ii) it is necessary to establish that a business is, in fact, in existence before a deduction for expenditure incurred is permissible. "Business" is defined by the Act as any profession, trade manufacturing, or undertaking carried on for pecuniary profit. Judicially, this means two things:

- There must be an intention to make a profit.
- There must be a reasonable prospect of making a profit.

(b) Section 106 of the Tax Act expressly prohibits certain deductions. The most relevant for the purposes of this paper are:
- Capital items.
- Interest, unless it is interest payable on capital employed in the production of assessable income.
- Private or domestic expenditure.

(c) Section 108 provides a deduction, at the Commissioner's discretion, for depreciation caused by fair wear and tear and for repairs and alterations where such expenditure does not increase the capital value of the asset.

(d) Sections 126 and 127 specifically provide for the deduction of expenditure incurred on listed types of work that generally develop and upgrade farms and agricultural businesses. This expenditure would normally be capital and, as such, not deductible. In the event of a sale of the farm in respect of which development expenditure has been allowed as a deduction, that expenditure is recoverable.

I expand on these important sec- and the 1982 Budget effects on them later in the paper.

(e) Section 131 enables a lessor of land for farming or agricultural business purposes to make deductions in respect of first year de- depreciation (with some specific exceptions) and for development expenditure pursuant to Section 127.

(3) Tax Rebates for Individuals

Four rebates of tax in respect of the ownership of property are provided in the Tax Act, but these would appear to have minimal effect on property values.

(a) Section 48A provides a rebate of $25 for rates paid by a taxpayer on an owner-occupied residence.

(b) Section 48B provides a rebate for interest paid on any mortgage entered into for the purpose of acquiring a first home for the occupation of that taxpayer as a principal place of abode. The amount of this rebate. is the lesser of $1,000 or 31 percent of the amount of the interest paid.

(c) Where a taxpayer operates a special farm or home ownership account a rebate of 45 percent of the amount of the increase in the savings from the preceding income year is allowed pursuant to Section 49.

(d) Section 49A provides a maximum rebate of $500 for interest received on home vendor mortgages approved prior to Budget night.

(4) Other Relevant Income Tax Sections

(a) Section 61 of the Tax Act sets out specific types of income and situations where income is deemed to be exempt income and not assessable e.g. Sections 61 (52) which exempts income derived from interest on any farm vendor finance bond or in respect of any farm vendor mortgage.

(b) Unit trusts provide facilities whereby subscribers or purchasers may participate, as beneficiaries under a trust, in various forms of investment, that are the subject of the trust. Unit trusts are treated as a company for tax purposes.

(c) Where a company is under the control of not more than four persons and invests or holds or deals in land, then such company is deemed to be a "privately controlled investment company" and is liable to excess retention tax at a rate of 35 cents per dollar on a defined amount of retained earnings.

B. Land Tax

Land tax is imposed by the Land Tax Act *1976* and is payable by every person on all land of which he is an owner at 31 March each year.

From 1981 the rates of land tax changed from a graduated scale (whereby the maximum rate of 0.7 cents in the dollar was payable on the taxable land value in excess of $40.000), to a flat rate of 2 cents in the dollar on the value of all taxable land. This resulted in an immediate three fold increase in the total land tax collected for the 1982 year. The 1982 Budget estimates show $40,000,000 land tax take for 1983.

Notwithstanding this increase, land tax only forms a small portion of the total ifscal receipts from direct taxation. Before the increase in the rates of tax in 1981, this percentage was 0.2 percent. The 1982 ifgures and 1983 estimates show a percentage of 0.5 percent.

Land tax is thus comparatively a minor source of revenue, but as the Task Force on Tax Reform observed, there is some degree of limitation on the use that can properly be made of land as a tax base by Central Government, as rates are the principal source of Local Government revenue.

Agricultural land and horticultural land is explicitly exempted from land tax along with land held by superannuation funds, charitable and friendly societies, racing clubs, educational institutions and various other bodies. In addition, there is a special exemption for the first $175,000 of land value which reduces $1.00 for every $1.00 in excess of $175,000, so that there is no exemption available for land valued at over $350,000. This exemption effectively exempts residential land from liability to land tax. Because of these exemptions only 5 percent of total land value is taxed.

The Land Tax Act is structured so that assessments for land tax are issued in respect of individually owned land; jointly owned land, which also includes jointly occupied land; land held by trustees; and land owned by companies. In this latter assessment, shareholders are assessable individually for the value of land owned but only if that interest is in excess of $1,000. In most cases the company will pay the tax, which I might add, is deductible from assessable income pursuant to the provisions of the Income Tax Act, and such payment of tax is allowed as a credit in the shareholder's individual assessment, thus avoiding any double taxation.

So far I have traversed the collection and assessment of land tax generally, and made frequent mention of "land value" but not defined this all important term. Section 4 of the Land Tax Act states:

> "The land value of any land so owned means the sum which the owner's estate or interest therein, if free from any mortgage or encumbrance, might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose and if no improvements had been made on thaf land".

Notwithstanding this interpretation, for the purposes of administering the Land Tax Act, Section 5 provides that the land value of any land as it appears on the district valuation roll shall be deemed to he, and taken as, the land value of that land.

Accordingly, we have a situation whereby a person's land tax liability will alter

every five years when government valuers complete their task.

C. Estate Duty

The Estate and Gift Duties Act 1968 provides for the imposition of estate duty on the final balance of the estate of every person who dies in New Zealand.

The final balance of any estate means the total value of the dutiable estate less the allowable debts and the matrimonial house allowance.

Dutiable estate includes all property, wherever situated, of the deceased which passes by will or intestacy. Several provisions "tidy" this up by including in the dutiable estate, gifts made within three years of or in contemplation of death, property over which the deceased has a power of appointment, and shares of jointly owned property.

From this may be deducted debts owing at the date of death and the value of any property on which a dwelling house was situated and occupied as a family residence.

Sections 18 to 26 of the Estate and Gift Duties Act govern the methods of valuing property for estate duty purposes. Valuation is at the date of death unless such property is brought back into an estate by reason of a gift made within three years of death.

The valuation of land for estate duty purposes is the value as determined by agreement between the Commissioner and the administrator. The Commissioner may here accept the value appearing on the district valuation roll or alternatively instruct the Valuation Department to make a special valuation. This latter course is common where substantial properties and farms have outdated government valuations at the time of the owner's death. An interest in land on which trees are growing is valued without taking into account any value which the trees may have for their wood.

Estate duty is levied on the excess of the final balance of the estate over the exemption. The exemption level has been altered with each Budget of recent years and is presently $300,000. The 1982 Budget extended the exemption to $350,000 for persons dying after 1 April 1983.

The rate of duty is a flat 40 percent rate on the excess of the final balance over the exemption.

D. Gift Duty

Gift duty is imposed in respect of every dutiable gift. A dutiable gift includes the amount of all property, wherever situated, comprised in any gift made by any donor to any donee, where the donor is domiciled in New Zealand at the date of the gift, or is a body corporate incorporated in New Zealand. If a donor is domiciled outside New Zealand then any gift of property situated in New Zealand also comprises a dutiable gift. A gift is defined in the Estate and Gift Duties Act as any disposition of property without fully adequate consideration in money or money's worth passing to the person making the disposition. The gift is deemed to be the amount of the inadequacy of the consideration. A disposition of property is widely defined by the Act to include almost any type and method of transferring property.

The property of any gift is valued on the same basis as that for estate duty purposes.

Exemptions from gift duty include gifts for education and maintenance of a family, gifts to charities and certain bodies, small gifts which form part of the donor's normal expenditure, and certain dispositions by employers such as labour shares, superannuation contributions etc.

The first $15,000 of any gift attracts no gift duty. The rate of gift duty is graduated and reaches a maximum of $5,280 plus 25 percent of the excess amount of any gift over $40,000.

E. Capital Gains Tax

There is no legislation titled "Capital Gains Tax" although I suggest that Section 67 is a form of capital gains tax. This section includes an arbitrary ten year cut off applying to several of its principal taxing sections and also includes as revenue gains, gains resulting from such things as re-zoning.

The Task Force on Tax Reform made the following comments in this area of their report:

> "10.22 In principle, there is no reason why capital gains (whether made by a business or a private individual) should not be taxed. Such gains increase taxable capacity in just the same way as does a gain on income account. The Task Force considers that failure to tax real capital gains is inequitable in principle, and is seen by many to be so. It has also been represented to the Task Force that failure to tax capital gains provides an incentive for funds to be diverted from productive activities to unproductive investments offering prospects of capital appreciation. While this argument has merit, and is very credible, the Task Force received no evidence that the diversion of funds in this way is of major proportions.
>
> 10.23 Despite the comments and observations above, the Task Force does not recommend the introduction of a capital gains tax at this time.
>
> The Measurement of Capital Gains:
>
> 10.24 Real gains should be distinguished from nominal gains, especially when the times of purchase and sale of an asset are separated by a

period of substantial inflation. A real gain will be made if the rise in price of the asset exceeds the rise in the general price level. To the extent that the transaction is financed by borrowing, a real gain may also be made even where there is no such excess in the rise in price of the asset itself.

10.25 Based on its study of real price trends, and on overseas experience, the Task Force is of the opinion that a capital gains tax would not produce significant revenue. It is recognised that there remains a question of equity but the Task Force is of the view that introducing substantial complexity for little revenue gain is not justified.

10.26 The Task Force considers that taxation of nominal gains in current New Zealand conditions would be wrong in principle. The introduction of a capital gains tax in a period of high inflation would probably bring with it more inequities than it would cure, unless the effects of inflation were also taken into account."

The Task Force also considered at paragraph 10.30 that different considerations applied to rural land:

"The potential has existed for the realisation of significant capital gains on the sale of farms as the real price of rural property has increased significantly (although not steadily) over the period. The last 20 years have seen three periods of sharp upward movement, two of which have been followed by a period of decline. That the third such period is still in the upward phase of the swing is apparent from the Rural Price Index to December 1981 (released in March 1982). This latest short term movement should not be viewed in isolation from the long term secular trend.

10.31 Many of the increases in real land values are probably related directly to certain incentives currently available to the business and agricultural sectors. For example, there is some relationship between the increase in farm prices and the increase in livestock units carried. The increased carrying capacity may flow from a specific policy decision to meet part of the capital cost (e.g. deduction for development expenditure). To the extent that such incentives are being applied in accordance with deliberate Government policy and are achieving clearly defined Government objectives, it would be inappropriate to tax benefits accruing as to do so would undermine the value of the incentive originally offered. If unintended benefits are accruing, the remedy lies in changing or modifying the incentive to bring it more in line with the intention of the incentive and, in particular, to ensure that costs to the taxpayer are not unreasonable in relation to the national interest and benefits accruing to the individuals concerned."

When commenting on residential land the Task Force stated that:

"10.32 Substantial individual gains have no doubt been made on residential properties at some points during the period we have studied. On the other hand, the principal residence of a taxpayer is usually exempted from the impost of the tax, with the result that the capital gains tax revenue that would have been derived from this source is probably small. Even what might seem a real gain on the sale of a principal private residence is to some extent illusory, because, generally, the vendor requires the proceeds to replace the property with one of a comparable standard."

3. DETAILED CONSIDERATION OF INCOME TAX PROVISIONS

A. Section 65

As indicated previously this covers business profits, profits derived from any scheme carried out for profit purposes and various revenues derived from land. I have already touched on the question of business versus hobby which has been the subject of several court cases. This situation generally arises in less significant situations and I believe has very little place in determining property values.

Dealers in land are covered under Section 67 but Section 65 does cover the situation of a profit making scheme. This section does not have as much significance as Section 67 in land transactions in view of the wide nature of the six taxing clauses of Section 67.

Revenues from land such as rents, sale of standing/cut timber, minerals etc., have always been taxable. Perhaps the most significant development in this area over recent years has been the question of goodwill attaching to business locations. I am sure you are all aware of recent publicity given to Wellington's current and "in-progress" retail development and the effect this will have on rentals and key money.

Goodwill received on the creation of a lease or on a sub-lease is taxable but goodwill received from the sale of lease is not taxable unless the seller is a dealer in leases.

There is also the question to be considered of site goodwill or business goodwill and tax implications thereof.

The deduction of goodwill payments also requires consideration and includes some "grey areas".

B. Section 67

I will provide at the seminar a bulletin prepared by this firm on Section 67. I suggest strongly to you that this section must warrant some consideration in nearly all property sales and purchases.

Not only can it have a demoralising effect to find tax is payable after you have spent the money, but it creates patterns which affect future dealings.

I turn now to a brief discourse on the section.

C. Section 126 and 127 - Farm Development Expenditure

There is some overlap between Sections 126 and 127 because both sections authorise deductions for much the same sorts of expenditure. Broadly, the difference between the two sections is that Section 127 authorises deduction of the qualifying expenditure when it is incurred as part of an approved development plan. Thus, the requirements as to deductibility are more stringent under Section 127, although if satisfied, the manner in which the deduction may be accomplished is more generous than that provided for under Section 126.

(1) Under Section 126 (1) any taxpayer engaged in a farming or agricultural business on land in New Zealand is entitled to a deduction from assessable income in respect of expenditure incurred in the:

- eradication or extermination of animal or vegetable pests on the land;
- felling, clearing, destruction and removal of timber, stumps, scrub or undergrowth from the land;
- destruction of weeds or plants detrimental to the land;

preparation of the land for farming, including cultivating or grassing it.

Any of these sorts of expenditure may be deducted in the income year incurred or be spread equally over that income year and any of the following four income years.

(2) Under Section 126 (2) any taxpayer engaged in a farming or agricultural business on land in New Zealand is entitled to deduct from assessable income, in the manner outlined below, any expenditure incurred in the:-

- draining of swamp or low-lying land;
- construction of access roads or tracks;
- construction of dams, stopbanks, irrigation or stream diversion channels or other improvements for conserving or conveying water or for preventing soil erosion;
- repair of flood or erosion damage;
- sinking of bores or wells to provide water for the farm;
- building of aeroplane landing strips to facilitate aerial top-dressing of the farm; or
- laying of fences, including the cost of wire to make fences rabbit-proof;

but subject to a total limit per year of $800.

(3) Under Section 127 a deduction is available for certain capital expenditure incurred in farm development. Expenditure qualifying for the deduction may be deducted in the income year incurred or the deduction may be spread over a period covering any of the next nine income years. The type of expenditure which qualifes is basically the same as that outlined above for Section 126, although it also includes:-

- construction of feeding platforms, feeding yards, plunge sheep dips or self-feeding ensilage pits;
- building of supporting frames for growing crops;
- construction of earthworks, ponds, settling tanks or other similar improvements for treating waste productions or combating pollution of the environment.

(4) This section has also been amended by the 1982 Budget.

4. THE ABSENCE OF TAXES THAT AFFECT PROPERTY

Apart from income tax there are various other methods and bases of direct taxation that may be employed in any tax structure. Commonly mooted taxes which, if introduced in New Zealand, would have a direct impact on the value of land are:

- taxes on wealth
- taxes on property
- taxes on capital gains

The very fact that we in New Zealand are not subject to such taxes is, in itself, an effect on property values, albeit that it takes the shape of a negative effect. The only wealth taxes imposed in New Zealand are Land Tax and Estate and Gift Duties. There was a time in New Zealand when such taxes accounted for the majority of direct tax revenue, however their importance has declined to such an extent that they are now insignificant revenue earners. The following table illustrates:

SOURCES OF TAX REVENUE, SELECTED YEARS 1876-1977
(in percent)

	Taxes on Income	Taxes on Wealth & Property	Taxes on Expenditure	Total
1875-76	0.0	0.0	100.0	100.0
1890-91	0.0	13.9	86.1	100.0
1910-11	8.1	12.6	79.3	100.0
1934-35	33.9	10.9	55.2	100.0
1947-48	52.0	5.3	417	100.0
1959-60	58.8	4.5	36.6	100.0
1969-70	66.0	2.5	31.5	100.0
1976-77	73.6	1.6	24.8	100.0

A. Taxes on Wealth

(1) The main New Zealand taxes on wealth are capital transfer taxes - estate and gift duties - which are not levied on wealth accumulated from individual savings until that wealth is transferred to someone else. As mentioned earlier, the threshold where these duties take effect has been increased over recent years in line with rising property prices.

The other existing wealth tax in New Zealand is the Land Tax on land valued over $175,000. It is interesting to note that in 1967 the Ross Committee on Taxation in New Zealand remended that land tax be abolished. Since then the rates of tax have been increased by some 185 percent. The Task Force on Tax Reform considered it be retained until a careful study of the pattern of wealth distribution in New Zealand could be undertaken.

(2) A net wealth tax involves an annual tax on the net wealth of any person or company. Net wealth is the value of all assets less liabilities. It is to be distinguished from a property tax which is normally levied on the gross value of real property.

Its proponents consider that the benefits of owning property are not fully measured by the income derived from it, and hence if ability to pay is a criterion of taxation the income based should be supplemented by a property or wealth base.

In this respect the effects of a net wealth tax in breaking up large estates and fortunes could be expected to be similar to the effects of land tax in New Zealand before the First World War, and also to the effects of high death duties.

In its effect on business the net wealth tax can be compared with a payroll tax. Each is a highly discriminatory tax. The payroll tax discriminates against enterprises with higher than average ratios of labour employed to capital invested. The net wealth tax discriminates against enterprises with lower than average ratios of labour to capital, such as most farms in New Zealand. Undoubtedly the tax would discriminate severely against highly capitalised farming.

B. Capital Gains Tax

The absence of a capital gains tax is a peculiarity of the New Zealand tax structure: in virtually all other developed countries a capital gains tax is an accepted part of the total tax structure. The economic costs of a system in which taxpayers have every incentive to adjust their behaviour to seek capital gains (non-taxable) rather than earned income (taxable) can only be enormous. Even in countries with capital gains taxes, such distortions occur when the rate of tax is lower on capital gains than on income. Ideally, a capital gains tax should have the same rates as the income tax. This would be possible if income tax rates were generally low. A capital gains tax is commonly accepted overseas as necessary on both efficiency and equity grounds. In New Zealand, capital gains on an owner-occupied house, and probably on a basic farm or family business, would need to be exempt from taxation for such a tax to be politically acceptable. In these circumstances, it would not be a major revenue source. The main aim of such a tax in New Zealand would be to tax more effectively the very large capital gains made by a small number of people and to redirect effort into the production of output rather than the creation of capital gains.

If both buyers and sellers of land were equally well informed, the non taxation of appreciation would already have been reflected in the relative current prices of the assets so that over time their future returns net of tax to their holders would be the same. Hence the introduction of a capital gains tax would principally create a crop of capital losses among holders of such assets as land, and a parallel crop of capital gains among owners of assets the main yield of which was in taxable income form. The substantive situation here is, however, that no market is ever ideally well informed and that, in relation to such assets as land, capital gains are mainly achieved by those buyers who have a better knowledge than sellers of market trends. Thus their gains are rightly judged akin to income because most are the fruit of skill and effort.

One form of short term capital gains tax evidenced by New Zealand is the property speculation tax introduced in 1973 and abolished in 1979.

> "There have been abnormally large increases in land and property prices. The Government believes that this in part is due to the activities of property speculators. As a result, people are finding it increasingly difficult to buy their own homes and farms. The demand for new houses at present exceeds the capacity of the building industry and the Government intends to ensure that this situation is not exploited by speculators who buy and sell for a quick profit."

"In line with its promise in the 1978 Manifesto, the Government has reviewed the property speculation tax. The greater stability built into the economy since the tax was introduced and the reduction in upward pressures on property prices have meant that this measure has now outlived its usefulness, if indeed it ever had any. The tax will, therefore, be abolished, and will no longer apply to property disposed of after that date."

5. SPECIFIC DEVELOPMENTS IN THE LAST FIVE-TEN YEARS WHICH HAVE TAX SIGNIFICANCE IN RELATION TO PROPERTY VALUES

A. The Development of Horticulture and Other Farming

Considerable impetus in horticultural development has occurred over the last five years throughout New Zealand. Most of this development has been in kiwifruit, persimmons and asparagus which has seen huge amounts of money from the "city" being invested into rural land where before such interest arose no similar source of funds existed.

We have also seen many acres of unused or under-deployed land "spring into life" from concerted development work being undertaken using funds which otherwise would have been paid in tax. This surely must benefit the country in the long term. As an example of who has been buying land, I quote the following extract from the Valuer-General's report:

> "In the half year to December 1981, of the 2,635 open market farm sales, 55.07 percent were to existing farmers, 24.67 percent to new farmers, 17.76 percent to businessmen."

We will have to wait until the 1982 Budget legislation is introduced but I am sure that it will slow down farm and commercial property sales - the extent to which I leave to your guess.

B. Increase in Farm Ownership by Non-Traditional Farmers

(1) The attractiveness of purchasing a farm and relative ease of so doing has realised a growth in the ownership of farm land by what I have termed non-traditional farmers.

(2) The attractiveness of such a decision is in the following factors:

(a) A long term gain - preferably capital growth rather than income.

(b) Immediate taxation relief by offsetting business income against farming taxation losses.

(c) A desire for "a bit of dirt" or "the good life".

(3) One of the major considerations influencing the decision is taxation. The principal taxation benefits can be summarised as follows:

(a) Tax deferral:
- standard value write down for livestock.
- increase in livestock numbers at nil standard value.
- accelerated first year depreciation allowances on plant (25%) and employee accommodation (20%).

Further details on the effect of tax write downs in respect of livestock are outlined in Section 2.

(b) Capital expenditure incurred in developing the land is deductible for tax purposes e.g.:
- clearing of scrub etc.
- preparation for grassing
- drainage
- construction of roads, tracks and fencing.

(4) The utilisation of partnership entities means that farms may be purchased and developed with the use of a pool of funds, but maximum tax advantage may be maintained by complete and direct set off of the farming losses against individual business income.
In addition, financing incentives are readily available to the farming sector.

(5) Other Advantages

(a) Finance that may be available to genuine farmers for farm purchase through the Rural Bank is generally not available to businessmen. In addition, concessions such as the exemption for stamp duty on a first farm purchase are not available. Accordingly a business person needs to use contacts for financing through insurance companies, trading banks, pension funds, and the like.

(b) The major financing areas available through the Rural Bank for those who already own a property are Livestock Incentive Scheme and Development Finance.

The Rural Bank provides low interest rates and easy repayment terms. In addition, Rural housing loans are available in certain circumstances through the local County.

(6) As with livestock farming, horticulture has become a major area of non-traditional investment.

(a) Deductibility of costs of:
- preparing the land for planting of vines
- purchase and planting of seedlings
- cost and erection of poles and vines
- annual costs of upkeep until the vines come into production
- shelter belts
- depreciation allowances.

(b) The same provisions for sale within ifve years of acquisition apply to horticulture lands as to other types of farming land.

(7) There is little doubt that farm ownership has become a popular avenue of investment by those deriving income from non farming businesses.
As a result, many development blocks have changed hands at prices far in excess of their worth. Even so many who have invested in farming have derived considerable satisfaction and enjoyment from their investment and particularly as a result of inflation can expect a successful return. It should be reiterated

however that farming is a business and for those who have no practical farm knowledge they must realise that they are placing the success of their investment in the hands of others. For this reason such an investment should be carefully evaluated from all aspects.

C. Transfer of Properties to Other Taxpaying Entities

Such a transfer enables income to be spread over several taxpaying persons as opposed to one thus providing obvious taxation benefits. To illustrate the beneifts we give an example of the sale of a property owned by an individual to a family trust. Annual rental income of $45,000 is apportioned between the wife, four children and some is retained.

In the individual's hands the rental income would attract the maximum rate of tax, now 66%. The trustees could apply $5,000 to each of the children in the form of school fees, dentist and doctor bills, clothing and other outgoings and any balance on account in their favour. The taxpayers could receive $10,000 and the balance is retained in the trust.

Thus:

	Each Child	Wife	Trust Income
Income assessed	5,000	10,000	15,000
Less interest exemption	200	200	NIL
Taxable income	4,800	9,800	15,000
Tax thereon (at new budget rates)	960	2,378	5,250
Less child rebate	156	NIL	NIL
Tax payable	$804	$2,378	$5,250

Total tax payable on the trust's income is therefore $10,844 as compared to $29,700 to the individual.

The benefits can therefore be quite substantial within the existing tax structure. In addition, the capital value of any property held by a trust is pegged as against the estate of the settlor. Further, the trust is a continuing vehicle in as much as events such as the death or divorce of the settlor, trustees or beneficiaries do not dissolve the trust.

D. Maximisation of Borrowing Deductions

If money is borrowed to invest in income earning investments, the interest incurred is deductible against that income or other assessable income,

It is not necessary to consider what security is used for the borrowing. What is required is to demonstrate that the purpose of the borrowing was to invest in income earning assets i.e. funds can be borrowed on a home to finance investment in shares and the interest expense (and associated legal and valuation fees) are deductible. It may also be possible to re-arrange borrowings against non existing income producing assets (e.g. a home) so that the borrowings relate to income producing assets and the interest is therefore deductible.

E. Growth in Ownership of Commercial Rental Properties

I have no statistics to comment on in this area but am aware of a number of taxpayers who have either solely or in partnership purchased commercial property. While this is mainly a hedge against inlfation the type of vehicle used (company, family trust or partnership) is significant and the amount of gearing that can be obtained is also important. The rate of tax depreciation on the building also plays a part, although this is generally not significant.

F. Publically Listed Commercial Property Developers

There has been some growth recently in public companies involved solely in property investment.

The prospectus usually promotes the company on the basis of enabling small investors to get a share of "top grade commercial property". Thus, a "hopefully" sound investment is obtained which yields "hopefully" capital gains.

Capital gains may exist as such only because present tax legislation does not tax such gains if the property is held for more than ten years.

Thus, if public support is received the growth of such companies is bound to be another factor in influencing property values.

6. 1982 BUDGET CHANGES RELATING TO PROPERTY

A. Farming

(1) Extension of the present holding period necessary to avoid recapture of development expenditure incurred in relation to the property and previously allowed as a deduction, from ifve to ten years. Sales, including binding contracts of sale and purchase, occurring on or before 5 August, 1982 are not affected by this measure.

(2) Interest deducted in respect of any land used for farming or horticultural purposes will be recovered and become assessable income if the property is sold within ten years of acquisition.

(3) Farming and horticultural partnerships or syndicates of more than six persons will be treated as companies for tax purposes. This measure is designed to prevent the deduction by an individual member of a share of the losses incurred by these partnerships or syndicates. Accordingly, profit-making partnerships or syndicates will be taxed at a flat rate of

45 percent, and payments to a member will be taxed as dividends. This measure will apply for the income year which commenced 1 April, 1982 regardless of when the partnerships or syndicates were formed.

B. Property Ownership -

(1) Recovery of Interest Deductions

From 6 August, 1982, the sale at a capital profit, within ten years of purchase, of any real property used in the production of income where the interest payable has been deducted for tax purposes will result in a taxable recovery of the interest previously allowed as a deduction. The recovery will be limited to the lesser of the capital profit or the total interest deducted over the period the property has been held.

(2) Partnerships and Syndicates

Partnerships and syndicates of more than six persons engaged in property owning ventures will be treated as companies for income tax purposes. It is envisaged that the provisions, when enacted, will apply from the beginning of the 1982 income year or equivalent accounting year to all such partnerships and syndicates regardless of when they were formed.

C. General Comments Thereon

(1) Land Prices

It is difficult to determine the impact of the budget provisions on the price of horticultural or agricultural land. In the short term, the market may be very uncertain as both buyers and sellers await the outcome of the Budget measures. However, in the longer term there are a number of influences which will work in different directions and it is difficult to determine the net effect.

(a) Existing partnerships which have owned land for less than ten years will be reluctant to sell and face interest and development expenses being assessable. This will reduce the supply of properties onto the market.

(b) The demand for land will fall due to a lack of investment from partnerships of more than six.

(c) The supply may be increased by the very newly established partnerships being unwilling to carry on for ten years and selling out immediately.

(d) Potential sellers may increase the asking price for land by the extent to which they will have to pay additional taxation. It is believed that such an effect occurred in the United Kingdom when a capital gains tax was applied to land.

(e) There is always a reluctance to sell land at less than its previous market value and this tends to place a floor on land prices.

(f) Partnerships may well take a more business-like approach to decision as to whether to continue farming than do conventional farmers and a fall in income may encourage land sales.

(g) If it is believed inflation will continue at its present level the purchase of land as a hedge against inflation will continue.

(h) A major factor in determining the price of land is the supply of money and variations in the supply of money will continue to have a major effect on land prices.

(i) In many horticultural developments including kiwifruit development and persimmon development the value of the land is a relatively small proportion of total development expenses and is relatively small compared with the final income achieved and hence the profitability of the investment is less sensitive to the original price of the land, than for conventional agriculture.

(j) The greater uncertainty created by the Budget provisions may well discourage some people from investing in agriculture.

(k) A number of potential syndicates may not come to fruition due to the Budget measures. We understand that evidence of this is already available in the Bay of Plenty and Northland.

(1) The change in the minimum ownership of land from five years to ten years will have little effect on the price of land.

(2) Increasing prices of land may well have improved the allocation of land use and ensured that land is used for its highest value use. For instance, the development of horticulture in the Bay of Plenty has put pressure on dairy farms in the area which has encouraged dairy farmers to move into better King Country and to the irrigated areas of Canterbury. In both of these areas the dairy farming has replaced sheep, very substantially increasing the value of production and the value of exports from the land. In the Bay of Plenty which accounts for 80 percent of the kiwifruit land area of New Zealand, the land to be replaced by kiwifruit between 1980 and 1983 was utilised as follows:

dairying	28%
maize.....	21%
grazing livestock	
lucerne.....	31%
other	20%
Total . .	100%

This so-called ripple effect has worked throughout the agricultural industry.

(3) Ownership of a Farm for Ten Years

The extension from five to ten years of the period of ownership of a farm or fish farm to avoid the recovery of the development expenditure deductions, and the setting of ten years as the period of ownership for interest to be non assessable appears to have been related to the period for a kiwifruit orchard to come into profit. Kiwifruit developments typically show losses for the first five to six years and show a profit beyond six years. Hence, kiwifruit orchards which were sold at the end of five years may never have shown a profit during the period and it would have been inappropriate for development expenditure and interest to have been deducted. Clearly in the case of kiwifruit the extension of the minimum period of ownership from five to ten years will be acceptable to genuine developers and will deter speculative capital. To that extent, it will reduce the speculative pressure on land prices in the kiwifruit growing areas. Much public attention has been drawn over the past few years to the rapid rise in the price of land for kiwifruit as speculative capital has moved in.

However, the change from five to ten years for the minimum period of farm ownership will not be suitable for other types of farming. Socalled "stepping stone" units in which would-be farmers purchase part-time less than fully economic units to enable them to accumulate capital on their way to attaining a full economic unit will no longer be an attractive method of entering farming. In 1981/82 the Rural Banking and Finance Corporation lent on approximately 300 such stepping stone units demonstrating the popularity of such units. Young farmers will not wish to retain a sub-economic unit for as long a period as ten years but would rather wish to sell the stepping stone unit after having carried out development and increased their equity, to enable the purchase of a larger farm. Farmers may wish to pass through several stepping stone units on the way to attaining a full economic unit and the ten year requirement will make this impossible. If interest and development expenditure are to be assessable for taxation on sale of the property if held for less than ten years, the objective of accumulating capital will be negated.

Similarly, sharemilkers have traditionally accumulated capital by building up a herd of milking cows. The herd is sold and the capital used to purchase a small transitional farm which, at a later stage is sold and a larger farm purchased. This has become an accepted method of entry into dairy farming and has provided the flexibility and strength characteristic of the dairy industry. An increase in the minimum ownership period from five to ten years will make it unattractive for a sharemilker to go through this progression and this method of entry to dairy farming will effectively be cut off. Both the stepping stone farmer and the sharemilker in a small transitional farm could find themselves locked into farms which are too small for their talents and unable to provide a full economic unit. Development of cropping farms will also be adversely affected by the minimum period of ownership from five to ten years in that, in general, a farm can be developed for conventional cropping in a shorter period than ten years. Farmers may develop cropping farms to fully developed units in a period of approximately five years and have to hold the farms for a further five years to avoid paying taxation on interest paid.

7. CONCLUSION

I have covered a wide range of tax legislation which could have an effect on property values. I have found it very difficult to relate this tax legislation specifically to movements in property values. However, I have attempted to highlight those areas which I suggest require consideration when making an investment in property. In addition, I have covered proposed legislation changes which I believe will cause a re-assessment by investors and owners of land who perhaps will then rechart their activities. We also have the unknown to contend with in the form of the politicians and retroactive legislation. All of these implications lead me to suggest that' a slow down in property investment will occur but that due to inflation property will remain the "No. 1 investment" and therefore the effect of the changes will be dissipated over a relatively short period of time.

Editor's note: Some of the above taxation provisions of the 1982 budget have been modified by the Government.

Commentary

By Roger E. Hallinan, Registered Valuer, Telfer, Hallinan, Johnston & Co., Christchurch.

On paper presented by: Ian R. Silver, Chartered Accountant,

EFFECT OF TAXATION ON PROPERTY VALUES

At the time the Wellington Branch Committee put together this seminar they could not have known of the significant property taxation measures the Government held in store for the August 5th, 1982 Budget.

Even without the Budget announcements I find the subject difficult. As Ian Silver said the main difficulty is that there is little information to determine the effect of taxation on property values.

The Budget announcements tend to complicate the subject, but this is a matter we shall all have to grapple with in our profession. The topic is therefore timely if not a few weeks premature in view of the fact that the legislation is not yet formulated and passed.

Necessarily Ian Silver's paper falls into two parts:

(i) The situation prior to the 1982 Budget.
(ii) The situation following the 1982 Budget.

1. The Situation Prior to the 1982 Budget.

The principal legislation related to taxation in New Zealand is the Income Tax Act 1976.

This document is a very large and imposing piece of legislation of 665 pages in the 1980 reprint.

The Act is made even more imposing by two amendments in 1980 and a further one in 1981. As a result of the Budget a further amendment will eventually be passed and become law.

Ian Silver's paper most concisely took us through the sections of the Income Tax Act having relevance to taxation on property and gave us a glimpse of what for taxation purposes is "assessable income" and what "deductions" or "exemptions' are allowed or disallowed. We learnt of the type of property which is exempt from land tax in terms of the Land Tax Act 1976, how it is structured, and that this form of taxation remains a relatively insignificant source of Government revenue notwithstanding its significant increase in 1981.

As far as property is concerned, Sections 65 and 67 of the Income Tax Act are clearly the most important areas, although to the farmers sections 126 and 127 dealing with farm development expenditure deductions are obviously of considerable interest.

Many valuers would agree with Ian Silver's comments that " . . . property values are affected by a number of factors . . . " and " . that tax is only one of these and also a relatively minor factor." We would also agree " ... that other market factors tend to dictate the price." Clearly the major factors over recent times have been inflation and the availability or supply of money.

Taxation on income now accounts for almost 75% of Government tax revenue compared with about 50% thirty years ago. Many now consider income tax to be excessive and this, coupled with substantial inflation and in the absence of any significant tax on capital gains has influenced property investors to seek capital gains rather than pay tax on income.

Capital gain has become the main criterion in an endeavour to hedge against inflation or maintain capital under these economic conditions.

Prior to the Budget therefore we have seen investors quite happy to accept a 7% net return on their property investments notwithstanding the fact that these investors could have deployed their money into other areas, such as a mortgage, and received at least double the return. Clearly the 7% net return property investor is seeking capital gain. This same investor accepting a 7% return is quite happy to borrow finance (at 16-20% interest) so that the investment "breaks-even" or shows a modest profit or loss. His ability to "gear" the investment is designed to avoid payment of income tax, in the knowledge that the larger the investment the larger will be the untaxed capital gain. Furthermore a loss situation on this investment eats into funds from other income which would otherwise have to be paid in tax so that on *a 60%* tax rate the investor's true loss is only 40%.

The following table shows the advantage to an investor in borrowing money to enable him to acquire a larger investment than he could otherwise afford, rather than owning a freehold property clear of any borrowings:

	Capital Invested	Borrowings @ 50% of Investment	Total Investment	Net Return p.a. @ 7%	Market Value after 3 years @ 12% pa. Compounded	Net Gain in Capital after 3 years
Investor A	$100,000	Nil	$100,000	$7,000 ($2,800 after tax @ 60%)	$140,493	$40,493
Investor B	$100,000	$100,000	$200,000	$14,000 excl. mtge. interest. (Including mtge.interest @ 16% represents per annum loss of $2,000- offset against other income nett loss 40% = $800 p.a.)	$280,986 less mortaegg	$180,986 $100,000 $80,986

In the above examples, Investor A has paid tax on his income and received $2,800 p.a. net after tax or $8,400. Investor B has. lost $800 p.a. over 3 years if we ignore interest on the income re-invested or $2400 over 3 years. Investor B has been prepared to sacrifice income of $10,800 over the 3 years in return for an untaxed capital gain of $80,986 compared with Investor A who only receives a $40,493 untaxed capital gain.

After the 3 year periodthe loss of income by Investor B is more than offset by the capital gain.

	Investor A		Investor B
Capital Invested	$100,000		$100,000
Income over 3 years	8,400	minus	2,400
	$108,400		$97,600
Inflation over 3 years	40,493		80,986
Capital at end of 3 years	$148,893		$178,586

Faced with the above situation I wonder whether it is true to say that taxation is only a minor factor affecting property values. I agree with Ian Silver that it is difficult to measure the effect of taxation on property values, but I tend to think investment property has been inflated by these effects as investors seek capital gains rather than income.

In the urban market with which I am familiar, we have a very broad range of types of buyer such as individuals, partnerships, trusts, syndicates, superannuation funds, pension funds, institutional buyers and companies. All invest in investment property for a common purpose, but in some instances the liability and level of taxation is different.

If we put to one side the scale or size of the investment whereby a property in say the $200,000 bracket would appeal to a large number of potential purchasers compared with a $10m investment property whereby there may be only 4 or 5 potential buyers, we could reasonably be expected to assume that a certain type or class of buyer should be more readily able to pay a greater sum to acquire an investment property than another type or class because of the effect or liability (or non-liability) of taxation on income. For example it could be assumed an owner of a superannuation fund could out-bid a private investor for a certain property because of the taxation advantage that existed, at least prior to the 1982 Budget.

It is possibly true that insufficient in-depth study of sales of investment property has been undertaken to establish the effect of taxation in the hands of the different types or classes of investor. However my reaction is that sales evidence does not indicate that one particular group of investors has a discernible advantage over another. Certainly investment property has continued to appeal to all types of investors, from institutional buyers down to private individuals and, away from the rural sector, no one type of buyer would seem to have a particular advantage by reason of reduced taxation liability than another.

It seems to me therefore that taxation liability between the various classes or types of

buyers must be reasonably uniform and therefore equitable, but that is not to say that taxation has NO effect on property values.

Turning now to the rural sector, I confess to having very little knowledge in this area but am aware farm land values have risen dramatically over the last five years. In comparison with urban property, rural land values have performed much better from an investor's viewpoint notwithstanding the delicate situation regarding overseas markets for our agricultural products. Faced with this situation, one might have expected values to remain relatively stable.

We have heard from Ian Silver that taxation relief to farmers has been obtained by offsetting business income (and non-farm or other income) against farming taxation losses by way of deferral, capital expenditure, deductible incentives, and depreciation allowances. Further Government assistance to the protected farming industry is provided by subsidies, supplements, write-offs, guaranteed minimum prices and various other concessions or devices, some of which are designed to smooth income but mainly designed to protect the farming community and maintain acceptable levels of income.

I suggest that Government policy, and particularly the taxation policy, has fostered and fuelled high rural land inflation but it would seem to be impossible to speculate on the extent taxation has influenced rural land values. It could be said however that the market has abused Government measures not only in the area of the non-traditional farmers with their deer, kiwi-fruit, boysenberry and asparagus holdings, but in the traditional farming areas of meat, wool and cropping units.

Much of the abuse has come about by the market fuelling inflation by using money that would otherwise have been paid in tax to the Government.

In my judgement taxation, or the lack of taxation, has had a considerable effect on rural property values.

2. Situation Following the 1982 Budget.

As indicated by Ian Silver we will have to wait until the legislation is introduced before we can really appreciate the effect of the recent Budget announcements on property values.

Currently we are in a period of considerable uncertainty, but the market can be expected to adjust, if adjustment is necessary, to the new "rules".

Effectively we are seeing the introduction of a capital gains tax on a wide range of property unless the investor retains ownership for at least 10 years. To avoid the taxable recovery of interest and development expenditure, the investor is now required to take a longer term view of his investment portfolio.

Faced with the type of inflation that has been occurring over recent years, and the loss of income tax to the Government, I think the Government has reacted correctly since I believe the market "asked for it". Whether the measures will "work" and restrain inflation is another matter.

The measures are designed to remove much of the taxation saving advantages and it seems certain that a significnt proportion of the "heat" will be taken out of the market with the result that sales will tend to slow down, and values will not escalate at their former pre-budget pace. To speculate is dangerous, but in some areas we may see investment property stabilising at current levels, or indeed falling, at least in the short term.

Ian Silver's paper (6 (C)) discussed the various influences that will come into play and affect property values in the longer term. There is insufficient time to comment on these now, but obviously all valuers should be aware of these influences and be convinced that now, more than ever before, the market will need to be closely monitored since valuations will need to relate to post-Budget sales rather than pre-Budget sales.

I am convinced taxation has had a significant effect on investment property values but as with Ian Silver am unable to speculate on the precise effect it has had in the past or will have in the future.

At the risk of being proven wrong I am prepared to speculate on the likely medium term taxation effects of the 1982 Budget.

I suggest:-

(a) Investors will expect higher returns - capitalisation rates will rise 1-2% above pre-Budget levels.

(b) Rents will rise at a greater rate than previously in an endeavour to compensate for increased returns (after the removal of the rent freeze on 23rd June 1983).

(c) Rural land values will fall - possibly by more than 10% in respect of the smaller non-traditional farming units and the non-economic units.

(d) Improved urban investment property will stabilise or fall slightly to provide the higher returns required.

(e) Commercial and industrial land values will fall as building cost inflation rises.

(f) Residential land for investment (rental) housing will continue to fall.

In the long term, as Ian Silver said, the effect of the Budget changes will be dissipated and property will remain the "No, 1 Investment". As valuers we are entering a particularly demanding and challenging phase in our day to day work of valuing investment property. Clearly investors will rely less heavily on previously untaxed capital gains and seek better returns than previously, notwithstanding their taxation liability.

Legal Decisions

CASES RECEIVED

Notice of cases received are given for members' information. They will be printed in the "Valuer" as space permits and normally in date sequence.

CASES NOTED

Cases `noted' will not normally be published in the "Valuer".

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

IN THE LAND VALUATION TRIBUNAL HELD AT AUCKLAND.

IN THE MATTER of the Public Works Act 1920

AND

IN THE MATTER of a claim for compensation

BETWEEN

Alma Jean Oliver - Claimant and The East Coast Bays City Council - Respondent - Decision 13th July, 1982.

This decision by the Land Valuation Tribunal at Auckland relates to a beach front property taken under the Public Works Act. It canvasses the difficulty of making value comparisons between properties of at times an unlike type and location. Interest was awarded at a rate of 10% per annum compounded on the unpaid portion of the determined market value, costs and witnesses' expenses were determined by relationship to Stackwood's case where the High Court scale was considered appropriate as a guide.

VALUERS' REGISTRATION BOARD

Disciplinary Decision

Fine and Reprimand Imposed on Valuer

A fine of $500 and a severe reprimand were imposed on a valuer in a recent inquiry heard by the Valuers' Registration Board.

Complaint

A complaint was received from a legal firm whose client had suffered financial loss as a consequence of his investment in a first mortgage advance made on the basis of the valuer's report. The property concerned was valued by the respondent in 1976 at $132,240 with a Trustee mortgage recommendation of $72,732 subject to a $26,000 retention pending completion of certain upgrading work. In a mortgagee sale in 1980 the property sold for $20,000. The complaint alleged gross over-valuation and improper or incompetent conduct by the valuer and his firm in carrying out the valuation in question.

The complaint was investigated by the Valuer-General and his report was duly put before the Board who decided that there were reasonable grounds for the complaint and that an inquiry should be held. The charges, framed in terms of section 31 (1) (c) of the Valuers Act, cited gross over-valuation, excessive mortgage recommendation and conduct contrary to Article 17 of the Code of Ethics of the New Zealand Institute of Valuers

Evidence

The Valuer-General, the local District Valuer and a Public Valuer practising in the district were called to give evidence for the prosecution. Having introduced various items of evidence in the course of cross-examining these witnesses, the defence made the decision not to call any witnesses. Submissions were however made by Counsel on behalf of the respondent.

The evidence put before the Board included:

- Copies of correspondence and Council records relating to an application for a Boarding House Licence and work required to meet fire safety and health requirements. The application form showed the maximum number to be accommodated to be 25 and was noted as to the date a licence was issued.

  The Public Valuer's report in which the current (1980) market value was assessed at $30,000 and the value in 1976 given as $26,000 with a Trustee mortgage recommendation of up to a maximum of $13,000 at the operative date.

- The District Valuer's report arriving at a 1980 value of $30,900 and $27,000 as at the relevant date in 1976, with any mortgage recommendation limited to 50% of valuation.

  A letter of explanation from the respondent valuer to the Valuer-General which made reference to his experience in the district concerned. Copies of transfer documents relating to his market research were also submitted.

- A letter from the council to the property owner indicating that the premises would be capable of housing a total of 88 persons. This letter which predated the valuation complained of, also outlined the sanitary fittings required to provide for that number of occupants.

- Earlier correspondence concerning upgrading proposals and requirements

- Council documents which showed that by mid-1977 a considerable amount of renovation work had been commenced but a substantial number of items remained to be completed. Also recorded was the owner's expectation that the work required should be completed within 8 days.

In his oral evidence the Valuer-General confirmed that he had inspected the property on or about March 1981 at which time it was in poor condition and in the course of being renovated by a new owner. He confirmed that the property had probably suffered more than the usual degree of wear and tear in the immediately preceding years. A sprinkler system had been removed, to his recollection from the ground lfoor.

The Public Valuer witness confirmed that a sprinkler system had been removed from the property and that a hot water cyclinder or cylinders had been removed. He also confirmed that sanitary fittings had been damaged and electrical fittings had been removed, but that his valuation assumed all hot water and electrical fittings were in working order. He expressed strong doubts as to whether the whole of the property could economically be used as a Boarding House, Rest Home or Old People's Home. He stated that this opinion was based on his knowledge of other rest homes in the district together with information from the Health Department and other rest home owners.

The District Valuer produced his report containing his valuation of the subject property as at the relevant date. His report also contained brief details of the sales history of the property, encompassing six sales over the period June 1968 to May 1980, at prices ranging from a minimum of $10,000 to a maximum of $35,000, the last two sales being in May 1971 at

$16,000 and May 1980 at $20,000, both being in exercise of power of sale under mortgages.

The District Valuer stated that his 1976 valuation was based on the assumption that the building had been partly renovated, that all kitchen, bathroom, toilet and hot water fittings were in operational order and that apart from some match lining to the toilets and timber lining to the ceilings, the property had been relined with gibraltar board. He also expressed serious doubts as to the economic viability of a large boarding house in that town and stated that such economic viability had never been proven.

Under cross-examination the District Valuer stated that at the time of his inspection in December 1980 there was evidence of decay which had not occurred in the preceding four years - particularly to the roof and foundation piles. He also expressed the opinion that first floor renovations had never been completed.

Decision

In its decision the Board found the valuer guilty of charges 1 and 2 - i.e. that he grossly overvalued the property and made a mortgage recommendation that was excessive.

In respect of charge 3 the Board had regard to the high standard of proof required on such a charge. The Board had not been satisfied beyond reasonable doubt that he acted contrary to Article 17 of the Code of Ethics of the New Zealand Institute of Valuers. Therefore that charge was dismissed.

With regard to charges 1 and 2, the main evidence before the Board was summarised as follows:

1. The Valuer's report dated in 1976.
2. The evidence of the Public Valuer and the District Valuer, two registered valuers domiciled in the regional centre and having considerable experience in the area.
3. Copies of various letters, memos and other documents written and compiled both before and after the date of the valuer's report, dealing with the renovation of the property, fire rating and egress requirements and the condition of the property.

Dealing firstly with the valuer's report, while he valued only land and buildings, it was clear that he had valued these items having regard to their suitability for use as a large boarding house or rest home. At four points in the report he mentioned accommodation for up to 80 guests or 80 hospital out-patients. While his report acknowledged that a licence had not yet been granted, it was clear that he was anticipating a licence for 80 guests or out-patients. The economic viability of a rest home or boarding house was therefore fundamental in sustaining his valuation of $132,240.

His report made no mention of the source of his information concerning 80 patients or guests, even though. at that time the property did not have any form of licence. In spite of the fact that a licence had not yet been granted, the valuer was prepared to recommend a mortgage advance of $72,732 with an immediate advance of up to $46,732. It appeared to be quite factual that the property had never enjoyed a licence for 80 guests or patients and when the owner eventually applied for a licence three months after the date of valuation, the application was for a boarding house with a maximum number to be accommodated of 25.

The valuer's report noted that the building was being substantially modernised and upgraded including complete relining and provision of modern facilities. He also noted that a contract had been let and work was currently underway for the installation of a fully operative fire sprinkler system. However, the report made no mention as to the number of guest or staff bedrooms; the number and type of toilet fittings, bathroom fittings or kitchen fittings. Furthermore, the report made no mention whatever as to the economics of such a large boarding house or rest home operation in a small country town, apart from very general comments including an understanding of a guaranteed income producing in excess of $100,000 per annum gross; a statement that a substantial yearly income would be produced purely as a private hotel; and the puzzling statement "the local racecourse would produce a guaranteed minimum level of tourist accommodation". As against these ambitious predictions on future ifnancial viability of the property, the valuer chose not to mention the past and checkered sales history relating to the property or to comment on the town's population pattern, general economic standing and the experience of other hotels/guest houses in the town.

Having regard to the very unusual character and special purpose nature of this property, the Board found the valuer's report to be misleading, superficial and far too brief. It was perhaps unfortunate that the valuer did not avail himself of the opportunity to provide the. Board with an explanation as to his basis of valuation together with the market evidence and necessary research he had undertaken to support that basis. The Board was unable to reconcile the contents of his report with the contents of various items of correspondence and documents written within three months of the date of that report and indicating clearly that a considerable amount of upgrading work was still outstanding; that use of the first floor was still prohibited by the Council; that the owner himself was still unclear as to the work necessary in order to obtain a licence for 80 persons; and that three months after the date of the valuation the owner applied for a licence for only 25 persons.

The evidence before the Board indicated that as at the relevant date the valuer had scant evidence on which to assess a value for the land and buildings, assuming the granting of a licence for 80 guests or patients. By recommending a first mortgage of $72,732 with an immediate advance of up to $46,732, he was placing the first mortgagee in a highly risky and vulnerable position having regard to the normal security afforded to investors providing finance on first mortgage in terms of the Trustee Act. When dealing with special purpose or unusual type properties such as motels, rest homes, boarding houses etc., valuers have a duty to look very closely and critically at the economic viability of such property. This must be particularly so where such properties are situated in small country towns and even more so when a relatively large amount of money or a relatively large sized property is being considered. On the evidence before the Board, it was clear that the valuer did not give sufficient attention to that aspect of the valuation exercise.

On balance, the Board concluded that the valuer had placed the first mortgagee in a highly vulnerable and unprotected position. His prime responsibility to the first mortgagee had not been fulfilled. Turning to the evidence of the other valuers, the Board felt bound to note that the Public Valuer's evidence was of little assistance. He did not check on Council requisitions, did not make inquiries as to the condition of the property as at the relevant date, did not inspect the vacant section sales in the town and had no information as to the existing use rights. He did not make inquiry as to possible sales of similar boarding house/rest home properties in other small towns in the region.

The District Valuer did make quite extensive inquiries with the council and his evidence was of assistance in determining the condition of the property as at the relevant date. The following main points emerged from his evidence, confirmed in some instances by the evidence of the Public Valuer.

1. The property being dealt with was a very unusual property compared with most other residential or commercial properties situated within the town or, indeed, within other small towns in the region.
2. The property was almost too large for economic use and would probably not have a very much lower value if the buildings were half their existing size.
3. Both valuers expressed strong doubts as to the economic viability of using the entire property as a boarding house/rest home, either for 25 patients or 80 patients.
4. Both valuers agreed that the town experiences very little growth and would be one of the less buoyant small towns in the region.

The various letters, memos and other documents written and compiled both before and after the date of the respondent's valuation report had also been studied and main points relating to that evidence have been covered. None of that evidence was considered

to support the valuer's assessment or his brief and optimistic economic predictions pertaining to the property. Having studied all of the evidence before it, and having taken note of submissions made by both the prosecuting and defence counsel, the Board found the valuer guilty of charges 1 and 2.

Mitigation

Since counsel for the valuer had requested an opportunity to make submissions in mitigation in the event of an unfavourable decision, the Board reserved its decision as to penalties to allow for the presentation of such submissions. A hearing was arranged for that purpose, at the conclusion of which the Board gave its decision as follows:

We have now heard the submissions of counsel in mitigation of penalty and he has ably presented for our consideration those aspects of the case and associated circumstances which he contends to be favourable to his client. The Board has sympathy with the valuer and the position in which he found himself when undertaking the valuation in question, for the following principal reasons:

(a) At the time he was instructed to update a report and valuation which had been prepared two years earlier by his senior partner. In fact his valuation of $132,240 was identical to that assessed two years earlier. The contents of his report were also very similar.

(b) At the time the valuer was 24 years old. Compared with his senior partner he was relatively inexperienced.

(c) In effect, the valuer was therefore faced with the uncomfortable choice of either supporting the previous valuation or questioning his senior partner's judgement.

The Board also accepts that the valuer has taken the proceedings against him very seriously and we acknowledge that their gravity and extent have placed him under considerable personal and financial strain.

Penalty

However, the fact is that the value and loan recommendation have been found to be grossly excessive. While some of the preliminary causes for this situation may not, in the Board's view, be entirely the fault of the valuer, such circumstances can in no way negate his professional responsibility as a Registered Valuer.

The Board is keenly conscious of its duty to ensure the maintenance of a proper standard of professional competence and conduct, and accordingly, in terms of the powers vested in it under Section 33 of the Valuers Act, the Board determines that:

1. The valuer shall be severely reprimanded, and that
2. A fine of $500 (five hundred dollars) shall be paid by him at the direction of the Registrar.

Auckland Harbour Board Rental Arbitration

IN THE MATTER of an Arbitration to determine rents payable on the renewal of certain leases granted by the Auckland Harbour Board.

Printed by agreement between the parties. The following award may not be reprinted in any form without reference first to the Editor.

AWARD OF SIR TREVOR HENRY

This is an arbitration to fix annual rents in respect of thirteen renewable leases granted by the Auckland Harbour Board. They relate to land located in the area between Fort Street (to the south), Customs Street East (to the north), and Commerce Street (to the west). The area is zoned Commercial A 3 and is part of the central business district of the city of Auckland and falls within the redevelopment area defined by the Auckland Harbour Board Control Area Properties Redevelopment Act, 1965. This Act contains a power in the lessor to acquire specific sites for the purpose of redevelopment with an obligation to pay compensation. In the present arbitration this is of no real or practical importance in assessing rents for the subject leases. A witness for the lessees stated that the area was characterised by the ageing condition of many of the buildings and the small size of a number of the separately leased sites; he said that the buildings generally comprise older commercial buildings with only limited new redevelopment over the last 10 to 15 years; that some of the buildings have been substantially up-graded to provide commercial and administrative accommodation whilst many remain somewhat dilapidated or obsolete; and, that the majority contain ground lfoor retail premises with upper floor office accommodation which varies considerably according to the degree of modernisation and up-grading. On the other hand counsel for the lessor pointed specifically to a number of buildings which have been, or are being, refurbished and further to some ten new developments in a somewhat wider area in the locality where new developments are either under construction or there are firm announced plans for construction and redevelopment. I consider that, generally speaking, there is a reasonably firm demand for available areas in the general locality and that activity with some upward trend is not less than that experienced over the last 10 years in other parts of the central business district.

Some 65 leases have been granted by the Board in the area. Twenty-three have been renewed for a further period of 21 years from February 1, 1980. Two have accepted the Board's offer but a further eight are still subject to arbitration proceedings. Some have indicated a desire to accept the offers made but it has been stated that relevent statutory provisions do not permit this course to be taken. A number of other leases have fallen due or will fall due for renewal in 1980-81. The result of this arbitration has accordingly been considered to be of some importance beyond the immediate leases involved.

Turning now to the 13 leases under review, 11 provide for perpetual rights of renewal for periods of 21 years, whilst the remaining two have only one further right of renewal which means that they terminate on January 31, 2022. In respect of all 13 leases, contracts have been concluded by the exercise of the right of renewal. The only remaining term of the contract is the fixing of rent by the present arbitration. The relevant date upon which valuations are to be fixed is February 1, 1980.

The provision in the said 11 leases provided for renewals as follows:-

> 14. This lease is granted under and subject to the provisions of "The Public Bodies Leases Act 1908" and accordingly on the expiration of the term of this lease the lessee shall have the right to obtain a new lease of the said premises for a further term of 21 years and so on from time to time in perpetuity at a rent to be ascertained each 21 years in accordance with the provisions of the first schedule to the said Act modified as follows: in making the valuations provided for by clauses 2 and 3 of the said schedule no account shall be taken of the value of any improvements now or hereafter erected or made on the said land.

The remaining two leases are subject to a proviso previously referred to restricting the term to January 31, 2022. By statute the operative Act is now the Public Bodies Leases Act, 1969. The function of this arbitration can be concisely stated as follows:-

> "To fix the fair annual rent of the land so that the rent so valued shall be uniform throughout the whole term but no account shall be taken of the value of any improvements now or hereafter erected or made on the land."

I shall use the term `the land' to express the concept of the particular assumption which must be accepted, namely, the land without taking into account the value of any improvements at present thereon.

The construction of the words `fair annual rent' of the land is a matter of law. The primary meaning of the expression naturally excludes a decision which imposes an imprudent bargain on either party. It is self-evident that, to be fair to the lessee, he should not be burdened with a liability to pay more than should be prudently paid for the land. Nor should the lessor be paid more than is a prudent figure for the land which he provides for the lessee. Reported cases have epitomised the concept of the words `fair rent' as an inquiry into what a prudent lessee would pay as rent for the land for the renewed term upon the other terms and conditions of the lease. Expressions such as `it is the motives which inspire the lessee which are material', and similar expressions, have gained currency as well as the constant reiteration of opinions on what a prudent lessee would take into account. Such expressions have been used as the test of relevancy of evidence. However convenient and emphatic these expressions are, it is, in my respectful view, necessary to look at the true nature of this and similar arbitrations and to state exactly what they are.

Such proceedings are judicial in nature and a decision must be given on the evidence after hearing the parties: re Carus, Wilson & Greene (1886) 18 Q.B.D.9. This is made expressly clear by clause 5 of the submissions which in its amended form reads:-

> 5. The umpire shall hold a formal hearing for the determination of the question in issue and may regulate the procedure thereof as he thinks fit provided that the umpire shall act fairly and the hearing and determination of the question in issue shall in all respects accord with the principles of natural justice. Without limiting the generality of the foregoing provision the umpire shall:-
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> (i) Hear all evidence adduced and representations made by the parties which he considers relevant to the question in issue;
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> (ii) Permit the parties to be represented by counsel,
>
> (iii) Require all witnesses to be examined on oath or affirmation and to permit such witnesses to be cross-examined by the opposing party and to be re-examined; and
>
> (iv) May proceed ex parte in the event of either party, after reasonable notice, neglecting or failing without due cause (of which the umpire shall be sole judge) to attend the hearing.

At the hearing, evidence from a number of witnesses, expert in their respective disciplines, has been given over a period of 10 days. Their testimony was closely cross-examined. Their views were not in agreement. In similar arbitrations evidence is commonly given by valuers, land agents, chartered accountants, economists, actuaries, property developers and others. Reference is frequently made to official statistics and returns and to published figures and opinions. This is a more detailed and specialised examination and involves infinitely more than a notional prudent lessee would undertake in forming a commercial or investment judgment to decide what rent he could prudently pay. In my respectful opinion arbitrations of this kind ought to be recognised for what, in truth, they are, namely inquiries of a judicial nature in which a just and reasonable decision ought to be reached after hearing all relevant evidence and submissions tendered. In in re a lease, Wellington City Corporation to Wilson, (1936) NZLR 5,110, Ill fixed by an expression of an informed judgment on all relevant factors."

Smith J. said that the rent "is to be

Reference has already been made to the test of the ifctitious prudent lessee and to the fact that it is the motives inspiring him which are material. This has been used as a test of relevancy of evidence. Because such a concept excludes any reference to the position of the lessor, a further tag has often been added, namely, that the rent must also be fair to the lessor but without defining what this addition is and how it is to be applied. In my respectful opinion such artificial means of approach are undesirable. The test of relevancy in each case is to be determined upon the true construction of the words used in the particular renewal clause under review. In the present case it is the land, which simply means the land in its situation at the relevant time. On this basis any circumstance relating to the lessor is irrelevant. The inanimate object or entity represented by the land does not include matters personally referable to the owner of it at any particular time. It remains the same as a matter of valuation irrespective of who is the owner and any matter concerning him. Likewise, circumstances peculiar to the particular lessee are irrelevant.

Lessees have made attempts to claim some interest or value in the land to be taken into account in their favour. Examples are seen in Wellington City Corporation v National Bank of New Zealand Properties Ltd. (1970) NZLR 660, and the arbitration of Sir George Finlay referred to in the judgments, In the Melanesia Trust Leases Arbitration an attempt was made to claim `lessee's goodwill'. Although the `prudent lessee' may have been called upon as a test of relevancy when considering such claims, in truth the real reason for rejection is that the valuation refers to the land as an unqualified entity. There is no basis for diminishing or qualifying the interest which is relevant, namely, the land which is to be considered in its situation and at the relevant time unaffected by the respective interests held in it by either the lessor or lessee, or by the improvements on it.

One further matter on this tonic will be referred to. Counsel agree that evidence of events subsequent to the relevant date is admissible. This evidence would not be available to the prudent lessee at the relevant date. It exemplifies a connotation of relevancy wider than the prudent lessee test and supports my view that all matters relevant to the rental value of the land are admissible and that that is the true test. The authorities which support the admission of subsequent events are: Poverty Bay Catchment Board v Forge & Ors (1956) NZLR 811, and Daandine Pastoral Co. Pty. Ltd. v Commissioner of Land Tax (1943) 7 The Valuer, 299.

It is clear that different formulae commend themselves to valuers of experience. Principles of valuation have been expressed and have commended themselves as methods of determining valuations. These are not matters of law but are questions of fact. The test of the prudent lessee' sits uneasily on such matters. It is the arbitrator who must determine which method he will accept for his guidance in coming to a iust and reasonable conclusion; North and Southwestern Junction Railway Co. v Assessment Committee of the Brantford Union and Overseers of the Poor for the Parish of Acton (1883) 3 App. Cas. 592, 594.

Three cases defining what has to be value should now be noted. They are:

(1) In Drapery & General Importing Co. of NZ v Wellington Corporation 31 NZLR 598 the Court of Appeal said at P.605: (The arbitrators) must ascertain what a prudent lessee would give for the ground rent of the land and for the term and on the conditions as to terms of renewal and other terms and conditions mentioned in the lease. They must put out of consideration the fact – if it be a fact that there are buildings or improvements on the land. (Emphasis added).

(2) Re Brechin & DIC Ltd. (1928) NZLR, 241 The Court of Appeal said: We think that the words `calculated on the basis of the unimproved value of the land' import only that the arbitrators in ifxing the rent are to fix it as a rental of the land alone and not of the land together with any buildings and improvements which may for the time being be upon the land. (Emphasis added).

(3) In in re a Tease, Wellington City Corporation to Wilson (1936) NZLR 5.110, It, it was stated that:- The test is that the valuers must proceed on the basis that there are no buildings on the land. .

To recapitulate, the position may be summarised as follows:-

(i) All evidence relevant to the rental value of the land is admissible.

(ii) The use of the term `the land' upon its true construction means the land in its situation at the relevant time and excludes any circumstance peculiar personally to either the particular lessor or lessee.

(iii) The respective interests of the lessor and the lessee in the land are irrelevant and are to be disregarded.

(iv) Any claim by the lessee to diminish or qualify the totality of the subject matter to be valued, namely the land, is contrary to the express terms of the contract and must be rejected.

(v) The method of valuation is a matter of fact (not law) for the arbitrator to decide on what method is best calculated to arrive at a just and reasonable conclusion in fixing a prudent rent to complete the remaining term of the contract already entered into by the parties.

(vi) The rent is to be fixed by the expression of an informed judgment on all relevant factors.

(vii) In arriving at a value the fact that there are existing buildings on the land must be put out of consideration.

In the present arbitration no question of the relevancy of evidence is in issue. Na question of law has arisen. I have to determine, upon a consideration of the whole of the evidence, what in my judgment is the amount of rent in each year which each lessee ought to be obliged to pay: Glasgow Corporation v Muir (1943) A.C. 448, 457. This amount is to be determined on the basis of what is a prudent rent to be imposed for the use of the land in the light of all relevant factors for the renewed term of 21 years.

Subject to a slight modification by one valuer for the lessees, the final method of assessment by both parties has been to apply a percentage rate to an assessed land valuation thus fixing the value of the fair rent at a uniform annual rate for the whole term. Other methods have been used for the purpose of checking or comparing values or rents. The Government Valuation for the years 1974 and 1979 were extensively referred to for the purpose of comparison. In one case the 1974 Government valuation was used as a basis for fixing values. In another percentage differences were given for comparison. I have summarised in the annexed Schedule the Government land value for each property in 1974 and 1979 and extended the valuation of each of the four valuers together with the percentage rate applied and the resulting annual sum assessed by each as rent. Messrs Jefferies and Gardner, valuers for the lessor, fixed a rate of 8 percent. Mr Mahoney, one of the valuers for the lessees, ifxed the rate of 7 percent whilst Mr McGough found a slightly higher rate by using a comparison formula which will be examined later. Messrs Ross and Willis, Chartered Accountants, called by the lessor, deposed to a return of 9 percent and 8.5 percent respectively. The valuations of Mr Gardner were higher than those fixed by Mr Jefferies. The valuations of both Mr Mahoney and Mr McGough were lower than those made on behalf of the lessor - those of Mr McGough being lower than those of Mr Mahoney. All are reputable valuers and each has approached his task with the concept of a nominal prudent lessee as the proper basis to arrive at a fair uniform annual rent.

Three principal methods of valuation have been referred to and used in the course of evidence. They were:-

(1)The fixing of the value of the land and then applying a percentage rate to fix the rent (in one case with an adjustment).

(2) Making a comparison of rents agreed on or fixed under conditions considered to be reasonably comparable, and

(3) Taking a hypothetical building method.

In my opinion I consider that the best approach is the first one and this was in the final analysis, the basis used by each valuer. The second method is useful as far as it goes and must be given due weight, but there is limited cogent evidence and it is insufficient to form the basis for fixing rents. The third method, whilst a useful way to test opinions is not, in my view, of any further help in the particular task I have to perform in respect of the subject properties. Accordingly, I propose to adopt the method fixing the value of the land and applying a percentage rate to that value and to consider and take into account evidence of existing rents in fixing the nercentaee rate.

The conclusions of each valuer on the question of percentage were:-

Mr Jefferies: In his first report made in March 1981 he said:

'I consider a conservative approach at the present time as fair and a minimum rate of 7.5 percent has been adopted, in view of even this rate not having been fully established at the present time.'

In March 1981 he reviewed his previous opinion and said:

'As a result of my further investigations I consider the valuations previously submitted should be revised upwards taking into account an assessment of the ground rental on an 8 percent per annum of assessed land value.. .

Mr Gardner adopted a figure of 8 percent. There is no particular passage in his evidence to which I wish to refer at this stage.

Mr Mahoney: After outlining a number of factors, said that a lessee in the area:

would have considered it imprudent to tender a lease rental in excess of 7 percent applied to a readily realisable level of land value.'

Mr McGough after reviewing the position generally said:

`Despite arguments on the basis of current interest rates that figures of up to 7.5 percent and 8 percent of value might be justified in other circumstances, a lessee in the central city because of uncertainties would have been imprudent to go beyond 7 percent on a valuation that was neither unduly optimistic nor pessimistic, that level of la"d value still having to stand the test of time itself'.

The first task is to determine the value of the land. In addition to the evidence of the four valuers, Mr Johnson the present District Government Valuer for Auckland was called. His evidence had not been previously briefed but he was given particulars of the area and some indication of the matters upon, which he would be questioned. Mr Albrecht, property officer of the Auckland Harbour Board also gave evidence which (inter alia) showed there was active interest in new terminating leases offered by the Board.

The contract expressly directs that 'no account shall be taken of the value of any improvements now or hereafter erected or made on the said land.' No unimproved pieces of land exist in this area, or in any area reasonably comparable, upon which a value may be found to support a basis for the valuation of the land only. In the analyses of sales of freehold properties, which were considered sufficiently relevant, the purchase price was quoted and the value of the land was arrived at by deducting the value of improvements. Reasons were given for the conclusions reached by each valuer and each was closely cross-examined.

Three typical samples of the differences are enlightening. They are:

Lessee	Gardner	Jefferies	Mahoney	McGough
1. Nathans	760,000	723,000	610,000	561,000
2. Northern Steamship	409,000	370,000	326,000	306,000
3. Gallagher	187,000	177,000	150,000	136,000

It is informative to analyse the final fixation of rents by Mr McGough by taking his method of assessing the rent of David Nathan Properties Ltd. on the corner of Customs Street East and Commerce Street. Mr McGough, after examining a number of sales, came to a conclusion that the 1974 Government Valuation was a fair base upon which valuations for 1980 could be fixed. His analysis led him to an opinion that 1980 values were 15 percent lower than 1974 Government Valuations. The method of assessment then proceeds thus:

1974 Government land value	$660,000
Less 15 percent	99,000
	$561,000
Rental rate at 7 percent	39,270 pa
Rental comparison, Bates Building 6.18% on $660,000	40,788 pa
Rental comparison Great Northern Hotel site 6.615% on $660,000	43,659 pa
Adopt	41,000 pa

The 1980 value is fixed at $561,000. Rent is calculated on this sum at 7 percent which rate the witness said it was imprudent to go beyond on a valuation that was neither unduly optimistic or pessimistic. I presume his present valuation does not go outside these boundaries. Calculated at 7 percent this valuation gave a rent of $39,270 but it is discarded for a higher rent of $41,000 which, of course, exceeds 7 percent. This figure appears to be founded on the rent fixed for Bates Building in 1974 - six years earlier - which was based on an agreed six percentage to be applied to a value to be fixed by arbitration. The value so fixed was in excess of the 1974 Government Valuation which, not unnaturally, gave a higher rate on the lower value - that being certain according to mathematical calculation. The witness has a value which was not the true value found and a rate which was not the rate agreed on. These variations enable the witness to calculate, quite correctly, that the rate percentage vis-a-vis the 1974 Government Valuation was 6.18 percent and would produce a yearly rent of $40,788. This figure was rounded off at $41,000.

A further transaction was referred to, namely, the rent fixed by mutual agreement in respect of the Great Northern Hotel site. First, that site does not in my opinion, have characteristics which ought to be transposed to the sites of the present leases. However, be that as it may, when the agreed on rent is related to the 1974 Government Valuation it represents a rate of 6.625 percent and produces a rental of $43,659 which appears to have suffered the same fate as his present value at the rate of 7 percent - it is discarded, unless (although not stated) it is brought in to get an average. When the three rentals are averaged one gets in round figures $41,000. Thus:-

Rent at 7%	$39,278
Rent at 6.18%	*40,788*
Rent at 6.615%	43,659
Total	123,725
Average	41,240

These results follow in each assessment. In every case it can be demonstrated that the figure is a rounding off, up or down, of the percentage calculated on the 1974 Government Valuation of Bates Building or an average of the three calculated rents. None of these calculations in my view supports a claim that the essential base is correct, namely, that 1980 actual values are 15 percent lower than 1974 Government values or that 7 percent is a fair percentage rate.

The Great Northern Hotel lease has, as I have said, special features and I am of the opinion that it does not provide a proper basis for comparison with properties which do not have similar characteristics. The comparison with the Bates lease establishes two propositions which are arithmetical. These propositions are:-

(1) That the 1974 Government Valuation and a rate of 6.18 percent produce the 1974 rental of $20,700, and

(2) That the 1974 Government Valuation reduced by 15 percent and an increased rate of 7.27 percent will also produce $20,700. (See page 12 of his report).

This results simply because the reduction in valuation and increase in percentage brought about the same result which is not surprising if the reduction and increase are approximately of the same proportions. It does not prove that the 1980 valuation is 15 percent less than the 1974 Government Valuation - it is a basic assumption in the exercise. Nor does it prove that $20,700 is a comparable rent in 1980 for the Bates property and that it is therefore a means of comparison for fixing and checking the correctness of the assessments made in respect of the instant properties. In passing it should be noted that the 1974 Government Valuation of the Bates building at $335,000 has increased in 1979 to $370,000. This is $85,250 more than Mr McGough's present value on the basis of the 1974 Government Valuation, less 15 percent. No separate up-to-date valuation was made of the Bates Building, I do not accept that this land has suffered such a drop in value. I shall return to the land valuations of Mr McGough later.

Mr Mahoney, by making assessments of frontage values, got figures lower than the 1974 Government valuations but the percentages, which varied, were by no means as low as 15 percent, so naturally he got higher rents than Mr McGough even though Mr McGough allowed a rate slightly in excess of 7 percent. Every valuation made in 1980 must bear some percentage relationship to Government valuations made six years earlier but that begs the question because to get the percentage you must first fix the 1980 valuations or by other means fix the percentage of decrease in value during the previous six years. Mr Mahoney relied mainly on an analysis of freehold sites which he considered relevant. He said his assessed land values vary from 6 percent to 9.5 percent less than the 1974 Government values. He fixed a rental rate at 7 percent as an absolute maximum. The result was that the rents fixed by Mr Mahoney were proportionately higher than those of Mr McGough according to the difference between a 15 percent reduction and the lower percentage reduction resulting from Mr Mahoney's higher valuation.

The next highest assessment was that of Mr Jefferies. The 1979 valuations were not then available. His opinion was that the weight of evidence obtained from freehold sales supported a level of values slightly above the level of the 1974 Government Valuations. This was in respect of the general area and was not confined to the subject properties. A number of freehold sales were analysed. A number of leasehold sales were also analysed for land values in accordance with a formula published in the New Zealand Valuer, Vol. 21 No. 11 (March 1972) at p. 433. He stated that their unit metre frontage value was adopted after considering his analysis of leasehold sales; the level of the 1974 Government values; the level of land values analysed or adopted from previous lease renewals; and, having regard to the general evidence from freehold sales.

The highest valuations were given by Mr Gardner. He considered 26 sales of freehold properties in the Auckland central business district during the period 1977-1979. Twelve sales of lessee's interests were also analysed. A number of new lettings in 1979 were also considered. It was stated that there were no recent comparable renewals in the near vicinity. This is the material upon which Mr Gardner based his conclusions in his written report. The reasons were not included in his written report but were given in evidence.

The foregoing is no more than a general outline of the evidence in chief of each valuer. It does not do justice to the meticulous and careful manner in which each considered and discussed many facets of the question which is posed. Further many additional matters were placed before each and considered during a lengthy hearing.

Mr Johnson, the District Government Valuer, gave evidence explaining the method of valuation adopted by his Department. He said that, not only were particular localities considered, but regard was also

had to values throughout the city. He agreed with the relativities which had been established in the 1974 valuations except in an area of Queen Street which was re-adjusted in the 1979 valuation. The conclusion of the officers of the department, after thorough inspections, was that an increase in values in the subject area was justified in 1979. He said the evidence supported a slow upward climb. Most of the objections to the 1979 valuations have been resolved but there are still a number outstanding in the subject area so there are no final figures for these properties.

The fundamental difficulty in arriving at the valuation of the land (i.e. without taking into consideration the fact that there are buildings on it) is that no such commodity exists in the area. The land has in each case been improved by the erection of varying types of buildings, in varying stages of the ageing process and requiring consideration of the necessity for future replacement or refurbishing. Also the sections are of varying shapes and sizes. The valuers rely upon sales in the vicinity - none of which affect the subject properties - and also sales over a wide (but considered comparable) area. An estimated value of improvements must then be deducted from the sale price and in some cases demolition costs required adjustment to fix the value of the land, as it must be assessed, namely, without taking into account any improvements, which means the cost of demolition does not reduce the value of the land when attempting to apply the sale price to the suppositious land without any improvements.

Government valuations for 1979 are, as a generality, approximately 10 percent higher than those of 1974. Mr McGough has reduced the 1974 values by 15 percent which means a reduction of 25 percent in 1979 Government valuations. As Mr Thomas points out the result which follows is that the relativity (for 1979), which the department attempts to sustain, is rejected, although that of 1974 is accepted. It also follows that the department has consistently undervalued improvements and consequently overvalued the land. I am of the view that the valuations of Mr McGough are too low and that values are to be found at a higher level which is the effect of the opinions of all the other valuers. The weight of other evidence bears heavily against the land valuations of Mr McGough, and, I am satisfied that there has not been a 15 percent decrease since 1974 nor are the 1979 Government Valuations 25 percent too high.

The valuations of Mr Mahoney are also significantly below 1974 Government Valuations. The witness extracted 13 sales as being of particular significance. It is not without importance that three sales were shown on cross-examination to be of no probative value. Mr McGough accepted 1974 Government Valuations as a safe base from which to find valuations for 1980. Mr Mahoney also saw fit to make a percentage comparison between his 1980 valuations and the 1974 Government Valuation. In the analysis of sales evidence it is important to be accurate on the value of improvements in attempting to find what proportion of the price may be attributed to the value of the land. In some cases there was a wide difference between Mr Mahoney's valuation of the improvements and that of the Government Valuation. His were considerably higher, with the result of course, that the land values were correspondingly lower. The properties selected were generally old, run-down and poorly tenanted buildings which would have a very limited market appeal and are not a good market basis for fixing values in which no account is to be taken of improvements. The analyses, as put forward, imply that the Government Valuation of improvements is in error. If such an error in valuing the improvements did in fact occur, Mr Mahoney could have made an inspection and so have given a comprehensive value of the improvements to demonstrate the error. This was not done. The Government valuers had, according to Mr Johnson, made a thorough inspection and assessment not only of the improvements in question but all improvements in the general area valued. Such an error on that scale is not likely.

In a private valuation, certainly made for advice to a mortgagee, Mr Mahoney, in March 1977, in respect of Stanbeth House, fixed a value of 13.6 percent above the 1974 Government Valuation. He also accepted that, at the time when the valuation of Bates building was fixed at $10,000 above the 1974 Government Valuation, it was then acceptable. Bates building was used as a rental comparison but then, again it is of no great importance in my view, unless an up-to-date valuation is made and the accepted rate of 7 percent, now put forward by Mr Mahoney, is applied to that value. In the absence of acceptable evidence given to show that this is so, I am not prepared to accept that the 1974 values in this area are now too high.

I have earlier dealt with the Great Northern Hotel site which was a rental fixation relied on by Mr Mahoney. It was in the area in which it was agreed that the 1974 Government Valuations were too high and on the adjusted 1979 Government Valuation the agreed rent in November 1976 is 7.3 percent of the adjusted 1979 Government Valuation. A number of errors were disclosed in respect of details referable to Nos. 52-54 Quay Street. This particular evidence I reject as having any value in support of the proposition for which it was put forward. Further, in my opinion Mr Mahoney did not give sufficient weight to the rental agreed to by the Reserve Bank in respect of its property in the immediate area, and too much weight was given to the `Downtown leases'.

Mr Jefferies admitted that he placed more reliance on an analysis of leasehold sales as distinct from freehold sales. In his report he said:

> One of the difficulties in making an assessment of ground rentals in this part of the central business district is that there is a paucity of freehold land sales upon which to base evidence of land values in the immediate locality. The analysis of improved leasehold sales is difficult, subject to considerable assumptions and judgment but, in my opinion cannot be disregarded as a useful form of analysis. Traditionally, purchasers of leasehold interests have tended to pay prices in excess of mathematically calculated interests in leases, reflecting the premium of location which must be related back to a land value factor.

The other valuers, including the District Government Valuer, all stated that this was the least reliable method. They said that it contains so many variables as to cause suspicion or danger in the result.

The use to which witness put freehold sales and his reason for not analysing land values from such sales appears in his report as follows:

> Nevertheless, the market has been quite active with 25 sales of freehold properties of which I am aware, within the central business district taking place in 1977/79 which are shown in chronological order in Appendix 4.
>
> Unfortunately, the freehold sales are not located within nor adjoining the subject location due to most of the land in this area being held under leasehold tenure. I have not analysed land values from these freehold sales nor attempted to impute by comparison and adjustment for time, location, etc., land values in the subject area under consideration. This would require considerable opinion based adjustments and rather I include these sales as forming a market background from which overall trends can be drawn.

Twenty-five sales from August 1977 to July 1979 were analysed. In evidence Mr Jefferies said that he had considered subsequent sales and that these confirmed his view that sales were supporting levels slightly above the 1974 Government Valuations. The totality of the evidence including the more recent sales added by Mr McGough and Mr Gardner would appear to support this trend. In the result Mr Jefferies assessed valuations of the land which turned out to be slightly under the 1979 Government Valuations which had not then been known and which were some 10 percent higher than the 1974 valuations for the same properties.

Mr Gardner said he satisfied himself that the 1979 Government Valuations were acceptable. He did this by a review of a number of sales and then analysed the movement and result which he said was demonstrated by leasehold sales. In his professional opinion, when the result was applied to each of the subject properties, he found valuations which were in excess of the 1979 Government Valuation as appears in the

schedule annexed. Before passing on I consider it important to note a passage from Mr Gardner's evidence which reads:-

'After reading his appendix No. 1 containing details of 26 freehold sales between April 1977 and March 1979 Mr Gardner said:

`If I can make comment at this stage - the only interpretation that I can give to the above evidence - and I stress the above evidence of improved sales, is that in the majority of the cases the obsolescence of the buildings and their consequent lack of earning power reduced their market value. It is perhaps significant that the properties comprising more modern buildings are ones which were generating an economic income were among those which sold above the Government Valuation.'

I turn next to the evidence of Mr Johnson, the District Government Valuer. He was responsible for the 1979 valuations but they were made by qualified officers of his department who carried out careful, detailed on-site inspections. Mr Johnson was well acquainted with all sales which were canvassed at the hearing. The department takes care in establishing relativities. Care is also taken to reflect the particular characteristics of localities. The city is looked at globally in an endeavour to retain uniformity. He was satisfied with 1974 valuation relativities except that an area in Queen Street (which does not affect the present question) required adjustment. This was done in 1979. No significant dispute has arisen over notices given generally in respect of 1979 valuations, but there are objections still unresolved in the area now being considered.

Mr Johnson's evidence has been strongly criticised because he was unable to point to specific sales evidence to alter the relativity in the subject area. Since there was really no freehold land available in the area - it was practically all leasehold - he said he was in a dilemma. That may only mean that if there was any comparable freehold land no-one desired to sell. That does not invalidate an opinion that land had, in 1979, a higher value than in some earlier period, in this case higher than in 1974. I reject any suggestion that his opinion was only an informed guess. It should come as no surprise that those with freehold land (and they are apparently few) are content to continue their holding and have not put them on the market. Their value may well increase, values do increase in areas where sales may not actually take place. Mr Johnson agreed that sales above Government Valuation were of properties with improvements showing good economic returns. Contrast this with selections of poorer types of property earlier referred to. This, in my opinion, highlights the difficulty of involving a suppositious situation - the rental value of the land, without taking into account the improvements.

The rent is related only to the land. Its value is to be considered in its site together with other general locality influences and should not be affected by the manner in which a particular lessee chooses to manage and exploit the land he holds on lease, the type of building he erects, or, the particular use to which he puts such building or the age or state of repair of the building at the particular time when a valuation or assessment is made. These are, no doubt, potent factors in sales of existing buildings. So the selection only, either of sales of properties with a poor financial return, or of those not so lucrative, may not give a valid result. The lessor is to be paid the rental value of the land not affected by any enhancement or depreciation in sale value by reason of the use to which the particular lessee has chosen to make of the land. The value of the land is not to be fixed by the manner or state of the use adopted by the particular lessee at the relevant date because, to do so, takes into account the state of the improvements on it at that point of time.

In general, conditions obtaining in the locality are, of course, of the greatest importance. A lessee cannot control the value of his particular piece of leased land by reason of the manner in which he elects to use it. The valuation is of the land in its site with all the advantages and disadvantages of that site and of the general state of the locality in which it is situated. The general locality and all factors influencing values are potent factors in fixing the value of the land, but the particular method in which a particular lessee has elected to develop and exploit the land and the state of the improvements at the relevant date are not factors to take into account in fixing the rent for that particular piece of land. If this was so a lucrative building and one with a poor return on similar adjoining sections would have different land values. Such a distinction would result in taking into account the improvements on the land.

In analysing sales of freehold land it is important to consider the extent to which the buildings on. the land and the actual use to which the land has been put, may or may not have enhanced or lowered the price paid. This underscores the difficulty in assessing something which does not exist as a separate entity, namely the land without improvements. That is not to say the sale of freehold improved land is not a proper criterion to be taken into account, it is, but what is important is that care should be taken in the analysis of such sales to see that a fair value is given to the land on the suppositious basis which is enshrined in the lease, namely, the land without taking into account the improvements. This may well be a matter of opinion upon a consideration of all relevant factors pertinent to the particular sale.

The valuations of Mr Jefferies have been severely criticised because of his reliance on an analysis of leasehold sales and the common opinion that such a basis has too many imponderables for any reliance to be placed upon such a method of determining land values. Mr Jefferies did analyse 25 sales of freehold commercial properties in the central business district. I propose to cite a portion of his report to show the effect of the state of improvements on sale prices.

He said:

When using the 1974 Government Valuation as a datum, there would appear to be little overall general trend with 13 of the 25 sales selling below Government Valuation and 12 above Govenmernt Valuation, although excluding the four previously mentioned 12 sold below Government Valuation and 9 above Government Valuation of the other 21 sales.

However, a slightly clearer picture can be ascertained by putting these sales into broader categories as follows:

Sales No. 1, 4, 5 and 6 are principally redevelopment sites with low-rise or old buildings notwithstanding that MacDonalds who purchased the Sale No. 1 did not demolish the old building on that site but upgraded it because it suited their particular purposes. This was a relatively small and very narrow deep site between Queen Street and Lorne Street having difficulties of difference in contour between the two streets and as it adjoins the southern side of the 246 building any redevelopment on the site would obtain views only at the highest floor levels. Difficulty arises in making an allowance, if any, for the buildings on the land, as to most typical purchasers they would have been regarded as due for demolition incurring additional costs to provide a vacant site. However, the purchasers re-used the existing structure.

Sale No. 4 (The Victoria Hotel site) is also of interest as this site has also not been redeveloped but the old building has been upgraded since the last resale and is continuing in hotel use. Excluding sales 5 and 6 which are in the same category for the reasons previously explained, there is an indication that redevelopment sites are selling about 10% below Government Valuation though this could be explained by the demolition cost factor.

A number of sales, Nos. 2, 7, 11, 13, 14, 16, 18, 23 and 25 would all fit the category of small or narrow sites having old or poor buildings requiring upgrading and in some cases vacant at the time of sale. All but one of these sold below the Government Valuation the lowest being Sale No. 11 at 28% below Government Valuation, this being a narrow corner site where redevelopment was frustrated because the developers were unable to acquire an adjoining site or extinguish a right-of-way along the northern side of this site. In any case the Government Land Value appears quite high for the size of the site. The nine sales in this category averaged 16% below Government Valuation and in general can be explained by the poor quality of the improvements requiring ex-

pensive upgrading or strengthening costs. Sale No. 25 was a very small and narrow awkward shaped site also affected by a road widening requirement which would result in a residual site completely uneconomic for redevelopment and I believe the sale was also affected by the effective investment return achievable from the existing improvements notwithstanding the adjoining owner influence in the sale.

Seven of the sales (Nos. 10, 12, 17, 19, 20, 22 and 24) all sold above Government Valuation varying from 4% to 30% and all are good type investment properties or owner occupier type properties with an average of 15% above Government Valuation or 16% above Government Valuation over the five sales which did not include adjoining owner influence. No additional comments are required to those shown as notes on the Appendix.

Three other sales Nos. 3, 9 and 21 were near vacant sites which were not particularly detrimentally affected by existing improvements, Sale No. 3 selling at 11% above Government Valuation whereas the other two sold at 5% and 14% below Government Valuation respectively. I have previously commented in respect of sale No. 21. No real overall pattern can be ascertained from these particular sales.

As discussed in the previous section of this report, it is difficult to ascertain a clear trend as to land values from these freehold sales with an ernnhasis appearing to be placed on the quality of the improvements as to whether Government Valuations are still a reflection of market values or not. It would be my submission that in most cases where prices below Government Valuation have resulted there are special factors which apply.

What, in my opinion, is important in this analysis is the references to the effect of old or poor buildings or even vacant buildings on the price paid in comparison with sales of better types of property. This is a matter to which I have already made reference. namely the requirement in the contract to put out of consideration the fact, if it be a fact, that there are buildings or improvements on the land: VIDE DIC v Wellington City Corporation (supra at P. 605). The intention of the contract is that the lessor should be paid rent on the value which the land has irrespective of the manner in which the particular lessee has elected to improve or maintain improvements on it. A reasonable demand for or use of the land in its site in the general area at the time must be the criterion rather than the immediate condition and use of the then improvements on it. It is a suppositious situation, not the actual improved state of the land at the particular moment of time, which is the basis of valuation of rent for the land at the relevant date.

Mr Jefferies dealt with sales since the date given in his original schedule. His view was that there was an upward trend which was also supported by Mr Gardner who added later sales in the original schedule of Mr McGough. As earlier stated these conclusions were reached before the 1979 Government values were published. Relativities in the city area, established at 1974 (and accepted by the valuers for the lessees) were maintained in 1979 (with an irrelevant exception). In 1979 Government values, when they became available, confirmed the upward trend found independently by Mr Jefferies.

There is a mass of material put forward by the parties, witnesses and counsel have canvassed almost every facet of every sale, both freehold and leasehold in the central city area. There are many variable influences and particular circumstances surrounding such sales and these have been dealt with at length. There is no one particular sale which requires a careful consideration and application by me to the question I have to determine, because most of the land in the subject area is leasehold and there is no freehold sale that can be isolated as having a special significance to the subject land. The answer has to be determined in an overall consideration of market trends. Values may be taken generally to be established by 1974 Government values. This appears to be accepted by all valuers. The market was disturbed by the Securitibank collapse. No question has arisen on the method of assessing the individual subject sections, so it is not necessary to enter into a detailed inquiry in respect of each piece of land. The real issue, and, the inquiry has been so conducted, is which of the valuations set out in the schedule, subject to adjustment if necessary, gives a fair basis for fixing values on the relevant date.

Each witness was examined at some length on a comparison of and details concerning each cited sale to show whether or not, by deducting the value of improvements, the sale was above or below the 1974 Government value. The result was reduced to percentages above or below. In his final address each counsel made reference to the result of this exercise. I conclude that, when the overall picture is considered on the basis that proper allowance is made for the effect which the state of improvements on the land may have had on the price, the land should be valued at a figure higher than the levels of the 1974 Government valuation, but in line with the 1979 Government valuation.

I am satisfied that the valuations of Messrs McGough and Mahoney are too low and that those of Mr Gardner are unduly high. A fair consideration of sales of freehold land, where the price has not been unduly depressed by poor or uneconomical buildings shows, that there is an increase in values in line with 1979 Government Valuations. I have not had the advantage of a close examination of the officers of the department who made the necessary inspections and assessed the 1979 values, but I have had the advantage of the report of Mr Jefferies, who quite independently and without foreknowledge, reached a comparable result. Mr Jefferies was closely cross-examined for some days on every aspect of the questions in issue. His dependence, up to a fairly substantial degree, on leasehold sales, has been severely criticised, but it must be remembered that a lack of really comparable sales of freehold land was, and still is, a matter which creates problems in fixing land values in an area which is substantially a `leasehold area'. Mr Jefferies made careful comparisons in respect of freehold sales and took all relevant factors into account before arriving at his conclusions. The subsequent analysis made by counsel at some length, of all the relevant sales, when viewed in the light of the principles laid down and the cases cited, supports the increases in land values to the extent claimed by Mr Jefferies. The Departmental officers, apparently placing no reliance on leasehold sales, made comparable assessments. Their 1979 valuations retain relativities established in 1974.

I propose to base my valuations on those of Mr Jefferies in preference to the slightly differing figures for the 1979 Government valuations. This for the reasons that the officers responsible have not been called to give evidence. Accordingly, I have not had the advantage of hearing their testimony and consequent cross-examination on the figures in respect of the subject properties. These findings are not a rejection or criticism of the 1979 Government Valuations and must not be so considered. It is merely a matter of having before me on the one hand witnesses who have been examined at length, and on the other hand mere official results set out in bare figure. I do not overlook the fact that they were supported by Mr Johnson, but he could speak only in general terms on the subject land.

I accordingly fix valuations as follows:-

Lessee	No. of Lease	Valuation
1. David Nathan Properties Ltd.	27819	$723.000
2. Perfection Textiles Ltd.	26883	$170,000
3. Frank M. Winstone (Merchants) Ltd.	29305	$263.000
*4. Russell & Somers Ltd.	29304	$117,000
*5. C. W. Heather Ltd.	27403	$116,000
6. H. M. G. Fay&D. M. Richwhite	26350	$106,000
7. Northern Steamship Co. Ltd.	27999	$370.000
8. Hanbury Holdings Ltd.	27449	$275,000
9. H. R. Jones	27667	$133,000
10. Real Estate House Ltd.	26348	$341,000
11. Real Estate House Ltd.	26349	$177,000
12. A. J. Gallagher & C. L. Rousell	26448	$177,000
13. Fund of N.Z. Nominees Ltd.	27450	$140,000

* Allowance made for expiry of term in 2022.

The next matter for determination is the rental rate on the values which have been fixed for the land. We

are concerned with land which is suitable for business or commercial use. According to its nearness to Queen Street these properties are in reasonable demand. There is no evidence that the lessees consider their holdings unprofitable or undesirable. There is no evidence that properties in the area have been on the market at a reasonable price and failed to attract a buyer. Certainly there have been few sales but that is not significant in the circumstances. They are leasehold interests, but we are considering such interests which the existing lessees have chosen for the establishment of their business, commercial or investment activity. The land is an asset chosen by, and essential to, the particular activity of the lessee. Instead of investing its own capital or raising capital by way of mortgage and paying current interest rates (to be refinanced at comparatively short period) the lessee has chosen to pay a rent on the capital asset which is an integral part of its financial activity. The question is what percentage is a fair uniform rate for the lessee to pay on the asset provided by the lessor for the sole use and occupation of that asset for the renewed term of 21 years with a perpetual right of renewal.

For myself I do not find it difficult to understand why, until the 1970's it was customary to relate ground rental for renewable leases, particularly perpetually renewable leases, to the interest yield on first mortgage securities for the reason that it was a payment for the provision of an asset for which otherwise a capital outlay was necessary. The land was provided by the lessor in lieu of the expenditure by the lessee of a capital sum for its acquisition either from assets or by borrowing on mortgage or a combination of both. Interest or other returns are either lost on capital which could otherwise be invested or interest is paid on the mortgage loan. Probably, and it may be speculation, the lower rate reflected the fact that the lessor had absolute security in the retention of a power to recover the whole interest in the freehold in the event of non-payment of rent. The lessor also had the security of a long term return. Except for `lessee's goodwill' the lessee unlike a freeholder, does not gain any benefit from an increase in the value of the land. On the other hand, however, the lessor can benefit only by an increased rent at the beginning of each new term if values have increased.

According to Mr Ross, from 1960 to 1971, the yield on perpetually renewable leases remained steady at 5 percent whilst average interest rates rose from 5.01 percent in 1960 to 6.88 percent in 1971 and thereafter in annual increases to the level of 11.8 percent in 1980. Ground rents rose in line with these increases but to a lesser degree, namely, 1975 at 6 percent, rising to 7 percent in 1976 and to 7.5 percent in 1978.

Considerable evidence was given in respect of the rise in overdraft interest rates, the rise in the Consumer Price Index, Government Stock, Local Authority Stock, and other forms of returns from investment of money including shares in companies, particularly in `land companies'. The question of continuing inflation was also canvassed. These figures generally show high rates and a tendency in mortgage investment to have shorter terms or some provision for regular reviews of the rate. I am, having adopted the present method, bound by a maximum of 9 percent, (put forward by Mr Ross) and minimum of 7 percent (put forward by Mr Mahoney). Properties, which are held on lease for the purpose of sub-letting, are usually sub-let for comparatively short periods so as to provide for a review of the rent at reasonable intervals to catch up on the change in money values which are now, and for some time past have been eroded by inflation. Long term renewals at a uniform rate do not have this advantage with the result that renewal clauses in new leases now almost invariably provide intermediate rent reviews. The position is quite clear that the purchasing power of the monetary unit (which unit remains constant vis-a-vis the lessor) has decreased dramatically during the just expired term of 21 years (a position which it cannot be suggested was in the contemplation of the parties when the original contract was made). Inflation still continues to have an increasing effect in lessening the purchasing power of the unit of money in which rent is calculated. There is at present no sign that stability is in sight.

The percentage rates supported by each of the witnesses are as follows:

	%	
Mr Ross	9	
Mr Willis	8.5	
Mr Gardner	8	
Mr Jefferies	8	(but 7.5% in original report)
Mr McGough	7	(plus small fraction %)
Mr Mahoney	7	

I realise that the maximum rent assessable might be 9 percent of the highest valuation (Mr Ross) or 7 percent of the lowest (Mr Mahoney) thus fixing the parameters within which the assessments must be made.

Counsel for the lessees relied upon the evidence of Mr Kensington to attack the linking of rental rates with monetary interest rates. It was claimed that this worked to the disadvantage of the lessee. It was submitted that the loss of purchasing power cannot be used as a basis for justifying a greater rental rate at the beginning of a new term to compensate for increases in land value during the term. This, seemingly, because that rate gives a higher sum of money on the increased value and to give a higher rate and a higher value is to reflect a double benefit for the lessor. It was stated that the lessor catches up on each renewal because the rate is applied to the new value. The example of the 1959 rates applied by Sir George Finlay was used as an example. All were slightly less than 5 percent yet no witness has suggested that 5 percent was an appropriate rate at the present time on the increased values. The thrust of Mr Kensington's evidence is not aimed, as it should be, at the relevant question which is what is a fair rent as a uniform amount throughout the next 21 years. Mr Kensington gave an example to show that the purchasing power of rental is maintained in a situation where land value, the amount upon which rental is based, rises in line with inflation. The true position is that, as the land value rises during the term of 21 years the percentage represented by rent decreases with the result that, unless the factor of increasing value during the term is reflected in a uniform rate, no provision is made for the diminishing rate of return or the increasing value of the asset. Experience has shown that the purchasing power of the monetary unit has decreased as the value of land has increased. The object of fixing a percentage is to arrive at a fair uniform rent for the whole period and not just a fair rate at its commencement.

I do not propose to refer further to the evidence of Mr Kensington. In general, I agree with the criticism of this evidence by Mr Thomas in his written submissions. I do not consider his evidence is of any help in the task which I have to perform. That task clearly emerges in the approach of all valuers and their agreement that a percentage rate between 7 and 8 percent of the present value is the range within which the rate ought to be fixed. The evidence of Messrs Ross and Willis, although favouring a higher rate is higher than I am prepared to accept, Nevertheless it is important evidence to be considered, and will be considered, in fixing the rate within the figures deposed to by the valuers, who have the task of fixing both the value and the rate in arriving at a prudent rent. Any undue reliance on evidence which deals only with the rate and not with the land valuation may give an overall figure which is too high, The effect of the combination of value multiplied by a rate must always be carefully considered when this method of assessment is adopted.

In my view the rate at the present time should not exceed 8 percent and no-one has put forward a rate less than 7 percent. As Mr Ross said, the lessee has the opportunity of passing on the effect of the higher rent, to his tenants if it is sublet, or to his customers if it is used for a commercial enterprise. There is no evidence to show that monetary returns from such enterprises have not increased as inflation takes effect. More frequent reviews of rents both of sub-tenants and of lessees under new leases show that short terms are fixed so that rents can be reviewed upwards. Except for financing projects the effect of the leasehold title is minimal. The land can produce the. same return whether freehold or leasehold although it may generally be more difficult to raise money on mortgage

to develop leasehold land. There may well be a reluctance to develop leasehold land to the same extent as freehold land, but the lessees have chosen a leasehold area as being suitable for their purposes and for development accordingly.

Large scale development requires at least a substantial area of freehold. This has been demonstrated but we are not concerned with any such potential. We are concerned only with individual sections of various shapes and areas. The lessee can realise only the accretion in the value of the buildings but not of the land (except perhaps a premium for the lease) nevertheless all the lessee's activities can be based for a period of 21 years for the payment of a uniform rent, which together with further reviews for a uniform rent at the end of each period of 21 years, represents the cost for the exclusive use of the land which has sometimes been stated (not quite accurately) to be in perpetuity.

There has been an apparent relationship between interest rates on first mortgage loans and the percentage rates applied in fixing rent on renewable leases - the latter being proportionately lower. With erosion of the value of mortgage capital resulting from inflation, interest rates have, in an endeavour to provide against loss of capital in real terms, increased to an unprecedented level. The value of land tends to increase as inflation takes effect, but the purchasing power of the monetary unit in which rent is paid over a long period, declines. The lessor gets a smaller return on the capital value as it rises and also the purchasing power of the monetary unit declines. The lessee pays correspondingly less in real value terms as inflation continues. An increase in rates hitherto applied may, on a consideration of all factors, be justified, but, since there is no capital erosion, as in the case of mortgage loans, any increase should not be proportionate or relative to the increase in interest rates.

I do not intend to review all the evidence given on this topic and the very helpful and interesting submissions made by counsel. I have carefully considered earlier awards cited by counsel and have paid particular attention to the general comment of Mr J. D. Mahoney in his award, a copy of which was produced at the hearing. In the end I have to make a judgment on what, in the proved circumstances, is a fair assessment of a uniform rate for the next 21 years.

All experience has shown that money is continuing to lose its value, and that while a lessee can provide for this during the term, the lessor continues to be paid in a unit of currency which as inflation continues, represents in real terms a smaller return. The lessee has means of increasing returns during the period. I am not fixing a rate that is fair at the beginning of the term but a rate that is fair as a uniform rate over the term. The difficulty in fixing a uniform rent for the land for 21 years by the percentage method is that the base valuation of the land at a single point of time does not remain a constant figure throughout the period. This difficulty does not arise if there is sufficient evidence to show the level of rents offered for such a period on a perpetually renewable lease so that a comparable rent may be fixed. Mr Albrecht gave evidence of leases for terminating periods which show returns of from 7.5 to 8.5 percent. This is valuable evidence but there are variable factors and the problem remains: what is fair for each particular piece of land on its site and with its own peculiarities? The Reserve Bank of New Zealand, for a comparatively large site on the corner of Customs Street East and Gore Street, agreed to pay the equivalent of 7.9 percent of the 1979 Government Valuation. There were others which I have kept in mind but they do not require any special consideration because the factors are variable, but they all show a rate higher than the rate favoured by Messrs Mahoney and McGough. T have to come to an opinion on a consideration of all relevant matters put before me. In my judgment a fair rate is 7.5 per centum per annum on the values ifxed. The respective rents are accordingly fixed at 7.5 per centum per annum on the values earlier found in respect of each lease.

There are two further questions. First, interest is claimed in respect of some lessees who have continued to pay rent at the previous rate. I am asked to ifx a percentage which I do at 10 percent per annum. The next question is costs and I refer to the memorandum of Mr Giles. I suggest that counsel, after considering the award, file memoranda as suggested but covering generally how costs should be carried. The fee for the arbitrator will be fixed in a separate memorandum. If counsel would prefer to argue the question of costs before me in preference to the submitting of memoranda, I shall be available.

THIS AWARD, together with the annexed schedule, is given and published under my hand this 22nd day of December, 1981.

Umpire, (Sifting as the Sole Arbitrator)

	1974 G.V.	1979 G.V.	Jefferies V.I..	Rent at 8%	Gardner Va n.	Rent at 8%	Mahoney Vain.	Rent at 7%	McGough Vain.	Rent at 7% (plus)
1. Nathans	660,000	725,000	723,000	57,840	760,000	60,800	610,000	42,700	561,000	41,000
2. Perfection	155,000	170,000	170,000	13,600	168,000	13,440	150,000	10,500	131,750	9,600
3. Winstones	243,000	267,000	263,000	21,040	281,000	22,480	227,000	15,980	206,550	15,150
*4. Russell & Somers	108,000	119,000	117,000	9,000	123,000	9,225	100,000	6,300	91,800	5,950
*5. Heather	105,000	115,000	116,000	9,000	124,750	9,350	100,000	6,300	91,800	5,950
6. Fay & Richwhite	105,000	115,000	106,000	8,480	118,858	9,500	97,000	6,790	89,250	6,550
7. Northern S.S. Coy.	360,000	396,000	370,000	29,600	409,000	32,720	326,000	22,820	306,000	22.500
8. Hanbury	255,000	281,000	275,000	22,000	303,000	24,240	240,000	16,800	216,750	15,900
9. Jones	110,000	121,000	133,000	10,640	155,000	12,400	104,000	7,280	93,500	6,850
10. RealEst.	475,000	522,000	341,000	27,280	345,500	27,640	312,000	21,840	272,000	20,000
11. Real Est. (for both properties)			177,000	14,600	157,750	12,620	129,000	9,030	131,750	9,650
12. Gallagher (No separate assessment)			177,000	14,600	187,000	14,960	150,000	10,500	136,000	10,000
13. N.Z. Fund Nominees	130,000	143,000	140,000	11,200	141,250	11,300	120,000	8,400	110,500	8,100

* Reduction made for expiry of term in 2022

Footnote

Twenty-three leases were due for renewal, under the Public Bodies Leases Act, as at February 1980. Prior to the Arbitration Hearing, two or three renewal figures had been agreed.

The Award, as printed above, relates to 13 lease renewals effective as at February 1980. Subsequent to the Decision dated 22nd December 1981, several other lease renewals had been agreed to. Two of the more prominent sites in the Downtown area have been negotiated and settled without reference to a formal Arbitration. These include:

(i) The South Pacific Hotel site, leased by Lion Breweries Limited. This property on the corner of Customs Street and Queen Street in the Downtown Square was the subject of a 21 year lease renewal from July 1978 negotiated and agreed in 1982 at $109,600 per annum. The relevant Government Land Value as at 1974 was $1,600,000. It remained unchanged as at 1979.

(ii) The Auckland Savings Bank site on the corner of Commerce and Customs Street East was the subject of a 21 year renewal in February 1980. The rental was negotiated and agreed in September 1982 at $107,000 per annum. The relevant Government Valuations were $1,300,000 as at 1974 and $1,430,000 as at 1979.

IN THE WANGANUI LAND VALUATION TRIBUNAL

LVP 109/79

IN THE MATTER of an objection to valuation under the Valuation of Land Act 1951

BETWEEN THE WANGANUI RACECOURSE TRUSTEES AND WANGANUI JOCKEY CLUB
Objectors

AND THE VALUER-GENERAL
Respondent

Mr Moran for objectors

Mr Maguire for respondent

Date of Hearing: 14 December 1979

Date of Reserved Decision: 4 May 1981

Decision delivered: 6 May 1981

(Case noted The N.Z. Valuer, Vol. 25, No. 2, June 1982, Page 100. Printed in full by request).

RESERVED DECISION OF LAND VALUATION TRIBUNAL

The matter for decision is the value of the Wanganui Racecourse as at 1 October 1976. The objector does not oppose a value of $250,000 being given to improvements, but objects to the unimproved value of $165,000, contending, in the formal objection to valuation, that the value should be $12,000. The objection was heard on 14 December 1979, and on 10 January 1980 counsel were invited to make submissions as to whether sections 32, 33 and 34 of the Reserves and Domains Act 1953 apply to racecourse reserves and as to the precise rights which the objectors contend the public had at the date of valuation in respect of the racecourse land. Unfortunately, those submissions were not received until August 1980.

Sections 32 to 34 are headed "Special Provisions as to Recreation Reserves", Sections 35 to 40 are headed "Special Provisions as to Racecourse Reserves". The vexed question is whether a racecourse reserve can also at the same time be a recreation reserve, and the Reserves Act 1977, which came into force after the relevant valuation date in this case, answers that question with effect from its date of commencement as it defines a racecourse reserve as a recreation reserve set apart for racecourse purposes. It seems clear that the public has some undefined rights, whether or not Sections 32 to 34 also apply to extend those rights. In that connection, Sections 16 and 95 appear to apply generally to all public reserves, as do other provisions of the Act which refer generally to reserves. Certainly the Wanganui Racecourse Trustees have, since the racecourse started, assumed that the public has rights over the racecourse during those periods when race meetings are not being held. The fact that the Reserves Act 1977 has redefined racecourse reserve suggests that the definition in the Reserves and Domains Act 1953 lacked precision. That definition refers to "a public reserve within the meaning of this Act set apart as a racecourse reserve"; "recreation reserve" is not defined in the 1953 Act. The Tribunal inclines to the view that the submissions of counsel for the Valuer-General are to be preferred, and that Sections 32 and 34 of the 1953 Act do not apply to racecourse reserves. Nevertheless, as stated above, the Tribunal does take the view that the public has some rights which will vary from one racecourse to another depending upon the manner in which other provisions of the 1953 Act referable to all reserves have been applied in each particular case. Two other matters which may be relevant to the question of the rights of the public over the racecourse land may be worthy of mention. The first is Section 11 of the Reserves and Domains Act 1953. Paragraph (a) of Subsection 2 of that Section states that the provisions of part IT of the Act (and part II includes Sections 11 to 40 inclusive) shall be read subject to the provisions of any provincial ordinances in force at the commencement of the Act. Section 2 of the Act defines "administering body" as "the . trustees . appointed under this Act to control and manage that reserve or in whom that reserve is vested under this Act." In Section 2 of the 1977 Act "administering body" is defined as "the ... trustees ... appointed under this Act or any corresponding former Act to control and manage that reserve or in whom that reserve is vested under this Act or under any other Act or any corresponding former Act." These different definitions suggest that provisions of the 1953 Act do not have such wide application as the provisions of the 1977 Act, particularly when it is noted that in both section 32 and section 35 of the 1953 Act reference is made to "the administering *body".*

The evidence of Mr James Arthur Brown, who was district valuer of the Valuation Department at Wanganui from 1969 to 1975, was that until his retirement the value of racecourse reserves on a revaluation was based on the average rise in the unimproved value of all the land in the city. He went on to say "this method was obviously not applied in the 1976 valuation because, instead of the rise in value being near the city average of 220%, it is 1550%, and this despite the fact that a nominal reduction was made for the land being designated in accordance with the operative town plan." In these circumstances, one can understand the objectors feeling that the bases of valuation have been changed dramatically and unjustifiably. It is clear that the decision of Mr Justice Cooper in re Hutt Park Racecourse Board (1907) GLR 12 is accepted by all parties as authority for the proposition that, where land is held by a board of trustees for the purpose of a racecourse reserve with a limited power of leasing the same, it must not be valued upon the basis of an unrestricted estate in fee simple but on the basis of the limited powers of disposition which the board by law possesses over the reserve.

The valuers for the parties disagree only on the following points:

(a) The amount of the increase in the value of land because of its situation and amenities.

(b) The allowance to be made in respect of the potentiality for a designation release.

(c) Allowance to be made for the restricted powers of disposition of the racecourse trustees.

Mr Brown, valuer for the objectors, considers 25% an adequate increase in respect of (a) above, whereas the district valuer thinks 35% to be a more appropriate increase, with some hesitation, the Tribunal accepts the Government Valuer's allowance of 35% in respect of amenities and location, although in the case of a city the size of Wanganui, where rural land is situated within a short distance of the city centre, it is considered 35% is a maximum. As to (b) above, Mr Brown makes no allowance for the possibility of the designation being lifted and the potential of the land being thereby improved. Mr McGowan, without fixing the value of that potentiality, equates it with an allowance to the trustees in respect of their restricted powers of disposition. To support that proposition, Mr McGowan in his evidence at page 6 says that the potentiality of the designation being removed and of the land therefore being capable of residential development is considered to be negated completely by the limited power of disposition held by the objectors. He says that if the objectors had full power to alienate the subject land then there would be some prospect of the designation being removed and therefore of the subject land being capable of residential development. It seems, then, that he considers the land to have no such potentiality, and he presumably agrees with Mr Brown's view in that respect. However, having decided there is no potentiality for the designation to be uplifted in all the circumstances, it is difficult to understand the proposition put forward by Mr McGowan and by counsel for the respondent Valuer-General when it is stated that the objectors' limited power of disposition has been given due allowance by not having a percentage for potentiality. The Tribunal would fix a small percentage of the basic value of the land, perhaps 6%, as appropriate for its potentiality. The Tribunal considers, however, that the allowance for the restricted powers of disposition of the owners should amount to approximately 50% of the total valuation ascertained as above.

On that basis, and using Mr McGowan's valuation at appendix 1 of his evidence, but disregarding the nil allowance he makes for (b) and (c) above, we have

a value of $165,000 plus 6% for potentiality, totalling approximately $175,000. A reduction of 50% will produce a value per hectare of the land of about $3,500. The area of the land is 25.0294 hectares. The Tribunal accordingly fixes the value of the Wanganui Racecourse Trustees estate in the land as at I October 1976 as capital value $337,603, land value $87,603, value of improvements $250,000. It is noted that the resulting valuation still produces an increase several times as great as the average rise for the city.

Mr Maguire for the Valuer-General added to his written submission by suggesting that there should be no departure from the market value willing buyer/willing seller concept in this case and that the restrictions were on the trustees, not on the fee simple. He also referred to the Hutt Park case and suggested that Cooper J did not reply to the question regarding restrictions on the disposal of Maori land which, he considers, should be regarded as similar to the present situation. It appears to the Tribunal that His Honour did answer fully those propositions on pages 14 and 15 of the Gazette law report of the case.

D. LOWE,
Chairman.

Overseas Events

The following is a brief list of known conferences or events that may be of interest to New Zealand valuers planning overseas travel. Some further details on specific events may be obtainable from the General Secretary's office or by reference to overseas appraisal in other journals.

Australian Institute of Valuers Annual General Meeting - 24 April - 1 May 1983 at Surfers Paradise, Queensland.

F.I.G. Congress - being held at Sofia, Bulgaria - 19 - 28 June 1983.

12th Pan Pacific Congress - Kuala Lumpur, Malaysia - between 21 - 26 August 1983.

FIABCI Congress - Jakarta, Indonesia - 29 May - 4 June 1983.

Appraisal Institute of Canada National Conference - 2 - 4 June 1983 at Edmonton.

Second South East Asian Survey Congress - being held at - Hong Kong 5 - 9 December 1983.

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ISSN 0027-7282