NEW ZEALAND INSTITUTE OF VALUERS

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The New Zealand
Valuer

VOLUME 25 NUMBER 8

DECEMBER, 1983

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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 by the New Zealand Institute of Valuers. The Editor reserves the right to accept, reject or abbreviate material at his discretion. Business letters, subscriptions and advice of changed address, sh ould be sent to the General Secretary. Deadline 2 months prior.

Registered in New Zealand at P.O. H.Q. as a magazine.

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Editorial Comment

PIPELINE EASEMENTS

The issue of pipeline easements has come very much to the fore in recent years, and has culminated in a report "The Effects of Petroleum Pipeline Easements on Property Values", commissioned by the Minister of Energy the Hon. W. F. Birch and reprinted by permission in this issue. The committee set up by the Minister was chaired by Mr R. J. Maclachlan and included a representative of the N.Z. Institute of Valuers and a representative of the Valuation Department.

The committee summarises its findings under the heading "Conclusions". It makes reference to a percentage of land value paid as compensation, and to the national agreement between Federated Farmers and pipeline owners. Importantly, the committee concludes that although a percentage of land value payment is adequate in most cases where pipelines cross pastoral farming land, a percentage formula should not be used under any circumstances when pipelines traverse commercial, industrial or residential land. Further, a pipeline may interfere seriously with horticultural development particularly when land is changing from pastoral use.

Mr Ken Stevenson in his article commencing on page 447 gives his experience on pipeline compensation work mainly in the Auckland and Northland regions. Mr J. P. Larmer is writing an article on pipeline easements as they affect the Taranaki region, and this will be published in the March 1984 issue of the Valuer.

In his article, Mr Stevenson highlights some of the present and potential difficulties. He offers some suggestions as to the methods of approach which might apply when valuing pipeline easements, with particular reference to rural land. His comments that he has seen no evidence to indicate that the presence of a pipeline has any real effect on the value of sheep, cattle and dairy land are worthy of note, particularly when it is appreciated that 50% or more of the paddock value is being paid out under the Federated Farmers form of agreement. This position may well not necessarily apply to multiple easements.

At the time of writing, there is no evidence of any case law on the subject, notwithstanding that the Petroleum Act has been in existence now for some 46 years. Some good reasons for this lack of case law could be advanced as follows:

1. *Owners of pastoral land may well be more than adequately compensated by a percentage formula, as inferred by Mr Stevenson and the committee.*
2. *Pipelines tend to be situated on public land in an urban environment.*
3. *Pipelines are not a visual encumbrance.*
4. *Most pipelines are relatively new.*
5. *The pipeline authorities may have ensured that all parties are adequately or more than adequately compensated.*

In his article, Mr Stevenson refers to a valuation tribunal decision, E. G. & J. Todd v Minister of Electricity L.V.P. 231180. That decision is printed in this issue as it is a useful addition to the limited case law on the subject of transmission lines and power pylons. One might well argue that case law on power wire or pylon easements provides the only basis of a comparable claim-type situation with pipeline easements.

The issues and principles involved laid down in the case Ministry of Works v Scott & Another (1977) N.L.R. 668 ("N.Z. Valuer" Volume 20 at Page 190) might equally apply to a pipeline easement situation. These principles were confirmed in the Todd case.

Where does this leave the valuer?

If the methods of assessment recommended by Mr Stevenson are considered, then there would appear to be little chance that any particular property owner would be other than fully compensated for any loss incurred. I commend them to your attention.

Finally, both the committee and Mr Stevenson conclude their comments by recommending that the property owner receive full and detailed advice on his rights and entitlements. If this approach is followed then a valuer for the property owner could be brought in at an early date. The valuer then must ensure that he is sufficiently well informed to correctly advise his client, basing his advice on the proper procedure for assessing compensation which is on a "before and after" basis.

President's Report on Twelfth Pan Pacific Congress

The Twelfth Pan Pacific Congress of Real Estate Appraisers, Valuers and Counsellors was held in Kuala Lumpur, Malaysia 21st -26th August, 1983. New Zealand, represented by thirteen delegates and nine accompanying delegates, took a prominent part in proceedings, the theme for which was "Land Resources - The Challenges Ahead."

The sessions allocated to New Zealand were "The Inflationary/Recessionary Economy - its effect on Real Estate Investment "Plenary" and "Kiwi Fruit Experience" and "Leisure Land Use and Development" (both workshop sessions).

The Congress was organised superbly by the Institute of Surveyors Malaysia, headed by its President R. Dass, who was also Congress Chairman, and all delegates from Pan Pacific countries attending were unanimous in their praise for the splendid hospitality and organisation provided by the host nation.

The Thirteenth Pan Pacific Congress will be hosted jointly by the American Society of Real Estate Counsellors and the American Institute of Real Estate Appraisers in Honolulu 9th -13th February, 1986, and the Fourteenth Congress is scheduled for New Zealand in 1988.

Twelfth Pan Pacific Congress

SPEECH BY THE HONOURABLE THE PRIME MINISTER DATO SERI DR. MAHATHIR BIN MOHAMAD AT THE OFFICIAL OPENING OF THE 12th PAN PACIFIC CONGRESS OF VALUERS, APPRAISERS AND REAL ESTATE COUNSELLORS AT HILTON HOTEL, KUALA LUMPUR ON MONDAY, 22nd AUGUST, 1983 AT 9.30 A.M.

The following address was delivered at the Twelfth Pan Pacific Congress of Real Estate Appraisers, Valuers and Counsellors in Kuala Lumpur, 21st - 26th August, 1983.

I wish to thank the Institution of Surveyors Malaysia, the organisers and host of the Pan Pacific Congress of Valuers, Appraisers and Real Estate Counsellors, for inviting me to say a few words today. I take this opportunity to extend a warm welcome to all the delegates, and to wish the foreign participants a happy stay in Malaysia.

2. The theme of your Congress - `Land Resources - Challenges Ahead' - is indeed one of great importance to the world in general, particularly at this point in time when the increase in population demands more living space and greater food production. Recent United Nations estimates indicate that in the last quarter of this century, the world population is expected to grow from 4,000 million to 6,500 million; the world's urban population will surge from 1,500 million to 3,200 million. Of particular concern to us is the population in Asia which will reach 3,600 million.

3. This scenario of population growth will no doubt throw up mammoth-sized problems which in turn will demand all the ingenuity and skills of governments all over the world to tackle. Merely to accommodate this huge additional population within the constraints of limited resources available to them is in itself a formidable task.

4. Malaysia is fortunate that with its size and resources, it has the capacity to accommodate a bigger population. However, it must always bear in mind that size and resources in themselves do not guarantee the capacity to support a large population. The most important factor is the productivity of the people. It is here that the diligence, drive and ingenuity of the people are most needed. Without these the resources will remain unexploited and will contribute nothing to the improvement in the quality of life for the inhabitants. With diligence, drive and ingenuity, even barren and limited land can support vast populations.

5. It is clear that for a fast growing population, the judicious use of available land will be of prime concern to most nations. Land remains the most valuable resource available to man. Failure to utilise this resource economically will retard the improvement of the quality of life. Indeed the quality might even retrogress. Already we see vast areas turning into deserts as man and animals destroy the vegetation. Questions must therefore be asked regarding land utilisation, if we are to survive and promote reasonable standards of living.

6. Answers to the questions - "Will the world be able to feed the people?" and "Will it be able to provide them with a better quality of life?" will hinge not only upon economic, social and political considerations, but also, and to a large extent, on the manner that land is viewed by the people and administered by Government.

7. As an example let us take Kuala Lumpur. It is a well-known fact that the Kelang Valley in which Kuala Lumpur is situated is still rich in tin. Indeed it was tin that created Kuala Lumpur. The question is, do we mine the tin first and then build, in which case there will be no growth for Kuala Lumpur for a long while, or do we build Kuala Lumpur and forget the tin? The mistake was made by the founders and subsequent settlers. By the time the people became sophisticated enough to worry about land and resources, Kuala Lumpur had already been established as the Federal Capital with a very substantial population and all the complex systems of a big city. It would certainly cost the nation much more to move the capital than the value of tin recoverable. And so a natural resource has to be forgone, when such resource could well enrich the nation if land use had been better planned.

8. Another example is the cutting down of the ancient tropical forests all over Malaysia. It is very easy for conservationists living in countries that have waxed rich on the rapacious exploitations of the world's resources in the past to condemn the systematic elimination of these forests. But for Malaysia which is faced with all kinds of restrictions to the export of manufactured goods, there is no choice but to exploit natural wealth like timber. In any case the land had to be cleared in order to grow rubber or palm-oil or to mine tin. These are the only things that we can sell. The world will not pay us to preserve the forests. And so a choice has to be made - deforest and develop economically or remain poor so that the rich can glorify in the beauty of the Malaysian rain-forest with their majestic trees.

9. Land as a natural resource can be subjected to planned exploitation, but such planning cannot be too idealistic. Other factors must be taken into consideration. And the cost must be borne by the world if the world feels so strongly about the exploitation of land. In the case of Malaysia, if the world wants it to preserve its forests, then the world should buy its manufactured goods at least.

10. Having said all that, let me assure you that we are not unmindful of the need to control land use. We do plan and we do conserve. Vast tracts of jungle have been designated as reserves. All land exploitations are subject to planning. We are aware that unrestricted development can lead to disasters like floods, etc. We have, therefore, within our limited means taken the necessary planning precautions. But of course there is no way we can completely avoid mishaps.

11. Land in Malaysia is not in the Central (Federal) Government's list. Land administration is vested with the 13 States that make up Malaysia. To a certain extent this hampers administration and uniformity of policies. It is for this reason that a National Land Code was formulated and a National Land Council established. The Prime Minister or his Deputy presides over the National Land Council. Over the years a degree of uniformity of policies has been established. Nevertheless, as the states have limited sources of revenue, conservationist policies do not get quite the same priority as the Central Government wishes. Fortunately for Malaysia most of the forests which have been cleared are replanted with rubber or palm-oil. Consequently, the greenness of Malaysia has been maintained.

12. Today, more than ever before, professionals are playing a vital role in shaping and designing our life style, that is, our life itself. Unfortunately, the development of the various professions cannot be separated from individualistic and commercially selfish interests. Consequently, professionals have to work to the tune of seemingly conflicting demands. The integrity and credibility of the professionals depends on their capacity to maintain good ethics while satisfying their own needs. In actual fact there is no conflict, for good ethics will, in the final analysis, yield the best returns for the individual professional as well as the profession in general.

13. Coming now to the valuation profession in this country, I am aware of its important role both in the Government and the private sector. The Government, in order to ensure an orderly growth of the profession, has provided legal protection for most of the professions. The Valuers and Appraisers Act. 1981, is an example of such protection and is administered by a Board which has members from both the Government and the Institute of Surveyors Malaysia.

14. The Government also ensured that the University Teknologi Malaysia and the MARA Institute of Technology run degree and diploma level courses in Valuation and Property Management, so that the needs of both Government and private sector for trained manpower are met. The Government is also at present building a Valuation Training and Research Institute at Bangi, so that in-service training can be provided not only for Valuation Department staff, but also for staff in land offices and local authorities. We hope that in the spirit of greater cooperation between the public and private sectors as reflected in our Malaysian Incorporated concept, the facilities of this Centre would also be extended to the private sector. It is abundantly clear that the Government has looked after the valuation profession just as it has done for other professions in this country.

15. In this context, it is only proper that I remind all valuers that the Government has initiated the Act and the Board, not solely to protect the interests of the profession. It has also to see that the profession serves the public efficiently, and that it will maintain high professional standards with regard to the services it provides. Consequently, I would like to urge the professional institutions in this country to take greater interest in ensuring that public complaints against their members are looked into more seriously.

16. We must be sensitive to the fact that the professions have always been held under suspicion because by their very nature they are closed-shop trade unions. The desire to use the authority conferred on the professional bodies, and the exclusive privileges of the professionals merely to protect and enhance the position of

the profession, is quite irresistible. Consequently the rights of the public to be protected from unscrupulous members are often ignored. The stature and integrity of a profession will be tarnished unless the public is protected from the black sheep. As a professional myself, although non-practising, I feel it is my duty to re-emphasise this. No society can prosper without good ethics and the honest practice of the ethical code.

17. Finally, may I once again welcome all foreign delegates to Malaysia, and hope that you will have the opportunity to move outside the walls of this Hotel and see a little more of our country. To all, I wish you every success in your deliberations.

18. With these words, it gives me great pleasure to declare the 12th Pan Pacific Congress of Valuers, Appraisers and Real Estate Counsellors open.

Thank you.

Letters to the Editor

Editor's Comment:

In the September 1983 issue of The New Zealand Valuer I published a letter from Derald Petherbridge dealing with a decision of the Valuers Registration Board and quoting from page 351 of the New Zealand Valuer - June 1983 issue.

The Valuers' Registration Board has advised that it is not prepared to enter into correspondence concerning decisions made when acting in a judicial capacity, beyond saying that such decisions are arrived at after hearing evidence and submissions presented at hearings which, in some cases, extend over a period of two to three days. Obviously, the totality of this evidence and submission cannot be reproduced fully in the Board's decision.

Dealing with the points made by Mr Petherbridge I would comment as follows:

(1) The part of the decision quoted by Mr Petherbridge deals only with the question of penalty and not with the question of whether or not the valuer was guilty of the charges laid against him. The portion quoted is an extract from a paragraph which commences "In the matter of penalty.. and it is clear that the valuer's high standing in other ifelds and his previous unblemished record were taken into account by the Board only when dealing with the question of penalty.

The disciplinary powers of the Board are defined in Clauses 31, 32 and 33 of the Valuers Act and these clauses clearly give the Board the right to impose a monetary ifne and reprimand, as an alternative to deregistration. Mr Petherbridge questions whether the Board is entitled to take into account "the valuer's high standing in other ifelds" in deciding whether to deregister or alternatively to impose a monetary fine, having already found the valuer guilty. The Board's decisions demonstrates that it considers that it is so entitled.

In this respect it is perhaps pertinent to note that the Courts and other disciplinary boards are also inclined to take account of a person's standing in the community, when deciding the question of penalty.

Also the Code of Ethics implies a requirement for a standard of conduct sufficient to "uphold the reputation of the Institute and the dignity of the profession." The Code of Ethics is referred to in those sections of the Valuers Act dealing with the disciplinary powers of the Board.

(2) The question of publication of names is dealt with separately in this issue, in a statement from the Valuers Registration Board. On the matter of secrecy surrounding disciplinary proceedings referred to by Mr Petherbridge,

It should be noted that all disciplinary hearings are open to any member of the public. If valuers in general share Mr Petherbridge's concern then it would be a simple matter for the Institute to appoint an observer to be present at every disciplinary hearing.

(3) On the question of giving all valuers details and names of those involved in disciplinary hearings . . . In my opinion this would be injudicious until a decision had been brought down and the time for appeal had elapsed. Mr Petherbridge refers to the practice of the Law Society. The general position with that Society is that members are not notified of names of those involved in disciplinary hearings until after the hearings have been concluded and a decision brought down. In a few cases and for special reasons, names are circulated prior to a hearing but the reasons for this action could probably not be applied to Valuers disciplinary hearings and are not for the purpose of "eliminating the countless rumours" which may be circulating.

Perhaps it should be made very clear that the Registration Board and the Institute are two quite distinct and separately constituted bodies. I am sure that Mr Petherbridge appreciates this but I wonder at times whether valuers in general are fully appreciative of the importance of this fact. The board is a judicial body, whereas the Institute represents the interest of its members.

N.Z. Institute of Valuers

1984 Annual General Meeting and Seminar

The 1984 Annual General Meeting and Seminar is to be held in conjunction with the Dominion Council Meeting running from Saturday, 14th April to Tuesday, 17th April.

The Council Meeting, Seminar and Annual General Meeting will be based at the Sheraton Hotel, Fenton Street, Rotorua, where 100 rooms have been reserved for registrants to the Seminar and Meeting.

A full programme has been prepared for the 2-day Seminar on 16th and 17th April, but, as speakers have yet to be finally confirmed, the programme listed below is, of necessity, brief and does not contain the names of guest speakers.

In addition to a full programme organised for registrants, the Rotorua/Bay of Plenty Branch has arranged a full and interesting programme for ladies attending the Conference as well.

Registration forms will shortly be distributed to all Branch Secretaries with further supplies available from the Seminar Secretary, N.Z. Institute of V aluers Rotorua/Bay of Plenty Branch, P.O. Box 1318, Rotorua.

Sheraton Hotel, Rotorua - 16th & 17th April, 1984.

Monday, 16th April

9.00 - 10.10 a.m.	Registration and morning tea.
10.10 - 10.30 a.m.	Official opening.
10.30 11.30 a.m.	Minister of the Crown to speak on the effects of the provisions of voluntary unionism on the profession - the Government's role in discipline - the future of the Valuers Registration Board and the Government's attitude on the responsibilities and professional ethics of Valuers.
11.30 - 12.30 p.m.	A representative of a major Finance Organisation to speak on the commercial finance companies expectations of the role of a registered valuer, the problems experienced and suggestions for improvments in the production of valuation reports and ethical standards.
12.30 - 1.45 p.m.	Lunch.
1.45 - 2.45 p.m.	High Court Judge to speak on the Court's expectations on the role of a registered valuer, commenting on the problems and pitfalls experienced, with suggestions for improvements.
2.45 - 3.00 p.m.	Afternoon tea.
3.00 4.00 p.m.	Representative of the Valuers Registration Board and a representative of the legal professional to speak on professional responsibility and negligence, ethical standards and standards expected and required of registered valuers by the legal profession and the Registration Board.
4.00 - 5.00 p.m.	Annual General Meeting.
5.30 - 6.30 p.m.	Cocktail Party hosted by the local Branch.
8.00 P.M.	Dinner and Social evening.

Tuesday, 17th April

9.00 - 10.00 a.m.	Senior Economist to speak on the effect of tourism on New Zealand and on a region like Rotorua, the impact on the Real Estate market and the economy of a community.
10.00 10.15 a.m.	Morning tea.
10.15 - 11.30 a.m.	Local bus tour of existing and new tourist developments and hotel accommodation - tour of the Government Gardens, tourist resorts, the Agrodome at Ngongotaha, each bus to be accompanied by a guide and participants will be provided with printed material pertinent to the points visited on the tour.
11.30 - 12.30 p.m.	Chief Executive of a major international hotel chain speaking on the changes in hotels in New Zealand, recent developments, the reasons for investing in hotel accommodation in New Zealand and the role of a Registered Valuer in such developments.
12.30 - 1.45 p.m.	Lunch.
1.45 - 2.45 p.m.	Senior Economist to speak on the effects of changing land use in a region, the impact on the community and the economy, the need for versatility in valuation and town planning.
2.45 - 3.00 p.m.	Afternoon tea.
3.00 - 4.00 p.m.	Senior partner in a major stockbroking firm and a director of a major hotel chain to speak on the financing of a major hotel development and the role of a Registered Valuer in such a proposal.
4.00 - 4.15 p.m.	Closing.

LADIES' PROGRAMME

N.Z.I.V. A.G.M. & Seminar 1984

Monday, 16th April	
9.30 - 10.00 a.m.	Morning tea and get-together.
10.00 - 12.00 p.m.	Renowned international floral demonstrator Herbert Hoare, demonstrating a morning of flowers and pottery.
P.M.	Free for shopping, hair appointments, etc.
Tuesday, 17th April	
9.00 a.m.	Bus to Wairangu Thermal Valley. Launch trip and lunch on Lake Rotomahana. Return Rotorua 2 p.m.
2.00 - 4.00 p.m.	Free for personal activities.

Valuers Registration Board

Publication of Disciplinary Proceedings

The following resolution was passed unanimously at the October meeting of the Council of the Institute:

> "The Council reaffirms its stated policy, that it considers the Valuers Registration Board should publish the names of the parties involved in disciplinary proceedings unless very extenuating circumstances indicate to the contrary."

The Institute and the Board have been examing this question for some time and now in response to this further clear statement of the wishes of the profession the Valuers Registration Board has determined that with respect to complaints received after 1 January, 1984 the names of parties involved in disciplinary proceedings may be published, at the discretion of the Board.

Report on the Half-yearly Council Meeting

By the Editor

The New Zealand Institute of Valuers Council conducted its half-yearly meeting at Wellington on the 9th and 10th October under the Chairmanship of the President, Mr R. M. Donaldson.

Mr Donaldson opened the meeting by welcoming the new Councillor for Northland, Mr W. A. J. (Bill) Burgess and a new member of Executive, Mr Graeme Kirkcaldie. There were no apologies and the minutes of the previous meeting were taken as read and passed as a true and accurate record.

MATTERS ARISING:

Council Meetings:-

Branches indicated an overwhelming preference for the Annual General Meeting to be held on a rotational basis in accordance with the present policy. Council re-affirmed that the present circuit and arrangement for future A.G.M.'s and Council meetings continue.

Retirement of Councillors:-

Council was in favour of branches having representation on Council in terms of branch participation rather than councillor participation, when considering retirement. After full discussion, Council agreed that an election for branch councillor in February 1984 should be conducted at the following branches: Northland, Hawke's Bay and Wellington. In addition, it was resolved that there be a mandatory four-year term for councillors.

EDUCATION:-

Mr Ralston, on behalf of the Board of Examiners, sought Council confirmation of a proposal to conduct further practical and oral examinations during 1984, to provide a final opportunity for unsuccessful candidates, particularly those sitting in November 1983 for the first time. This was approved by Council.

Mr Ralston indicated the indebtedness of the Institute to Mr T. G. Hunter for his outstanding service in the education area over a period of 10 years. Mr Hunter is due to retire in December 1983.

Four chapters of the Institute's publication "Urban Valuation in New Zealand, Volume 2" have been completed and other chapters are at various stages of completion.

STATISTICAL BUREAU:-

Statistical bulletins continue to be in demand for Modal House Costs, particularly during the current stabilisation of building costs that have become apparent because of the effects of the

price freeze regulations. The Modal House Specifications and Quantity booklet will be available this year in an updated and metricated form although the price is yet to be decided upon.

Mr Wall indicated that the Statistical Bureau has continued to function smoothly with a small number of additional subscribers to the microfiche system having joined over the past six months period. New microfiche supply charges cannot at present be implemented because of the price freeze regulations, but would apply in such proportion as may be permitted, after the 29th February, 1984.

NEW TECHNOLOGY:-

The Chairman, Mr Allan, indicated that the principal objective set by this committee for 1983 involved the implementation of a computer sales retrieval system for valuers. That objective is about to be realised.

Council empowered Executive to make available electronic transmission to members in the same way as the microfiche is currently made available.

PUBLICITY AND PUBLIC RELATIONS:-

The Chairman, Mr Kirkcaldie, advised Council that information brochures are nearing completion in a draft form. When completed, the pamphlets will be widely distributed.

A second "State of the Market Report" will be prepared in January 1984 and in due course will be published in "The Valuer".

ASSETS VALUATION STANDARD:

Mr Cooper's report is printed in this issue of the Valuer. It is clear that few accounts within New Zealand are currently being prepared on a C.C.A. basis although a number of companies use the system for internal management. In contrast, there is a general commercial acceptance of C.C.A. in the United Kingdom.

EXECUTIVE COMMITTEE:-

Mr McAlister, chairman of this committee indicated that complaints was a subject which continued to engage a great proportion of the Executive Committee's time.

TARIFF:-

Discussion took place on the removal of the clause - Section 16 (1) K, of the Valuers Act approved at the April 1983 Council meeting. On the general question to tariff Council supports action taken on tariff matters to date.

VALUERS ACT, WORKING PARTY:

Mr MacLachlan reported to Council upon the recommendation the party has arrived at in connection with proposals to review the Act. The Act has been looked at on a section-by-section basis.

GENERAL SECRETARY RESIGNATION:-

The President announced that Mr F. Bernie Hunt and his wife Betty, General Secretariat Team, had decided to notify their intention to resign as at 31st December 1983. Council recorded its extreme disappointment at this decision.

MEMBERSHIP:-

It was suggested that consideration be given to bring allied groups into the Institute under such possible headings as "Student", "Technical" or "Affiliate". Council gave approval to the executive officer to prepare a suitable rule change to include two new groups as follows:

"Students"

"Affiliates"

N.Z. VALUER:-

The Editor put forward a recommendation that Council consider the appointment of a suitably interested person to act as the "Computer Correspondent", whose main function would be to keep members informed on an issue - by - issue basis on the subject of Computers and their application to valuing. Mr R. V. Hargreaves, Senior Lecturer in Valuation at Massey University has agreed to act as the Computer Correspondent.

PAN-PACIFIC CONGRESS:-

The 12th Pan-Pacific Congress at Kuala Lumpur was held from 21st to 26th August, 1983. The President spoke with high regard on the quality of organisation and hospitality of the host nation.

The 13th Pan-Pacific Congress is to be held at Honolulu, 9th -15th February, 1986.

Council has ratified the action of the New Zealand Representatives and agreed that New Zealand will host the 14th Congress in 1988. Tentatively, dates of 1990 have been fixed for Korea and 1992 for Canada.

The choice of venue for the Congress in New Zealand in 1988 will be resolved at the 1984 April Council Meeting.

Our President Mr R. M. Donaldson was admitted as an Honorary Member of the Australian Institute of Valuers.

FINANCIAL:-

Because of the Wage and Price Freeze Regulations, it has not been possible to increase subscriptions of members.

Following discussion on ways and means of supplementing income for the ensuing year. It was resolved by Council that:

"Subject to an application/approval under the Wage and Price Freeze Regulations, subscriptions be altered to the following level:-

Practising members	$100.00 p.a.
Non-practising members -	$70.00 p.a.
Students -	$70.00 p.a.

Council resolved that the timing of payment and the amount of capitation to branches for 1984 be deferred until after the 1984 April Council Meeting at Rotorua.

1984 A.G.M. AND COUNCIL MEETING:-

Mr Bill Cleghorn, councillor for Rotorua/Bay of Plenty, provided Council with details of the tentative programme drawn up for the A.G.M. and Seminar. The venue is confirmed as being at the Sheraton. The Council Meeting will be held on Saturday the 14th and Sunday 15th April, followed by the Seminar on Monday the 16th and Tuesday the 17th April.

The 1985 A.G.M. and Council Meeting will be held at Palmerston North from 13th to 16th April 1985.

COUNCIL OF LAND RELATED PROFESSIONS:-

At present, councillor Bob McGough and Mr Nigel Dean constitute the N.Z.I.V. representation on the above-mentioned Council. The proposed constitution is designed to allow any of the represented land professions to withdraw if necessary.

Council approved in principle the Institute being associated with this group.

L.P.M.S.I.:-

Mr MacAlister indicated that 91 valuer firms to date had joined the recently established Professional Indemnity Insurance Scheme conducted by the Land Professionals Mutual Society Incorporated.

VOLUNTARY UNIONISM AND THE PROFESSION:-

Council resolved that the N.Z.I.V. supports it provides to the public.

compulsory membership because of the benefits

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS - (I.A.A.O.):-

Council approved the following Motion:-

"That the N.Z.I.V. accept the invitation to become an affiliate member of the I.A.A.O."

VALUERS REGISTRATION BOARD:-

Council passed a motion that in the absence of facts necessary to make a recommendation for an appointment, the matter be deferred and be decided by a postal vote of councillors if necessary.

In this regard, the term of Mr L. M. Sole expires on the 30th April 1984 and that of Mr R. P. Young expires on the 30th April 1985.

GENERAL:-

Council reaffirmed its stated policy that the registration board publish names of those involved in disciplinary proceedings before the Board, unless very extenuating circumstances dictate otherwise.

The Registration Board has indicated that names of members involved in Hearings after 1st January, 1984 will in general circumstances be published.

Before closing the meeting, the President recorded his grateful thanks to Mr and Mrs Hunt for their services over the past six to seven years indicating his regret that Mr Hunt will be terminating his association in December 1983 and wishing him all the best for the future. Mr Donaldson's comments were carried by acclamation.

Assets Valuation Standards Committee

Report to October 9, 1983 NZIV Council Meeting

by Kelvin Cooper, Chairman

There are two items on which I should report - the first is the domestic situation, and the second, a progress report on the international position.

(1) The Situation in New Zealand.

Notwithstanding the fact that the Society of Accountants and the Stock Exchange jointly decided, without Government endorsement, to require listed public companies to provide supplementary CCA (Current Cost Accounting) accounts as part of their annual reporting requirements from 1 April, 1982 as a condition of continued listing on the exchange, the number of companies complying has been minimal. In submitting their annual reports in the traditional, historical form as required by law, most companies have, however, addressed the question of CCA. In effect, company directors have taken the view that until the requirement to provide supplementary CCA accounts becomes part of the law, they do not intend to provide such accounts as part of their public reporting process. However, it is apparent from their comments that CCA accounts are being prepared by an increasing number of companies for their own internal management use. This situation is having a gradually increasing impact on the demand for valuing for accounting purposes, as opposed to the originally predicted sharp increase in demand. It is interesting to note that the New Zealand experience is in stark contrast to that of the UK where there is a general commercial acceptance of CCA reporting. It is worth bearing in mind, however, that in New Zealand the Government is again examining the question of company taxation and this could have implications for the future of CCA here.

(2) Progress on the International Front.

The third meeting of the International Standards Committee was held in Kuala Lumpur on 21-23 August, 1983 at the same time as the Pan Pacific Congress. New Zealand was represented by Mr Peter Mahoney and Mr Graeme Horsley. Ten countries, including New Zealand, attended and membership now stands at 21, with a further seven countries applying to join.

Good progress is being made on a work programme and full credit must be given to the British secretariat - Messrs Idris Pearce and Norman Bowie - for the efforts. and achievements so far. It is pleasing to note that the Guidance Notes that are being produced are very much along the lines of the New Zealand position.

The Trustee Act 1956

A REMINDER OF VALUERS' RESPONSIBILITIES IN MAKING MORTGAGE REPORTS UNDER THE PROVISIONS OF THE TRUSTEE ACT 1956

(Sourced by The Publicity and Relations Committee)

Following a recent complaint, the Executive Committee of the NZIV sought a legal opinion as to a valuer's duties when responding to instructions for mortgage valuation purposes from someone other than a Trustee or his authorised agent.

The opinion explores both The Trustee's and The Valuer's liabilities, makes reference to case law and contains important guidelines, and is reproduced below in an edited format, to which all practising valuers are commended.

The Reader is also referred to an article entitled "Mortgage Security Reports" by M. L. Graham, The New Zealand Valuer, Vol. 23, No. 5, March 1977.

Section 10 of the Trustee Act 1956 provides that a trustee lending money on the security of any property on which he can properly lend is not chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time was made if -

(a) In making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be competent to value the property, being a person instructed and employed independently of any owner of the property; and

(b) The amount of the loan does not exceed two-thirds of the value of the property as stated in the report; and

(c) The loan was made under the advice of the valuer expressed in the report.

Where a valuer is aware that the person for whom he is carrying out the valuation is a trustee who may lend money in reliance on the valuation report, the valuer has a duty to consider not only the value of the property but the amount of the loan which the trustee would be justified in advancing - In re Solomon Nore v. Meyer (1912) I Ch 261, 282. The amount which the valuer should state as being the amount which the trustee would be justified in lending will not necessarily be as much as two-thirds of the value of the property. There may be features of a particular property which would require a prudent trustee to allow a greater margin than that afforded by the "two-thirds" rule - Shaw v. Cates (1909) I Ch 389. Section 10(1)(c) of the Trustee Act provides that the loan has to be made under the advice of the valuer expressed in the report which contemplates that the valuer is expected to do more than merely recommend two-thirds of the valuation as a matter of course. Furthermore, under section 10, a trustee is not chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property if the amount of the loan does not exceed two-thirds of the value of the property. However, there remains the possibility of a trustee being liable for lending the money in the first place if there is some feature of the property which made it undesirable as security for a prudent lender.

Section 4(3A)(b) of the Trustee Act, relating to the lending of moneys on the security of leasehold property, provides that a trustee must act upon a report as to the value of the lessee's interest made by a person whom he reasonably believes to be competent to value the property, being a person instructed and employed independently of any lessor or lessee of the property.

For a trustee to be able to rely on the protection afforded by section 10 of the Trustee Act, the valuer must be a person instructed and employed independently of any owner of the property. Similarly under Section 4 (3A)(b), the valuer must be a person instructed and employed independently of any lessor or lessee of the property. This means that the relationship of employer and employee must exist as between the trustee and the valuer and between them only. The valuer must look to the trustee alone for his remuneration and be responsible to him alone for the performance of his duty. It is not necessary that the trustee should make inquiry to see whether the valuer has at any previous time acted for the owner, lessor or lessee. Section 10 requires merely that in the particular transaction he must be employed independently of the mortgagor. The authority for these propositions is In re Solomon Nore v. Meyer (supra).

Not only must the valuer be instructed and employed independently of the owner, lessor or lessee, but he must in fact be independent. In In re Dive Dive v. Roebuck (1909) I Ch 328, a trustee employed a solicitor to assist in the execution of the Trusts of a Will. The solicitor received a communication from a valuer, the effect of which was to introduce the solicitor to certain property as security for any money which the solicitor's clients might.have for investment. The valuer subsequently sent the solicitor particulars relating to the property. In sending these particulars the valuer wrote:

"As I am quite disinterested in the transaction and should receive no other fee from the owner

in connection with the loan I should be at liberty to act for your client in the valuation. The proposed borrower is Mr H. Johnson of Park Avenue, Woodgreen (Builder)."

The trustee accepted the solicitor's suggestion that the valuer should carry out the valuation which was required. The engaging of this particular valuer by the trustee was subsequently held by the Court to have been most imprudent. Warrington J. stated at page 343 that the fact that the surveyor introduced the security would have led one to suppose that he had some interest, at any rate, in getting the mortgage through. Warrington J. held that:

"With a whole range of surveyors to choose from, he chose as a person to value on his behalf the man who had introduced the security, which seems to me to have been most imprudent."

Of course not all prospective lenders are trustees. There is no requirement for persons lending their own money to comply with the provisions of the Trustee Act. Indeed, it is theoretically possible even for a trustee to be given specific power, by the trust instrument by which he is appointed, to invest in a mortgage security an amount greater than two-thirds of the value of the property. In such cases, if the facts are known, references in the valuation to the Trustee Act are superfluous.

Any trustee who wishes to rely on the protection afforded by either section 4(3A)(b) or section 10 of the Trustee Act should ensure that the valuer is instructed and employed independently of the lessor, lessee or owner of the property. He should also endeavour to ensure that the valuation is addressed to him or to his agent. This is not to say that a valuer might not be liable in negligence to a trustee who relies on a report addressed to someone other than the trustee. The law in this area is continually developing and the current state of the law is such that if the valuer knew, or ought to have foreseen, that someone other than the person to whom the valuation is specifically addressed would be relying on the valuation in advancing moneys to be secured over the property concerned, the valuer owes a duty of care to that third person and may be liable in negligence to him.

We are aware of valuers who are including in their valuation reports statements of disclaimer to avoid liability to anyone other than the person from whom instructions were reeceived and to whom the valuation report is addressed.

However, the Trustee Act only gives virtually automatic protection to a trustee if the valuer is employed independently of the owner, lessor or lessee (as the case may be). This being so, we consider that a valuation which purports to be a valuation pursuant to, or in accordance with, the Trustee Act is misleading if in fact the valuer was not instructed and employed independently of the owner, lessor or lessee. It is misleading because it suggests that the valuer was independently instructed and employed. A trustee might rely on the report believing that is was independently obtained only to learn later that this was not the case and that he is deprived of the protection afforded by the Trustee Act. In many cases the fact that the owner, lessor or lessee has commissioned the report will be obvious because it will be addressed to him. However, in other cases it may be addressed to a firm of solicitors or other party and it may not be clear for whom the solicitors or other party are acting.

For the reasons stated, a valuer should not state that his valuation is pursuant to, or in accordance with, the Trustee Act 1956 or use any words to that effect unless he knows the person instructing and employing him to be someone other than the owner, lessor or lessee (as the case may be) or someone acting on their behalf. Even then there is no need for him to mention the Trustee Act if he knows that his client is not a trustee. If he is in doubt he should make due enquiry.

Included in the definition of "owner" in this context is any purchaser or prospective owner and in the definitions of "lessor" and "lessee" any prospective lessor or lessee.

Amendment to Land Tax Act 1976

The Land Tax Amendment 1983, No. 12 is an Act to amend the Land Tax Act 1976, produced 23rd September, 1983.

The Act applies to Land Tax for the year of assessment commencing on the 1st day of April, 1984 and every subsequent year.

Section 27 (1) of the Principal Act (as amended by Section 3 of the Land Tax Amendment Act, 1981) is amended by repealing paragraph (k) and adding the following paragraph:

"(p) Land owned by a taxpayer which is used as the site of the taxpayer's residence (being a house, flat, town house, home unit or similar dwelling) which is occupied as the principal place of abode of the taxpayer:

"Provided that where the area of the land so owned and used is, as the case may be -

(i) Greater than 4,500 sq. metres, or

(ii) Where the area that, in the opinion of the Commissioner, is required for the reasonable occupation of the land (having regard to the size and character of the residence erected on that land and the nature of the land) exceeds 4,500 sq. metres, greater than that area that is so required - the exemption provided by this paragraph shall not extend to so much of that land as, in area, exceeds 4,500 sq. metres or, as the case may be, that area that is so required."

The following enactments are repealed:

(a) The definition of the expression "superannuation fund" in Section 2 of the Principal Act (as inserted by Section 2 of the Land Tax Amendment Act 1977):

(b) Section 2 of the Land Tax Amendment Act 1977.

Membership

ADMITTED TO INTERMEDIATE:

Ancell, G. C.....	Otago.
Bennett, K. K.	Wellington.
Budden, J. K.	Waikato.
Butler, P. J.....	Rotorua/Bay of Plenty.
Crookes, G. M.	Waikato.
Dunbar, M. G.	Taranaki.
Johnston, P. R.	Auckland.
Neill, C. D.	Waikato.
Ng Soh Yong (Miss)	Auckland.
Paterson, D. H.	Otago.
Percival, B. S.	Canterbury/Westland.
Quaife, G. S.	Canterbury/Westland.
Quinn, W. E.	Central Districts.
Thompson, A. D.	Northland.
Wild, A. M.	Canterbury/Westland.

ADVANCED TO ASSOCIATE:

Berryman, G. D.	Auckland.
Beeson, G. J.	Canterbury/Westland.
Churchill, P. J.	Auckland (from 19/11/83).
Glassey, W. J.	Canterbury/Westland.
Howie, R. L	Otago.
Jarvis, G. B.	Canterbury/Westland.
Logan, G. J.....	Hawkes Bay.
Mitchel, R. J.	Central Districts.

MEMBERSHIP RE-INSTATED:

Gillies, C. C.....	Auckland.
Hazewinkel, K. B.	Wellington.
Hendry, R. H.	Auckland.
Jelley, I. G.	Overseas.
Lee See San	Overseas.
Mann, G. L	South Canterbury.
Sliper, P. A.	Overseas.
Wright, R. K.	Auckland.

RESIGNED:

Morrison, P. C. K.	Taranaki.
Smales, A. J.	Otago.

RETIRED:

Davies, E. J.	Canterbury/Westland Rule 14(2).
Cherry, G. A.	Central Districts (Rule 14(1).

DECEASED:

Ford, J. H.	Otago.

MEMBERSHIP SUSPENDED (from 1/9/83):

Pollock, R. L.	Central Districts.

A New Degree for Property Specialists

A Bachelor's degree in Property Administration (BPA) is to be offered at the University of Auckland in 1984. This represents the culmination of several years of preparatory work within the university. This has had the support of professional institutes, government departments and employer groups. The new degree replaces the Diploma in Valuation (Dip. Val.).

Academic courses in valuation first became available in New Zealand in 1938/39 when the urban oriented course was established at Auckland University and the rural oriented course at Lincoln College. Massey became involved in this area of tertiary education in 1976. As from 1984 degrees will be obtainable from all three universities.

The Auckland BPA combines the disciplines of valuation and property management. These are the core subjects. Graduates will be well equipped to embark upon any property oriented career and succeed in reaching the top. It is to be expected that the BPA will become an entree, like law and commerce degrees, to a wide variety of job opportunities with a `seat on the Board' as the ultimate objective.

The BPA is a three years full time course which also includes subjects such as property law, building construction, land use planning, economics, financial appraisal, sociology, a selection of relevant elective papers in other areas, and every student has to complete an original research project. The course is organised within the Faculty of Architecture and Town Planning.

The BPA has been designed to cater for those men and women who initially see themselves as becoming essentially registered valuers, or property managers. It will also equip the graduate for positions in the world of finance and investment, in the development industry, in project management and the general administration of all property interests in both public and private sectors.

(For further information contact W. K. S. Christiansen, University of Auckland, 737-999 extension 8597.)

NEW ZEALAND INSTITUTE OF BUILDING FORMED

Recently the above institute was incorporated to represent generally the views of individuals on all aspects of the building industry in New Zealand, as do long established similar institutes in Britain, Australia and many other countries throughout the world. A chapter of the Australian Institute has operated in New Zealand. Among the over two hundred foundation members are included principals or general managers of prominent construction and development companies, individuals holding building qualifications, architects, engineers, clerks of works, building inspectors and representatives from universities, technical institutes and polytechnics teaching in this subject area.

A National Council has been formed under the leadership of the President, Mr R. S. Lockwood, OBE, of Palmerston North.

Members of Council are:

J. Espie, Chartered Builder, Auckland.
D. K. Armstrong, Technical Institute Deputy Principal, Auckland.
W. E. Wagener, Chartered Builder, Auckland.
J. F. Spencer, Chartered Builder, Hamilton.
J. M. F. Sewell, Chartered Builder, Wellington.
Prof. Helen M. Tippett, University Professor, Wellington.
J. Carruthers, Chartered Builder, Wellington.
B. J. Phillips, Registered Master Builder, Christchurch.
G. L. Robertson, Architect, Christchurch.
D. J. Kerr, Polytechnic Department Head, Christchurch.

Three regional chapters are being established: Northern, Central and Southern centred on Auckland, Wellington and Christchurch with the total institute having a strong local presence. With an increasing membership representative of many disciplines, a strong unified industry voice will result.

An International Conference in association with the Australian Institute of Building is planned for Christchurch on 18-21 March, 1984. The title of the conference is "Communication In Our Industry".

Further information on any aspect of the N.Z.I.O.B. can be obtained from -
The Secretary,
The N.Z. Institute of Building Inc.,
P.O. Box 36-002,
Wellington.
Telephone (04) 663-248.

New Zealand Inflationary/Recessionary Economy

Its Effect on Real Estate Development

by R. M. Donaldson, F.N.Z.I.V.

President of the New Zealand Institute of Valuers

Morley Donaldson led the New Zealand delegation to the 12th Pan Pacific Congress at Kuala Lumpur., The following is his Plenary session paper.

It is an honour to have the privilege and pleasure of attending and participating in this 12th Pan Pacific Congress in Kuala Lumpur.

The title of the paper which has been assigned to me to prepare and discuss with you is quite awesome in that almost anything and everything in the financial and real estate field could be included without my being accused of wandering away from the subject. Having placed that on record I make no apology for confining my address to a New Zealand situation (and largely a rural one at that), for my knowledge of the effect which in inflationary/recessionary economy has on real estate investment in other Pacific Basin countries is certainly not extensive enough for me to make any meaningful comment. That knowledge will, I hope, be considerably increased during the discussion period which is to follow this paper.

To set the scene you should appreciate that New Zealand was settled some 120 to 130 years ago, largely by those who wished to escape from two historical extremes of land ownership where land was owned either by the state or by a few wealthy individuals. Up to about 1900 the latter was still the case, particularly in the South Island, until the government of the day, anxious to break up the large estates, compulsorily purchased them, and by subdividing and selling them off as small but economic units, created opportunities for individuals and their families to purchase their own holdings. Since the mid 1940s and into the mid 1960s the state was very active in developing and selling land to individuals on very reasonable terms, and to a somewhat lesser degree, has continued since then to provide opportunities for suitably qualified young men to own their own farms.

Up to the early 1970s land prices more or less paralleled inflation and the cost of living but since then have increased dramatically partly under the impact of rampant inflation. Because of this measures such as the Livestock Incentive Scheme and Land Development Encouragement Loans have been introduced, and while these have been successful in largely attaining their objectives - increased livestock numbers and improving productive capacity, they have also contributed to some disturbing developments which have become apparent during the past 3 to 4 years. Some of these are:

1. An escalation in the price of land to a point far beyond the ability of young people with traditional savings methods to cope with.
2. A decline in the price which the producer receives, forcing him to consider a larger farming area to reduce the effect of his declining unit price.
3. A tendency to purchase more land and reap capital gain rather than improve the productive capacity of an existing holding and
4. A dramatic increase in servicing costs at current rates of interest, to a point where some farmers, who financed with short term high interest loans, can no longer carry the debt loading and may be forced to sell.

Whether or not an inflationary/recessionary economy became more pronounced in the 1970s in other Pacific Basin countries will be better known to you as delegates from those countries, but as far as New Zealand is concerned the trough and the high became much more pronounced during that period than in earlier years. For this reason my paper covers the period from 1970 to early 1983, with the following brief lead up to 1970.

During the Second World War (1939-45) and until 1951 the price of rural land was pegged by legislation. On its repeal in 1951 land prices were slow to rise for some years and lagged behind wool prices (which were at that time our largest earner of overseas funds) and farm profitability in general. This trend continued into the early sixties, and, following a brief sharp upturn in prices in 1964/65, carried on to the end of the 1960s. Many called them the "golden" years of farming - money was freely available at modest interest rates, inflation was hardly ever mentioned, production increased rapidly, there was a steady movement of farmers into larger units capable of development, fuel and machinery costs were modest, and labour relatively cheap. Add to these factors the input by science - rabbit control, grass grub control, more extensive use of trace elements, plus an explosion of production in the hill country sector through the use of aeroplanes to aerially oversow wealthy individuals. Up to about 1900 the later and topdress thousands of hectares of steep country formerly capable of very limited production and the term "golden" seems most appropriate.

In the early 1970s Great Britain, traditionally by far our largest market for dairy products and meat, and to a lesser extent wool, became a member of the European Economic Community. At around the same time oil prices started to escalate, and worldwide, inflation started to quicken. This latter factor, coming at a time when farm production, increasing by leaps and bounds had created a very strong demand for land made people realise that land was the one commodity whose annual increase in price was greater than the annual inflation rate. Prices were paid for land which no longer reflected the productive worth of the land. Farmers, for a variety of reasons sold out at ever increasing prices and moved to more favoured localities and larger units with greater potential. They frequently accepted a 50% (and higher) indebtedness with the almost certain knowledge that the selling price of their properties would continue to increase rapidly, giving them either room to borrow more money ,or to sell and make a very considerable capital gain. A normal return on capital assumed less and less importance as prices continued to soar.

From the late 1970s until late 1981 livestock incentive schemes, land development encouragement loans, and water supply and irrigation schemes kept farmers' incomes at acceptable levels but factors were showing up which indicated difficult times ahead. Some of these were:

1. Vendor (and other) mortgages taken out for 5 and 10 years in the 1970s at 8% were falling due, and 16-18% interest rates were the order of the day.
2. The price of fuel escalated beyond all expectations and this reverberated right through our economy. (New Zealand is particularly vulnerable to "imported inflation" as virtually all our oil is imported from the middle East).
3. Our quotas for the export of lamb, and butter and cheese to European Economic Community Countries started to shrink alarmingly. For 10 or more years this prospect had been in view, and while we had made some progress towards finding acceptable alternate markets we had not taken up all the slack by any means.
4. On farm costs for fertiliser, fencing materials and particularly new machinery literally soared and all this at a time when the farmer was receiving little more for his produce than he did in the "golden" years.

From mid 1981 onwards the downturn in our terms of trade has become increasingly apparent. Our alternative markets, established because of E.E.C. quota reductions, were also becoming much less reliable, due to the Iraq/Iran War and other problems which Middle East countries were experiencing. Credit sources constricted rapidly as many farmers found to their cost when attempting to replace 5 and 10 year vendor mortgages on expiry. Interest rates from traditional sources for the shrinking amounts available were of the order of 16 to 18% - double what they had been 10 years earlier. Some straight finance companies were asking for (and getting) 25% interest rates for bridging finance.

In June 1982 the government announced a "Prices and Wages Freeze" to run for 12 months. With the exception of price increases for imported materials processed in New Zealand, some government services and certain other exceptions the freeze has been largely observed, but while it was meant, in part at least, to maintain confidence in farming it is doubtful if it has had any significant impact on farm costs. At the same time the Land and Income Tax Amendment Act No. 2 was introduced. One effect of this was a limitation of $10,000 per year for losses claimable against tax payment. This limitation has had a huge effect on the level of investment by what we call "Queen Street Farmers" (Auckland's principal street) - that is businessmen who, either singly or in syndication, invest in farming, more particularly horticultural farms and specifically kiwifruit units in the upper North Island. These investors were formerly able to offset losses incurred in developing such units to full production over a period of some years. The most dramatic effect of the amendment however, is that had on properties purchased and resold within ten years. In such cases there is a "clawback" in that interest and development expenditure (over the total time for which the property has been owned) becomes taxable. It appears certain that these measures will greatly reduce the input of capital from business interests formerly used for farm purchase and development.

Having covered the 1970s and the 80s to March 1983, perhaps a brief summary would help to set

the stage for some comment on the investment effect which an Infationary/Recessionary economy has had and may have in the future on real estate investment. During the 1970s development and production proceeded apace, encouraged by generous tax concessions, freely available credit at modest interest rates, and a strong belief that ever increasing prices paid for land would continue to escalate. It was a time too when more thou ghtful farmers and some businessmen worried about a traditional reliance on meat and wool, most energetically and successfully established alternative markets for such diverse products as deer velvet, kiwifruit and berries. Investment in land continued to be very attractive, because as a limited commodity its supply could not be increased by further production or indeed by any means. The early 1980s with their attendant dramatic oil price increases, uncertain markets, huge increases in running costs, very high interest rates, and legislative changes which affect off farm finance availability, have seen a severe downturn in rural real estate investment.

During the period covered by this paper we have clearly had an inflationary situation building through the 1970s and are now in a recessionary situation in the early 1980s. One farming newspaper on 31st March, 1983, carried the banner headline "Viability of farming now in question" and went on to state in part "No profits and no capital gains! This is the stark reality today for a large percentage of New Zealand farmers." Strong words indeed, but they do echo the concern with which responsible leaders in the farming world view the present situation.

The effect which the inflationary period had on real estate investment was almost euphorial. Mortgage money, and government assistance through low interest loans and grants, was freely available, farming confidence was quite high, and individual farmers justified their purchases of additional land at very high prices by convincing themselves that inflation would continue. The effect which the recessionary period is having on real estate investment is very marked indeed. Traditional credit sources have largely withdrawn from the market, asking prices for properties are being reduced for the first time in more than ten years, and the volume of sales has plummeted to a very low level. Even sales of attractive and desirable properties are proving difficult to finalise. The availability of mortgage money has been proved again and again to have a very significant effect on the real estate market. At the time of preparing this paper (March 1983) mortgage money is freely available from some sources not normally associated with rural lending, but interest rates of better than 20% mean that such monies cannot be serviced, and so a lack of serviceable credit exists. Even though the market is presently in a recessionary state it seems unlikely that our rate of inflation will fall below 10% during 1983. The "freeze" has caused it to drop from its former 17% + level, but again at the time of preparing this paper, no announcement has been made as to what is to happen when the "freeze" finishes in June 1983. If our exports are to hold or improve our ability to earn more overseas funds, our inflation rate must parallel or be less than that of our trading partners - even at a 10% level it is higher than that applying in a considerable number of our important trading countries.

Since this paper was prepared in March 1983 a dramatic announcement was made by our Prime Minister in July, 1983 to the effect that interest rates were to be slashed to a prime rate as low as 8% and that if lending institutions did not reduce their rates legislation would be passed, forcing them to do so. This sudden and somewhat unexpected announcement has created an air of uncertainty among institutional lenders in general and dismay among those who in anticipation of a continuing inflationary spiral had written monthly interest reviews into short term mortgage agreements.

To date (late August 1983) interest rates for new first mortgages on houses and farms have been reduced by 1% to 3% per annum and it has been estimated by the New Zealand Dairy Board that changes in interest rates would mean a saving of about 2.5% in farm expenditure. This will not of course be immediately the case as reviews of existing mortgage interest rates can only occur as they become due. The unpalatable fact remains that while interest as a percentage of total farm expenditure should in time reduce from around 16% to around 14% it will still be the largest single item of expenditure for dairy farmers. Figures for meat and wool farmers should be similar.

The New Zealand economy has over the past 20 years gone through periods of long recession followed by short bursts of euphoria. Right now the future is uncertain - the drop in interest rates should stimulate real estate investment once the sharemarket settles down (for shares have found new favour as an investment medium) but the recovery may well be slow as funds must be invested at new interest rates before they can be similarly lent. (Not the case however with such state funded organisations as the Housing Corporation and Rural Bank).

Latest figures available show that the inflation rate for 1983 may well dip below 10% and while this should enable the present position to improve no announcement has yet been made regarding what is to happen when the "freeze" is lifted in February, 1984 (At the same time as interest rates were slashed in July 1983 the "freeze" was extended by six months).

If as I believe they may, returns for primary products improve during the season about to start, my greatest fear is that those returns coupled with lower interest rates may well set us off again on an inflationary land price cycle which is not supported by logic and is followed only by optimism.

The sad part about inflationary conditions is that they have a depressing effect on the market as far as young people and low income earners are concerned, in that their ability to purchase real estate is severely curtailed, as even the raising of a deposit is often beyond them, and here the residential market is included. This latter market raises another interesting feature in that at the lower end of the market the lenders are

quite different from the upper end. At the lower end the Housing Corporation (a Government Body), Savings Banks and Building Societies are very active, while at the upper end large institutions, trust fund investors and wealthy individuals with greater cash resources are the principal lenders.

A recessionary period has a much greater effect at the lower end of the market because much of the available money is institutionally and partly government controlled and so even minor increases in real estate prices have a greater effect on the demand because lower income earners are involved. This does not occur at the other end of the market. The effective interest rate also has a significant impact at the lower end of the market in that high income earners are less affected but interest rates do have a tremendous effect on the community's ability to borrow, and service, mortgage money.

Another factor not mentioned before is the individual's personal view of the future. Up to the age of about 45 years many farmers take a positive and constructive approach to purchasing and developing additional land or stepping up to larger units. Above that age many take a much more subdued and conservative role. An individual's age has a distinct bearing on what he will or will not do, be it in an inflationary or a recessionary period.

I am very conscious that the majority of delegates to this conference are highly skilled valuers and appraisers in the industrial, commercial, and residential spheres of our mutual professions, and that to them this paper may not have the appeal generated by other plenary papers.

What it attempts to convey is the effect an inflationary/recessionary economy is having on real estate investment in a predominantly primary producing country. I trust that the broad canvas which it paints will provoke and stimulate discussion on the topic as it affects your country, and your involvement with it.

The Effects of Petroleum Pipeline Easements on Property Values

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Report of the Committee Established to Consider The Effects of Petroleum Pipeline Easements on Property Values July 1983

In January 1983, in response to representations, the Minister of Energy in consultation with the Minister of Works and Development established the following committee under the provisions of Section 8 of the Ministry of Energy Act 1977 to consider the effects of the presence of multiple high pressure petroleum pipelines on property values.

Chairman:

Mr R. J. Maclachlan -
Ex Director-General of Lands and a former Valuer-General.

Committee:

Mr B. C. Smith
Federated Farmers of New Zealand.

Mr J. P. Larmer
New Zealand Institute of Valuers.

Mr P. B. Davenport -
Natural Gas Corporation.

Mr G. F. Grant -
Ministry of Works and Development.

Mr H. F. McDonald -
ValuationDepartment.

Committee Secretary:

Mrs J. P. Clarke
Ministry of Energy.

Terms of Reference

I To consider and advise upon:

(1) Present methods of payment for easements for pipeline construction and placement with particular reference to:

(a) the impact of multiple easements on a single property.

(b) the impact of overlapping easements compared with separate easements on a single property and possible formulae as the basis for compensation payments for such easements.

(2) Whether pipelines in single easements or/and multiple easements place constraints on land use with particular reference to the impact of any constraint on the value of property.

(3) The validity of a landowner being able to claim further compensation at some date subsequent to the pipeline being constructed where it can be shown that the pipeline or pipelines have caused a reduction in the market value of that property.

(4) The effects of easement restrictions on total farming operations.

(5) The effects of changes of land use on properties traversed by pipeline easements and, consequent restrictions placed on such redevelopment.

(6) The effects of knowledge of future pipeline construction in an area on farming operations and land values on those properties to be directly affected.

II The Committee will make recommendations as to what amendments, if any, should be made to the relevant Acts or Agreements with regard to compensation for pipeline construction and easements. Such recommendations should be made within three months of the establishment of the Committee.

CONCLUSIONS

Para

3.3 The impact of a single pipeline on pastoral farming is generally minimal.

3.4 A pipeline may interfere seriously with horticultural development particularly when land is changing from pastoral use.

3.5 The subdivision of land for residential, industrial or commercial purposes will be affected by a pipeline, its extent depending on the position of the pipeline.

3.7 Overlapping easements are to be preferred to separate easements.

3.9 The impact of multiple pipelines on land use will generally be greater than the impact of a single pipeline.

3.12 A prudent buyer will offer less for a property with pipeline easements.

4.7 Payment of 50 percent of land value as compensation for a single pipeline is simple and is adequate in most cases.

4.10 The use of a formula for multiple easements is for simplicity in assessing the injurious affection over the whole property and determines minimum compensation.

4.15 The 50 percent formula should not be used under any circumstances when pipelines traverse commercial industrial or residential land.

4.17 The national agreement between Federated Farmers and the pipeline owners contains no provision to cover disagreements over land value.

4.21 Urban properties adjacent to a pipeline do not qualify for compensation for injurious affection even though their selling values may be affected.

5.4 Additional compensation at a subsequent date for rezoning or change of land use is not normally claimable and Federated Farmers has been very astute in securing extended compensation rights.

5.5 Care must be taken in assessing additional compensation to make sure that a change of use is not compensated for twice.

6.5 An annual rental for land in an easement is in no way preferable to the present rights of compensation.

7.1 Outright purchase of land for pipeline corridors should be urgently considered.

8.1 There is a need for total co-ordination of the pipelaying operations of the eight separate pipeline owners and a Pipeline Authority is indicated.

RECOMMENDATIONS

(i) That minimum compensation for injurious affection be assessed as follows in respect of the area occupied by the easement:

First Easement -

50% of land value for a single pipe plus *10%* for each additional pipe whether laid simultaneously or later.

Second and Subsequent Easement -

(1) Where any overlap with another easement is less than half the area of the new easement - 50% of the land value.

(2) Where any overlap with another easement equals or exceeds half the area of the new easement - 45% of the land value.

(3) 10% to be added for each additional pipe laid in that easement simultaneously or later.

(ii) The person owning the land at the time of the grant of the easement should be entitled to claim for additional compensation on one occasion during the following 15 years years where there has been a change of zoning to residential, industrial or commercial or a subsequent or desired change of land use which can be shown to have been injuriously affected by the pipeline easement, such compensation to take into account the sum represented by the original compensation inflation adjusted to bring it

up to the same date at which the additional compensation has been assessed.

(iii) That urgent consideration be given to the establishment of pipeline corridors and to the establishment of a Pipeline Authority.

(iv) That pipelines through land with a horticultural potential should be laid at a depth approaching 2m.

(v) That urgent action be taken to replace S.80 of the Petroleum Act 1937, repealed in 1982.

(vi) That the words "District Court Judge" in S.74(7) of the Petroleum Act 1937 be replaced by the words "Land Valuation Tribunal" established under the Land Valuation Proceedings Act 1948.

(vii) That S.77(1) of the Petroleum Act 1937 be amended by adding the words "or suffering any loss or damage" after the words "injuriously affected".

(viii) That guidance notes be prepared and issued to property owners who are asked to grant a pipeline easement.

1 Background to this Investigation

1.1 Part II of the Petroleum Act 1937 is the legislation under which authorisation is given for the construction of petroleum pipelines and Section 77 provides for full compensation for all loss, injury or damage suffered by any person whose property is injuriously affected by such a pipeline.

1.2 The first natural gas pipeline (from Kapuni) was constructed in 1969 and since that time there have been over 1600 kilometres of high pressure natural gas pipelines laid in the North Island. Construction is currently under way in Northland, Waikato, King Country, Bay of Plenty and Hawkes Bay and further extensions are possible.

1.3 These natural gas pipelines traverse considerable tracts of privately owned land and the pipeline owner (in this case the Natural Gas Corporation) secures from the property owner an easement, usually 12m in width, for which compensation is payable for the injurious affection to the property.

1.4 The discovery of the "Maui" field and its subsequent development has led to pipelines being required for purposes other than the conveyance of natural gas and condensate. Pipelines for LPG, methanol, synthetic fuel and McKee oil have been or are to be constructed and result in some property owners having more than one pipeline traversing their properties. One property owner in Taranaki currently has four pipelines traversing his property with at least two more pipelines to be constructed in the near future. Further development within the Taranaki area will undoubtedly lead to further pipelines being required.

1.5 For single pipelines it has been the practice to offer the property owner an easement fee calculated at 50% of the paddock value of the area of land contained in the easement. With the pipe laid to a depth of one metre and with provision for the land to be restored to its original state such an amount to represeent the injurious effection has been described as being "most reasonable".

1.6 Where there is more than one pipeline and a further easement is required which may overlap to some extent the original easement, further compensation is payable. For the LPG pipeline from Oaonui to New Plymouth it was proposed that while *50%* of paddock value would be paid for land to be included in an easement for the first time, this would be reduced to 25% for the portion overlapping an existing easement on which 50% compensation had already been paid. This proposal received a number of objections and led directly to the setting up of this committee to investigate.

1.7 It is estimated that in the region of 5000 property owners have or will shortly have pipelines traversing their land.

1.8 A national agreement for compensation and conditions to be applied to easements, ifrst negotiated between the national body of Federated Farmers and the Natural Gas Corporation in 1968 and subsequently updated, is generally adopted and applied to each pipeline project. The agreement is used as a basis for negotiations with individual landowners and includes the following provisions regarding compensation:

(i) Compensation for the right to construct, operate and maintain an underground pipeline along a 12 metre wide easement with a temporary working width of 30 metres will be offered to the owner at a fee equivalent to 50% of paddock value. It is clearly stated that the acceptance of such a fee does not prejudice the right of any owner to claim a greater sum if he considers such a claim is warranted pursuant to S.77 of the Petroleum Act 1937.

(ii) Compensation for any additional loss, injury or damage suffered by owners or occupiers arising from actual construction work will be dealt with subsequently.

(iii) Additional compensation can be claimed within fifteen years where, the land having been re-zoned, the owner is prevented by the easement from subdividing and selling the land for residential, commercial or industrial purposes in the manner in which it could be subdivided if the easement did not exist.

1.9 Authority to lay pipelines under the Petroleum Act has been given to, or will be required by eight separate pipeline owners.

Owner	Pipeline
(i) Natural Gas Corporation.	Natural gas from Taranaki to various places.
(ii) N.Z. Refining Company.	Refined oil products Marsden Point to Wiri and Wiri to Auckland International Airport.
(iii) Maui Development Ltd.	Natural gas Oaonui to Huntly. Condensate Oaonui to New Plymouth Port.
(iv) Liquigas Ltd.	LPG - Oaonui to New Plymouth Port. LPG-Manukau to Wiri. LPG - Lyttelton to Woolston.
(v) Petralgas Chemicals (N.Z.) Ltd.	Methanol - Waitara to New Plymouth Port.
(vi) Petroleum Corporation of N.Z. Limited.	McKee Crude - McKee to New Plymouth Port.
(vii) Ministry of Energy.	Gas Feeder line - from an offtake near Waitara on the Oaonui to Huntly line to the site of the stand alone Methanol Plant and the synthetic petrol plant. Synthetic Fuel Waitara to New Plymouth Port.
(viii) Shell Petroleum Mining Co. Ltd., BP Oil Exploration Co. of N.Z. Ltd. and Todd Petroleum Mining Co. Ltd.	Condensate line - Kapuni to New Plymouth Port.

2 Procedure Adopted

2.1 The committee met on 6 occasions in Wellington between March and June. We also travelled to Taranaki for a two day ifeld inspection which included visits to farms and discussions with the owners. The properties inspected were representative of the problems encountered by property owners having pipelines traversing their land and we did not think there was anything to be gained by inspecting other areas in the North Island.

2.2 Individual organisations were notified of the committee's terms of reference and advertisements were placed in twenty North Island newspapers calling for submissions. There was a satisfactory response with 41 submissions being received which can be categorised as follows:

Pipeline owners	4
Federated Farmers	3
Boards, Associations and Federations	6
Rural land owners	8
Urban land owners	17
Others	3
	41

A schedule of those making submissions will be found in an appendix to this report.

2.3 The committee then invited those who had asked to be heard to present their submissions in person at a meeting in Wellington. Seven took advantage of this invitation and this led to a fruitful discussion of problems and possible solutions.

3 Impact of Pipeline Easements

3.1 It is apparent from the submissions we have received that pipelines can have a considerable impact on land use particularly on land which has horticultural or subdivisional potential.

3.2 On the area of land covered by an easement, the pipeline owner has control over construction of buildings, fencing, the planting of trees and shrubs, the disturbance of soil below a depth usually of 400 mm (16 inches) and any other works which could damage or endanger the pipeline. The prior consent of the pipeline owner is required to carry out any of these works on the easement area and while consent is not unreasonably withheld, deep rooting trees and shrubs are not permitted directly over the pipeline because of the risk of root damage. It is undesirable that buildings be constructed over pipelines and we were informed that the Natural Gas Corporation has, to date, not approved the erection of any buildings.

Single Easements

3.3 The least interference to land use is found in a pastoral farming situation. Once the initial disturbance is over, the land restored to permanent pasture and fences replaced, the existence of a single pipeline easement usually has little effect on the farming operation. There may be problems with land requiring further drainage and live shelter belts will have breaks where the easement passes through them but generally the impact of a pipeline is minimal.

3.4 With horticultural use the interference to land use can be more marked and the pipeline route, if not carefully selected, may interfere seriously with horticultural development. Live shelter belts present the most serious problem due to the unavailability of shallow rooted tree varieties and the requirement for easement access. The pipeline route can often be placed in existing orchards without permanently upsetting the layout. The problem arises however when land is changing from pastoral to horticultural use in an area where pipelines have already been placed. The specific drainage, shelter and planting needs can be interfered with by the presence of a pipeline which does not follow an existing fenceline or natural topographical features.

3.5 Where a change in zoning permits the subdivision of land for residential, industrial or commercial purposes, the most

suitable plan of subdivision may be nullified by the position of a pipeline easement.

Multiple Easements

3.6 Multiple easements are of two kinds. The ifrst is where the easements are separate although they may be side by side. The second is where easements partially overlap - the typical case is where a 12m easement is overlapped by a subsequent easement to the extent of 8m of its width. Additional easements can then further overlap so that a particular 4m wide strip would be covered by three separate easements. Three overlapping easements would occupy a width of 20m, four would occupy 24m, five would occupy 28m and so on.

3.7 There was unanimous agreement in the submissions that overlapping easements are to be preferred to separate easements because less land is tied up. Four overlapping easements occupy just half the area of land that four separate easements occupy.

3.8 One Taranaki property inspected by the committee already carries 20in. natural gas, 8in. condensate, Bin. methanol and 6in. LPG pipelines with synthetic fuel and McKee oil pipelines expected to be constructed in the next few months. This is an extreme example but there are quite a number of properties carrying or likely to carry at least three pipelines.

3.9 The impact of multiple pipelines on land use must be much greater than the impact of a single pipeline. It was even claimed that each additional pipeline could have a greater impact than did the previous one.

3.10 The effect will obviously vary from case to case. The presence of multiple pipelines will be most noticeable where land in pastoral use becomes suitable for horticultural use. The actual position of pipelines may seriously affect the subdivision of the property into smaller units and also restrict horticultural layout and development. The depth at which pipelines have been laid can also restrict horticultural development and the committee is of the opinion that in potential horticultural land, the pipelines should be laid to a much greater depth than lm. A depth approaching 2m appears to be desirable.

3.11 We were told in Taranaki that prospective buyers of both farm and horticultural properties have ceased to be interested when made aware of the presence of pipelines or the likelihood of additional pipelines. One owner whose land was surveyed for subdivision into horticultural units prior to the methanol line traversing his land stated he is now unable to effect a sale as it is known that further lines are to be constructed.

3.12 There is as yet no sales evidence to confirm the extent to which pipelines depress the value of properties but in all the circumstances it is a reasonable assumption to make that a prudent buyer will offer less for a property with pipeline easements than for one free of such encumbrances.

3.13 Item 6 of the Terms of Reference required us to consider and advise on the effects of knowledge of future pipeline construction in an area on farming operations and land values on those properties to be directly affected. During our Taranaki inspections we visited properties which had recently had the methanol pipeline laid through them and which would almost certainly be on the chosen route for the synthetic fuels and other pipelines. All the landowners we saw were apprehensive about the future. They claimed that the existing line and possibility of further lines had prevented any subdivision being effected for a change of use and scared off possible purchasers. The first pipeline might be accepted as inevitable but any additional pipelines are seen at this point in time as something which is going to have a detrimental effect on farming operations and future land use and consequently on property values.

3.14 Representations were made calling for the reinstatement of S.80 of the Petroleum Act 1937 (repealed in 1982) which formed the basis of Clause 28 of the model easement agreement between the Federated Farmers and Natural Gas Corporation. This section provided a measure of protection for pipeline owners, property owners and contractors in that it defined reasonable controls with some freedom to act. As matters stand, should an action leading to pipeline damage be deemed wilful, a prosecution under common law could lead to a substantial penalty. This additional exposure coupled with more stringent restrictions on land use imposed by the pipeline owner as a precaution will inevitably lead to claims for increased compensation. The committee agrees there is a degree of urgency for the reinstatement of S.80.

4 Compensation

4.1 Part II of the Petroleum Act 1937 deals with pipelines and the principle provision for compensation is contained in S.77 which refers back first of all to S.74(7), then to S.39(2) (3) and (4) which in turn links these compensation provisions to the Public Works Act 1981.

4.2 S.77(1) provides that every person having any right, title, estate or interest in any land or property injuriously affected by the taking of an easement for a pipeline shall be entitled to full compensation for all loss, injury or damage suffered by him. Injurious affection is generally taken to mean the permanent loss in value to the land arising from the acquisition of the easement and the construction of the pipeline. Unlike S.74(7) and S.39(1) it does not specifically refer to compensation for damage. However a right to compensation for

damage could be inferred where it flows from the injurious affection but cases could arise of damage not flowing from injurious affection.

4.3 We consider that S.77(1) should be amended to bring it in line with the other two sections by adding the words "or suffering any loss or damage" after the words "injuriously affected". We further consider that the right of determination in S.74(7) should be by a Land Valuation Tribunal and not by a District Court Judge.

4.4 The pipeline owner compensates the property owner for the disturbance during construction of the pipeline. Payment is made for such items as loss of production, loss of pasture, supplementary feed required, restoration of fencing and for the time spent by the owner in dealing with matters arising from the grant of the easement. The property owner is put in the position where his land and improvements are restored to the condition they were in and he has been recompensed for any loss of income which he has suffered. There was general agreement that property owners have been fairly treated in this respect.

4.5 In addition to these direct costs, there is the injurious affection to the property being the permanent loss in value due to the presence of the pipeline easement. The specified date for determining the quantum of full compensation is, in the case of pipelines, the date the land was first entered upon for the purpose of construction. As at this date there would normally be assessed the value of the property free of the pipeline easement and the value subject to the easement. The difference in value is the amount of compensation payable for injurious affection.

4.6 In terms of the agreement outlined in Paragraph 1.8, in order to save a separate calculation in respect of every property, it has been the practice to offer for a single easement, compensation in the form of an "easement fee" calculated at 50% of the value of the land contained in the easement. This in effect becomes the minimum compensation offered and the property owner if he considers a greater loss has been suffered has the right to establish this by means of a "before and after" valuation.

4.7 Payment of 50% of paddock value as the compensation appropriate to a single pipeline easement has gained general acceptance. It was originally based in line with overseas practice and has provided a simple and straightforward method resulting in an adequate offer of compensation in most cases.

4.8 Where multiple pipeline easements are concerned it was suggested in respect of the LPG pipeline that the 50% should be reduced to 25% for that portion of the easement which overlapped other easements although it is understood that earlier when the condensate pipeline was being constructed the full 50% was paid irrespective of any overlap with the Kapuni-New Plymouth 20in. natural gas pipeline.

4.9 The argument has been put forward that to pay a full 50% in respect of every easement would result in more than 100% of value being paid for that land lying within these overlapping easements. We have examined this contention and regard it as fallacious. The 50% approach provides an administratively simple method of awarding compensation. The compensation is equated to 50% of the value of land as being the injurious affection that would be arrived at by a "before and after" valuation. It does not mean that the property owner has been compensated for half the value of the land within the easement and that all he has left is the remaining 50%. Although calculated on the easement area, it is actually an assessment of the injurious affection of the easement over the whole property.

4.10 What we have to find is an equally simple formula which will result in an adequate sum being paid for second and subsequent easements to reflect their injurious affection to the property.

4.11 Federated Farmers (Taranaki Province) submitted a formula for multiple pipelines with a steadily increasing percentage of paddock value for each easement after the first two and reaching 100% of the paddock value for the 7th easement. In an example placed before the committee the compensation came to over 150% of the value of the land occupied by seven overlapping easements. There is nothing to support the contention that the seventh easement creates twice as much injurious affection as do the first two easements.

4.12 If there are two easements side by side we think that 50% of their paddock value should be paid for each. These would occupy a combined width of 24m. For two easements which have a degree of overlap, to give 50% for the second easement would result in the same compensation as for two separate easements even though the total width would be less than 24m. We are of the opinion however that reducing the overlap portion to 25% results in an inadequate payment of compensation. In the typical case of 8m of overlap in a 12m easement, the compensation would equal 50% on 4m and 25% on 8m or the equivalent of assessing it at 33

3 % of the paddock value over the whole easement

4.13 Where the overlap is less than half the area of the easement we consider that the full 50% of paddock value should be paid for the total area of the easement. Where the overlap equals or exceeds half the easement area we consider that 45% of paddock value should be paid for the total

area of the easement. (This is roughly equivalent to 50% on the new portion and 40% on the overlapping portion). For three overlapping easements compensation would be equivalent to 140% of value on value on the land common to all three.

4.14 We have also examined the situation where two pipes are laid within the one easement. This can come about with the duplication of an existing pipeline or in the simultaneous laying of two pipelines as is currently being done between Auckland and Whangarei. In such cases we consider 10% of paddock value should be paid for each additional pipe whether laid simultaneously or later. Where it is necessary to widen the existing easement compensation should be at 50% of paddock value for the additional area required. Disturbance for later laying of a second pipe will of course be compensated for in the usual way.

4.15 We stress that our recommendations are to determine minimum compensation. They will probably result in satisfactory offers of compensation in at least 90% of cases. Rules of thumb such as these are quite unsuitable for example for very small areas, for farm forestry areas, for land about to be subdivided and for land where a change of use is hindered by the laying of a pipeline. A rule of thumb should not be used under any circumstances where a pipeline traverses commercial, industrial or residential land. Such cases must continue to have the compensation assessed by a registered valuer on a "before and after" method of valuation and the property owner will always have the right to ask that compensation be so calculated where he is not satisfied with the formula based offer.

4.16 We also stress that our recommendations are based on the present practice of taking a 12m wide easement for all new pipelines. Should there be any reduction in the width of new easements, our recommendations would need to be reviewed.

4.17 The national agreement drawn up between Federated Farmers and the pipeline owners is accepted by the pipeline owners as being the conditions they offer to all property owners irrespective of any membership of Federated Farmers. There is a separate agreement for each pipeline and it states who will assess the paddock value for all properties traversed by that pipeline. What happens if a property owner wishes to dispute the assessment of paddock value is not clear. There is certainly no provision in the agreement to cover situations where the landowner's valuer disagrees with the pipeline owner's valuer. Under the legislation, compensation would have to be determined pursuant to the Public Works Act 1981 and presumably would not be on the basis of 50% of paddock value.

4.18 "Paddock value" is a confusing term. It has no definition and we are of the opinion that "land value" as defined in the Valuation of Land Act 1951 should replace it. The land value of the easement area will, having regard to topography and other relevant factors, be the value assessed to that piece of land as part of the land value of the whole property.

4.19 All valuations required in respect of compensation for pipeline easements should be made by valuers registered under the Valuers Act 1948.

4.20 We received 17 submissions from residential property owners in the Hillsborough and Blockhouse Bay areas of Auckland where the Auckland to Whangarei pipelines are being constructed. In no cases are the pipelines being constructed over the properties. The claim was made that the placement of these pipes in the road reserve had depreciated selling values in the area. One owner who had his property on the market claimed that he had to reduce the price considerably and was still unable to find a purchaser. Throughout these submissions there was expressed a fear of the risk of leaks or explosions and there is obviously a misapprehension about the whole matter. One submission was based on the pipeline being for distribution of LPG whereas they are for natural gas and white oil products.

4.21 The committee appreciates that residents living adjacent to the routes of pipelines may be concerned and it would appear that more publicity is required to allay their fears. As far as compensation is concerned, the Petroleum Act provides for this in the case of a person whose land is injuriously affected but whether this extends to properties not actually traversed by a pipeline is open to doubt and is a matter for legal interpretation. In any event it would be impossible to devise a formula to meet this sort of situation.

5 Should a landowner be entitled to claim further compensation at a subsequent date

5.1 The current agreement between Federated Farmers and the pipeline owners provides for additional compensation to be claimed within 15 years where land is rezoned and the easement prevents the most suitable plan of subdivision into residential, industrial or commercial lots.

5.2 Although not yet included in the agreement, the pipeline owners have apparently agreed to extend this to cover change of land use. In its submission Liquigas stated it had "agreed to negotiate with Federated Farmers a further clause to be added to their agreement covering the matter of compensation for easement restrictions on future land use if this were to be changed within a fifteen year period".

5.3 Shell BP and Todd Oil Services Limited also supported additional compensation on

change of use and went even further to suggest additional compensation on the sale of the property where the sale price is lowered by the existence of an easement. In this latter case full compensation would already have been paid when the easement was initially granted and further compensation should not be payable unless there has been a change of use.

5.4 Compensation is usually determined once and for all and Federated Farmers has been very astute in securing extended compensation rights in its agreements with pipeline owners. Because these rights already exist we do not feel we have to examine whether they should have been granted. We accept the position and see our task as being to lay down the parameters.

(i) It should apply only to the person who owned the land at the time of the grant of the easement.

(ii) It should be limited to 15 years from the date of the grant of the easement.

(iii) It should apply (a) where there having been a rezoning the owner is prevented or restricted by the easement from subdividing and selling the land for any residential, commercial or industrial purpose in the manner in which the same could be subdivided and sold if such easement did not exist or (b) where a subsequent or desired change to a higher and better land use can be shown to have been detrimentally affected or prevented by the pipeline easement.

(iv) From the compensation assessed on this basis of the rezoning or change in land use there will be deducted an amount equivalent to the compensation originally paid, inflation or time adjusted to bring it up to the same date at which the new compensation has been assessed.

(v) Additional compensation can be claimed once only.

5.5 We are of the opinion that the present assessment of paddock value should already include the influence of potential future use. For example a paddock value of $10,000 per hectare for land having a potential for horticultural use may be compared with $6,000 per hectare for apparently similar land which has no potential for horticultural use. Care must be taken in assessing additional compensation to make sure that change of use is not compensated for twice.

6 Annual Rental

6.1 A submission by Federated Farmers (Manawatu, Rangitikei, Hawke's Bay, Southern Hawke's Bay and Wairarapa) put forward the intriguing thought that farmers are entitled to a businesslike and continuing compensation because companies make a profit from the gas resource. It was submitted that not only should there be adequate initial compensation but that the farmer should then receive a rental based on the flow of gas and the length of the pipe.

6.2 The national body of Federated Farmers put forward a recommendation that, in lieu of payment for compensation, an annual rental reviewable three yearly should be paid. For this purpose land would be classified into various categories according to existing and potential land use and a rental rate fixed for each. In discussion they were unable to suggest how such a rental would be calculated.

6.3 As far as we are aware there is no overseas precedent for payment of a rental where pipelines are laid below the ground. Rentals are paid in the case of land occupied by power pylons and in such cases the area of land taken out of use is easily ascertainable.

6.4 If a rental were to be paid in lieu of compensation there would have to be a method of assessing it. One possible way could be as a percentage of what the compensation would have been. But the rental would be taxable whereas the compensation is non taxable and we do not think this would be attractive to property owners. Any review of such a rental would pose many problems and the administration of a rental system would be difficult and costly.

6.5 We fail to see that a rental system is in any way preferable to the present rights of compensation which adequately cover the loss and disturbance caused by pipelines.

7 Pipeline Corridors

7.1 It seems inevitable that there will be a multiplicity of pipelines in the Taranaki province and, with the certain prospect that particularly near New Plymouth several pipelines will have to be routed close together, urgent consideration should be given to the establishment of pipeline corridors.

7.2 From Oaonui, Kapuni and the Waitara area, pipelines converge on their way to the port. We have already mentioned the case of the property with four existing pipelines and two more to be built shortly. This will not be the finish as far as this property is concerned as any expansion or further discoveries of oil must all add further pipelines. There is already a case for a corridor leading to the Tank Farm and a further corridor between Waitara and New Plymouth.

7.3 A corridor of sufficient width to take all the pipelines which may eventually be required would be acquired by purchase of the necessary land by a Pipeline Authority which would then lease to the pipeline owners the rights to lay pipes within the corridor. The land could be leased back to adjoining farmers at a suitable

rental subject to them keeping the land free of weeds.

7.4 A corridor would establish clearly defined routes for future pipelines and would:

(a) dispel uncertainty on the part of the landowner as to whether his property will be affected by pipelines and thereby stabilise values.

(b) assist pipeline owners in their planning and costing.

(c) enable local authorities to consolidate district plans and provide for orderly development.

8 A Pipeline Authority

8.1 Although not strictly within our terms of reference it has become more and more obvious that a lot of the problems we were confronted with were due to the fact that there were eight separate pipeline owners all doing their thing. There is an informal co-ordination of sorts as to what goes on through the Natural Gas Corporation and the Ministry of Energy but there appears to be a need for the establishment of a single authority to be responsible for all forward planning and for the co-ordination of operations and administration. Persons affected by pipelines would then know who to approach with any problem.

8.2 The main function of the authority would be the overall planning of pipelines under the Petroleum Act, the ownership of pipeline corridors, co-ordination of the operations of pipeline owners.

9 Sunset Clause

9.1 Federated Farmers drew attention to the need for what they termed a "Sunset clause" to outline what compensation is available consequent upon the destruction of the pipeline at the termination of its use.

9.2 We have no recommendation to make as to how compensation should be assessed in such an eventuality.

10 Guidance Notes:

10.1 It became apparent that it has been no organisation's direct responsibility to explain to the property owner his rights and entitlements when he is asked to agree to the grant of an easement over his property. A booklet for property owners modelled on that available for the case of bulk electric power reticulation should be prepared as soon as possible.

Pipeline Compensation

by K. G. Stevenson, Dip. V.F.M., Val. Prof. Urban, A.N.Z.I.V.

Ken Stevenson graduated from Lincoln College in 1968 with a Diploma in Valuation and Farm Management. Following four years with Dalgety New Zealand Limited in Whangarey he joined the Valuation Department and worked for them for a period of five years in both Whangarei and Auckland. During his time with the Department he completed the Valuation Professional Urban Examinations, and in 1978 joined the practice of A. D. Guy & Associates as a partner. Ken is presently involved in the valuation of both urban and rural land. in the Auckland region.

This article is written after experience on pipeline compensation work mainly in the Auckland and Northland regions. My practice originally became involved in compensation assessments on the Huntly to Auckland gasline which came through the South Auckland area during 1981-82. I have subsequently been involved in the valuation work on the Marsden Point to Wiri Dual Products gas and oil pipelines. I have also had the benefit of reading the report of the Committee established to consider the effects of petroleum pipeline easements on property values which was published in July 1983. The lines with which we have been associated have passed through a wide cross section of properties ranging from economic dairy, sheep and cattle farms, rural residential and forestry blocks, through to industrial and residential land. In my experience the pipelines affect these various classes of property in different ways.

The purpose of this article is to highlight what I see as some of the present and potential difficulties and to attempt to offer some suggestions as to the methods of approach when valuing for pipeline compensation, with particular reference to rural land.

History

The history of pipeline work in New Zealand is clearly laid out in the Committee's report. The first natural gasline ran from Kapuni in 1969, and with the subsequent discovery of further resources in the Taranaki region, over 1600 kilometres of high pressure natural gaslines have been laid in the North Island. The procedure has been for the pipeline owner to secure from the land owner an easement strip (usually 12 metres in width) for which he pays compensation in terms of the requirements of the Petroleum Act. Following over. practice, when the first pipelines were laid, agreement was reached with land owners that an easement fee calculated at 50% of the paddock value of the area contained in the easement would be paid by way of compensation.

In general this method of assessment has been accepted as a reasonable approach to payment of compensation for granting of an easement. In my view, however, in a large number of cases, payment along these lines could be regarded as generous. For example there is no evidence of which I am aware that would suggest that the Kapuni line which has passed through South Auckland since 1969, has had any measureable effect on the value of land.

However it seems logical to assume that pipelines could have some effect on the value of rural properties, particularly on blocks suitable for horticulture. An important point must be that compensation is generally only paid once, and therefore a long term view must be taken of any possibility of effect on values.

In my opinion the effect on the value of commercial, residential and industrial land can be more easily clarified, as the highest and best use of such property is more clearly defined. In the past assessments have been made on the basis of loss of buildable area etc.

In addition to compensation for loss in value to the land, provision has also been made for compensation for disturbance. In the agreement made with land owners the pipeline owners undertake to reinstate the land, pastures, fencing and other improvements, to their original condition. However, depending on various factors this can often take some time and compensation is payable for loss of grazing, profits etc. In my experience the most effective way of assessing this is on a

gross profit per hectare basis, as any attempt to define actual loss is often confused by seasonal lfuctuations to weather and markets.

Legal Requirements

The legal basis for assessment of compensation to be paid is contained in Part 2 of The Petroleum Act 1937 which ties in with the requirements of The Public Works Act. Details of the relevant provisions and their effect are outlined in the Committee's Report Section 4.

Sections 4.5 and 4.6 of the Report clearly confirm that the provisions of the Act require a "before and after" valuation to be completed so as to assess the amount of compensation payable. Section 4.7 confirms that the method of calculation and payment of an easement fee has gained general acceptance as an appropriate method to assess a minimum amount of compensation.

The easement is a permanent registration on title and could have an effect on the saleability and value of the property. However in my view the payment of an easement fee should be clearly understood for what it is. It appears to me that some land owners and valuers have regarded the easement fee to be receivable as of right and in addition to compensation for any loss in value to the land. However, to my knowledge the term "easement fee" is not mentioned in any legal statute and the calculation on this basis is merely an historically acceptable and convenient way of arriving at an initial calculation of the compensation payable. What is actually being assessed and compensated for is the loss in value to the land caused by the public work and consequently the casement fee may be an adequate means of assessing compensation, it may be too little, and in other cases too much.

Although it is clear that the Act requires a "before and after" valuation to be completed, in practice this causes considerable difficulty. In my experience, particularly on typical sheep, cattle and dairy land, there is no evidence to indicate that the presence of a pipeline has any real effect on the value of the property. Therefore when completing a "before and after" valuation it could be very difficult to substantiate any loss in the value at all. These difficulties were highlighted in a case heard before the Land Valuation Court in Auckland in 1981. E. G. & J. Todd v. Minister of Electricity LVP231/80.

This case concerned a claim for compensation in respect of land injuriously affected by the erection of power pylons and power lines. In essence this was a claim for the visual impact of the wires as there were no actual pylons on the subject land. The property contained an attractive dwelling situated on a 4.Oha property located at Ramarama, South Auckland. The dwelling had been sited on the block to take advantage of an attractive setting and views which were disturbed by the construction of thirteen high tension wires.

The Court heard evidence from Registered Valuers who had made an attempt to assess the loss in value on a "before and after" basis. One valuer, however, assessed compensation after comparison with other negotiated settlements on properties that had been affected in a similar way. His contention was that in view of the relatively small figures indicated by other settlements the detriment to the Todd property could not be accurately assessed on a "before and after" basis due to the vagaries of the property market and the fact that valuation is not an exact science.

The Court agreed with this method of approach, but also indicated that such evidence should be treated with caution. The Court highlighted the fact that there was no evidence to suggest how the other settlements used in evidence had been reached, nor whether they were a result of valuations completed by Registered Valuers. The Court pointed out that the settlements could have been "take it or leave it" offers and that the fact that they were accepted by land owners did not necessarily mean that they represented adequate compensation.

Although this case concerned the effect of high tension power wires on property value, I consider the principles established can be applied to pipeline compensation. When using other settlements as evidence emphasis obviously must be laid on those settlements that have been properly negotiated with well informed property owners. This may not necessarily require that registered valuers be involved on both sides, but in my view a minimum requirement would be that the land owner is aware of his rights to compensation and in particular his right to employ professional advice at the expense of the pipeline owner. The Committee's recommendation that guidance notes be prepared and issued to property owners who are asked to grant a pipeline easement, would be helpful in this situation.

In view of the Court's comments it is obvious that valuers should take great care in analysing and using previously negotiated settlements as evidence of compensation. To my mind there can be a difference between value and compensation paid. The valuer assesses the value of a property and if he is doing a job for compensation he is supplying his estimate of the effect on value of the public work. However, the compensating authority may well pay a greater or lesser amount by way of compensation and it could well depend on their negotiating power and abilities. In my opinion this has occurred in South Auckland as it is evident that in some cases land owners have accepted far too little by way of compensation for certain public works. On the other hand, other payments made have included allowances for disturbance, loss of income and solatium type payments that do not relate directly to the loss in value to land.

Although in my opinion the Todd case does confirm the Courts are prepared to accept an alternative method of assessing compensation, it does appear to create some difficulty. In the Auckland region there is now adequate evidence of properly negotiated settlements that can be used as some basis for assessing compensation on other properties. However this is all relatively recent information and the valuer involved in this type of work in an area where this evidence does not exist still has the problem of arriving at some method of assessing a fair level of com-

pensation. I do not consider there is any easy answer to this problem, but factors that should be taken into account include the detriment the pipeline will cause to the highest and best use of the property, the level of compensation the land owner would be prepared to accept and his reasons, the comments of agents in the area who are actively selling land particularly those who have been involved in the locality for some time, and the application of any evidence the valuer can obtain from other localities outside the region. Furthermore there are normally properties within a locality that are currently affected by easements such as rights-of-way, local body water supplies and sewerage works, power pylons, restrictions associated with airports etc. Any information that would indicate the effect on values of these works could be used as evidence.

A second difficulty that could be a result of the principles of the Todd case would be that the land owner who holds out the longest and makes the most noise could get more compensation than those who settled at an earlier date i.e. once the ball is rolling it snowballs and those who settled earlier could be penalised. In my opinion this is not necessarily as large a problem as it may first appear. Public works such as pipelines and powerlines are normally completed over a fairly short period of time, and the date of entry is the effective date of any valuation. It may well be true that those landowners who hold out the longest get slightly more, but in the long term they may not be better off, as those who settle at an earlier date have had the opportunity to make alternative investments that could well be more profitable.

Method of Assessment

It is clear to me that the effect a pipeline will have on any particular property could vary markedly from others in the district depending on a wide variety of situations and circumstances. These would include the use to which the land is presently being put, the potential uses, the route the line takes through the property, contour and other factors. There is no doubt in my mind that each property must be assessed on an individual basis and regard be taken of all relevant factors.

In view of this, rather than provide specific details on individual properties, I offer the following suggestions as an approach that could be applied to most properties.

a. Clearly establish what the highest and best use of the land is. This is a basic principle when approaching the valuation of any property, but in my view cannot be emphasized strongly enough when assessing compensation for pipelines. These lines will be in the ground for some time and therefore any potential the property may have in the foreseeable future must be taken into account. Difficulties we have experienced include hill country currently being used for sheep and cattle farming which may have long-term potential for forestry use, and land close to Auckland City set aside for future urban development but which may well have a higher potential at the present time for horticulture. As the Act refers to the owner being entitled to full compensation, I consider the benefit of any doubt should go to the property owner.

b. Clearly define the restrictions the presence of the pipeline will place on the highest and best use of the land. This can vary according to the depth of pipe, type of pipe and coating, and any special agreements made between the land owner and the pipeline owner. For example, one of the main difficulties in rural land is the growing of shelter and horticultural crops over pipeline areas. However some pipes have a heavy plastic coating and I am informed that in some cases agreements have been reached with the pipeline owners to allow growing of certain long-term crops within the easement area. I consider this factor should be looked at more closely as it could overcome many of the difficulties that rural land owners are presently experiencing with the presence of a pipeline. Recent information would suggest there is some consideration being given to the placing of a plastic shield over the pipes that would allow full use of the land above without special permission being required. One of the main factors to be considered on non-horticultural land is the effect on drainage of the property.

c. Following already established principles calculate an easement fee at the appropriate percentage of the 12 metre wide easement width.

d. Investigate sales in the subject and other localities in an attempt to see if pipelines have any measurable effect on the value of property.

e. Obtain evidence of other negotiated settlements on properties affected in a similar way to the subject.

f. Having regard to all the information consider the effect on the value of the subject property. In my experience on typical rural land the easement fee calculation provides adequate compensation. However on horticultural land this is often not adequate, depending on the route the pipeline takes through a property. Where the line runs close to a property boundary and still permits the erection of shelter, the easement land can often be used as a headland and the easement fee calculation should provide adequate compensation. However, in other cases where the line cuts diagonally across a property, this may have an adverse effect both on the land within the easement and on the surrounding land. This situation would require a "before and after" valuation to be completed. The "before" value will have regard to the land's horticultural potential, but because the pipeline may effectively render the land unsuitable for horticulture so that its subsequent best use will be for, say, dairying, the "after" value will be as for those less valuable potential uses.

Recommendations of the Committee

The Committee established to consider the

effects of petroleum pipeline easements on property values reported in July 1983 and made certain recommendations which are contained in page 4 of their report. Judging by the attitude of many pipeline owners it would appear that the recommendations of this Committee have already been largely adopted. I offer the following comments on their recommendations in the hope that further consideration can be given to some of these points.

1. The Marsden Point to Wiri pipeline contained two pipes within the one 12 metre wide easement, and the easement fee calculations were based on 60% of the land value of that easement. Most owners seemed to regard this as being adequate compensation, especially in typical rural areas. In the Auckland area there are few properties with multiple easements such as exist or will exist in the Taranaki region. I have therefore not had any direct experience but could imagine that where multiple pipelines exist on properties, they could well have a substantial effect on the value and the saleability of those properties. It would seem to me that the only fair way would be for the pipeline owners to purchase the blocks and lease back to the original owners or neighbours, and it could well be desirable to allow for pipeline owners to be required by law to purchase a property once multiple easements are required and should the land owner wish to sell.

2. The second recommendation of the Committee concerned the claim for additional compensation within a fifteen-year period where the pipeline has affected the potential use as a result of change of zoning. They have extended this recommendation to include injurious affection caused by a desired change of land use. I have considerable difficulty in accepting the principles behind this recommendation for two reasons.

   Firstly, if one accepts that a suitable definition of valuation is the "present worth of future benefits" then where there is any possible change of zoning or land use this should be taken into account in making the original assessment. Compensation is assessed on this basis on any other public work, and I fail to see why pipelines should be regarded as a special case. Consider for a moment the position of a land owner who loses part of his property for a public work and say some ten years later, due to a change of zoning or land use, that public work affects the highest and best use of his residual land. To my knowledge he has no further claim for compensation.

   Secondly, I consider that this recommendation has the potential for causing more problems than it will cure. In their conclusions the Committee states that care must be taken in assessing additional compensation to make sure that a change of use is not compensated for twice. Put yourself in the shoes of a valuer ten years hence who is endeavouring to establish what part of the compensation presently being paid is attributable to any potential the property may have had at the original date. Furthermore, what inflation or time adjusted. index should be used when making the necessary adjustments to the compensation already paid?

   As mentioned in the Committee's report the agreement to pay additional compensation within 15 years seems to be the result of astute negotiation by Federated Farmers. As far as I am aware, these provisions are not contained in any current legal statute and they can only be regarded as agreements made between individual land owners and pipeline owners and appear to be based more on political expediency rather than the laws and principles of compensation. Some would argue that in agreeing along these lines the pipeline owners are opting out of their responsibility to the land owners to pay full compensation. Pipelines are expensive and there is always considerable pressure to get the job done. Special agreements may enable the bigger problems to be overcome at a later date and could be seen as taking the easy way out.

   I would further contend that agreements that contain these provisions could well be more in the best interests of the pipeline owners rather than the land owner. Take the case of large blocks of land set aside for future urban development in close proximity to Auckland City. In the mid-1970's there was good demand for property of this type and prices well above the current rural rates were being paid. However with the downturn in economic conditions it has become apparent to the purchasers of this land that development is many more years away than they originally thought, and in recent years the value of this land has actually fallen. Therefore if a pipeline went through part of this property in the mid-1970's the land owner would have been better advised to negotiate full "before and after" compensation at that time and make alternative use of the compensation paid.

   It will be evident from my above comments that I have some difficulty accepting the wisdom of the agreement to pay compensation at a later date. However it could be argued that in view of the principles established by the Todd case, agreements in compensation paid indicate properly negotiated settlements between pipeline owners and land owners. That being the case, and presuming that this will continue, I fail to understand why the 15 year clause is restricted to land rezoned residential, industrial or commercial. For example, the provisions of the new Franklin County District Scheme make subdivision far more readily obtainable, and the presence of a pipeline through this area could affect potential subdivision of a larger rural block. This may be able to be catered for by the provision of a change of land use, but I consider this should be clarified.

3. I agree with the recommendation that pipelines through land with horticultural poten-

tial should be laid at a depth approaching 2 metres. I consider the effect of pipelines on rural land owners could be further reduced were more attention given to minimising the effects on the rural uses of land. This could involve further protection of pipes in horticultural areas to allow the planting of horticultural crops and suitable shelter within the total easement width.

4. I strongly recommend that guidance notes be prepared and issued to property owners who are asked to grant a pipeline easement. These notes should contain detailed information of the restrictions and effects of the pipeline on the owner's property, details of how and when compensation will be paid, and confirmation that the land owner has the right to obtain alternative professional advice at the pipeline owner's expense should he consider that necessary.

IN THE LAND VALUATION COURT
HELD AT AUCKLAND.

IN THE MATTER of the Electricity Act 1968.

AND

IN THE MATTER of a claim to compensation in respect of land injuriously affected by the erection of power pylons and power lines.

BETWEEN

ERIC GORDON TODD of Auckland, Clothier and JANICE TODD his wife.

Claimants.

AND

THE MINISTER OF ELECTRICITY

Respondent.

Date of Hearing: 16th April, 1981.

Date of Decision:

Counsel: Mr Bryers for Applicant.
Mr Haines for Respondent.

DECISION OF LAND VALUATION TRIBUNAL.

This is a claim for compensation under Section 16 of the Electricity Act 1968 which falls for determination under the provisions of Part III of the Public Works Act 1928. Section 16 (1) of the Electricity Act provides:

> "Every person having any right, title, estate or interest in any land or property injuriously affected by the exercise from time to time of any powers conferred by this Act, shall be entitled to full compensation for all loss, injury or damage suffered by him."

The Claimants are the joint owners of a 10 acre rural block situated in Hillview Road, Ramarama on the eastern side of the motorway running south from Auckland.

It was a piece of land which they selected from several available in the area. They purchased in 1967 and in 1969-1970 they had a home built there, subsequently added to in 1976. The home was designed by an architect. It is of distinctive design which has attracted some publicity and the architect won a prize for it. The site for the house was chosen and the design of the house was arranged to take full advantage of a view to the north east towards a stand of native bush. There are extensive windows to take advantage of that view.

Subsequently, the Electricity Department passed a number of high tension power lines across the property to a pylon on adjacent or nearby land. There are no pylons on the Claimants' land but they are clearly visible to either side. Thirteen wires pass over the Claimants' land at a distance of some 140 metres from the house. They are visible at eye level for a person looking from the house site at the bush view earlier referred to. According to Mr Todd they pass directly across the aspect which was the feature taken advantage of in the design and siting of the house.

Mr Todd gave evidence, and it is quite clear from what he said, that for him and his wife the wires are a substantial blot on a specially chosen and much cherished landscape.

The claim was originally for $10,000.00 but this was amended at the hearing to $7,000.00 and Mr A. D. Guy, a Registered Valuer practising in the area, gave evidence in support of that figure.

The Respondent called two valuers. Mr J. W. Carter a registered valuer employed by the Valuation Department, whose assessment of injury to the Claimants' land was in the sum of $800.00. Mr A. G. Hilton a registered valuer in private practice assessed the injury at $2,000.00.

Both parties accepted and relied on the principles laid down in Ministry of Works v. Scott and Anor [1967] N.Z.L.R. 668.

1. No claim can be based on the erection of a pylon which is not on the Claimants' land.
2. Subject to proof of loss or damage a claim could be made in respect of the crossing of the Claimants' land by power lines.
3. That the damage complained of must be damage affecting the land and not damage of a purely personal character.

Having heard the evidence we are satisfied that the only damage suffered by the Claimants for which compensation can be paid under the principles outlined in the Scott case, results from the visual impact of the transmission lines passing across the Claimants' land. The specified date under Part III of the Public Works Act 1928 is May, 1979.

It was frankly acknowledged by the parties that there was considerable difficulty in assessing the quantum of damage. We can say immediately that the range of assessments made by the valuers can be narrowed. Mr Guy, in addition to a claim for injury, assessed by him as representing a five percent loss of value, included in his check method a claim for payment as if an easement had been granted over a strip of land immediately below the path of the wires, assessed at $2,000.00. No easement was granted and in any event it seems to the Tribunal that this aspect is already covered in his assessed loss of value. We are satisfied that this item is not a claim for injury or damage. With the particular item excluded from his check method the claim is reduced to $5,000.00.

Both Mr Guy and Mr Carter proceeded by way of a "before and after" valuation. Mr Carter relied on comparable sales evidence to establish his "before" value for the Claimants' property. He treated the detriment from the wires as minimal and made a nominal deduction of $800.00 from his "before" valuation as representing his assessment of the quantum of damage suffered.

Mr Guy used comparable sales evidence to establish that there was a market trend. Comparable properties

without high tension overhead wires were, he said, commanding higher prices than those affected by overhead lines or pylons.

Mr Guy treated his sales evidence with caution, and he did not rely wholly upon them to establish the quantum of damage, in this case.

In taking the approach he did, Mr Guy adopted what was done in the case Lee v. Minister of Works a decision of the North Canterbury Land Valuation Tribunal dated 22 June, 1979, a decision with which he was familiar.

However, we do not think that that is a sound approach in dealing with this particular class of case.

In his valuation report Mr Hilton said:-

> "It is normal when assessing claims for compensation to value the affected property on a "before and after" basis, however the relatively small figures indicated by the foregoing settlements could not be accurately valued on a "before and after" basis due to the vagaries of the property market and the fact that valuation is not an exact science. In our assessment therefore we have compared the injurious affection to the subject property to the foregoing properties."

We think that he is right in that observation.

Damage in the present case is the spoiling of a particular view by power lines passing across the property. In other cases of this type there are different kinds of injury such as damage caused to land in the erection of a power pylon, or loss of cropping land on the site of a power pylon. In some cases the damage is much more severe in degree than in others.

In the present case the detriment, impairment of a view, in relation to the property as a whole must be of such small proportions, that some other method than comparable sales evidence must be relied on to quantify it in terms of money. We refer to the very desirable home, designed to take maximum advantage of the sun, the rolling country, put down in pasture, divided into paddocks, as some of the features of this valuable property.

Properties regarded as comparable have other features, some perhaps more attractive, some certainly less attractive in the market place, none sufficiently similar to the Claimants' property as to be in any way a measure of the damage to view which has to be considered. Furthermore, sales evidence may well reflect a detriment for which no claim can be made, although there may be significant loss in the value of a property by reason, for example, of a power pylon sited just outside the boundary of the property but in a position which spoils the view or has some other detrimental effect. Relief for such damage is not available under the Electricity Act solely for the reason that the pylon happens to be on other land.

The approach adopted by Mr Hilton is a surer guide to an assessment of this kind of damage. He took into account the sort of damages awarded in particularly cases of this type. Secondly, he considered a number of cases and used settlement figures made available to him. He considered the circumstances of particular cases and the amounts of compensation for which claims were settled in those cases. Then by analogy and compensation with those cases he assessed the quantum of damage in the present case at $2,000.00.

That is an approach which Mr Guy might well have adopted. He went to the Department for the sort of information relied on by Mr Hilton and was refused access to it.

Although we accept that Mr Hilton adopted the most helpful approach the results of settlements on which he relied have to be treated with considerable caution.

There is no evidence as to how any of the settlement figures were arrived at. Were they based on some formula applied by the Department? Did they result from the valuations carried out by a registered valuer? Were they in each case what the Department was prepared to offer? - a take it or leave it situation?

The Respondent of course relies on the fact that in each case there was acceptance. That, however, on its own does not establish that compensation was adequate.

It was suggested at the: hearing by counsel for the Crown, that the Respondent was the party at a disadvantage in settling these claims.. We are not at all satisfied about that. The Respondent brought no evidence to establish that the Claimants whose land was affected in each case were on an equal bargaining position with the Department Officers who knocked at their doors or that the figures offered were subject to negotiation or were based on some proper assessment of the detriment resulting in a particular case.

Having regard to the amount of compensation at issue it is unlikely in many cases that an individual would go to the expense of taking legal advice.

Mr Hilton went to the Claimants' property and he was able to look through the home and see how the view which was an important aspect of the siting of the house and its design. He agreed that the power lines were unsightly, but they did not create a problem of particular severity. We have come to the conclusion that he made a genuine effort to assess a detriment which he regarded as measurable, however difficult measurement might be.

For the reasons we have given we think that the settlement figures which were the basis of comparison have to be treated with considerable care. The Tribunal is satisfied that the Claimants have suffered some damage affecting their land for which compensation is payable to them. The damage results from the . visual impact of the transmission lines earlier referred to, In coming to a conclusion as to the quantum of damage it is relevant to take into account that this particular property was purchased and has been developed to provide a rather special example of rural living. Its predominant character is residential in a rural setting. We refer to the care taken in the siting of the home and its design to take account of the view which has been affected and the development of the property with the planting of trees, the establishment of a pond for wildlife and other features referred to by Mr Todd in his evidence. It is a property of considerable value. It has a Government valuation of $80,000.00 including $50,000.00 on improvements. Mr Carter for the Crown valued it at $90,000.00 including $53,000.00 on improvements. A property with these characteristics and that value in the view of the Tribunal would be more affected in value than a modest or predominantly income earning property where the property was developed as an income earning asset rather than predominantly as a home in a rural setting. As the Court said in Scott's case, the value of a property is usually arrived at by assessing what a hypothetical purchaser in appropriate conditions would pay to acquire it. It is possible purchasers are prejudiced against a property traversed by power wires. The price likely to be secured from. sale is likely to he less and the value of the property is consequently reduced. After considering the whole of the evidence and taking these considerations into account, it is our view that the sum of $2,000.00 is insufficient compensation with respect to this particular property and we fix compensation in the sum of $3,000.00.

The question of costs is reserved with leave to the parties. to apply if necessary for costs to be fixed.

(P. D. Mahony) Chairman.

(J. A. Atkins) Member.

(L. C. Cooper) Member.

Computer in a Valuation Practice

by Graeme Burns F.N.Z.LV., M.P.M.I.

Graeme Burns is a partner in the valuation practice of J. 0. Macpherson and Associates, Dunedin. His firm showed a lead by taking an early interest in computers and their application to valuation work.

The practice of J. O. Macpherson and Associates in Dunedin has now been using a computer for the storage and retrieval of data for the past 18 months and to put it very briefly we are absolutely thrilled with the system and wonder why we didn't do it earlier.

The practice has five registered valuers and two secretarial typists and for over 20 years has serviced urban properties in metropolitan Dunedin, Oamaru, Alexandra, Cromwell, Wanaka, Queenstown, Balclutha, Gore and Invercargill:

The idea of a computer had been on our minds for several years but it wasn't until 1979/80 when the market was fairly active and our resources were being stretched that we could see the real advantage in a computer storage system. Our manual record systems showing sales (both N.Z.I.V. and others), valuations, rentals etc. were not as efficient as could be and time was being lost seeking data from the records and between staff.

Finally in 1980/81 when the Institute was considering to introduce the "microfiche" system of sales containing additional data but unfortunately in alphabetical street order for urban local authorities instead of suburbs we decided to investigate the feasibility of using a computer for the storage and retrieval of data in a format suitable for our practice.

Not knowing where to start we first sought the advice of two valuers using a computer, Mr A. P. Laing a rural valuer and accountant in Dunedin and Mr D. G. C. Milburn an urban valuer in Whangarei, who were able to demonstrate their respective micro or personal computers based on the floppy disk system of storage. We realised that the micro computer for the selective needs was too small for what we initially required to be stored, namely all sales and valuations covering a larger number of properties.

We then sought the assistance of a Computer Bureau and the computer consultants from our own accountants, Peat, Marwick, Mitchell and Co. (formerly Gilfillan, Morris and Co.) laying down the criteria in valuers' terms of so many records rather than megabytes etc.

These two independent opinions steered us to an "on line facility" with a main frame computer which uses a mass or hard disk instead of the lfoppy disk system of storage and retrieval. The "on line facility" simply means we are connected by a telephone cable to a computer in another building, and all we have in our office is a screen with a keyboard and a printer as well as a modem for communication.

The system that we have is unique in that it has been developed in Dunedin for use in a valuation practice or real estate business for conditions pertaining in New Zealand; it is not a modification of some packaged deal from another country.

It is based on a storage and retrieval system readily identifying the comparable properties etc. rather than many calculations at this stage, but mathematical or valuation formulae, reinstatement insurance, accounting records and word processing facilities are all within the capability of the computer.

The system at present caters for:

1. Sales from both the N.Z.I.V. and other sources.
2. Valuations effected by our firm.
3. Rentals covering tenancies within buildings and ground leases.
4. Valuation formula - Ellwood capitalisation calculations.

We have what is termed an enquiry programme based on a property or street search and can

obtain data according to type, value range and other criteria as selected.

In addition we have the facility to produce in a written format the listing of all properties within a locality, a most useful reference when in the field inspecting properties.

Since the N.Z.I.V. Computer Awareness Course of 1982 at Lincoln College where we were able to demonstrate our system using the College computer our records of both sales and valuations have grown to a total of 10,000 representing approximately 25% (after allowing for duplication) of all properties in metropolitan Dunedin; in computer terms the utilised file size is 2.00 megabytes. In practical terms the actual disk space required to run the system is approximately 5.00 megabytes which allows for expansion up to 15,000 sales/valuations. There is ample capacity to increase the file size to allow for further expansion after this level is reached.

All of us within the firm use the computer either by inputing data or extracting the information. Incidentally the inputing of sales data from the "microfiche" is done manually through the keyboard in approximately three to four hours twice a month.

Information from the computer is being produced virtually immediately on the screen and for most queries within a few seconds by the printer when required in written format; even the most complicated and detailed searches in written form are accomplished within a couple of minutes.

The cost of the screen and printer together with communications equipment for further expansion has been approximately $18,000 but for many practices using less hardware the cost could be reduced to $8,000; software or the specialised programme for the complete system of sales, valuations and rentals including enquiries is expected to cost no more than $5,000.

In other words the capital cost of both hardware and software for a quick, efficient and flexible system with a large capacity is around $13,000.

To the capital outlay is added the operating costs, a deductible expense for taxation purposes in any practice, and these will vary depending upon several items including location and the number of terminals required.

We are linked to a Digital Vax 11/780 computer (a large and sophiscated unit similar to those in the Universities) in a private business house in Dunedin with "on line facilities" to many branches throughout New Zealand. We have the capacity to add further screens so that individual members in the practice will be able to access the computer files simultaneously, a "multi user" feature not available in the standard personal computer range of equipment. We have been assured that the computer can handle all of our requirements and still have ample capacity for the refinements or extras of valuation and mathematical formulae, reinstatement insurance and accounting records.

Obviously the choice of a computer whether it be a micro computer using floppy disks or access to a main frame with a mass (hard) disk system of storage will depend upon the requirements of the individual practioner or firm but we found that to accommodate the requirements of a metropolitan practice it was essential to use a main frame computer with its larger capacity, greater flexibility and quicker search and retrieval system.

Another aspect which must not be overlooked is that with an "on line facility" we are not involved with any additional outlay such as replacement of the computer as can be the case with the smaller and more easily to be outdated installations.

We know we have made the right decision and we are prepared to share this experience with others investigating the use of computers in a valuation or real estate practice. And furthermore although the system has been developed primarily for an urban practice it has been designed to be able to be modified to cater for the use of a specialised rural or urban/rural practice.

In conclusion we decided at an early stage to remain as "valuers" and not take on the role of "programmers" or "computer experts", we sought advice from experienced people who were prepared to help us and after many months of planning and testing we now have a simple yet lfexible system capable of being adapted or varied to suit particular requirements.

We would welcome any enquiries.

Discounted Cash Flow Techniques

- A Nuts and Bolts Approach

by D. Lane, B.Com., A.C.A., Chartered Accountant

Denis Lane was formerly a journalist and is now a senior partner in Coopers and Lybrand (formerly Barr Burgess and Stewart) a large international accountancy practice. He holds a Bachelor of Commerce Degree and specialises in financial advising and planning.

When I was asked by your local Branch Chairman to give this paper I immediately thought of the words of a wise American, one Norman Ford. He said:

> "Never try to tell everything you know it may take too short a time."

And then another thought came to me and this is a modification of a phrase put out by F. Scott Fitzgerald better known as the novelist and author of: "The Great Gadsby". He said, with a fraction of poetic license on my part:

> "No grand idea was ever born at a seminar but a lot of foolish ideas have died there."

The technique described as "discounted cash flow" has been around for many years. The use of the technique is taught within the Universities and the Technical Institutes in courses involving Accountancy, Management, Economics, Engineering and Urban and Rural Valuation.

As a technique it has often sheltered under a number of other names. I refer particularly to phrases like "net present value," "amortisation," "annuity functions," and "bond yields".

It has been part of the tools of trade of the valuer and has been incorporated in statutory authorities providing some of the boundaries of your profession for many years. I refer particularly to the Valuation of Land Act 1951 which at section 45 set out methods to be adopted in calculating a leasehold interest in property in any valuation made under that Act. That section reads:-

> "The interest of a lessor is the present value of the net rent under the lease for the unexpired term, plus the present value of the reversion to which he is entitled."

The textbook I consulted to obtain these key facts was itself published in 1959. The chapter in that textbook covered the valuation of leasehold properties. My reading of the section indicates that the net present value technique itself goes back to at least as early as 1903.

It is interesting to note the consistent use from 1903 to 1959 of a discount rate of 5% per annum in preparing these net present value calculations. Because of this unchanging discount rate the author was able to refer with authority to published sets of tables.

The application of the "discounted cash flow technique" in the past involved the use of present value and logarithmic tables and in many cases quite incredible patience. We now live in the world of the programmable calculator and the micro computer and this has meant that the difficulties involved in using the technique in the past have now largely been overcome.

What does remain is confusion around the terminology - and a lack of understanding of the basic definitions associated with the discounted cash flow technique.

There appears to have been some debate within the New Zealand Institute of Valuers on the validity of applying the technique to rural and urban valuation. I am indebted to my commentator for access to a number of recent articles published in your own journal.

I was particularly taken by some material contained in a commentary presented by Mr W. H. Cairns the manager of Property Investments, the AMP Society, Sydney. He quoted from an American paper entitled "The Retreat from Real Estate". That particular author said:-

"The institutionalisation of the real estate market has led to efforts to formalise investment decisions in ways familiar to securities analysts - that don't really work in the property market."

The author cited management's insistence on using tools such as internal rate of return as a basis for their investments and he states:

"It looks scientific and professional but it is neither."

"Internal rate of return analysis requires projections not only of inflation and interest rates but also of resale values and rent structures. It has made some institutions willing to make forecasts of what will happen 10-15 years down the road to justify their current real estate commitments."

"What is important" says this author "is what you are making on the building today, cash on cash. Internal rate of return is like smoking grass."

It would be reasonable to say that that particular author had no commitment to the internal rate of return approach. He wouldn't be any happier if you changed the name to "discounted cash flow analysis".

This paper today does not attempt to suggest that discounted cash flow analysis is of major benefit as a technique for property valuation. But it is of some value in resolving some of the problems which valuers face in advising on investment decisions.

As a chartered accountant in public practice I am involved in the valuation of business enterprises. The techniques we use in the valuation of those enterprises are similar to the techniques used by the property valuer - the capitalisation of a future income stream by a required rate of return. The business valuer does not have the precision of the property lease and finds it more difficult to identify that future income stream.

I have used discounted cash flow techniques for the valuation of business enterprises with a limited life and I have also used those techniques to identify the real rate of return on various forms of financial obligations.

Provided consistent information can be obtained it is useful for the comparison of alternatives and it is also useful sometimes as a second line of attack to check an answer.

However I did not come here to defend the technique but rather to take a Meccano-like approach - to examine and to share with you the nuts and bolts of discounted cash flow analysis.

The technique itself with the advent of the computer is no longer time-consuming to use. I am told that your profession is currently working towards a computerised data-base for market evidence and this should give you access to the calculation capacity to carry out DCF analyses frequently and expeditiously.

As I said before there seems to be some confusion about the terminology. Perhaps this is because the technique itself was shrouded in the trappings of the investment analyst. Like all professionals he then invested the technique itself with his own peculiar set of buzz-words.

The technique is based on the use of the compound interest function:

$$P \times (1.OR)^{n} = P$$

where P is the original investment

P_b is the result of that investment

P_n (principal and interest)

R is the interest rate

and n is the number of time periods

All of us here understand compound interest. If you invest a dollar at 10% for one year, then at the end of that year you will have $1.10 and if you invest that $1.10 it will then become $1.21 at the end of the second year. Your money is breeding on itself and the compound interest function just defined provides a measure of that breeding activity.

The discounted cash flow technique deals with income streams. We can use our investment of $100 to yield $121 after two years as an example. To obtain the investment required to produce $121 invested at 10% per annum on annual rests you divide the results of your investment - the principal and the interest of $121 in total - by the compound interest function for that two year period

$$P = (I.OR)n = P$$

with the same definitions as before.

This calculation returns an answer of $100 and that figure of $100 is the net present value of $121 discounted back for two years at 10% per annum.

In this illustration we have been dealing with a single example but the discounted cash flow technique deals with a series of net annual cash lfows. More terminology. What is a net annual cash flow ?

It is the net sum remaining after all receipts and payments within a year are taken into account.

In our $100 example the net annual cash lfow in year one was $100 paid out and in year two was $121 received back. There was no income in year one because the interest earnings were reinvested.

In 1968 Mobil Oil New Zealand Limited published a bright little book entitled "DCF: Investment Analysis". They have used this book as a promotional tool and have very kindly made copies of it available as a handout for all of you attending this seminar. I therefore feel quite free to quote from their handbook when necessary.

The Mobil Oil New Zealand Limited authors - who are anonymous - confirm the point that investments are made to yield profits. They define six basic questions which need to be asked to help to determine the rate of return relationship between investment and profits:

(1) How Much Will it Cost.

(2) When Will Funds be Spent.

(3) How Soon Will Income Begin and For How Long Will It Last.

(4) What Will be the Pattern of Income During the Economic Life of the Project.

(5) What Will be the Value of the Investment at the End of its Economic Life.

(6) What Are the Taxation Effects.

These questions can be expressed another way as six simple headings:-

- Total Capital Outlay.
- Incidence of Expenditure.
- Total Income Generated.
- Incidence of Income Generation.
- Residual Value of Investment. •

Taxation Effects.

The unknown authors of the Mobil Oil New Zealand Handbook also seem to suffer from the critics. They identify two opposing schools of thought in information gathering:

"One group accepts only perfection and detailed accuracy and will reject any method that is not wholly correct."

"On the other hand there are those who profess that analysis should require the minimum of time to complete or no more than a knowledge of simple arithmetic to understand. They continue to insist on the use of certain rules of thumb with which they are familiar."

I would suggest that all we need here is an open mind and a readiness to accept that each and every technique we come across may have some application in the right place and at the right time.

Back to the definitions.

In discounted cash flow analysis timing plays an important part. Obviously money in hand today is much more valuable than the same amount of money available at some point in time in the future - even ignoring inflationary factors.

The rapidity with which money erodes away in value under attack from high rates of inflation indicates that errors in future projections can often be of little significance.

By definition the discounted cash flow method is simply a method to use compound interest and annuity totals to measure the rate of return of an investment project on the same basis as they are used to measure the rate of return of a mortgage.

As with a mortgage each investment consists of:-

- Capital Sum.
- Annual Income Earned.
- Repayment of Capital.

FIRST EXAMPLE

Table Mortgage.

Normal Form of Calculation.

Quarter	Principal Remaining at Start $	Interest at 4% $	Quarterly Payment Return of Capital $	Total Repaid $	Principal Remaining at End $
0	10000.00	400.00	335.82	735.82	9664.18
1	9664.18	386.57	349.25	735.82	9314.93
2	9314.93	372.60	363.22	735.82	8951.70
3	8951.70	358.07	377.75	735.82	8573.95
4	8573.95	342.96	392.86	735.82	8181.09
5	8181.09	327.24	408.58	735.82	7772.51
6	7772.51	310.90	424.92	735.82	7347.59
7	7347.59	293.90	441.92	735.82	6905.68
8	6905.68	276.23	459.59	735.82	6446.09
9	6446.09	257.84	477.98	735.82	5968.11
10	5968.11	238.72	497.10	735.82	5471.01
11	5471.01	218.84	516.98	735.82	4954.03
12	4954.03	198.16	537.66	735.82	4416.38
13	4416.38	176.66	559.16	735.82	3857.21
14	3857.21	154.29	581.53	735.82	3275.68
15	3275.68	131.03	604.79	735.82	2670.89
16	2670.89	106.84	628.98	735.82	2041.90
17	2041.90	81.68	654.14	735.82	1387.76
18	1387.76	55.51	680.31	735.82	707.45
19	707.45	28.37	707.45	735.82	-0.00
TOTALS		4716.40	10000.00	14716.40	

If all the knowledge you have about a mortgage is the original sum invested, the life of that mortgage, and the instalment repayable obviously you are going to be concerned about the rate of return available from that mortgage.

The rate of return from the mortgage will in effect be the interest rate which has been used to determine the instalments to be repaid - the face rate of the mortgage. In the discounted cash lfow sense the rate of return is that rate of interest at which the sum of the present value of all the cash inflows equals the present value of all the cash outflows.

Let me undo some nuts and draw some bolts by giving you some examples in which the discounted cash flow technique is applied. These examples will cover:-

Table Mortgages.
Motor Vehicle Lease.
Front End Mortgages and
A Property Sub-division.

As a starting point we have put together a table mortgage repayment schedule in the usual form. In example one, the table mortgage is for the sum of $10,000 with interest payable on quarterly rests and with the mortgage being fully repaid over a five year period. To do this the quarterly instalment has to be the sum of $735.82.

The particular table mortgage used in preparing the first example can be put into the format of a discounted cash flow to illustrate the application of the technique.

The first requirement is to design a form of work sheet to use for this exercise.

SECOND EXAMPLE

Internal Rate of Return.

Sample Form of Work Sheet.

Quarter	Actual Cash Flows			Factor	Net Present Values	
	Invested $	Received $	Net Cash $		Invested	Received
0						
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
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24						
25						
26						
27						
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31						
32						
33						
34						
35						

Once you have the work sheet you can then put in the figures for our mortgage example. You do not need to work out the internal rate of return - it is exactly the same as the mortgage interest rate and this is known to be 16% p.a. or 4% per quarter.

The table mortgage in example three is now expressed in terms of annual cash flows. The initial investment of $10,000 is identified as taking place in quarter 0 and is not discounted back in any way.

Once you have prepared your summary of actual cash flows you can then apply the discount rate to obtain the net present value of each annual cash flow. This has been done on the right hand side of the example. The factor is in the form $(1.OR)^{n}$ and the net present value is the annual cash flow divided by this factor.

You know that you have established the internal rate of return correctly when the sum of the net present value of the annual cash flows is equal to zero. In simple form this has taken place in this example when the total of the net present value of the investment and the total of the net present value of the receipts are equal - $10,000 in each case.

THIRD EXAMPLE

Internal Rate of Return.

Table Mortgage Fully Repaid Over Mortgage Term.

Quarter	Invested	Actual Cash Flows Received $	Net Cash $	Factor	Net Present Values Invested $	Received $
0	10000.00		10000.00	1.0000	10000.00	
1		735.82	-735.82	1.0400		707.52
2		735.82	-735.82	1.0816		680.31
3		735.82	-735.82	1.1249		654.14
4		735.82	-735.82	1.1699		628.98
5		735.82	-735.82	1.2167		604.79
6		735.82	-735.82	1.2653		581.53
7		735.82	-735.82	1.3159		559.16
8		735.82	-735.82	1.3686		537.66
9		735.82	-735.82	1.4233		516.98
10		735.82	-735.82	1.4802		497.09
11		735.82	-735.82	1.5395		477.97
12		735.82	-735.82	1.6010		459.59
13		735.82	-735.82	1.6651		441.91
14		735.82	-735.82	1.7317		424.92
15		735.82	-735.82	1.8009		408.57
16		735.82	-735.82	1.8730		392.86
17		735.82	-735.82	1.9479		377.75
18		735.82	-735.82	2.0258		363.22
19		735.82	-735.82	2.1068		349.25
20		735.82	-735.82	2.1911		335.82
	10000.00	14716.40	-4716.40		10000.00	10000.03

FOURTH EXAMPLE

Internal Rate of Return.

Table Mortgage Partly Repaid Over Mortgage Term.

Quarter	Invested	Actual Cash Flows Received $	Net Cash $	Factor	Net Present Values Invested $	Received $
0	10000.00		10000.00	1.0000	10000.00	
1		601.49	-601.49	1.0400		578.36
2		601.49	-601.49	1.0816		556.11
3		601.49	-601.49	1.1249		534.72
4		601.49	-601.49	1.1699		514.16
5		601.49	-601.49	1.2167		494.38
6		601.49	-601.49	1.2653		475.37
7		601.49	-601.49	1.3159		457.08
8		601.49	-601.49	1.3686		439.50
9		601.49	-601.49	1.4233		422.60
10		601.49	-601.49	1.4802		406.35
11		601.49	-601.49	1.5395		390.72
12		601.49	-601.49	1.6010		375.69
13		601.49	-601.49	1.6651		361.24
14		601.49	-601.49	1.7317		347.35
15		601.49	-601.49	1.8009		333.99
16		601.49	-601.49	1.8730		321.14
17		601.49	-601.49	1.9479		308.79
18		601.49	-601.49	2.0258		296.91
19		601.49	-601.49	2.1068		285.49
20		4601.49	-4601.49	2.1911		2100.06
	10000.00	16029.80	-6029.80		10000.00	9999.99

The above example once again shows a table mortgage still for a five year period and at an interest rate of 16% p.a. on quarterly rests but with the sum of $4,000 payable at the end of the mortgage.

The same approach is taken in preparing the analysis with the net present values being obtained by dividing the net annual cash flow by the discount factor.

In the next example we are dealing with a much more complex situation. This is a motor vehicle lease with advance rentals and this means that the rate of interest in terms of the lease agreement is particularly difficult to calculate. In this example the motor vehicle cost the finance company $16,320; the monthly instalment is $351.13; advance rentals equivalent to 24 instalments are paid when the lease begins; and there is a residual value to settle at the end of the lease of $8,360.

FIFTH EXAMPLE

Internal Rate of Return.

Car Lease With Advance Rentals.

Month	Actual Cash Flows			Factor	Net Present Values	
	Invested	Received	Net Cash		Invested	Received
					$	$
0	16320.00	8427.12	7892.88	1.0000	16320.00	8427.12
1		351.13	-351.13	1.0150		345.94
2		351.13	-351.13	1.0302		340.83
3		351.13	-351.13	1.0457		335.79
4		351.13	-351.13	1.0614		330.83
5		351.13	-351.13	1.0773		325.94
6		351.13	-351.13	1.0934		321.12
7		351.13	-351.13	1.1098		316.38
8		351.13	-351.13	1.1265		311.70
9		351.13	-351.13	1.1434		307.10
10		351.13	-351.13	1.1605		302.56
11		351.13	-351.13	1.1779		298.09
12		351.13	-351.13	1.1956		293.68
13			0.00	1.2136		0.00
14			0.00	1.2318		0.00
15			0.00	1.2502		0.00
16			0.00	1.2690		0.00
17			0.00	1.2880		0.00
18			0.00	1.3073		0.00
19			0.00	1.3270		0.00
20			0.00	1.3469		0.00
21			0.00	1.3671		0.00
22			0.00	1.3876		0.00
23			0.00	1.4084		0.00
24			0.00	1.4295		0.00
25			0.00	1.4509		0.00
26			0.00	1.4727		0.00
27			0.00	1.4948		0.00
28			0.00	1.5172		0.00
29			0.00	1.5400		0.00
30			0.00	1.5631		0.00
31			0.00	1.5865		0.00
32			0.00	1.6103		0.00
33			0.00	1.6345		0.00
34			0.00	1.6590		0.00
35		8360.00	-8360.00	1.6839		4964.72
	16320.00	21000.68	-4680.68		16320.00	17221.79

We are endeavouring to establish the internal rate of return (effective interest rate) for this lease agreement. In this example the net present value of the receipts is greater than the net present value of the sum invested and this means that the discount rate used is too low.

SIXTH EXAMPLE

Internal Rate of Return.

Car Lease With Advance Rentals.

Month	Actual Cash Flows Invested	Received	Net Cash	Factor	Net Present Values Invested	Received
	$	$	$		$	$
0	16320.00	8427.12	7892.88	1.0000	16320.00	8427.12
1		351.13	-351.13	1.0250		342.57
2		351.13	-351.13	1.0506		334.21
3		351.13	-351.13	1.0769		326.06
4		351.13	-351.13	1.1038		318.11
5		351.13	-351.13	1.1314		310.35
6		351.13	-351.13	1.1597		302.78
7		351.13	-351.13	1.1887		295.39
8		351.13	-351.13	1.2184		288.19
9		351.13	-351.13	1.2489		281.16
10		351.13	-351.13	1.2801		274.30
11		351.13	-351.13	1.3121		267.61
12		351.13	-351.13	1.3449		261.08
13			0.00	1.3785		0.00
14			0.00	1.4130		0.00
15			0.00	1.4483		0.00
16			0.00	1.4845		0.00
17			0.00	1.5216		0.00
18			0.00	1.5597		0.00
19			0.00	1.5987		0.00
20			0.00	1.6386		0.00
21			0.00	1.6796		0.00
22			0.00	1.7216		0.00
23			0.00	1.7646		0.00
24			0.00	1.8087		0.00
25			0.00	1.8539		0.00
26			0.00	1.9003		0.00
27			0.00	1.9478		0.00
28			0.00	1.9965		0.00
29			0.00	2.0464		0.00
30			0.00	2.0976		0.00
31			0.00	2.1500		0.00
32			0.00	2.2038		0.00
33			0.00	2.2589		0.00
34			0.00	2.3153		0.00
35		8360.00	-8360.00	2.3732		3522.66
	16320.00	21000.68	-4680.68		16320.00	15551.59

In this instance the net present value of the sum spent is greater than the total of the net present values of the receipts and this means that the discount rate (22% per month or 30% per annum) is too high.

SEVENTH EXAMPLE

Internal Rate of Return.

Car Lease With Advance Rentals.

Month	Actual Cash Flows Invested $	Received $	Net Cash	Factor	Net Present Values Invested $	Received $
0	16320.00	8427.12	7892.88	1.0000	16320.00	8427.12
1		351.13	-351.13	1.0200		344.25
2		351.13	-351.13	1.0404		337.50
3		351.13	-351.13	1.0612		330.88
4		351.13	-351.13	1.0824		324.39
5		351.13	-351.13	1.1041		318.03
6		351.13	-351.13	1.1262		311.79
7		351.13	-351.13	1.1487		305.68
8		351.13	-351.13	1.1717		299.69
9		351.13	-351.13	1.1951		293.81
10		351.13	-351.13	1.2190		288.05
11		351.13	-351.13	1.2434		282.40
12		351.13	-351.13	1.2682		276.86
13			0.00	1.2936		0.00
14			0.00	1.3195		0.00
15			0.00	1.3459		0.00
16			0.00	1.3728		0.00
17			0.00	1.4002		0.00
18			0.00	1.4282		0.00
19			0.00	1.4568		0.00
20			0.00	1.4859		0.00
21			0.00	1.5157		0.00
22			0.00	1.5460		0.00
23			0.00	1.5769		0.00
24			0.00	1.6084		0.00
25			0.00	1.6406		0.00
26			0.00	1.6734		0.00
27			0.00	1.7069		0.00
28			0.00	1.7410		0.00
29			0.00	1.7758		0.00
30			0.00	1.8114		0.00
31			0.00	1.8476		0.00
32			0.00	1.8845		0.00
33			0.00	1.9222		0.00
34			0.00	1.9607		0.00
35		8360.00	-8360.00	1.9999		4180.23
	16320.00	21000.68	-4680.68		16320.00	16320.67

Here we now have the optimum solution with the sum of the net present values of the receipts and payments being equalised. The internal rate of return in this lease is therefore 2% per month or 24% per annum. Also in terms of the Credit Contracts Act this is the interest rate which would have to appear on the face of the lease.

EIGHTH EXAMPLE

Internal Rate of Return.

Front-end Fee/Interest Only Mortgages.

Quarter	Actual Cash Flows Received	Paid Back	Net Cash	Net Present Values Factor	Received	Paid Back
	$	$	$		$	s
0	99000.00		99000.00	1.0000	99000.00	
1		3600.00	-3600.00	1.0433		3450.75
2		3600.00	-3600.00	1.0884		3307.70
3		3600.00	-3600.00	1.1354		3170.57
4		3600.00	-3600.00	1.1846		3039.13
5		3600.00	-3600.00	1.2358		2913.13
6		3600.00	-3600.00	1.2892		2792.36
7		3600.00	-3600.00	1.3450		2676.60
8		3600.00	-3600.00	1.4032		2565.64
9		3600.00	-3600.00	1.4638		2459.27
10		3600.00	-3600.00	1.5272		2357.32
11		3600.00	-3600.00	1.5932		2259.59
12		3600.00	-3600.00	1.6621		2165.92
13		3600.00	-3600.00	1.7340		2076.12
14		3600.00	-3600.00	1.8090		1990.05
15		3600.00	-3600.00	1.8872		1907.55
16		3600.00	-3600.00	1.9689		1828.47
17		3600.00	-3600.00	2.0540		1752.67
18		3600.00	-3600.00	2.1428		1680.01
19		3600.00	-3600.00	2.2355		1610.36
20		123600.00	-123600.00	2.3322		52996.92
	99000.00	192000.00	-93000.00		99000.00	99000.15

NINTH EXAMPLE

Subdivision Cash Flows.

No Borrowed Funds Used.

PAYMENTS:	Year 1 $	Year 2 $	Year 3 $	Year 4 $	Total $
Roading and engineering	750000	450000			1200000
Reserve contribution					
Local body rates	35000	35000	30000	20000	120000
Advertising		10000	20000	5000	35000
Selling commission		21504	32256	23654	77414
	785000	516504	82256	48654	1432414
Less SALE OF SECTIONS					
-Sold at $15000		600000	900000	780000	2280000
-Sold at $12000		240000	360000	144000	744000
	0	840000	1260000	924000	3024000
NET CASH SURPLUS					
-Year	-785000	323496	1177744	875346	1591586
-Cumulative	-785000	-461504	716240	1591586	1591586

In the eighth example we have what is described as a front end loaded mortgage where a fee is payable to a mortgage broker to obtain an interest only mortgage. The trap in this exercise is that the mortgagee only receives $99,000 but pays interest on and repays a total sum of $120,000. In effect it has cost a front end fee of $30,000 to the investor and $1,000 to the broker to obtain $99,000.

Once again the internal rate of return or true rate of interest is the discount rate required to equalise the net present value of the cash flows. This rate is 4.33% per quarter or 17.32% per annum.

When the mortgage brokers presented proposals on such facilities they tended to express the true rate of interest on an after tax basis. In my opinion this is not a valid comparison as any mortgagee is concerned with alternative sources of finance and these are likely to be expressed on a pre-tax basis.

The ninth example is presented with all humility and deals with the valuation of a subdivision.

What I have done is put the costs and the realisations in the form of a four year cash flow. What I would like you to do individually is to present your assessment of value for that subdivision using the conventional techniques.

The subdivision consists of 47 acres 28 perches of freehold land and lies within the Auckland metropolitan area. It is expected to produce 114 sections of which 152 will sell for $15,000 and 62 for $12,000.

The subdivision cash flow presented as the ninth example does not include any interest cost and for the purposes of any valuation it should be assumed that the cost of finance at the time of the valuation is *18%* per annum.

Any investor in looking at a high risk investment like a subdivision is concerned at achieving a better than average rate of return. Therefore if the cost of mortgage finance is 18% the investor would require a return on investment to allow for risk of at least *24%* per annum.

The discounted cash flow analysis using an internal rate of return based on these cash flows appears as the tenth example. The figure required in year zero to balance the net present values represents the valuation of the subdivision to provide an investor with a return of 24% per annum on his investment given the assumptions used. This total figure comes down to a value per acre of $12,000.

I have also prepared alternative analyses at different interest rates to permit comparison to be made against the answers obtained by conventional methods.

The technique of discounted cash flow should be part of the tools of trade of the valuer. As I have endeavoured to demonstrate today it can be used to establish the true rate of interest in a number of instances. It provides another light which can be used to look into the darker corners of professional life.

I have been told that there are now a number of cases in the High Court relating to valuation which have discarded the technique. I can only sum up by quoting from another American the U.S. High Court Justice Felix Frankfurter who said:-

"To some lawyers all facts are created equal."

All that you should do as valuers is to recognise that all techniques are created equal and the only way of ensuring their equality is to give them the use they deserve.

TENTH EXAMPLE

Internal Rate of Return.

Subdivision Realised Over Four Years.

Quarter	Actual Cash Flows			Factor	Net Present Values	
	Paid Out	Received	Net Cash		Paid Out	Received
	$	$	$		$	$
0	565285		565285	1.0000	565285	0
1	785000		785000	1.2400	633065	0
2	516504	840000	-323496	1.5376	335916	546306
3	82256	1260000	-1177744	1.9066	43142	660854
4	48654	924000	-875346	2.3642	20579	390828
	1997699	3024000	-1026301		1597987	1597987

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.

The Assistant Commissioner of Crown Lands v. Associated Taverns Ltd.

The High Court of New Zealand (Administrative Division) Christchurch Registry. M 214/82 before Roper J. and Ralph Frizzell, Esq.

Judgement 30th August, 1983.

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 cases was heard. (A charge is normally made for photocopying.)

M 9/83

IN THE HIGH COURT OF NEW ZEALAND
(ADMINISTRATIVE DIVISION)
BLENHEIM REGISTRY

IN THE MATTER of the Estate and Gift Duties Act 1968.

AND

IN THE MATTER of an Objection to a Valuation carried out for Gift Duty purposes.

BETWEEN

THE COMMISSIONER OF INLAND REVENUE
Appellant

AND

THE FLAXBOURNE TRUST
Respondent.

Hearing: 4 August, 1983 (at Wellington).
Counsel: C. J. Maguire for appellant.
P. J. Radich for respondent.
Judgment: 17 August, 1983.

JUDGMENT OF DAVISON, C. J. and
R. J. MACLACHLAN, ADDITIONAL MEMBER

In valuing a fractional interest in a property, it is not correct to value the property as a whole, divide that value by the proportion of the interest and then apply a rule of thumb discount to arrive at the fractional interest value. The correct approach is to value the fractional interest after taking into account the various factors relevant to the case. No valuers could present comparable sales evidence. Fractional interest sales were presented. A reduction equivalent to 8.57% was given.

BACKGROUND

The appeal involves the valuation of the residue of the "Flaxbourne" Station, the first sheep run established in New Zealand by the Weld family in the earliest days of European colonization,

"Flaxbourne" presently has an area of some 1026 hectares, is located near Lake Grassmere and is managed as a mixed beef and sheep enterprise.

In 1965 the property was vested as a trust but in 1980, following a family arrangement, a sale by the Trustees of an undivided half share to one of the beneficiaries of the Trust and her husband - Major and Mrs Petre was arranged, for the sum of $325,000. (The circumstances relating to this sale will be referred to later in this judgment).

A special valuation of the undivided half share was carried out on behalf of the Commissioner of Inland Revenue for stamp duty purposes as at 7 June, 1982 pursuant to s.42 of the Stamp and Cheque Duties Act 1971. The valuation fixed a figure of $425,000. The Trustees objected to that valuation as the effect of it was that gift duty would be payable on the difference between the figure of $425,000 and the agreed price of $325,000.

The objection was heard at Blenheim by the Land Valuation Tribunal on 18 March, 1983. One member of the three man Tribunal who was a registered valuer disqualified himself as one of his partners was giving evidence for the objector. The Tribunal proceeded to a hearing with the remaining members - being the Chairman Judge Headifen and Mr Fairhall, J.P. The Tribunal allowed the objection and fixed the value of the undivided half interest at $350,000.

The Commissioner has appealed to the Administrative Division of this Court against that finding.

At the outset of the appeal hearing, counsel for the Commissioner raised the question of the jurisdiction of the Tribunal to have heard the objection which fell to be determined under the provisions of the Valuation of Land Act 1951. Section 20 (6) of that Act provides:

> "The presence of at least the Chairman and a registered valuer who is a member of the Tribunal shall be necessary to constitute a sitting of the Tribunal."

By reason of the only member of the Tribunal who was a registered valuer disqualifying himself there was no registered valuer sitting on the Tribunal and quite clearly the Tribunal was invalidly constituted.

After discussion with counsel for both parties it was agreed that as appeals to this division are by way of rehearing, the appeal should proceed on the basis that we would hear the objection de novo on the record of the evidence taken before the Tribunal with the parties being given leave to call such further or other evidence viva voce, as they considered necessary. Pursuant to this arrangement counsel called the additional evidence of Mr McDonald, Chief Valuer employed by the New Zealand Valuation Department, Wellington.

THE ISSUES

It was accepted at the outset of the hearing before us that the capital value of the whole of the 1026 hectare property was as fixed by the valuation carried out on behalf of the Commissioner by the Crown valuer Mr Hayward at $875,000. Argument, however, centred around the value to be given to an undivided half share of that property.

Mr Hayward after taking into account the disadvantages of acquisition of an undivided half share reduced the figure of $437,500 (being half the capital value) by $12,500 or 2.8 per cent (approximately) to give a value for the fractional interest of $425,000.

Messrs Lyall and Ibbotson the valuers who gave evidence for the Trust arrived at valuations of the fractional interest which were equivalent to a 20 per cent discount on the capital value for the half share

*ly.*and reached figures of $350,000 and $348,000 respective-

THE LAW

The valuation in this case 'falls to be made in accordance with s. 2 of the Valuation of Land Act 1951. It

provides:

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

The two New Zealand cases commonly referred to dealing with the application of that provision in relation to fractional interests are: In re Jackson 1961 NZLR 50 and Public Trustee for New South Wales v. Commissioner of Inland Revenue 1966 NZLR 257.

In Jackson's case Archer J. held that in valuing a share in freehold land the Valuer General should have regard to the definition of capital value contained in s 2 of the Act and should value the undivided share as such and independently of the value of the land as a whole.

In Public Trustees NSW v. Commissioner of Inland Revenue, which concerned the valuation of an undivided share in a hotel business, McGregor J held that it was proper to make some discount in the value of an undivided share arrived at by the capitalization of profits method in recognition of the difficulty likely to be experienced in finding a willing buyer for such an undivided interest.

We were also referred to two Australian Text Books Principles and Practice of Valuation 1973 edited by J. F, N. Murray and Land Valuation and Compensation in Australia 1973 edited by Rost & Collins. Both texts are to similar effect and for brevity we quote only from Murray at p 116:

> `It is often claimed that a fractional interest has a lesser value than its proportionate share of the value of the fee simple; and that a fixed percentage deduction should be made for difficulties associated with management, and because of the differences that may arise between co-owners. There is no general rule which is applicable to the valuation of fractional interests and any appraisal must be based upon the facts existing in any particular case. It even cannot be accepted as axiomatic that some discount should be made from the proportionate value of the fee simple, in determining the value of a fractional interest.
>
> The value of any share in the fee simple is the price that would be paid for it in friendly negotiation between a willing but not eager buyer and a willing but not anxious seller, with both parties fully aware of the nature of the interest, and of all its potentialities, and possessing a knowledge of the legal rights of its possessor as to partition.

The valuation of any fractional interest will call for inquiry along the following lines.

(a) The number of parts into which the fee simple is divided and the manner in which those parts are held.

(b) The nature of the property and its value. The class of property may have an important bearing upon the value of the interest. A share in a subdivisional property, held for sale, would require different treatment from an interest in an old residence or from a part ownership in an investment property.

(c) The size of the interest and whether it is greater or less than a moiety.

(d) The income, if any, from the property.

(e) Whether partition would, or would not, be in the interests of all parties.

(f) Is physical partition -possible, or would a partition call for a sale of the property and a division of the net proceeds?

(g) Is there any special demand for fractional parts? In some cases a tenant may wish to secure his position by becoming a part owner.

(h) What is the legal position regarding partition? In some cases the relevant statutes distinguish between interests greater or less than a moiety.

(i) What costs would be involved in partition?

Reference was also made to a number of cases: Baldwin and Robinson v. CIR (1978) 2 TRNZ 587: In re Melrose 1928 SASR 11: Cost v. CIR 1939 The Valuer 335: Union Trustee Company of Australia Ltd. v. Commissioner of Taxation 1962 The Valuer 202. None of these cases, however, is very helpful to the matters presently under consideration.

We are satisfied that it is not a correct approach to the valuation of fractional interests to value the property as a whole, divide that value by the proportion of the interest and then apply a rule of thumb discount to arrive to the value of that fractional interest. To do so is to ignore the requirement of s 2 of the Act and the decision in Jackson's case. In so far as the two New Zealand cases earlier referred to do discuss discount they should be understood as referring to such only as the assessment of the extent to which the share of the capital value of the whole should be varied after taking into account all relevant factors - generally as referred to in the text of Murray - ante - which have a bearing on the price which in a willing buyer/willing seller situation would be paid for the fractional interest.

After having taken such factors into account to arrive at a valuation there is nothing wrong in saying that in the result the share of capital value should be reduced by a certain percentage so long as the percentage is the result of the sum total of the factors properly to be taken into account. It is preferable, however, for the valuer to say that after taking into account the various factors relevant to the case - namely (a) (b) (c) (d) etc the value of the fractional interest is $X. Expressed in such a way a valuation leaves no doubt that the undivided share has been valued independently of the value of the land as a whole and does not raise any possible inference that the valuer has simply applied some rule of thumb.

THE SALE

The Flaxboume Trust was set up in 1965 by Constance Mary Scrope the then owner of Flaxbourne Station. At that time Mrs Scrope had lived in England for many years and the trust provided in general terms for the income from the property to pass equally to her two daughters Christina (now Mrs Jackaman) and Cecily (now Mrs Petre) and upon their deaths one half of the property would pass to Mrs Jackaman's children and the other half to Mrs Petre's children. There was provision allowing the trustees to vest capital in either daughter prior to their deaths as a discretionary matter.

In the mid 1970's Mrs Petre and her husband Major Petre decided to come to New Zealand to manage the property. Mrs Jackaman continued to live with her husband and children in England. In 1980 negotiations commenced to rearrange the trust with the trustees vesting in Mrs Jackaman a half share of Flaxbourne Station which she in turn sold to Major and Mrs Petre. The remaining half share remained in the trust with the income passing to Mrs Petre and upon her death the property passing to her children.

This then was the background to the sale of the half share from Mrs Jackaman to Major and Mrs Petre for $325,000 on 7 June, 1982. While the transaction was one which took place within a family it was submitted that the Petres determined their price on the basis of their assessment of the value of the half share and that the transaction was an "arms length" one. It was agreed that Mrs Jackaman had no capacity to sell other than to the Petres and that the trustees would not have assisted in the sale of a half share out of family ownership. While Mrs Jackaman wanted as much as she could get for her half share, this amounted only to the sum which the Petres were prepared to pay. We cannot therefore accept that the price agreed to is in any way a reliable guide to the value of the undivided half interest.

THE VALUATION

We turn now to a consideration of the relevant factors which would be taken into account by a hypothetical buyer considering the purchase of an undivided half interest in Flaxbourne Station.

1. He would note that Major and Mrs Petre were in occupation of the homestead and actively engaged in farming the property. He would have to weigh up his own chances of participating in the whole farming operation and to consider the restrictions of shared ownership.

2. He would examine the ability of the property to provide an income for two separate owners.

3. He would examine the ability of the property for subdivision into two units and would note that although not straight-forward because of the situation of the classes of land involved this was never the less possible even though one unit would carry a surplus of buildings.

4. He would investigate to see what security could be offered and the availability of mortgage finance for the purchase.

5. He would consider as an alternative the sort of sole ownership farm property he could acquire for a similar price and weigh up the relative merits of the two propositions.

These are the principal factors which we consider a prospective purchaser would have to weigh up. At the same time the other half interest would have a similar value and the possibility at some later date of one of the part owners buying out the other cannot be put completely out of mind. It is a consideration which may well weigh with a prospective purchaser.

Mr Hayward was of the opinion that Flaxbourne is one of Marlborough's most historic properties and that were the sale of a half interest widely advertised it would attract an "enormous market interest". Mr Lyall on the other hand considered that a half interest would have been unsaleable although he conceded that the property was large enough to subdivide into two bare one man economic farms, Mr Ibbotson saw the effecting of a subdivision of the property as time consuming and therefore costly. He considered that with two owners to be provided for the total debt the property could service at 17.5 per cent interest was $200,000. However this debt servicing capacity would no doubt have been somewhat similar for a single owner employing a labour unit and would therefore already have been taken into account in arriving at the capital value of $875,000.

No valuer was able to produce any comparable sales evidence to support his valuation. Mr Hayward did produce a schedule of sales but they were family rearrangements and not sales on the open market. Mr McDonald produced a summary of all sales of fractional interests collected throughout New Zealand in the period immediately following Jackson's case in 1961. This mainly involved sales between family members although there were a few rural sales recorded as being between unrelated owners. In October 1982 the Valuation Department again endeavoured to collect reliable sales information concerning fractional interests only to find once again that the majority of sales involved family members and that arms length transactions were extremely limited.

Mr McDonald gave as his opinion from an analysis of the rural land market that no measurable discounting for fractional interests is taking place at the present time. He outlined the department's approach to the valuation of fractional interests and indicated that a discounting factor of up to five per cent deduction was made for a half interest and that for quarter interests or less the deduction could reach as much as 20 per cent.

The situation which we face in this matter is quite unreal. Mr Lyall knew of no sales and said it was a "very rare thing to have a fractional interest arrive on the open market". Mr Ibbotson likewise knew of no sales and both valuers admitted they had never previously allowed a 20 per cent discount for any fractional interest. Further it is quite obvious that a half share of this particular property would never be available for purchase by an outsider yet it is necessary for us to determine what such a hypothetical person would offer.

We have examined the valuations produced and considered the typed notes of evidence given at the Tribunal hearing. We have also taken into account the background information relating to valuation of fractional interests given in evidence by Mr McDonald. We feel that the $87,500 reduction given by the Tribunal which upheld the valuations of Mr Lyall and Mr Ibbotson is too great and that insufficient weight was given to the evidence of Mr Hayward.

We consider the value of the undivided half interest in Flaxbourne Station to be $400,000 which expressed as a percentage is equivalent to a reduction of 8.57 per cent upon the figure of $437,500.

The appeal is therefore allowed by substituting $400,000 for the figure of $350,000 determined by the Tribunal.

The appellant is allowed costs which are fixed at $500 and disbursements as fixed by the Registrar.

IN THE LAND VALUATION TRIBUNAL

HELD AT NAPIER.

IN THE MATTER OF a claim for compensation under the Public Works Act 1981.

BETWEEN HAWKE'S BAY HARBOUR BOARD

Claimant.

AND NAPIER CITY COUNCIL

Respondent.

Dates of Hearing: 20 May 1982, 31 August 1982, 1 September 1982.

Date of Decision: 1 November 1982.

This is a claim for compensation for land taken under the provision of the Public Works Act. It is common ground that the basis for assessing compensation was the Public Works Act 1928 with this Act having been replaced by the Public Works Act 1981. For practical purposes the latter Act makes no change to the basis for assessment of compensation in these proceedings.

The land in question is now vested in the Mayor, Councillors and Citizens of the City of Napier, (hereinafter called "the City Council"). It was formerly owned by the Hawke's Bay Harbour Board (hereinafter referred to as "the Harbour Board"). Agreement was reached between the two parties for the taking of the land by the, City Council. The parties, however, have failed to reach agreement as to the quantum of compensation payable in respect of the land.

The land acquired by the City Council (which land is hereinafter referred to as "the subject land") totals 52.8828 hectares of land. It is situated between the suburb of Tamatea and Park Island. The land falls into three parcels:

(a) Block A - a narrow elongated parcel of 13.6685 hectares extending around the western side of Westminister Avenue. It includes 2.3246 hectares of drainage reserve. The whole of the block is within the Napier City boundary. The date of entry was May 1978 with the land being zoned Rural 1 on the City of Napier District Scheme.

(b) Block B - this is the largest parcel of land at 33.2604 hectares. It is fairly regular in shape but with a long narrow arm extending off to the north and west to skirt the higher ground of Park Island. The date of entry was May 1978. At that date the land was farmed by the Hawke's Bay Harbour Board. Some of the land has now been improved for recreational use. The land is bounded on its western side by Park Island Road and to the east by the remaining parts of the Hawke's Bay Harbour Board farm. The whole of this block lies in the Hawke's Bay County and was zoned Rural B. on the District Scheme of the Hawke's Bay County Council.

(c) Block C - this piece of land is 5.9539 hectares. It lies on the western side of Park Island Road which separates it from A. and B. It has an extended frontage which continues almost as far as the junction of Park Island Road with Lawn Cemetery Road. The land is of irregular shape. The Taipo Stream flows through it. The date of entry in respect of this land was July 1979. It lies within the Hawke's Bay County and was zoned Rural B. on the District Scheme of the County.

AMOUNTS CLAIMED BY HARBOUR BOARD

1.Block A-	13.6685 hectares	$601,200
2. Block B	33.2604 hectares	$572,960
3.Block C-	5.9539 hectares	$104,600
		$1,278,760

In addition interest is claimed from the date of entry in respect of each block.

Mr Simkin has based his valuation on a notional subdivision for an area of 13.7863 ha together with a rural land value for the remaining land on the eastern side of Park Island Road and for the area of land on the western side of Park Island Road. These values have been supported by comparable sales. The other Valuer for the Board, Mr Snow, has based his valuation on a notional subdivision basis for all of the land.

The City Council contends that it is quite unrealistic, bearing in mind the zoning and situation of the subject land, to value it on an urban or subdivision potential basis. It points to the figure of $360,000 as an appropriate, even generous, figure based on Block A. having a residential potential, Block B. as rural with a potential, and Block C. on a similar basis.

HISTORY OF DEVELOPMENT OF NAPIER LAND -

The 1931 Napier Earthquake raised certain land of the Harbour Board to a height of some eight feet or so. The land ceased to become subject to inundation by seawater. The Napier Harbour Board and Napier Borough Enabling Act of 1945 empowered the Harbour Board and the then Napier Borough to enter into agreements for the development of certain areas of those lands. Various agreements between the Board and the Borough (more recently the City) were made under the authority of the Act. Accordingly considerable areas of land were developed by the Napier City for urban subdivisional purposes. Indeed the majority of new residential and industrial sections since that time have been supplied in this fashion. The local bodies concerned appear to have worked together in commendable harmony ensuring a steady supply of sections for building purposes.

The practice adopted by the Harbour Board and City Council has been for the City Council to develop the land and carry out all the work normally done by a subdivider (including roading, drainage and the like). The City Council is recompensed for its expenditure and for the work which it carries out as well as for its part in the development by being allowed to take over a sufficient number of sections from the subdivision to cover its actual expenses and administration costs in connection with the development. The remaining sections from each development are retained by the Harbour Board which leases them on the Glasgow Lease principle in accordance with the Public Bodies Leases Act 1969.

Pirimai and Tamatea are two areas recently developed in this way. Tamatea was developed in three stages under three agreements made in 1968, 1973 and 1974.

A boundary change in 1967 made possible, and contributed to, the development of Tamatea. The boundary extension was made to the area of the city west of Taradale Road affecting part of the subject land. This is the reason why part of the subject lands are in the city and at the moment zoned Rural 1, while the remainder are still in the County and zoned Rural B. In 1966 the Enabling Act was amended so as to include in the enabling legislation areas of Tamatea and a part of the subject land.

The co-operative development involved the City Council and the Harbour Board conferring, bargaining and negotiating both over the area to be developed and the basis of development. From the early 1950's a further complicating factor was the necessity to take into account the attitude of the Hawke's Bay County Council (hereinafter referred to as "the County Council") to planning proposals. It became difficult to develop rural land for use other than rural unless the County Council agreed to the proposal or proposals. The County Council was concerned at all times to prevent encroachment on to agricultural land of urban development. This has resulted in negotiations and agreement between the local authorities and although there have been from time to time comparatively major disagreements the history to date shows that agreement has always been reached in the end.

As stated, Tamatea was developed in three stages and no part of the subject land was included within the agreement dealing with that development. There is no provision within the Tamatea agreement for extension into the subject land.

The pattern of growth for Napier City anticipated by planners in the early 1970's allowed for the development of Tamatea to continue through to the middle part of the decade with the expectation that, as this area was built upon, development work would start at Greenmeadows East where a further 500 odd residential sections were to be subdivided by the City Council. Long term planning in the early and middle 1970's was that growth on the plains should be confined to:

(a) The development of Greenmeadows East and

(b) The infill of the much older semi-urban land in Greenmeadows West and other existing areas within the city boundary.

It was planned that further growth would occur outside the existing city boundaries in the hillier area of Whararangi which is to the north and west of Park Island. As a result Park Island and its surroundings would be left as part of a green belt. In the event the Whararangi proposal was dropped. The Local Government Commission was opposed to the proposal. However, the Commission certainly did not favour any extension towards the subject land. Of its own motion it made available to the Napier City Council for further development certain land in the area of Greenmeadows East.

ACQUISITION BY CITY COUNCIL OF SUBJECT LAND -

As early as 1976 it became obvious that the City Council required extra land for playing fields in the Napier area. A letter to the Harbour Board dated 27 July 1976 resulted.

In 1977 meetings took place between the parties and correspondence flowed between them relating to the subject land. In a letter dated 26 July 1977 to the City Council the Harbour Board made reference to its resolution to make the area available to the City Council for recreational use at a valuation on the basis of the land being zoned for residential purposes. A letter in reply from the City Council on the 2nd August 1977 included the following comment:

> "I note that the Board has indicated that it will be expecting to be paid for the land on the basis of it being zoned for residential purposes. Council would prefer to leave open the question of basis of valuation at this stage."

Unfortunately no basis of agreement was subsequently agreed on, defined or finalised.

Subsequently the City Council amended its district planning scheme (by Change Number 27.2 operative from 16 July 1979) so as to designate the subject land "Proposed Recreation Reserve". The City Council gave public notification of its District Scheme Review in accordance with the resolution of 30 November 1981. In that Review it describes the Park Island development as a "major recreational development" which will provide "for a wide range of mainly outdoor sports activities on a 60 hectare site adjoining Tamatea."

The Code of Ordinances provides for "sports park" zones which are to include Park Island. The proposed predominant uses refer to a wide range of indoor and outdoor recreational activities. Some of the land now within the city boundary is also shown and set aside for hospital purposes.

The County Council also published a proposed review consequent upon a resolution of 12 October 1981. This review classified that part of the subject land which at present remains within the County as reserve for recreation purposes.

However, the City Council, having entered the lands in 1978, has well under way the sports ground development at Park Island which development is proving a great asset to the community.

THE CASE FOR THE HARBOUR BOARD

Mr Joyce, for the Harbour Board, called as witnesses the following:

(a) Newell De'Val Lawrence (General Manager of the Harbour Board).

(b) Robert Walker Hamilton (Registered Surveyor).

(c) Dale Simkin (Registered Valuer).

(d) Derek Edwin Snow (Registered Valuer).

(e) Eileen von Dadelszen (Town Planning Consultant).

(f) William James Smith (Senior Engineering Officer with the New Zealand Electricity Department at Napier).

Mr Joyce pointed out that part of the subject lands had in fact been taken by the Hospital Board for hospital purposes. However it is agreed that those lands should be treated as part and parcel of the lands for which the Harbour Board is to be compensated for by the City Council. The latter has its own arrangements with the Hospital Board for indemnity or contribution. The lands not taken for the benefit of the Hospital Board are taken for the benefit of the City Council, primarily for recreation purposes but with provision also for roading and drainage.

As indicated earlier herein, the Harbour Board's case is that the subject lands should be valued for compensation purposes on the basis of potentiality for subdivision for residential purposes and further that the worth of the land with that potential must be assessed not on the basis of notional calculations which determine what a hypothetical willing purchaser would pay for the land to develop it (which involves an allowance for profit and risk) but a basis bereft of such an allowance. This is on the basis of the pattern of dealings in the past whereby the City Council has developed Harbour Board land carrying out all the work normally done by a subdivider.

The Harbour Board Says:

(a) That the very uses to which the City Council (and Hospital Board) desire to put (and in the case of the City Council have already commenced to put) the land make it clear that it is now on the way to becoming part of the urban area as an integral part of the adjacent urban subdivisions.

(b) That the development of Tamatea, Greenmeadows and adjacent subdivisions made insufficient allowance for recreational areas and other ancillary facilities within the residential sector.

(c) That these facilities and amenities are just as fundamental to modern residential development as are the housing sites themselves.

Thus the land taken in order to service the city urban requirements with sports and recreational facilities (or for any of the other mentioned purposes) necessarily constitutes an integral part of the subdivisional urban development.

Accordingly, the Harbour Board says, it can be truly said that "full compensation" in terms of Section 16 of the Public Works Act 1981 must be compensated assessed on the basis of subdivisional potential.

Mr Joyce emphasised that:

(a) The land, although not now to be used for housing and such, has already commenced to be used for the provision of facilities that are an integral part of modern housing estates;

and

(b) The land is eminently suitable for the provision of those facilities, just as it would have been for housing.

In the course of his evidence, Mr Lawrence, the General Manager of the Harbour Board, confirmed the Board's opinion that the subject lands are now being called upon to provide facilities which are an integral part of residential development. These comprise facilities which, if provided earlier elsewhere than at Park Island, would have required Park Island itself to be developed for residential purposes. As the Harbour Board sees it, if, as suburbs were developed, there had been commensurate development of sports facilities, the Board would have been compensated for those lands as lands of residential or subdivisional potential. Accordingly, it should not be deprived of compensation assessed on that basis simply because the City Council has chosen to leave the provision of major recreational facilities until the last.

In cross-examination however, the following points emerged:

That on each occasion development had occurred between the City and the Harbour Board, that a separate agreement had been entered into and that there was no such agreement in the case of the subject land.

That the Hawke's Bay County Council was endeavouring to prevent the encroachment of urban development and that it was unlikely to agree with the proposal that the land be developed for subdivision.

That in the up-dated plans prepared for Tamatea, provision had not been made to provide roading for a subdivision of the Park Island block.

That the Harbour Board were involved in the question of Reserves and certainly had some say in the putting aside of Reserves in Tamatea Stage 1.

With regard to the Meeanee land, Mr Lawrence agreed that the only way in which the County Council would allow the subject land to be used for recreation purposes was to relinquish the Meeanee land of some 90 acres.

(f) When the City Council amended its District Planning Scheme (by change 27.2 Operative from 16/7/79) so as to designate the subject land "Proposed Recreation Reserve" the Harbour Board lodged no objection to the change.

Accordingly, the Tribunal is forced to the conclusion that at no stage could the Harbour Board have reasonably expected that the land would be used for urban subdivision purposes and that the utilization was to be for recreational use and for playing fields.

Mr Hamilton's Evidence:

With regard to Mr Hamilton's evidence, it appears that he was instructed by the Harbour Board to prepare a Scheme of hypothetical subdivision. This Plan was subsequently used by the Claimant's Valuers in assessing the amount of compensation - in fact this was highlighted in his cross-examination.

Mr Hamilton pointed out that he had not taken into account existing boundaries and that he had carried out his subdivision of the overall area, notwithstanding the fact that some of it was situated in the County Council area.

(a) Mr Hamilton advised that he knew of the County Council's attitude towards further development and that the prospects of a developer developing the subject land would be unlikely.

(b) Mr Hamilton did not take into account the upgrading of roads or other services (water supply and sewerage) to service the area.

(c) Further cross-examinations highlighted a lack of request for information with regard to added costs involved with subdividing the particular area together with the problems associated with the

power line and drainage.

Mr Simlcin's Evidence:

Mr Simkin pointed out that in consideration of the cost of subdivision and development of the land the Napier Harbour Board and Napier Borough Enabling Act 1949 provided that the Board might sell part of its land to the Napier City Council. In practice the sections are allocated between the Board and the Council so that the realisation from the Council selling its quantum of sections just covers the cost of development, including interest and administration, but not allowing for any profit. The Harbour Board then leases the sections retained in its ownership under typical Glasgow ground lease terms. Mr Simkin went on to say that it has been proven over the years that, in practice, the cost of developing a given area in this subject location has been found to be approximately 60 percent of the estimated market value of the sections so developed, therefore giving the Harbour Board a return of 40 per cent of the gross realisable value. He continued by saying that the Harbour Board and the City Council have clearly a considerable number of precedents in land transactions between the parties with the Harbour Board realising more for the land than a private developer could yield because of the profit and risk not being deducted by the City Council. The City Council is in a privileged position having, as it has, the right to expand the boundaries of Napier and develop the city in accordance with its town planning ideals or proposals.

Mr Simkin said "the judgment of Speight J. in the matter of the Napier Harbour Board and the Ministry of Works and Development and a school site held that the compensation for that land should be computed on the same basis as surrounding land sold to the Napier City Council without profit and risk being taken into consideration."

His valuation therefore, for compensation purposes, is based on those factors with no allowance for profit and risk being taken into consideration.

His valuations are therefore:

Block A.	$601,100
Block B. and Block C. combined	$677,560
Total:	$1,278,660

Evidence of Derek Edwin Snow:

He considered Block A. as being suitable for residential subdivision and ripe for development at the date of entry for low-cost housing or other urban uses such as community services or public recreation. This was on the assumption that its zoning or underlying zoning would have a strong chance of changing to that of residential. His valuation of Block A. was $465,000.

With respect to Block B. he assessed the value of $517,000 arrived at by the same method used for Block A. and *after* deducting *50 per cent* for a two to four year holding period for the sale of sections.

Concerning Block C., Mr Snow had the firm belief that this area would develop satisfactorily for intensive horticultural utilisation such as grapes and kiwifruit. He considered the front portion of this block to have future urban potential and by adopting the same formula as for the previous area arrived at a value of $92,500.

Among the factors influencing Mr Snow in his compensation assessments was the decision by Speight J. relied on by his co-valuer Mr Simkin.

His valuations, again, therefore:

Block A.	$465,000
Block B.	$517,000
Block C.	$92,500
	$1,074,500

Evidence of Eileen von Dadelszen:

Mrs von Dadelszen stated that if the provision of a large active recreation reserve had been considered at an early stage in the Tamatea development it is probable that it would have been located in an area closer to the central areas of the city. In particular, it could have been located in an area such as the junction of Taradale Road with the entrance to the Tamatea suburb. If this had indeed been the case, the subject land would become residential in order to provide the optimum number of sites available for the suburb of Tamatea. She concluded by saying that if in the future it is decided that a reserve is no longer required in the area the uses to which the land would eventually be put would tend to be urban in character rather than rural.

THE CASE FOR THE CITY COUNCIL

In his written submissions, Mr Gallen deals with the questions for determination by the Tribunal and also the principles for assessing compensation. The Tribunal accepts that both the questions for determination by the Tribunal and the principles for assessing compensation are the questions and principles to be answered and followed respectively. The general principles as to compensation are those set out in the case of Tauhara Properties Ltd. v. Minister of Works (1980) 2 N.Z.L.R. 673. Those principles with certain additional propositions are referred to by Mr Gallen and recited on pages 2 and 3 of the written submissions. The main points made by Mr Gallen are:

(1) Re: Block A.

Because of the rural zoning, the problems in a change of zoning, the slowing population growth with the concomitant slowing of the section sales, and the engineering constraints, then the potential for urban subdivision is limited or likely to be postponed. The land was not ripe for subdivision in May 1978 and has not become so since. If the concept of notional subdivisional valuation was to be accepted by the Tribunal then the period of realisation of the sections required to be a realistic one and, in addition, an appropriate figure required to be included for a profit and risk factor. Mr Simkin, he stated, had erred in two respects

(a) his assumption that the land would be immediately available for development

and

(b) the lack of provision for a profit and risk factor.

He said that Mr Snow in dealing with Block A. followed exactly the same pattern as did Mr Simkin and that his calculations were equally unacceptable and for the same reasons. He said it was not open to the Harbour Board to rely on the decision of Speight J. in the Napier Harbour Board and Ministry of Works case as Mr Simkin had proceeded on a wrong assumption which invalidated the whole of his calculation.

Accordingly, in summary, in relation to Block A. he states that because:

(a) it has never been the subject of an agreement for development.

(b) there were no plans for its development - it must be regarded as having only a potential for residential development.

(c) The principles in the Napier Harbour Board/ Ministry of Works case cannot apply for the reasons advanced in his written submissions on pages 11 and 12.

(d) The notional subdivision method of calculation is inappropriate because of the special circumstances of the case with any such potential being considerably postponed. A calculation based on comparable sales is more realistic and appropriate.

(e) If a notional subdivision calculation is used then it must take into account all the normal factors including profit and risk.

(f) The profit and risk factor should be a minimum of 33 and 1/3rd per cent.

(g) The valuation by Mr Hanna is generous and should be the figure adopted.

(2) Re: Block B.

This land is zoned "rural" within the Hawke's Bay County scheme and there has never been any suggestion that it should form part of the Napier City development and it has never been the subject of an agreement with the Napier City. Moreover the Hawke's Bay County Council would oppose its development for residential purposes. The City Council contends that there are only two possible ways in which this land can be valued, first when used for comparatively large scale farming activities and secondly in small holdings.

It is conceded that the proximity of the land to Napier City would give it some increased value because of the possibility that at some future stage it might be developed for urban purposes but it is contended that any such margin must be regarded as very small. Mr Hanna, in valuing it, was prepared to concede a margin of 5 per cent above rural values with Mr Hanna's valuation being $186,000.

Mr Gallen summarised his case and his objections to the method of assessment or valuation by Mr Simkin and by Mr Snow on page 18 of his written submissions. They are succinct and do not require repeating.

(3) Re: Block C.

Mr Gallen states that similar considerations apply to Block C. as to Block B. but with even greater force. Developmental problems which relate to Block B. apply equally or more strongly to Block C.

He criticises Mr Snow's valuation of $92,500 saying that the comparable sales on which the valuer relies are not in fact comparable. As in the case of Mr Simkin, says Mr Gallen, Mr Snow has relied heavily upon blocks which were brought into the Napier City for development, designated as such by the local Government Commission and contemplated by all parties as being suitable for development. Such considerations certainly do not apply, he says, to this land.

Mr Gallen contends that the evidence given by Messrs Snow and Simkin in respect of Blocks B. and C. may be simply tested. "Effectively they have valued the land to get the same return as that which the Hawke's Bay Harbour Board got from the land within the Tamatea agreement. This land is not within the city boundaries, it is not the subject of an agreement and has never been even considered for development. Clearly it must have a very much lower value without even taking into consideration that the particular factors which fix the Tarnatea valuation may or may not apply to this land if it were ever the subject of a development agreement."

Mr Gallen continues by saying that Mr Speedy, the valuer called by him, had valued the land as a whole on a rural basis. He arrived at a total figure of $307,000. He did not divide up the land as others had done into Blocks A., B. and C. In February 1977 Mr Speedy had valued the block for acquisition purposes for $33,500. He had at that time no reason to prepare for these proceedings and the figures must therefore be regarded as a reasonable indication of its then value. Mr Gallen maintains that the City Council relies upon his valuation of $307,000 in respect of the land generally as being a reasonable indication of the value of the land and stresses that he is the only valuer of all those called before the Tribunal who actually carried out a valuation at the relevant time.

Mr Wilson, another valuer called by Mr Gallen, in order to test the position, carried out a valuation on the basis that the whole of the land had a residential potential. In doing this he arrived at a total figure of $325,000.

As indicated earlier Mr Hanna valued Block A. as though it had a residential potential, Block B. as rural with a potential, and Block C. on a similar basis. He arrived at a total value of $360.000. This figure, says Mr Gallen, is the figure which could well be accepted by the Tribunal.

In addition to Reginald Speedy (District Valuer in charge of Valuation Department at Napier), Alan Ross Wilson (Napier City Valuer) and Malcolm Russell Hanna (Registered Valuer of Wellington) there was called for the City Council the following witnesses:

(a) Brian Elmore (Planning Officer for the H.B. County).
(b) Raymond Sidney Tucker (Town Clerk, Napier City Council).
Water Works Engineer).
(c) Graham Campbell Stilwell (Streets Engineer, Napier City Council).
(d) Donald Austen Hutson (Napier City Council Water Works Engineer),
(e) Ian Lindsay Hall (City Engineer, Napier City Council),
(f) Lance Charles Leikis (Town Planner) (Napier City Council Planner until 1979).

REVIEW BY TRIBUNAL OF EVIDENCE OF VARIOUS WITNESSES:

Reference has already been made herein relating to the points emerging from the evidence of Mr Lawrence. Attention is now turned to the evidence of Mr Simkin. An outline of his evidence-in-chief has been earlier outlined herein. His evidence overall - as is the evidence of some other witnesses - is now examined in greater depth.

(a) Mr Simkin's evidence:

Mr Simkin firstly elaborated on the various areas of the subject land and provided some information with regard to the background of sales between the Hawke's Bay Harbour Board and the Napier City Council. This section, and in particular one paragraph which reads "The Napier City Council is however in a privileged position, they have the right to expand the boundaries of Napier and develop the City in accordance with their town planning ideals," appear to be the rationale for Mr Simkin's method of valuation.

Mr Simkin then proceeded to value 13.7863 ha of land within the Napier City Boundary on the basis of a yield of 10.6388 sections per hectare to result in 146.67 sections. His valuation on this basis is $601,100. Mr Simkin then valued the balance of the land within the County Council administered area on the basis of rural land. The Tribunal's criticisms of Mr Simkin's valuation are:

(a) He assumed that the subject land was "ripe" for subdivision.
(b) He made no allowance for profit and risk.
(c) He has valued the land within the area administered by the County Council on the basis set for sales of bare land which were purchased for subdivision purposes and where subdivision potential existed.

It is a recognised prerequisite for valuing land on a hypothetical subdivision basis that the land be "ripe" for subdivision - this has been continuously recognised by the Courts and in particular in the recent judgment Te Marna Limited and Wellington Regional Water Board (M. 86/80 - High Court (Administrative Division) Wellington Registry - judgment 1.3.1982) On page 12 of the judgment this question is dealt with as follows:

"The Court is of the opinion, however, as has been stated a number of times previously, that the hypothetical subdivisional method is quite unsuitable when the subdivisional potential is some years removed in this case."

The Tribunal is of the opinion that in 1978 the subdivisional potential of the land was certainly some years removed (refer Mr Wilson's evidence). Mr Simkin, when questioned on section sales, conceded that their sales had been poor.

Additional criteria with regard to the valuation of land on a hypothetical subdivision basis are that an allowance for profit and risk be made and that due allowance be made for time required to dispose of the sections. In the initial valuation carried out by Mr Simkin neither of these factors were taken into account. In the subsequent valuation (Exhibit 4), a 25% allowance was made resulting in a reduction of the value of the area of land within the Napier City Boundary from $606,100 to $344.414. The Tribunal notes however, that the overall claim has not been reduced to reflect this amount. If interest had been taken into account, the revised valuation of $344,414 would likely be subject to a substantial reduction.

Due to the basic errors of approach, together with the failure to take into account various criteria with regard to the methods of valuation used, the Tribunal considers that the evidence placed before them by Mr Simkin carries insufficient weight.

(b) Mr Snow's Evidence:

With regard to the evidence produced by Mr Snow, it is noted by the Tribunal that Mr Snow stated that the subject land was known to be required for urban development and had not been exploited for its full farming potential by its owners. This fact was not corroborated in subsequent evidence and although a relatively minor point, the Tribunal is of the opinion that having regard to the attitude of the Hawke's Bay County Council together with the very slow level of section sales, that in fact the opposite was more likely to be the case.

In arriving at his overall valuation of $1,074,500 Mr Snow has relied on the notional subdivision method of valuation and has in fact used this method for areas A., B., and C., notwithstanding that area C. is situated on the western side of Park Island Road and that areas B. and C. are within the area administered by the Hawke's Bay County Council.

The Tribunal considers that Mr Snow has wrongly approached the valuation from a notional subdivisional point of view and that in making this approach he has failed to make any allowance for profit and risk. Mr Snow's rationale for this approach relied on the judgment delivered in the Napier Harbour Board and Ministry of Works and Development claim delivered by Speight J. We consider that the reliance placed on this judgment is inappropriate in the circumstances. In the particular situation there was an agreement between the Harbour Board and the Napier City Council for the development of Tamatea. From this it was nossible to calculate the amount that the Harbour Board would receive for the land in question. The agreement with the Napier City Council did not involve an assessment for profit and risk. Speight J. found in his iudgment that the land had a certain value to the Harbour Board pursuant to the agreement with the Napier City Council and that this in fact formed the basis for the assessment of compensation. For the reasons given and for those recited on pages 10 and 11 of Mr Gallen's submissions for the Napier City Council it is clear there has been a faulty interpretation and application by Mr Snow of the judgment.

The considerations involved in this context are markedly different - in particular there is no agreement between the Napier City Council and the Harbour Board for the development of the area. In the circumstances, the Tribunal is of the opinion that the indgment delivered by Speight J. cannot be applied to the subject case.

The Tribunal finds therefore that Mr Snow has incorrectly based his valuation on the notional subdivision basis and has misinterpreted or misapplied the judgment of Speight J. and has wrongly failed to take into account the profit and risk factor. It is also noted that Mr Snow has used a notional subdivision basis of valuation for areas A., B. and C. when in fact Mr Simkin used this basis for area A. and a block value for the remaining area.

Mr Snow proceeded to support his valuation on a notional subdivision basis by a comnarison with block land values. The main sales referred to in suonort of his valuation i.e. No's 1, 2, and *3 are* for considerably smaller areas of land which have subsequently formed part of the Greenmeadows East subdivision and which were bought with their subdivision potential in mind.

Due to the foregoing considerations, the Tribunal ifnds itself unable to accept the valuation presented by Mr Snow.

(c) Mr Wilson's evidence:

Mr Allan Ross Wilson, who retains the position of Napier City Valuer on a contractual basis, said that there was virtually no demand for residential sites as at May 1978, and that at that time the prospect for future sales was bleak. As it turned out, he said, the City Council did not experience any up-turn in the demand for sections until the second half of 1981.

Mr Wilson continued by saying that he had been requested by the Napier City Council to carry out a valuation on an urban subdivision basis to establish whether in fact the land had a higher value than when valued on a rural basis. Mr Wilson produced a comprehensive valuation - it is noteworthy that an allowance for profit and risk of thirty-three and one third percent was used in the exercise. This resulted in a value of the 45.4 ha of subdivisable land of $275,000. To this figure he added the balance of the land valued on a rural basis, together with an allowance for improvements, to reach an overall value of $325,000. He noted that in carrying out this valuation he had not taken into account any major contributions that a subdivider may have been required to make towards new trunk mains for stormwater and sewage disposal.

In the course of cross-examination by Mr Joyce on the question of the down-turn in the sale of sections, it was put to the witness that it would be a "Dismal Desmond" who thought the situation would not change, Mr Wilson replied that, rather, it would be a prudent person. Mr Joyce also questioned Mr Wilson on the question of the time delays involved. Mr Wilson admitted that the time would be unlikely to be less due to the attitude of the Hawke's Bay County Council.

When questioned on the profit and risk factor used of thirty-three and one third percent. Mr Wilson considered it appropriate - in fact, he said, he had considered using 40 percent at the outset.

(d) Mr Speedy's evidence:

Mr R. D. Speedy, the District Valuer, Valuation Department, Napier, said he inspected 40 ha of the land under consideration on the 1st and 7th August 1978 and reported to the Napier City Council on the 8th August 1978. A detailed description of the land and improvements followed in his evidence.

Mr Speedy then outlined his valuation approach saving that he had considered potential for residential urban development, potential for subdivision into rural holdings and purchase as block rural land. In Section 4.2 of his evidence Mr Speedy discussed the prospects for residential urban development and stated that from his experience and discussions with the Hawke's Bay County Planning Officer he considered the likelihood of the Hawke's Bay County Council changing the zoning to Residential to be extremely remote. He then went on to point out that assuming the zoning could be changed that any potential for urban development would have been ruled out for several reasons, namely -

(a) Plans to proceed with the Wharerangi development had been deferred indefinitely. This would have enabled the block to utilise the same service connections.
(b) Neither the proposed servicing of Greenmeadows West in five years time nor the existing Tamatea services would have the capacity to include the subiect land.
(c) Susceptibility of the land to flooding from the Taipo Stream would necessitate a costly flood control scheme.
(d) An easement across the land for the locating of power pylons would restrict development.

Mr Speedy also referred to the sale of sections in the Greenmeadows East development and to the fall-off in demand for sections. Mr Speedy further points out in his evidence (page 10, Section 4.2), when discussing residential urban development, "Those comments were made without the benefit of hindsight and I was then and still am firmly convinced that no one would have seriously considered the purchase of this or any other similar block of land adjacent to Napier for residential development in 1978."

Mr Speedy then proceeded to value the land on a rural basis and supported his valuation with a considerable number of sales. When questioned by the Tribunal as to the method in which he had arrived at his valuation Mr Speedy replied that the valuation produced at this time was based on his earlier valuation extended to cover the overall area of 46.93 ha. The

Tribunal noted that Mr Speedy's overall valuation for the land on the eastern side of Park Island Road as at May 1978 and for land on the western side of Park Island Road as at July 1979 was $321,000.

Mr Speedy, when cross-examined by Mr Joyce was asked if he had given consideration to urban development. In reply Mr Speedy stated that he had – and considered that he would have been negligent if he had not done so. He further went on to say that he had discussed the situation with the District Urban Valuer and considered that as at May 1978 the land should have been valued as rural land. Mr Speedy also pointed out that he had had dealings with the Hawke's Bay County Council and was aware of its approach.

When questioned in regard to the table of sections sales presented, Mr Speedy was asked whether the table included Glasgow lease sections. He replied that it did not - when asked if it included Napier City Council sales he replied in the affirmative.

(e) Mr Hanna's evidence:

The evidence of Mr M. R. Hanna, the Registered Valuer from Wellington, contained the assertion that in the 1978-79 period the subject land could have met a demand on the open market for:-

(a) Large scale farming or horticultural use.

(b) For subdivision into small holdings, hobby farming or horticultural use within zoning restraints.

(c) For subdivision into residential land.

In reaching his conclusion that the land was not suitable for subdivision into residential land Mr Hanna pointed to the following as grounds for such a conclusion:

(a) The development of the Greenmeadows East subdivision and the availability of sections in that area together with infill in the older semi-urban areas in Greenmeadows West and other areas within the Napier City boundary.

(b) The drop-off in the sale of sections and the fact that the Whareraangi proposal was dropped.

(c) Population projections from the "Hawke's Bay Area Planning Study" published in July 1979.

(d) The fact that following his enquiries it was unlikely that the Napier City Council would have agreed to change the zoning for urban use of Block A. and that there was no reasonable likelihood that the Hawke's Bay County Council would have considered a change in respect of Blocks B. and C.

(e) The fact that subdivisional difficulties would have occurred in providing municipal services for intensive residential subdivision – Mr Hanna pointed out that this may not necessarily have been the case as far as Block A. was concerned but that he considered it was common ground amongst the Local Body Officers with whom he spoke that any subdivision of Blocks B. and C. would have required revision of major services.

In considering the question of subdivision of the land into smaller holdings, Mr Hanna in Section 7.3.2. of his evidence said that he had considered the possibility that the subject land might be suitable for subdivision into small holdings but considered that it was doubtful from enquiries that he had made from the Hawke's Bay County Council that such a subdivision would have been approved.

Mr Hanna concluded that the land was not suitable for subdivision for urban use or subdivision for small rural holdings. However, he pursued the hypothetical subdivision concept for Block A. and, in attachment F. of his evidence, after allowing for 30 percent profit and risk and interest on outlay for half of the realisation period, he arrived at a nil value for this area. A further exercise was carried out where the gross realisation was extended to 150 Lots over a six year period. This also resulted in a nil Block value. Two further exercises were carried out shown as Method 2 where the income and expenditure excluding purchase was set out over the period to leave a residual or net Block value. This resulted in a net Block value of $140,000 for a realisation of 125 sections and $133,000 for a realisation of 150 sections (the Tribunal assumes that the sum of $5,000 should be added to this latter figure being the nominal allowance for drainage reserves to make a total of $138,000.)

After considering the subdivisional possibilities Mr Hanna proceeded to value the three blocks of land on farmland values to which an additional 15 percent was allowed with regard to Block A. for urban potential and five percent for Block B. The Tribunal noted that the valuations presented by Mr Hanna and Mr Speedy were similar in most respects with the exception of the allowance for urban potential.

The respective valuations were set out in Attachment H of Mr Hanna's report and result in an overall figure of $360,000. (NOTE: The incorrect addition in the summary.)

FINDINGS OF THE TRIBUNAL

After considering and weighing the evidence and after taking into account the principles for assessment of compensation (particularly that relating to the land requiring to be valued for what it was at the specified date but taking into account any potentialities) the Tribunal arrives at the following findings:

(1) It became obvious about 1976 that extra land was required to serve the recreational needs of Napier City as a whole and, to some extent, the residents of the County Council.

(2) Sufficient allowance had been made for reserves within the Tamatea subdivison with the Harbour Board having been given every opportunity to make representations with respect to reserves.

(3) The Tribunal does not agree with the assertion made by the Harbour Board that the subject lands are now being called on to provide facilities which should have been provided earlier elsewhere thus enabling Blocks A., B. and C. to be developed for residential purposes. Mr Lawrence made that statement boldly but under cross-examination his concessions weakened his assertion to a point where one could not hold to it.

(4) Various suburbs developed by the Napier City Council on land formerly owned by the Harbour Board were all the subject of separate agreements, whereas no agreement existed with respect to the subject land.

(5) The only reference to the basis of assessment of the valuing of the subject land is in the letter dated 26 July 1977 from the Harbour Board to the City Council and in the latters reply dated 2nd August 1977. No agreement was reached relating to the basis of assessment of the value. The formal agreement entered into between the parties provided for the compensation to be assessed in accordance with the provisions of the Public Works Act 1928. There is little weight to be given to references to earlier agreements between the parties affecting other lands. There cannot be any certainty that any subsequent agreement would be on the same terms. As Mr Gallen says the City Council could well say to the Harbour Board "We will enter into an agreement only on the basis that we obtain the profit and risk which the ordinary developer would require." Accordingly the Harbour Board cannot rely on the decision in the Ministry of Works case.

(6) The evidence failed to satisfy the Tribunal that the land was "ripe" for subdivision as at the dates of entry. Indeed a considerable amount of evidence to the contrary was presented, and that evidence was persuasive. The evidence presented confirmed that Blocks B. and C. (which were administered by the Hawke's Bay County Council) were highly unlikely to be released for urban subdivision purposes. With respect to Block A. because of the problems associated with a zone change, the slowing population growth (with the concomitant slowing of section sales) and the engineering constraints, then the potential for urban subdivision was limited.

(7) The practical servicing, engineering (including new road and access construction) and sewage

difficulties, if the subject land were subdivided, while not as impossible or imposing as put forward by the witnesses called by Mr Gallen are substantial enough.

(8) In all the circumstances and having regard to the Te Marua Limited decision - the Tribunal considers that a valuation on a hypothetical subdivision basis is not appropriate. Mr Simkin and Mr Snow, though obviously competent and experienced valuers, have proceeded on a faulty basis.

As a further comment, the Tribunal notes that the Harbour Board has based its claim for compensation on Mr Simkin's valuation figure of $1,278,760 which is insufficiently supported by the ifgure of $1,074,500 calculated by Mr Snow. Both Mr Simkin and Mr Snow, the Valuers for the claimant Harbour Board relied on a notional subdivision basis for their valuations and in doing so made certain assumptions with regard to the calculation of profit and risk and time delays. The valuations resulted in a substantially higher level of value than the City Council's valuers. The claimants valuers endeavoured to confirm their valuation of a block land value by comparing their values with the sale of other mainly smaller parcels of land which were sold for urban subdivision purposes. While Mr Hanna and Mr Wilson, for the respondent City Council, included in their valuations assessments on a hypothetical subdivision basis they considered that this method was largely inappropriate. In making their assessments they rightly took into account the profit and risk factor as well as the time delay in section sales.

(9) Considerable weight must attach to the evidence of Mr Speedy of the Valuation Department. He was the only valuer who valued much of the subject land at the approximate dates of entry. He was able to present evidence from his valuation report dated 8 August 1978. His values are generally consistent with those of Mr Hanna with the exception of allowances for urban potential.

(10) Taking all matters into account therefore, the Tribunal arrives at the conclusion that it should accept the valuation of Mr Hanna as being the amounts which the subject land, Blocks A. B. and C. if sold on the market at the respective dates of entry by a willing seller, might be expected to realize. In other words, the land should be valued on the basis of rural land accepting Mr Hanna's point that allowance could rightfully be made for urban potential for Blocks A. and B.

Accordingly, the Tribunal values the subject land as follows -

Block A.(As at May 1978)	$115,000
Block B.(As at May 1978)	$186,000
Block C.(As at July 1979)	$59,000
	$360,000

INTEREST ON THE SUM AWARDED

The cases referred to the Tribunal (Coomber's case and To Marna Properties Limited) have been considered. So too have the submissions made by Counsel on the matter.

The Tribunal concludes that the Harbour Board is entitled to interest on the unpaid purchase money. A figure of 10.25% compound interest is ordered to be paid. The figure arrived at is the interest rate for local authority for a four year term in mid 1978 as quoted by the Reserve Bank of New Zealand.

COSTS

Counsel indicated they would prefer delaying the making of submissions to the Tribunal on this question until the claim was determined. The Tribunal invites such submissions in writing.

(A. J. Sheehan)

DISTRICT COURT JUDGE
CHAIRMAN

(S. D. Morice).

VALUERS' REGISTRATION BOARD

Disciplinary Decision

Charges Against Valuer Dismissed

Date of Hearing: 2nd November, 1982

Heard Before: Mr M. R. Hanna (Inquiry Chairman), Mr D. J. Armstrong, Mr L. M. Sole, Mr R. P. Young

Date of Decision: 25th November, 1982.

This inquiry arose from a complaint in respect of a valuation report dated March 4th, 1980, by a registered valuer concerning a residential property. On December 9th, 1981, the Board reached the decision that in the terms of Section 32 (2) of the Act there were no reasonable grounds for the complaint, but the complainant later submitted further letters in January, April and May, 1982, in which he made additional submissions regarding the original complaint and requested the Board to reconsider its decision not to hold an inquiry. As a result the Board ordered that the investigation should be re-opened and at its meeting on July 13th, 1982, decided that on the evidence then before it, the matter should proceed to an inquiry which was finally arranged for November 2nd.

By Notice dated August 27th, 1982, the valuer was advised of the Inquiry and of two charges against him which were framed in the terms of Section 32 (1) (c) of the Valuers' Act. Certain changes to the first of these were agreed by consent at the commencement of the Hearing, and as finally heard by the Board the charges cited firstly that the valuer failed to correctly state the position with regard to stormwater disposal at the subject property, and secondly that he failed to make all proper and reasonable enquiries and inspections concerning the possibility of surface flooding of that property.

At the commencement of the Hearing, counsel for the valuer made certain other submissions concerning the validity of the charges and the Board's action in proceeding with the Inquiry after the original complaint has been declined. These points were answered by counsel for the Valuer-General and the Board decided that the various submissions should be noted for consideration should the need arise when decisions had finally been reached by the Board in respect of the charges.

Counsel then opened the case for the Valuer-General by calling the complainant, who described himself as a Technical Officer employed by the Insurance Council of New Zealand. Giving his evidence orally and in narrative, the witness explained that in January, 1980, he was transferred from Dunedin where he had previously owned a home situated in close proximity to the Abbotsford slip. Understandably he was therefore particularly sensitive to the risks to which real property can be put by the forces of nature.

When house-hunting he was shown the subject property and in due course made an offer to purchase subject to the completion of a valuation of the property acceptable to his employer, by a registered valuer. He asked the real estate agent concerned to instruct a valuer and the agent in turn passed the instruction to the valuer who inspected the property on March 3rd, 1980, and whose report dated March 4th was sent to the Insurance Council of New Zealand which approved mortgage funding. The purchase was therefore confirmed.

The witness then stated that within a few days his wife was advised by an acquaintance of a possible risk of flooding to properties in the area concerned. The complainants considered the matter and witness consulted the drainage authority where he saw a map allegedly indicating the flood risk areas in the city and was advised that there was on record a complaint concerning flooding in respect of the adjacent front property. Accordingly the witness decided to rescind the contract on the strength of that information and instructed his solicitor to act accordingly. Witness subsequently purchased another property but faced a claim for loss and costs of some $2,600 arising from the repudiation of the contract. He was advised to settle

out of court, later doing so on the payment of the sum of $1,500. The witness also stated that the valuer had telephoned him after the contract had been rescinded and that in reply to the witness's claim that his enquiries revealed a flooding problem the valuer had said that his inspection had been made immediately after heavy weekend rain which had not indicated any such problem. Furthermore, it was alleged that in reply to a comment by the witness that being new to Christchurch he had employed a valuer for the benefit of local knowledge, including flood risk, the valuer has said "well, you live and learn every day".

Later the witness entered into extended correspondence with the Valuers' Registration Board, finally drawing to the Board's attention his claim that despite the valuer's statement in his report that the site had stormwater disposal available, such was not the case insofar as there was no outfall system to carry water off the property. Witness stated that he later contacted the present owner of the property, who advised him that a valuer employed on her behalf later in the year had noted a potential water problem and that in the event she had installed a pumping system to carry water back to the road at a cost of about $2.000.

Cross-examined by counsel for the valuer, the witness agreed that the condition that his purchase of the property should be subject to a favourable valuer's report was a requirement intended only to satisfy his employers for purposes of mortgage finance. He did not know the name of the person who had spoken to his wife and agreed that the allegation of water problems referred to the general area and not in particular to the subject property.

The witness was closely questioned on aspects of his enquiries from the drainage authority and his conversation with the valuer and agreed that the crux of his complaint was now in respect of the question of stormwater disposal. He also agreed that the expense to which he had been put in the matter of the repudiated Agreement for Sale and Purchase led to the complaint rather than a question of professional incompetence. Later, in reply to a question from a Board member, the witness stated that the Insurance Council of New Zealand refused to withdraw the loan offer despite the questions which he raised as to the accuracy of the valuer's report, but stated that the council thought that it was not legally able to take such an action.

Counsel for the Valuer-General then submitted to the Board the Valuer-General's written reports dated October 2nd, 1981, and July 6th, 1982, concerning the complaints against the valuer. By consent it was agreed that these be taken as read and the Valuer-General, Mr M. R. Mander, was not called upon to give evidence. Mr Mander's reports set out his investigation into the complaints including enquiries to the drainage authority, the City Council and various other parties. The other matters in his reports tended to sustain evidence given by witnesses who appeared before the Board.

Mr Mander included some detail concerning the topography of the site and its neighbours and it seems convenient at this point to summarise these facts which appear to be common ground between the parties and which also formed part of the evidence of other witnesses. It was noted that the property with which the complaint is concerned was the balance of a larger back section previously known by the same address but subdivided in 1974 to *provide a* vacant section. The property from which the complaint was received by the drainage authority is a front section lying between the vacant section and the road. The general contour of the land apparently shows a slight fall from the road through the subject properties to the street at the rear but it also seems that the vacant section had been filled and raised and that action has recently been in hand to recover from the original subdivider for costs incurred by the local authority in relieving the flooding problem on the adjacent front property which was considered to result from that filling.

The second prosecution witness was an officer of the By-laws and Services Department of the Drainage Authority. He gave evidence as to the nature of his duties with the authority which included investigation into enquiries and complaints made by the public and he indicated the general procedure adopted in such cases. He acknowledged that the intersection of the subject road and an adjacent thoroughfare had an inadequate stormwater outfall which occasionally overtopped and backed up but he stated that the map hanging in his office indicated areas of flooding resulting from a storm some years ago. In later cross-examination he agreed that the hatched area on that map in the vicinity of the subject road did not appear to include the complaint property.

Questioned by counsel for the valuer, the witness stated that while he had no specific recollection of the alleged enquiry to the drainage authority by the valuer concerning the subject property, he handled more than 3,000 enquiries per annum and had no doubt that the valuer did in fact make the phone call he claimed. He also accepted that he would have told him that the Board had no record of a problem at the subject property. He gave further evidence concerning the flooding on the adjacent front property and its correction, and stated that because the filled vacant section is of higher contour, water from it will not necessarily flow to all lower surrounding properties. It could certainly go to the front property and not to the subject property.

In respect of the phrase "stormwater disposal" the witness confirmed that both outfall from a site and a soak pit would be regarded by the drainage authority as "a stormwater system". A soak pit on the subject property would qualify and he accepted the comment in the valuer's report as being accurate. He further stated that soak pits are legal and indeed were a normal installation in the 1950s in some parts of the city.

The Board found the evidence given by this witness to shed much light on the matters before it and is grateful for the assistance he was able to give.

The case for the Valuer-General closed at the conclusion of the above evidence and the case for the valuer was then opened by counsel who submitted that the evidence led to the conclusion that any flooding problem at the adjacent property resulted from the filling of the vacant section in 1974 while the problem which had developed at the subject property by December, 1980, resulted from the construction of two residential units and the sealing of driveways etc., which occurred subsequent to the date of the valuer's report.

The valuer was then called and read a detailed submission setting out his version of the events leading up to the preparation of his valuation dated March 4th, 1980, and including certain relevant documents, personal references and statements/affidavits by persons familiar with the subject property.

He commented upon the recent heavy rainfall before his inspection, the higher ground level of the neighbouring property and his subsequent enquiries, in particular from the drainage authority. He was satisfied that there were no problems of flooding on the subject property at the time of his inspection and valuation. He claimed that he had no recollection of the telephone conversation he is alleged to have had with the complainant and denied that he would ever have used the words claimed. He also discussed the valuation later obtained by the present owner from another registered valuer. He further provided detailed comments concerning the subdivision of the original property, the subsequent filling on the vacant section and later efforts by the drainage authority to overcome the problems which then occurred on the front property. He claimed that his statement that "stormwater disposal" was available was not only correct but a matter of common interpretation accepted by other valuers and by the drainage authority and claimed the facts supported his conclusion that the stormwater disposal system was working at the time of his inspection.

The valuer was then cross-examined by counsel for the Valuer-General and agreed that he did not locate a soak pit on the property but believed that the recent rainfall of 80 mm would certainly show up any defects in the available stormwater system. He accepted that local knowledge was valuable but admitted that he had made no specific enquiries from neighbours though he had noted that the first unit on the filled vacant section was in the early stages of construction at the

time of his inspection. Re-examined by counsel for the valuer, he expressed the view that it was not necessary to include in his valuation matters which were negative or did not justify comment.

In his concluding address, counsel for the Valuer-General commented upon some of the written supporting statements submitted by the valuer and upon comments noted in the Valuer-General's report of October, 1981, by another person who owned the subject property for a very short period after the complainant's interest in it and before the present owner's purchase. That person had claimed to have sold the house because he encountered a surface flooding problem and because a block of high-rise flats was to be erected on the adjoining property. It was submitted that this indicated that the flooding problem pre-dated the construction of Unit 2 on the filled section and that the complainant's contention that the flooding problem did in fact exist when the valuer inspected the property was therefore sustained.

In his conclusion counsel for the valuer contended the charges were unusually severe in respect of the phrasing of Section 31 (1) (c) of the Act but that they must be considered strictly in accordance with that wording. He put it to the Board that the highest standard of proof was required of behaviour as grave as professional misconduct. He contended that the prosecution must show that there was not a disposal system on the property, although the evidence had been that both the drainage authority and the Valuer-General accepted that there was an operative soak pit system. Thus in respect of Charge 1 he submitted that there was a stormwater disposal system and that it was in place on March 3rd, 1980, when the valuer inspected the property, but that it may later have become ineffective. As to Charge 2, counsel submitted that the valuer had followed standard professional practice in making his valuation and having neither cause nor opportunity to enquire from neighbours concerning flooding, had very properly made enquiries from the drainage authority and the City Council which had satisfied him as to the absence of risk.

Counsel stated that he would go beyond asking that the charges be dismissed as not proven and that the Board's decision should entirely exculpate the valuer in the matter. He claimed that his client deserved more than the dismissal of the charges, by an acknowledgement that the proper enquiries were made and by an affirmation of the propriety of the valuer's actions.

In arriving at its decision, the Board carefully considered the weight of evidence placed before it in relation to the stated charges. In respect of Charge 1, it seems clear that the statement on page 2 of the valuer's report dated March 4th, 1980, that "the site has available ... stormwater disposal....." is correct in light of common practice and understanding in the city The officer from the drainage authority gave evidence to the effect that stormwater disposal to a soak pit is legal and an accepted and not uncommon method in the city, and that view was supported by the valuer's evidence and by written statements which he submitted. The Board accepts the officer's opinion in the matter as being the correct one.

As to Charge 2 that the valuer failed to make all proper and reasonable enquiries and inspections concerning the possibility of surface flooding to the property, the Board has concluded that there is insufficient weight in the evidence presented by the prosecution to suggest that he did not do so. It does accept that the situation at the subject property may have been changed in the months which followed March, 1981, as a result of the construction and development upon the adjoining filled site but that was hardly a matter on which the valuer could have been expected to speculate.

The evidence of the complainant in the matter indicates that his views were sincerely held and it would be understandable if they were influenced by his earlier unfortunate experience at Abbotsford. Nonetheless, the Board formed the opinion that the valuer did in fact do all that could reasonably be expected from him in the discharge of his professional obligations in the matter.

Accordingly, the Board concluded that both charges should be dismissed and at 5.05 p.m. on November 2nd, 1982, gave its oral decision as follows:

"The Board is particularly conscious of the prolonged strain to which the valuer has been subjected in the prosecution of these complaints and wishes in the circumstances, to make the substance of its decision known to him without delay. Having heard the evidence we find that neither Charge 1 nor Charge 2 is proven and they are therefore dismissed. The Board wishes to give full consideration to the closing submissions made to it by counsel and will therefore reserve its decision on those matters. It will present that decision in writing at the earliest possible time".

In now presenting that written decision, the Board has given further consideration to counsel's submissions and reiterates that on the evidence before it the charges must be dismissed, and accepts that the valuer did make such enquiry as might reasonably have been expected of a registered valuer on the basis of the information available to him on March 3rd and 4th, 1980. It believes that such acceptance adequately meets the submissions made to it by defence counsel both at the opening of the Hearing and in his closing address, but remains firm in the view that the particular circumstances of the series of complaints made by the complainant entirely justified the holding of an Inquiry in order that the matter should be thoroughly and properly explored and explained.

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ISSN 0027-7282